WEST VIRGINIA CODE: §17c-25-2

§17C-25-2. Operation of aircraft while under influence of alcohol, controlled substances, or drugs; criminal penalties.

(a) Any person who operates an aircraft in this state while:

(1) Under the influence of alcohol;

(2) Under the influence of any controlled substance;

(3) Under the influence of any other drug;

(4) Under the combined influence of alcohol any controlled substance, or any other drug; or

(5) Has an alcohol concentration in his or her blood of four-hundredths of one percent or more by weight is guilty of a misdemeanor and, upon conviction thereof, shall be confined in a regional jail facility not more than one year or fined not more than $500, or both, in the discretion of the court.

(b) Any person who operates an aircraft in this state while:

(1) Under the influence of alcohol;

(2) Under the influence of any controlled substance;

(3) Under the influence of any other drug;

(4) Under the combined influence of alcohol any controlled substance, or any other drug; or

(5) Has an alcohol concentration in his or her blood of four-hundredths of one percent or more by weight who, when operating an aircraft while under the influence, does any act forbidden by law or fails to perform any duty imposed by law in the operation of the aircraft, which act or failure proximately causes bodily injury to any other person, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a definite term of imprisonment of not less than one year nor more than five years, or in the discretion of the court, be confined in a regional jail facility not more than one year and be fined not more than $500.

(c) Any person who knowingly permits his or her aircraft to be operated in this state by any other person who is:

(1) Under the influence of alcohol;

(2) Under the influence of any controlled substance;

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(3) Under the influence of any other drug;

(4) Under the combined influence of alcohol and any controlled substance or any other drug; or

(5) Has an alcohol concentration in his or her blood of four-hundredths of one percent or more by weight is guilty of a misdemeanor and, upon conviction thereof, shall be confined in a regional jail facility not more than one year or fined not more than $500, or both, in the discretion of the court.

(d) A person violating any provision of subsection (a) or (c) of this section is, for the second offense under this section, guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a definite term of imprisonment of not less than one year nor more than three years.

(e) A person violating any provision of subsection (b) of this section is, for the second offense under this section, guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a definite term of imprisonment of not less than one year nor more than five years.

(f) For purposes of subsections (d) and (e) of this section relating to second and subsequent offenses, the following types of convictions shall be regarded as convictions under this section:

(1) Any conviction under the provisions of the prior enactment of this section; or

(2) Any conviction under a statute of the United States or of any other state of an offense which has the same elements as an offense described in subsection (a), (b), or (c) of this section.

(g) A person may be charged in a warrant or indictment or information for a second or subsequent offense under this section if the person has been previously arrested for or charged with a violation of this section which is alleged to have occurred within the applicable time periods for prior offenses, notwithstanding the fact that there has not been a final adjudication of the charges for the alleged previous offense. In that case, the warrant, or indictment, or information shall set forth the date, location, and particulars of the previous offense or offenses. A person may not be convicted of a second or subsequent offense under this section unless the conviction for the previous offense has become final.

(h) The fact that any person charged with a violation of subsection (a) or (b) of this section, or any person permitted to operate an aircraft as described under subsection (c) of this section, is or has been legally entitled to use alcohol, a controlled substance, or a drug, shall not constitute a defense against any charge of violating subsection (a), (b), or (c) of this section.

(i) When any person is convicted of violating any provision of this section, the clerk of the

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court in which the conviction occurred shall, within 72 hours after receipt thereof, transmit a true copy thereof to the federal aviation administration.

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