
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 129

Session of
2005

INTRODUCED BY WATSON, GEIST, HARPER, CRAHALLA, McCALL, BLAUM,
FAIRCHILD, FICHTER, GILLESPIE, KENNEY, MCGILL, MELIO,
MILLARD, O'NEILL, PAYNE, PETRARCA, RUBLEY, SAMUELSON,
WOJNAROSKI, FREEMAN AND MANN, JANUARY 31, 2005

AS AMENDED ON THIRD CONSIDERATION, IN SENATE, JUNE 30, 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 Statutes
7 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).

11 § 6502. Offense.

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

14 (1) while under the influence of alcohol;

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

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

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

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

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

1 is under the influence of alcohol or a controlled substance, or
2 any combination thereof, which affects the individual's
3 faculties in any way contrary to safety.

4 § 6503. Penalty.

5 ~~AN~~ (A) GENERAL RULE.--EXCEPT AS PROVIDED IN SUBSECTION (B), <—
6 AN individual who violates section 6502 (relating to offense)
7 commits a misdemeanor of the second degree and shall, upon
8 conviction, be sentenced to all of the following:

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

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

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

17 (B) ACCIDENTS.--AN INDIVIDUAL WHO VIOLATES SECTION 6502 <—
18 WHERE THERE WAS AN ACCIDENT RESULTING IN BODILY INJURY, SERIOUS
19 BODILY INJURY OR DEATH OF ANY PERSON OR IN DAMAGE TO AN AIRCRAFT
20 OR OTHER PROPERTY COMMITS A MISDEMEANOR OF THE SECOND DEGREE AND
21 SHALL, UPON CONVICTION, 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 UNDERGO IMPRISONMENT FOR NOT LESS THAN 30 DAYS.

25 (3) FOR A VIOLATION OF SECTION 6502(A), TO UNDERGO
26 EVALUATION FOR SUBSTANCE ABUSE AND, IF THE EVALUATION
27 INDICATES SUBSTANCE ABUSE, TO UNDERGO TREATMENT ORDERED BY
28 THE COURT.

29 § 6504. Testing.

30 (a) Prearrest.--If a law enforcement officer has reasonable

1 grounds to believe an individual has violated section 6502(a)
2 (relating to offense), the officer may request that the
3 individual submit to a preliminary test of blood, breath or
4 urine on a device approved by the Department of Health for the
5 purpose of assisting the officer in determining whether the
6 individual is in violation of section 6502(a) and should be
7 placed under arrest. It shall be the duty of the law enforcement
8 officer to inform the individual at the time of the request of
9 the penalties for refusal under subsection (c) and the reporting
10 requirements under section 6505 (relating to reporting). If the
11 individual, after being notified of the penalties and reporting
12 requirements, refuses to submit to chemical testing, the test
13 shall not be conducted. Nothing in this section shall be
14 construed to require a law enforcement officer to request an
15 individual to submit to a chemical test prior to placing the
16 individual under arrest for a violation of section 6502(a).

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

28 (c) Refusal.--Notwithstanding section 6503(1) (relating to
29 penalty), an individual who violates section 6502(a) and who
30 refuses to submit to a test requested or required under

1 subsection (a) or (b), shall be sentenced to pay a fine of not
2 less than \$2,500 nor more than \$5,000.

3 (d) Test results admissible in evidence.--In a civil
4 proceeding arising out of a violation of section 6502 or in a
5 prosecution under section 6502, the amount of alcohol or the
6 presence of a controlled substance in the individual's blood, as
7 shown by chemical testing, conducted by a qualified individual
8 using approved equipment, of the individual's breath, blood or
9 urine shall be admissible in evidence. The following apply:

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

24 (2) (i) Chemical tests of blood or urine, if conducted
25 by a facility located in this Commonwealth, must be
26 performed by a clinical laboratory licensed and approved
27 by the Department of Health for this purpose using
28 procedures and equipment prescribed by the Department of
29 Health or by a Pennsylvania State Police criminal
30 laboratory. For purposes of blood and urine testing, a

1 "qualified individual" means an individual who is
2 authorized to perform those chemical tests under the act
3 of September 26, 1951 (P.L.1539, No.389), known as The
4 Clinical Laboratory Act.

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

15 (3) Chemical tests of blood or urine, if conducted by a
16 facility located outside this Commonwealth, must be
17 performed:

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

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

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

1 with other factors concerning the charge.

2 (f) Other evidence admissible.--This section shall not be
3 construed as limiting the introduction of any other competent
4 evidence bearing upon the question of the amount of alcohol or
5 the presence of a controlled substance in the defendant's blood.

6 (g) Test results available to defendant.--Upon the request
7 of the individual tested or the individual charged under section
8 6502(b), the results of a chemical test shall be made available
9 to the individual or the individual's attorney.

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

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

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

1 results except for good cause.

2 § 6505. Reporting.

3 A law enforcement officer shall report to the Federal

4 Aviation Administration:

5 (1) the name of the individual and the results of the
6 individual's chemical test administered under section 6504(b)
7 (relating to testing); and

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

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