

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 225 Session of
2005

INTRODUCED BY STACK, STOUT, KITCHEN, MUSTO, TARTAGLIONE, COSTA,
O'PAKE, PILEGGI, KASUNIC, ORIE, LAVALLE, ERICKSON, BOSCOLA,
RAFFERTY, WONDERLING, C. WILLIAMS AND GREENLEAF,
FEBRUARY 9, 2005

REFERRED TO TRANSPORTATION, FEBRUARY 9, 2005

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:

8 CHAPTER 65

9 FLYING WHILE IMPAIRED

10 Sec.

11 6501. Definitions.

12 6502. Offense.

13 6503. Penalty.

14 6504. Testing.

15 6505. Reporting.

16 § 6501. Definitions.

17 The following words and phrases when used in this chapter

1 shall have the meanings given to them in this section unless the
2 context clearly indicates otherwise:

3 "Flight crew." Any person who performs or is assigned to
4 perform any duty in an aircraft during the time which the
5 aircraft is undergoing preflight inspection or maintenance or
6 boarding or carrying passengers or crew or at any time the
7 aircraft is under power or in flight.

8 "Law enforcement officer." Includes any officer with current
9 certification as provided for in 53 Pa.C.S. Ch. 21 Subch. D
10 (relating to municipal police education and training) and those
11 officers with limited jurisdiction whose jurisdiction is an
12 airport.

13 § 6502. Offense.

14 (a) General rule.--No individual may act or attempt to act
15 as flight crew of an aircraft in this Commonwealth:

16 (1) while under the influence of alcohol;

17 (2) while under the influence of a controlled substance
18 which affects the individual's faculties in any way contrary
19 to safety;

20 (3) when the alcohol concentration in the individual's
21 blood or breath, as measured within two hours of the time of
22 operation, or attempted operation, is 0.02% or more;

23 (4) while under the influence of any combination of a
24 controlled substance and alcohol which affects the
25 individual's faculties in any way contrary to safety; or

26 (5) within eight hours after consumption of liquor or a
27 malt or brewed beverage as defined in section 102 of the act
28 of April 12, 1951 (P.L.90, No.21), known as the Liquor Code.

29 (b) Owner.--An owner of an aircraft or the person in charge
30 of an aircraft may not knowingly permit an individual to act or

1 attempt to act as flight crew of an aircraft if the individual
2 is under the influence of alcohol or a controlled substance, or
3 any combination thereof, which affects the individual's
4 faculties in any way contrary to safety.

5 § 6503. Penalty.

6 (a) General rule.--Except as provided in subsection (b), an
7 individual who violates section 6502 (relating to offense)
8 commits a misdemeanor of the third degree and shall, upon
9 conviction, be sentenced as follows:

10 (1) To pay a fine of not less than \$1,000 nor more than
11 \$5,000.

12 (2) To imprisonment for not less than 72 consecutive
13 hours.

14 (3) For a violation of section 6502(a), to undergo
15 evaluation for substance abuse and, if the evaluation
16 indicates substance abuse, to undergo treatment ordered by
17 the court.

18 (b) Accidents.--An individual who violates section 6502
19 where there was an accident resulting in bodily injury, serious
20 bodily injury or death of any person or in damage to an aircraft
21 or other property shall be sentenced as follows:

22 (1) To pay a fine of not less than \$5,000 nor more than
23 \$10,000.

24 (2) To imprisonment for not less than 60 days.

25 § 6504. Testing.

26 (a) Prearrest.--If a law enforcement officer has reasonable
27 grounds to believe an individual has violated section 6502(a)
28 (relating to offense), the officer may request that the
29 individual submit to a preliminary test of blood, breath or
30 urine on a device approved by the Department of Health for the

1 purpose of assisting the officer in determining whether the
2 individual is in violation of section 6502(a) and should be
3 placed under arrest. It shall be the duty of the law enforcement
4 officer to inform the individual at the time of the request of
5 the penalties for refusal under subsection (c) and the reporting
6 requirements under section 6505 (relating to reporting). If the
7 individual, after being notified of the penalties and reporting
8 requirements, refuses to submit to chemical testing, the test
9 shall not be conducted. Nothing in this section shall be
10 construed to require a law enforcement officer to request an
11 individual to submit to a chemical test prior to placing the
12 individual under arrest for a violation of section 6502(a).

13 (b) Postarrest.--If an individual is arrested for violation
14 of section 6502(a), the individual shall submit to one or more
15 chemical tests of breath, blood or urine for the purpose of
16 determining the alcoholic content of blood or the presence of a
17 controlled substance. It shall be the duty of the law
18 enforcement officer to inform the individual at the time of the
19 request of the penalties for refusal under subsection (c) and
20 the reporting requirements under section 6505. If the
21 individual, after being notified of the penalties and reporting
22 requirements, refuses to submit to chemical testing, the test
23 shall not be conducted.

