WEST VIRGINIA CODE CHAPTER 17c ARTICLE 25

WV Legislature

§17C-25-1. Definitions.

As used in this article, unless the context otherwise requires:

"Aeronautics" means the art and science of flight including, but not limited to, transportation by aircraft; the operation, construction, repair, or maintenance of aircraft, aircraft power plants, and accessories, including the repair, packing, and maintenance of parachutes; the design, establishment, construction, extension, operation, improvement, repair, or maintenance of airports or other air navigation facilities; and education about aeronautics.

"Aircraft" means any contrivance now known, or hereafter invented, used or designed for navigation of or flight in the air.

"Air navigation" or "navigation" means the operation or navigation of aircraft in the air space over this state, or upon any airport within this state.

"Air navigation facility" means any facility other than one owned or controlled by the federal government used in, available for use in, or designed for use in aid of air navigation, including airports, and any structures, mechanisms, lights, beacons, markers, communications system, or other instrumentalities or devices used or useful as an aid or constituting an advantage or convenience to the safe takeoff, navigation, and landing of aircraft or the safe and efficient operation or maintenance of an airport, and any combination of any or all of such facilities.

"Airport" means any area of land or water which is used, or intended for use, for the landing and takeoff of aircraft and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon.

"Controlled substance" has the meaning ascribed to it in chapter 60A of this code.

"Law-enforcement officer" means: (1) Any member of the State Police; (2) any sheriff and any deputy sheriff of any county of this state; (3) any member of a police department in any political subdivision of this state; and (4) any natural resources police officer of the Division of Natural Resources.

"Operation of aircraft" or "operate aircraft" means the use, navigation, or piloting of aircraft in the airspace over this state or upon the ground within this state.

"Person" means any individual, firm, partnership, corporation, company, association, joint stock association, or body politic, and includes any trustee, receiver, assignee, or other similar representative thereof.

"Political subdivision" means any county, city, town, village, or other political subdivision of this state.

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§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;

(3) Under the influence of any other drug;

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

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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 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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§17C-25-3. Implied consent to test; administration at direction of law-enforcement officer; designation of type of test; definition of law-enforcement officer.

(a) Any person who operates an aircraft in this state is considered to have given his or her consent by the operation thereof to a preliminary breath analysis and a secondary chemical test of either his or her blood, breath, or urine for the purposes of determining the alcoholic content of his or her blood, breath, or urine. A preliminary breath analysis may be administered in accordance with the provisions of §17C-25-4 of this code whenever a law-enforcement officer has reasonable cause to believe a person committed an offense prohibited by §17C-25-2 of this code. A secondary test of breath, blood, or urine shall be incidental to a lawful arrest and shall be administered at the direction of the arresting law-enforcement officer. The law-enforcement agency by which the law-enforcement officer is employed shall designate which one of the secondary tests shall be administered: *Provided*, That if the designated test is a blood test and the person arrested refuses to submit to the blood test, then the law-enforcement officer making the arrest shall designate in lieu thereof either a breath or urine test to be administered.

(b) If any political subdivision or the Division of Natural Resources does not have available to its law-enforcement officers the testing equipment or facilities necessary to conduct any secondary test which a law-enforcement officer may administer under this article, any member of the State Police, the sheriff of the county in which the arrest is made, or any deputy of the sheriff or any municipal law-enforcement officer of another municipality within the county in which the arrest is made may, upon the request of the arresting law-enforcement officer and in his or her presence, conduct a secondary test. The results of the test may be used in evidence to the same extent and in the same manner as if the test had been conducted by the arresting law-enforcement officer. Only the person actually administering or conducting the test is competent to testify as to the results and the veracity of the test.

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§17C-25-4. Preliminary analysis of breath to determine alcoholic content of blood.

When a law-enforcement officer has reason to believe a person has committed an offense prohibited by §17C-25-2 of this code, the law-enforcement officer may require the person to submit to a preliminary breath analysis for the purpose of determining that person's blood alcohol content. The law-enforcement officer shall administer the breath analysis as soon as possible after he or she has a reasonable belief that the person has been operating an aircraft while under the influence of alcohol, controlled substances, or drugs. Any preliminary breath analysis required under this section shall be administered with a device and in a manner approved by the Bureau of Public Health for that purpose. The results of a preliminary breath analysis shall be used solely for the purpose of guiding the law-enforcement officer in deciding whether an arrest should be made. When a person is arrested following a preliminary breath analysis, the tests shall be administered in accordance with the provisions of this article.

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§17C-25-5. How blood test administered; additional test at option of person tested; use of test results; certain immunity from liability incident to administering test.

Only a doctor of medicine or a doctor of osteopathy, a registered nurse, or trained medical technician at the place of his or her employment, acting at the request and direction of the law-enforcement officer, may withdraw blood for the purpose of determining the alcoholic concentration of the blood. These limitations shall not apply to the taking of a breath test or a urine specimen. In withdrawing blood for the purpose of determining its alcoholic concentration, only a previously unused and sterile needle and sterile vessel may be used, and the withdrawal shall otherwise be in strict accord with accepted medical practices. A nonalcoholic antiseptic shall be used for cleansing the skin prior to venipuncture. The person tested may, at his or her own expense, have a doctor of medicine or a doctor of osteopathy, registered nurse, or trained medical technician of his or her own choosing, at the place of his or her employment, administer a chemical test in addition to the test administered at the direction of the law-enforcement officer. Upon the request of the person who is tested, full information concerning the test taken at the direction of the law-enforcement officer shall be made available to him or her. A person who administers any test upon the request of a law-enforcement officer, a hospital in or with which the person is employed or is otherwise associated or in which the test is administered and any other person, firm, or corporation by whom or with which that person is employed or is in any way associated, is not in any way criminally liable for the administration of the test or civilly liable in damages to the person tested unless for gross negligence or willful or wanton injury.

