

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Originating

House Bill 4846

BY DELEGATES FAST, PACK, HAYNES, KEATON, KIMBLE

AND B. WARD

[Originating in the Committee on the Judiciary;

Introduced February 24, 2022]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article
2 designated §17C-24-1, *et seq.*; all relating to flying under the influence and other aviation
3 offenses; prohibiting operation of aircraft while under the influence of alcohol, controlled
4 substances, or drugs; defining terms; providing for implied consent to testing; preliminary
5 analysis of breath to determine alcoholic content of blood; the administration of blood
6 tests; interpretation of such tests; rights to demand testing; providing for fee for
7 withdrawing a blood sample and making a urine test; forbidding careless or reckless
8 operation of an aircraft; forbidding unauthorized taking of an aircraft; requiring federal
9 licensure to operate an aircraft; providing criminal penalties; and requiring state officers
10 to collaborate in enforcing aeronautics laws.

Be it enacted by the Legislature of West Virginia:

CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.

ARTICLE 24. AVIATION RELATED OFFENSES

§17C-24-1. Definitions.

1 As used in the statutes of West Virginia, unless the context otherwise requires:
2 “Aeronautics” means the art and science of flight, including, but not limited to,
3 transportation by aircraft; the operation, construction, repair, or maintenance of aircraft, aircraft
4 power plants and accessories, including the repair, packing, and maintenance of parachutes; the
5 design, establishment, construction, extension, operation, improvement, repair, or maintenance
6 of airports or other air navigation facilities; and education about aeronautics.
7 “Aircraft” means any contrivance now known, or hereafter invented, used or designed for
8 navigation of or flight in the air.
9 “Air navigation” or “navigation” means the operation or navigation of aircraft in the air
10 space over this state, or upon any airport within this state.

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

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

21 “Controlled substance” means substances and meanings ascribed to it in chapter 60A of
22 this code.

23 “Law-enforcement officer” means (1) Any member of the State Police; (2) any sheriff and
24 any deputy sheriff of any county of this state; (3) any member of a police department in any
25 municipality of this state; and (4) any natural resources police officer of the Division of Natural
26 Resources.

27 “Municipal” means pertaining to a municipality as herein defined.

28 “Municipality” means any county, city, town, village, or other political subdivision of this
29 state.

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

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

§17C-24-2. Operation of aircraft while under influence of alcohol, controlled substances or
drugs; criminal penalties.

1 (a) Any person who:

2 (1) Operates an aircraft in this state while:

3 (A) He or she is under the influence of alcohol; or

4 (B) He or she is under the influence of any controlled substance; or

5 (C) He or she is under the influence of any other drug; or

6 (D) He or she is under the combined influence of alcohol and any controlled substance or

7 any other drug; or

8 (E) He or she has an alcohol concentration in his or her blood of four hundredths of one

9 percent or more, by weight; and

10 (2) When so operating an aircraft does any act forbidden by law or fails to perform any

11 duty imposed by law in the operation of such aircraft, which act or failure proximately causes

12 bodily injury to any person other than himself or herself, is guilty of a felony, and, upon conviction

13 thereof, shall be imprisoned in a state correctional facility for a definite term of imprisonment of

14 not less than one year nor more than five years, or in the discretion of the court, be confined in a

15 regional jail facility not more than one year and be fined not more than \$500.

16 (b) Any person who:

17 (1) Operates an aircraft in this state while:

18 (A) He or she is under the influence of alcohol; or

19 (B) He or she is under the influence of any controlled substance; or

20 (C) He or she is under the influence of any other drug; or

21 (D) He or she is under the combined influence of alcohol and any controlled substance or

22 any other drug; or

23 (E) He or she has an alcohol concentration in his or her blood of four hundredths of one

24 percent or more, by weight;

25 (2) Is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in a regional

26 jail facility not more than one year or fined not more than \$500, or both, in the discretion of the

27 court.

28 (c) Any person who:

29 (1) Knowingly permits his or her aircraft to be operated in this state by any other person
30 who is:

31 (A) Under the influence of alcohol; or

32 (B) Under the influence of any controlled substance; or

33 (C) Under the influence of any other drug; or

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

36 (E) Has an alcohol concentration in his or her blood of four hundredths of one percent or
37 more, by weight;

38 (2) Is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in a regional
39 jail facility not more than one year or fined not more than \$500, or both, in the discretion of the
40 court.

