

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2664 Session of
2004

INTRODUCED BY WATSON, HARPER, CRAHALLA, MILLARD, GEIST, McCALL,
FAIRCHILD, MCGILL, WEBER, PETRARCA, RUBLEY, FICHTER, KENNEY,
GILLESPIE, DAILEY, PAYNE, O'NEILL, WOJNAROSKI, SAMUELSON,
BLAUM, MELIO AND SCRIMENTI, JUNE 7, 2004

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
JUNE 28, 2004

AN ACT

1 Amending Title 74 (Transportation) of the Pennsylvania
2 Consolidated Statutes, providing for flying while impaired;
3 and imposing penalties.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Title 74 of the Pennsylvania Consolidated
7 Statutes is amended by adding a chapter to read:

CHAPTER 65

FLYING WHILE IMPAIRED

10 Sec.

11 ~~6501. Offense.~~

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12 ~~6502. Penalty.~~

13 ~~6503. Testing.~~

14 ~~6504. Reporting.~~

15 6501. DEFINITIONS.

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16 6502. OFFENSE.

17 6503. PENALTY.

1 6504. TESTING.

2 6505. REPORTING.

3 ~~§ 6501. Offense.~~ <—

4 ~~An individual may not operate an aircraft in this~~

5 § 6501. DEFINITIONS. <—

6 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS CHAPTER
7 SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
8 CONTEXT CLEARLY INDICATES OTHERWISE:

9 "FLIGHT CREW." ANY PERSON WHO PERFORMS OR IS ASSIGNED TO
10 PERFORM ANY DUTY IN AN AIRCRAFT DURING THE TIME WHICH THE
11 AIRCRAFT IS UNDERGOING PREFLIGHT INSPECTION OR MAINTENANCE OR
12 BOARDING OR CARRYING PASSENGERS OR CREW OR AT ANY TIME THE
13 AIRCRAFT IS UNDER POWER OR IN FLIGHT.

14 "LAW ENFORCEMENT OFFICER." INCLUDES ANY OFFICER WITH CURRENT
15 CERTIFICATION AS PROVIDED FOR IN 53 PA.C.S. CH. 21 SUBCH. D
16 (RELATING TO MUNICIPAL POLICE EDUCATION AND TRAINING) AND THOSE
17 OFFICERS WITH LIMITED JURISDICTION WHOSE JURISDICTION IS AN
18 AIRPORT.

19 § 6502. OFFENSE.

20 (A) GENERAL RULE.--NO INDIVIDUAL MAY ACT OR ATTEMPT TO ACT
21 AS FLIGHT CREW OF AN AIRCRAFT IN THIS Commonwealth:

22 (1) while under the influence of alcohol;

23 (2) while under the influence of a drug which affects
24 the individual's faculties in any way contrary to safety;

25 (3) when the alcohol concentration in the individual's
26 blood or breath, as measured within two hours of the time of
27 operation, or attempted operation, is 0.02% or more; ~~or~~ <—

28 (4) WHILE UNDER THE INFLUENCE OF ANY COMBINATION OF A <—
29 DRUG AND ALCOHOL WHICH AFFECTS THE INDIVIDUAL'S FACULTIES IN
30 ANY WAY CONTRARY TO SAFETY; OR

1 ~~(4)~~ (5) within eight hours after consumption of "liquor" <—
2 or a "malt or brewed beverage" as defined in section 102 of
3 the act of April 12, 1951 (P.L.90, No.21), known as the
4 Liquor Code.

5 (B) OWNER.--AN OWNER OF AN AIRCRAFT OR THE PERSON IN CHARGE <—
6 OF AN AIRCRAFT MAY NOT KNOWINGLY PERMIT AN INDIVIDUAL TO ACT OR
7 ATTEMPT TO ACT AS FLIGHT CREW OF AN AIRCRAFT IF THE INDIVIDUAL
8 IS UNDER THE INFLUENCE OF ALCOHOL OR A DRUG, OR ANY COMBINATION
9 THEREOF, WHICH AFFECTS THE INDIVIDUAL'S FACULTIES IN ANY WAY
10 CONTRARY TO SAFETY.

11 § ~~6502~~ 6503. Penalty. <—

12 An individual who violates section ~~6501~~ 6502 (relating to <—
13 offense) commits a misdemeanor of the third degree and shall,
14 upon conviction, be sentenced to all of the following:

15 (1) To pay a fine of not less than \$1,000 nor more than
16 \$5,000.

17 (2) To imprisonment for not less than 72 consecutive
18 hours.

19 (3) ~~TO~~ FOR A VIOLATION OF SECTION 6502(A), TO undergo <—
20 evaluation for substance abuse and, if the evaluation
21 indicates substance abuse, to undergo treatment ordered by
22 the court.

23 § ~~6503~~ 6504. Testing. <—

24 (a) Prearrest.--If a law enforcement officer has reasonable
25 suspicion to believe an individual is in violation of section
26 ~~6501~~ 6502 (relating to offense), the officer may request that <—
27 the individual submit to a preliminary breath test on a device
28 approved by the Department of Health for the purpose of
29 determining whether the individual is under the influence of
30 alcohol. The sole purpose of this preliminary breath test is to

1 assist the officer in determining whether or not the individual
2 should be placed under arrest. No individual has any right to
3 expect or demand a preliminary breath test. Refusal to submit to
4 a test under this subsection shall ~~not~~ be considered for <—
5 purposes of section ~~6504~~ 6505 (relating to reporting). <—

6 (b) Postarrest.--If an individual is arrested for violation
7 of section ~~6501~~ 6502, the individual shall be requested to <—
8 submit to one or more chemical tests of breath, blood or urine
9 for the purpose of determining the alcoholic content of blood or
10 the presence of a drug.