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§17C-25-6. Interpretation and use of chemical test.

(a)(1) Upon trial for the offense of operating an aircraft in this state while under the influence of alcohol, controlled substances, or drugs, or upon the trial of any civil or criminal action arising out of acts alleged to have been committed by any person operating an aircraft while under the influence of alcohol, controlled substances, or drugs, evidence of the amount of alcohol in the person's blood at the time of the arrest or of the acts alleged, as shown by a chemical analysis of his or her breath, blood, or urine, is admissible if the sample or specimen was taken within two hours from and after the time of arrest or of the acts alleged, and shall give rise to the following presumption or have the following effect: Evidence that there was, at that time, four-hundredths of one percent or more by weight of alcohol in his or her blood, is prima facie evidence that the person was under the influence of alcohol.

(2) Percent by weight of alcohol in the blood shall be based upon milligrams of alcohol per 100 cubic centimeters of blood.

(b) A chemical analysis of a person's breath, blood, or urine, in order to give rise to the presumption or to have the effect provided for in subsection (a) of this section, shall be performed in accordance with methods and standards approved by the state Bureau for Public Health. A chemical analysis of blood or urine to determine the alcoholic concentration of blood shall be conducted by a qualified laboratory or by the scientific laboratory of the criminal identification bureau of the State Police.

(c) The provisions of this article shall not limit the introduction in any administrative or judicial proceeding of any other competent evidence bearing on the question of whether the person was under the influence of alcohol, controlled substances, or drugs.

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§17C-25-7. Right to demand test.

Any person lawfully arrested for operating an aircraft in this state while under the influence of alcohol, controlled substances, or drugs has the right to demand that a sample or specimen of his or her breath, blood, or urine be taken within two hours from and after the time of arrest and that a chemical test be performed. The analysis disclosed by the chemical test shall be made available to the arrested person immediately upon demand.

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§17C-25-8. Fee for withdrawing blood sample and making urine test; payment of fees.

A reasonable fee shall be allowed to the person withdrawing a blood sample or administering a urine test at the request and direction of a law-enforcement officer in accordance with the provisions of this article. If the person whose blood sample was withdrawn or whose urine was tested was arrested and charged with a violation of §17C-25-2 of this code, the county having venue of the charge shall pay the fee. If the person is subsequently convicted of the charge, the fee shall be taxed as a part of the costs of the criminal proceeding and shall be paid, notwithstanding any other provision of this code to the contrary, into the general fund of the county.

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§17C-25-9. Unauthorized taking or operation of aircraft; penalty.

Any person who commits the following prohibited acts is guilty of a felony and, upon conviction thereof, shall be fined not less than $200 nor more than $5,000, and confined in a state correctional facility for not less than two nor more than 10 years.

(1) A person, other than the duly authorized agent, servant, or employee of the owner thereof, who takes, without the knowledge and consent of the owner, and operates within this state any aircraft owned by another person.

(2) A person who willfully and without the knowledge or consent of the owner or person in lawful charge thereof, and with the intent to deprive the owner or person in lawful charge of the possession or use thereof, either temporarily or permanently, takes possession of, enters and operates, or otherwise takes and uses, any aircraft belonging to another or in his or her lawful possession;

(3) Any person who assists, aids, and abets, or is present for the purpose and with the intent to assist, aid, or abet another person in taking possession of, entering, and operating, or otherwise taking and using the aircraft.

(4) Any person who receives, buys, conceals, or otherwise disposes of any such aircraft knowing the same to have been stolen or taken without the knowledge or consent of the owner or person in lawful charge thereof.

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§17C-25-10. Federal license required for operation of aircraft.

(a) A person shall not operate or cause or authorize to be operated any aircraft within this state unless such aircraft has an appropriate effective certificate, permit, or license issued by the United States, if such certificate, permit, or license is required by the United States.

(b) A person may not engage in aeronautics in this state unless he or she has an appropriate effective certificate, permit, rating, or license issued by the United States authorizing him or her to engage in the particular class of aeronautics in which he or she is engaged, if such certificate, permit, rating, or license is required by the United States.

(c) Where a certificate, permit, rating, or license is required by the United States, it shall be kept in the personal possession of a pilot when he or she is operating within this state and shall be presented for inspection upon the demand of any law enforcement officer, or any official, manager, or person in charge of any airport upon which they shall land, or upon the reasonable request of any other person.

(d) Where a certificate, permit, or license is required by the United States for an aircraft, it shall be carried in the aircraft at all times while the aircraft is operating in the state, shall be conspicuously posted in the aircraft where it may readily be seen by passengers or inspectors, and shall be presented for inspection upon the demand of any law enforcement officer, or any official, manager, or person in charge of any airport upon which the aircraft shall land, or upon the reasonable request of any person.

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§17C-25-11. Enforcement of aeronautics laws.

All law enforcement officers shall enforce and assist in the enforcement of this article and all other laws of this state relating to aeronautics. Law enforcement officers may inspect and examine at reasonable hours any aircraft, the credentials of any person engaged in aeronautics required by the laws of this state or of the United States to have in his or her possession credentials evidencing his or her authority or permission to engage in aeronautics, any premises and the buildings and other structures thereon, where airports, air navigation facilities, or other aeronautical activities are operated or conducted.

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