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

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

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

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

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

55 (g) A person may be charged in a warrant or indictment or information for a second or
56 subsequent offense under this section if the person has been previously arrested for or charged
57 with a violation of this section which is alleged to have occurred within the applicable time periods
58 for prior offenses, notwithstanding the fact that there has not been a final adjudication of the
59 charges for the alleged previous offense. In such case, the warrant or indictment or information
60 must set forth the date, location and particulars of the previous offense or offenses. No person
61 may be convicted of a second or subsequent offense under this section unless the conviction for
62 the previous offense has become final.

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

67 (i) When any person is convicted of violating any provision of this section, the clerk of the
68 court in which such conviction is had shall, within 72 hours after receipt thereof, transmit a true
69 copy thereof to the federal aviation administration.

§17C-24-3. Implied consent to test; administration at direction of law-enforcement officer;
designation of type of test; definition of law-enforcement officer.

1 Any person who operates an aircraft in this state is considered to have given his or her
2 consent by the operation thereof to a preliminary breath analysis and a secondary chemical test
3 of either his or her blood, breath, or urine for the purposes of determining the alcoholic content of
4 his or her blood. A preliminary breath analysis may be administered in accordance with the
5 provisions of §17C-24-4 of this code whenever a law-enforcement officer has reasonable cause
6 to believe a person to have committed an offense prohibited by §17C-24-2 of this code. A
7 secondary test of blood, breath or urine shall be incidental to a lawful arrest and shall be

8 administered at the direction of the arresting law-enforcement officer having reasonable grounds
9 to believe the person to have committed an offense prohibited by said section. The law-
10 enforcement agency by which the law-enforcement officer is employed shall designate which one
11 of the aforesaid secondary tests shall be administered: *Provided*, That if the designated test is a
12 blood test and the person so arrested refuses to submit to the blood test, then the law-
13 enforcement officer making the arrest shall designate in lieu thereof either a breath or urine test
14 to be administered.

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

§17C-24-4. Preliminary analysis of breath to determine alcoholic content of blood.

1 When a law-enforcement officer has reason to believe a person has committed an offense
2 prohibited by §17C-24-2 of this code, the law-enforcement officer may require the person to
3 submit to a preliminary breath analysis for the purpose of determining such person's blood alcohol
4 content. Breath analysis must be administered as soon as possible after the law-enforcement
5 officer has a reasonable belief that the person has been operating an aircraft while under the
6 influence of alcohol, controlled substances, or drugs. Any preliminary breath analysis required
7 under this section must be administered with a device and in a manner approved by the bureau
8 of public health for that purpose. The results of a preliminary breath analysis shall be used solely

9 for the purpose of guiding the officer in deciding whether an arrest should be made. When an
10 operator is arrested following a preliminary breath analysis, the tests shall be administered in
11 accordance with the provisions of this article.

**§17C-24-5. How blood test administered; additional test at option of person tested; use of
test results; certain immunity from liability incident to administering test.**

1 Only a doctor of medicine or osteopathy, or registered nurse, or trained medical technician
2 at the place of his or her employment, acting at the request and direction of the law-enforcement
3 officer, may withdraw blood for the purpose of determining the alcoholic content thereof. These
4 limitations shall not apply to the taking of a breath test or a urine specimen. In withdrawing blood
5 for the purpose of determining its alcoholic content, only a previously unused and sterile needle
6 and sterile vessel may be utilized, and the withdrawal shall otherwise be in strict accord with
7 accepted medical practices. A nonalcoholic antiseptic shall be used for cleansing the skin prior to
8 venipuncture. The person tested may, at his or her own expense, have a doctor of medicine or
9 osteopathy, registered nurse or trained medical technician at the place of his or her employment,
10 of his or her own choosing, administer a chemical test in addition to the test administered at the
11 direction of the law-enforcement officer. Upon the request of the person who is tested, full
12 information concerning the test taken at the direction of the law-enforcement officer shall be made
13 available to him or her. No person who administers any such test upon the request of a law-
14 enforcement officer as herein defined, no hospital in or with which such person is employed or is
15 otherwise associated or in which such test is administered and no other person, firm or corporation
16 by whom or with which such person is employed or is in any way associated, may be in anyway
17 criminally liable for the administration of such test or civilly liable in damages to the person tested
18 unless for gross negligence or willful or wanton injury.