24 (c) Refusal.--Notwithstanding section 6503(1) (relating to
25 penalty), an individual who violates section 6502(a) and who
26 refuses to submit to a test requested or required under
27 subsection (a) or (b) shall be sentenced to pay a fine of not
28 less than \$2,500 nor more than \$5,000.

29 (d) Test results admissible in evidence.--In a civil
30 proceeding arising out of a violation of section 6502 or in a

1 prosecution under section 6502, the amount of alcohol or the
2 presence of a drug in the individual's blood, as shown by
3 chemical testing, conducted by a qualified individual using
4 approved equipment, of the individual's breath, blood or urine
5 shall be admissible in evidence. The following apply:

6 (1) Chemical tests of breath must be performed on
7 devices approved by the Department of Health using procedures
8 prescribed jointly by regulations of the Department of Health
9 and the Department of Transportation. Devices must have been
10 calibrated and tested for accuracy within a period of time
11 and in a manner specified by regulations of the departments.
12 For purposes of breath testing, a "qualified individual"
13 means an individual who has fulfilled the training
14 requirement in the use of the equipment in a training program
15 approved by the departments. A certificate or log showing
16 that a device was calibrated and tested for accuracy and that
17 the device was accurate shall be presumptive evidence of
18 those facts in every proceeding in which a violation of this
19 chapter is charged.

20 (2) (i) Chemical tests of blood or urine, if conducted
21 by a facility located in this Commonwealth, must be
22 performed by a clinical laboratory licensed and approved
23 by the Department of Health for this purpose using
24 procedures and equipment prescribed by the Department of
25 Health or by a Pennsylvania State Police criminal
26 laboratory. For purposes of blood and urine testing, a
27 "qualified individual" means an individual who is
28 authorized to perform those chemical tests under the act
29 of September 26, 1951 (P.L.1539, No.389), known as The
30 Clinical Laboratory Act.

1 (ii) For purposes of blood and urine testing to
2 determine blood alcohol or drug content levels, the
3 procedures and equipment prescribed by the Department of
4 Health shall be reviewed within 120 days of the effective
5 date of this subparagraph and at least every two years
6 thereafter to ensure that consideration is given to
7 scientific and technological advances so that testing
8 conducted in accordance with the prescribed procedures
9 utilizing the prescribed equipment will be as accurate
10 and reliable as science and technology permit.

11 (3) Chemical tests of blood or urine, if conducted by a
12 facility located outside this Commonwealth, must be
13 performed:

14 (i) by a facility licensed and approved by the
15 Department of Health for this purpose; or

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

20 (e) Refusal admissible in evidence.--In a civil action
21 arising out of a violation of section 6502 or a prosecution
22 under section 6502, the fact that the individual refused to
23 submit to chemical testing as required by subsection (a) or (b)
24 may be introduced in evidence along with other testimony
25 concerning the circumstances of the refusal. No presumptions
26 shall arise from this evidence, but it may be considered along
27 with other factors concerning the charge.

28 (f) Other evidence admissible.--This section shall not be
29 construed as limiting the introduction of any other competent
30 evidence bearing upon the question of the amount of alcohol or

1 the presence of a drug in the defendant's blood.

2 (g) Test results available to defendant.--Upon the request
3 of the individual tested or the individual charged under section
4 6502(b), the results of a chemical test shall be made available
5 to the individual or the individual's attorney.

6 (h) Test by personal physician.--The individual tested shall
7 be permitted to have a physician of the individual's choosing
8 administer an additional breath, blood or urine chemical test,
9 and the results of the test shall also be admissible in
10 evidence. The chemical testing given at the direction of the law
11 enforcement officer shall not be delayed by the individual's
12 attempt to obtain an additional test.

13 (i) Request by individual.--An individual involved in an
14 accident or placed under arrest for a violation of section 6502
15 may request a chemical test of the individual's breath, blood or
16 urine. A request under this subsection shall be honored when it
17 is reasonably practicable to do so.

18 (j) Immunity from civil liability and reports.--No
19 physician, nurse or technician or hospital employing the
20 physician, nurse or technician and no other employer of the
21 physician, nurse or technician shall be civilly liable for
22 withdrawing blood or obtaining a urine sample and reporting test
23 results at the request of a law enforcement officer pursuant to
24 this section. No physician, nurse or technician or hospital
25 employing the physician, nurse or technician may
26 administratively refuse to perform a test and provide the
27 results except for good cause.

28 § 6505. Reporting.

29 A law enforcement officer shall report to the Federal
30 Aviation Administration:

1 (1) the name of the individual and the results of the
2 individual's chemical test administered under section 6504(b)
3 (relating to testing); or

4 (2) the name of an individual that refused to submit to
5 a chemical test under this chapter.

6 Section 2. This act shall take effect in 90 days.