11 (c) Refusal.--If an individual refuses to submit to the test
12 under subsection (A) OR (b), the testing shall not be conducted <—
13 but the law enforcement officer shall inform the individual of
14 the requirement of section ~~6504~~ 6505. <—

15 (d) Test results admissible in evidence.--In a civil
16 proceeding or in a prosecution under section ~~6501~~ 6502, the <—
17 amount of alcohol or the presence of a drug in the defendant's
18 blood, as shown by chemical testing, conducted by a qualified
19 individual using approved equipment, of the defendant's breath,
20 blood or urine shall be admissible in evidence. The following
21 apply:

22 (1) Chemical tests of breath must be performed on
23 devices approved by the Department of Health using procedures
24 prescribed jointly by regulations of the Department of Health
25 and the Department of Transportation. Devices must have been
26 calibrated and tested for accuracy within a period of time
27 and in a manner specified by regulations of the departments.
28 For purposes of breath testing, a "qualified individual"
29 means an individual who has fulfilled the training
30 requirement in the use of the equipment in a training program

1 approved by the departments. A certificate or log showing
2 that a device was calibrated and tested for accuracy and that
3 the device was accurate shall be presumptive evidence of
4 those facts in every proceeding in which a violation of this
5 title is charged.

6 (2) (i) Chemical tests of blood or urine, if conducted
7 by a facility located in this Commonwealth, must be
8 performed by a clinical laboratory licensed and approved
9 by the Department of Health for this purpose using
10 procedures and equipment prescribed by the Department of
11 Health or by a Pennsylvania State Police criminal
12 laboratory. For purposes of blood and urine testing, a
13 "qualified individual" means an individual who is
14 authorized to perform those chemical tests under the act
15 of September 26, 1951 (P.L.1539, No.389), known as The
16 Clinical Laboratory Act.

17 (ii) For purposes of blood and urine testing to
18 determine blood alcohol or drug content levels, the
19 procedures and equipment prescribed by the Department of
20 Health shall be reviewed within 120 days of the effective
21 date of this subparagraph and at least every two years
22 thereafter to ensure that consideration is given to
23 scientific and technological advances so that testing
24 conducted in accordance with the prescribed procedures
25 utilizing the prescribed equipment will be as accurate
26 and reliable as science and technology permit.

27 (3) Chemical tests of blood or urine, if conducted by a
28 facility located outside this Commonwealth, must be
29 performed:

30 (i) by a facility licensed and approved by the

1 Department of Health for this purpose; or

2 (ii) by a facility licensed to conduct the tests by
3 the state in which the facility is located and licensed
4 pursuant to the Clinical Laboratory Improvement
5 Amendments of 1988 (Public Law 100-578, 102 Stat. 2903).

6 (e) Refusal admissible in evidence.--In a civil action or a
7 prosecution under section ~~6501~~ 6502, the fact that the defendant <—
8 refused to submit to chemical testing as required by subsection
9 (b) may be introduced in evidence along with other testimony
10 concerning the circumstances of the refusal. No presumptions
11 shall arise from this evidence, but it may be considered along
12 with other factors concerning the charge.

13 (f) Other evidence admissible.--This section shall not be
14 construed as limiting the introduction of any other competent
15 evidence bearing upon the question of the amount of alcohol or
16 the presence of a drug in the defendant's blood.

17 (g) Test results available to defendant.--Upon the request
18 of the individual tested, the results of a chemical test shall
19 be made available to the individual or the individual's
20 attorney.

21 (h) Test by personal physician.--The individual tested shall
22 be permitted to have a physician of the individual's choosing
23 administer an additional breath, blood or urine chemical test,
24 and the results of the test shall also be admissible in
25 evidence. The chemical testing given at the direction of the law
26 enforcement officer shall not be delayed by the individual's
27 attempt to obtain an additional test.

28 (i) Request by individual.--An individual involved in an
29 accident or placed under arrest for a violation of section ~~6501~~ <—
30 6502 may request a chemical test of the individual's breath,

1 blood or urine. A request under this subsection shall be honored
2 when it is reasonably practicable to do so.

3 (j) Immunity from civil liability and reports.--No
4 physician, nurse or technician or hospital employing the
5 physician, nurse or technician, and no other employer of the
6 physician, nurse or technician shall be civilly liable for
7 withdrawing blood or obtaining a urine sample and reporting test
8 results at the request of a law enforcement officer pursuant to
9 this section. No physician, nurse or technician or hospital
10 employing the physician, nurse or technician may
11 administratively refuse to perform a test and provide the
12 results except as may be reasonably expected from unusual
13 circumstances that pertain at the time the request is made.

14 § ~~6504~~ 6505. Reporting.

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15 A law enforcement officer shall report to the Federal
16 Aviation Administration:

17 (1) the results of a chemical test administered under
18 section ~~6503(b)~~ 6504(B) (relating to testing); or

<—

19 (2) the refusal to submit to a chemical test under
20 ~~section 6503(c)~~. THIS CHAPTER.

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21 Section 2. This act shall take effect in 60 days.