§17C-24-6. Interpretation and use of chemical test.

1 (a) (1) Upon trial for the offense of operating an aircraft in this state while under the
2 influence of alcohol, controlled substances or drugs, or upon the trial of any civil or criminal action

3 arising out of acts alleged to have been committed by any person operating an aircraft while under
4 the influence of alcohol, controlled substances or drugs, evidence of the amount of alcohol in the
5 person's blood at the time of the arrest or of the acts alleged, as shown by a chemical analysis of
6 his or her blood, breath or urine, is admissible, if the sample or specimen was taken within two
7 hours from and after the time of arrest or of the acts alleged, and shall give rise to the following
8 presumption or have the following effect: Evidence that there was, at that time, four hundredths
9 of one percent or more, by weight, of alcohol in his or her blood, shall be prima facie evidence
10 that the person was under the influence of alcohol.

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

13 (b) A chemical analysis of a person's blood, breath, or urine, in order to give rise to the
14 presumption or to have the effect provided for in subsection (a) of this section, must be performed
15 in accordance with methods and standards approved by the state bureau of public health. A
16 chemical analysis of blood or urine to determine the alcoholic content of blood shall be conducted
17 by a qualified laboratory or by the State Police scientific laboratory of the criminal identification
18 bureau of the West Virginia state police.

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

§17C-24-7. Right to demand test.

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

§17C-24-8. Fee for withdrawing blood sample and making urine test; payment of fees.

1 A reasonable fee shall be allowed to the person withdrawing a blood sample or
2 administering a urine test at the request and direction of a law-enforcement officer in accordance
3 with the provisions of this article. If the person whose blood sample was withdrawn or whose urine
4 was tested was arrested and charged with a violation of §17C-24-2 of this code, the county having
5 venue of the charge shall pay the fee and if the person is subsequently convicted of the charge,
6 the fee shall be taxed as a part of the costs of the criminal proceeding and shall be paid,
7 notwithstanding any other provision of this code to the contrary, into the general fund of said
8 county.

§17C-24-9. Operation of aircraft at low altitude or in careless and reckless manner; penalty.

1 No person shall operate an aircraft at an altitude of less than one thousand feet over any
2 city, town, or village, or public gathering elsewhere, except at a duly established airport or when
3 necessary to make a safe and proper landing or take off in an emergency or at a duly established
4 airport.

5 No person shall operate an aircraft in the air over, or on the ground or water within this
6 state in a careless and reckless manner in willful or wanton disregard of the rights or safety of
7 others, or without due caution and circumspection and in a manner so as to endanger or be likely
8 to endanger any person or property.

9 A person violating any of the provisions of this section shall be guilty of a misdemeanor,
10 and, upon conviction thereof, shall be punished by a fine of not more than \$500 or by confinement
11 in a regional jail facility for not more than one year, or both.

§17C-24-10. Unauthorized taking or operation of aircraft; penalty.

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

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

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

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

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

§17C-24-11. Federal license required for operation of aircraft.

1 No person shall operate or cause or authorize to be operated any aircraft within this state
2 unless such aircraft has an appropriate effective certificate, , or license issued by the United
3 States, if such certificate, permit or license is required by the United States.

4 No person may engage in aeronautics in this state unless he or she has an appropriate
5 effective certificate, permit, rating, or license issued by the United States authorizing him or her
6 to engage in the particular class of aeronautics in which he or she is engaged, if such certificate,
7 permit, rating or license is required by the United States.

8 Where a certificate, permit, rating, or license is required by the United States, it shall be
9 kept in the personal possession of a pilot when he or she is operating within this state and shall
10 be presented for inspection upon the demand of any law enforcement officer, or any official,

11 manager, or person in charge of any airport upon which they shall land, or upon the reasonable
12 request of any other person.

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

§17C-24-12. Enforcement of aeronautics laws.

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