

# WEST VIRGINIA LEGISLATURE

## 2016 REGULAR SESSION

Introduced

### House Bill 4413

FISCAL  
NOTE

BY DELEGATES CAPUTO, LONGSTRETH, MANCHIN, PERRY,

BOGGS, BYRD, LYNCH, PERDUE, ROMINE, ROWAN AND A,

EVANS

[Introduced February 5, 2016; Referred  
to the Committee on the Judiciary.]

1 A BILL to amend and reenact §61-8-28 of the Code of West Virginia, 1931, as amended, relating  
2 to the use of drone surveillance of private citizens; and providing criminal penalties.

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

1 That §61-8-28 of the Code of West Virginia, 1931, as amended, be amended and  
2 reenacted to read as follows:

**ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.**

**§61-8-28. Criminal invasion of privacy; penalties.**

1 (a) For the purposes of this section, the words or terms defined in this subsection have  
2 the meanings ascribed to them. These definitions are applicable unless a different meaning  
3 clearly appears from the context:

4 (1) "A person fully or partially nude" means a male or female who is either clothed or  
5 unclothed so that: (A) All or any part of his or her genitals, pubic area or buttocks is visible; or (B)  
6 in the case of a female only, a part of a nipple of her breast is visible and is without a fully opaque  
7 covering;

8 (2) "To visually portray" a person means to create a reproducible image of that person by  
9 means of:

10 (A) A photograph;

11 (B) A motion picture;

12 (C) A video tape;

13 (D) A digital recording; or

14 (E) Any other mechanical or electronic recording process or device that can preserve, for  
15 later viewing, a visual image of a person; and

16 (3) "Place where a reasonable person would have an expectation of privacy" means a  
17 place where a reasonable person would believe that he or she could, in privacy, be fully or partially  
18 nude without expecting that the act of exposing his or her body was being visually portrayed by  
19 another person.

20 (b) It is unlawful for a person to knowingly visually portray another person without that  
21 other person's knowledge, while that other person is fully or partially nude and is in a place where  
22 a reasonable person would have an expectation of privacy. A person who violates the provisions  
23 of this subsection is guilty of a misdemeanor and, upon conviction, shall be confined in a ~~county~~  
24 ~~or regional~~ jail for not more than one year or fined not more than \$5,000, or both confined and  
25 fined.

26 (c) Any person who displays or distributes visual images of another person with knowledge  
27 that said visual images were obtained in violation of subsection (b) of this section is guilty of a  
28 misdemeanor and, upon conviction, shall be confined in a ~~county or regional~~ jail for not more than  
29 one year or fined not more than \$5,000, or both confined and fined.

30 (d) It is unlawful for any person to use a drone or unmanned aircraft system to enter and  
31 view another person's property in which the person operating the drone has no lawful access or  
32 right of entry, with the intent of viewing or capturing photographs, video, or surveillance, of persons  
33 or activities on another person's property. A person who violates the provisions of this subsection  
34 is guilty of a misdemeanor and, upon conviction, shall be confined in jail for not more than one  
35 year or fined not more than \$5,000, or both confined and fined.

36 ~~(d)~~ (e) A person who is convicted of a second or subsequent violation of subsection (b),  
37 ~~or (c)~~ or (d) of this section is guilty of a felony and, upon conviction, shall be ~~confined~~ imprisoned  
38 in a state correctional facility for not less than one year nor more than five years or fined not more  
39 than \$10,000, or both imprisoned and fined.

NOTE: The purpose of this bill is to create restrictions on the use of drones or unmanned aircraft systems on another person's property in order to view or capture pictures, video, or surveillance for the use of the person operating the drone and establish penalties for violating those restrictions.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.