

1 **H. B. 2997**

2
3 (By Delegates Frich, Householder, Howell, Kump, Reynolds,
4 Lane, Moore, Ellem, Sobonya, Border and Butler)

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6 [Introduced March 20, 2013; referred to the
7 Committee on the Judiciary.]

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10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new article, designated §1-7-1, §1-7-2, §1-7-
12 3, §1-7-4, §1-7-5, §1-7-6 and §1-7-7, all relating to
13 prohibiting the use of unmanned aircraft; providing
14 exceptions; requiring documentation when an unmanned aircraft
15 is used; providing remedies; prohibiting the use of certain
16 evidence and preservation of collected data; establishing
17 exceptions; and defining terms.

18 *Be it enacted by the Legislature of West Virginia:*

19 That the Code of West Virginia, 1931, as amended, be amended
20 by adding thereto a new article, designated §1-7-1, §1-7-2, §1-7-3,
21 §1-7-4, §1-7-5, §1-7-6 and §1-7-7, all to read as follows:

22 **ARTICLE 7. UNMANNED AIRCRAFT SYSTEM.**

23 **§1-7-1. Definitions.**

24 For purposes of this article, the following definitions apply:

25 "Law-enforcement agency" means a person authorized by law, or

1 funded by the state, to investigate or prosecute offenses against
2 the state.

3 "Unmanned aircraft" means any aircraft that is operated
4 without the possibility of direct human intervention within or on
5 the aircraft.

6 "Unmanned aircraft system" means an unmanned aircraft and
7 associated elements, including communication links and the
8 components that control the unmanned aircraft, which are required
9 for the pilot in command to operate safely and efficiently in state
10 airspace.

11 **§1-7-2. Prohibited use of unmanned aircraft system.**

12 (a) Except as otherwise provided in this article, a law-
13 enforcement agency may not use an unmanned aircraft for
14 surveillance of a person within the state or for the surveillance
15 of personal or business property located within the borders of the
16 state to gather evidence or other information pertaining to
17 criminal conduct, or conduct in violation of a statute or
18 regulation except to the extent authorized in a warrant issued by
19 a court which satisfies the requirements of the Constitution of
20 West Virginia.

21 (b) Warrants to conduct surveillance with an unmanned aircraft
22 may only be issued in a criminal investigation.

23 **§1-7-3. Exceptions.**

24 (a) The use of an unmanned aircraft by a law-enforcement

1 agency is permitted when exigent circumstances exist. For the
2 purposes of this subsection, exigent circumstances exist when a
3 law-enforcement agency possesses reasonable suspicion that absent
4 swift preventative action, there is an imminent danger to life or
5 bodily harm.

6 (b) The use of an unmanned aircraft by state authorities is
7 permitted to preserve public safety, protect property, survey
8 environmental damage to determine if a state of emergency should be
9 declared, or to conduct surveillance for the assessment and
10 evaluation of environmental or weather-related damage, erosion,
11 flood or contamination.

12 **§1-7-4. Prohibited surveillance.**

13 (a) A state agency may not authorize the use, including grant
14 a permit to use, of an unmanned aircraft while armed with any
15 lethal or nonlethal weapons, including firearms, pepper spray, bean
16 bag guns, mace, and sound-based weapons.

17 (b) A state agency may not authorize the use, including
18 granting a permit to use, of an unmanned aircraft to permit any
19 private person to conduct surveillance on any other private person.

20 (c) A state agency may not authorize the use, including
21 granting a permit to use, of an unmanned aircraft for the purpose
22 of the surveillance of persons engaged in the lawful exercise of
23 the constitutional right of freedom of speech and freedom of
24 assembly.

1 §1-7-5. Remedies.

2 An aggrieved party may file a civil action and seek all
3 appropriate relief to prevent or remedy a violation of this
4 article.

5 §1-7-6. Use of evidence prohibited; data may not be preserved;
6 exceptions.

7 (a) Evidence obtained or collected in violation of this
8 article is not admissible as evidence in a criminal prosecution,
9 including use during trial, at sentencing, before a grand jury, as
10 rebuttal evidence, or during administrative hearings in any court
11 of law in the state.

12 (b) Any imaging or other forms of observational data gathered
13 by unmanned aircraft surveillance from or concerning the parties or
14 places subjected to surveillance in violation of this article may
15 not be preserved by law-enforcement or government agencies for any
16 purpose unless required by a court of law.

17 (c) Any imaging or any other forms of data lawfully obtained
18 under this article for which there is not a reasonable and
19 articulable suspicion that those images or data contain evidence of
20 a crime, or are relevant to an ongoing investigation or trial, may
21 not be retained for more than ninety days, unless the retention is
22 attendant to general agency guidelines regarding the retention of
23 evidence in criminal cases. In those cases, the imaging or other

1 data may not be distributed to agencies, entities, or individuals
2 if the distribution is not necessary to meet general agency
3 guidelines regarding the retention of evidence in criminal cases.

4 (d) An unmanned aircraft may not conduct any type of
5 surveillance that would violate state laws regarding the
6 interception of aural communications, electronic messaging,
7 personal location data, or acquire video or still images of a
8 person within a home or place without first obtaining all required
9 warrants in compliance with state statutes relevant to the
10 interception of such voice communications, digital communications,
11 physical surveillance data, or to capture the still or video images
12 of a person or interior or a place for which a search warrant is
13 prerequisite to its lawful search.

14 **§1-7-7. Documentation of unmanned aircraft surveillance.**

15 (a) The person or agency authorized to conduct the
16 surveillance under this article shall document all use of unmanned
17 aircraft for surveillance. The person shall document all
18 surveillance flights as to duration, flight path, and mission
19 objectives, including the names of place or persons authorized to
20 be subject to surveillance.

21 (b) The flight information must be certified as accurate and
22 complete by the supervising person authorized by a court to conduct
23 the surveillance.

24 (c) The flight information required under this section must be

1 retained for five years.

2 (d) Except for the operational capabilities of the unmanned
3 aircraft system and other operational information strictly related
4 to the technical conduct and physical security of the surveillance
5 operation, a person accused of a crime that includes evidence
6 gathered through the use of unmanned aircraft system surveillance
7 may obtain all information relating to the person acquired in the
8 course of the surveillance through subpoena and discovery
9 proceedings available in criminal proceedings.

10 (e) The documentation required by this section applies to all
11 uses of unmanned aircraft systems, including testing, training,
12 education and research.

NOTE: The purpose of this bill is to prohibit the use of unmanned aircraft. The bill provides exceptions and requires documentation when an unmanned aircraft is used. The bill provides remedies. The bill prohibits the use of certain evidence and the preservation of data, and establishes exceptions. The bill defines terms.

This article is new; therefore, it has been completely underscored.