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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1995



ENROLLED

Committee Substitute for
SENATE BILL NO. 141

(By Senator YODER)



PASSED MARCH 9, 1995
In Effect 90 Days From Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 141

(SENATOR YODER, *original sponsor*)

[Passed March 9, 1995; in effect ninety days from passage.]

AN ACT to repeal sections fifteen and sixteen, article two-a, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal article two-b of said chapter; to amend and reenact section eighteen, article fifteen, chapter eleven of said code; to amend and reenact sections one, two, three, four, five, seven, eleven, twenty and twenty-two, article two-a, chapter twenty-nine of said code; and to further amend said article by adding thereto six new sections, designated sections eleven-a, eleven-b, eleven-c, eleven-d, eleven-e and eleven-f, all relating to the state aeronautics commission generally; repealing the commission's authority relating to the licensing of air schools and aeronautics instructors, the certification of airport sites and the licensing of airports; repealing provisions relating to the

regulation of weather modification; purposes for which the commission may use taxes on aircraft fuel; revising definitions relating to aeronautics; amending definitions; replacing the state road commissioner with the secretary of transportation as a member of the commission; eliminating the commission's general supervision of airports, air schools and aeronautics; eliminating the commission's authority to classify airports; eliminating the commission's rule-making authority regarding air schools, the classification of airports and the enforcement of the federal air commerce act; legislative rules; commission authority regarding investments with board of investments; commission seal; qualification of and limitations on director of aeronautics; eliminating police powers of and enforcement of laws by commission, agents and employees; removing designation of commission as agent regarding federal moneys in certain circumstances; applications for and receipts by political subdivisions for federal aid; prohibiting the operation of aircraft while under the influence of alcohol, controlled substances or drugs; implied consent to test; tests for alcohol which may be administered; use of test results; certain immunity from liability incident to administering tests; interpretation and use of chemical test; right to demand test; fee for withdrawing blood sample and administering urine test; payment for fees; commission authority to inspect; enforcement of aeronautics laws; commission orders, notices and hearings; method of mailing notices; and criminal penalties.

Be it enacted by the Legislature of West Virginia:

That sections fifteen and sixteen, article two-a, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that article two-b of said chapter be repealed; that sections one, two, three, four, five, seven, eleven, twenty and twenty-two, article two-a of said chapter be amended and reenacted; and that said article be further amended by adding thereto six new sections, designated sections eleven-a, eleven-b, eleven-c, eleven-d, eleven-e and eleven-f, all to read as follows:

ARTICLE 2A. STATE AERONAUTICS COMMISSION.

§29-2A-1. Definitions.

1 As used in the statutes of West Virginia, unless the
2 context otherwise requires:

3 (a) "Aeronautics" means the art and science of flight,
4 including, but not limited to, transportation by aircraft;
5 the operation, construction, repair or maintenance of
6 aircraft, aircraft power plants and accessories, including
7 the repair, packing and maintenance of parachutes; and
8 the design, establishment, construction, extension,
9 operation, improvement, repair or maintenance of
10 airports or other air navigation facilities.

11 (b) "Aircraft" means any contrivance now known, or
12 hereafter invented, used or designed for navigation of or
13 flight in the air.

14 (c) "Airmen" means any individual who engages, as the
15 person in command, or as pilot, mechanic or member of
16 the crew, in the navigation of the aircraft while under
17 way and any individual who is directly in charge of the
18 inspection, maintenance, overhauling or repair of
19 aircraft engines, propellers or appliances and any
20 individual who serves in the capacity of aircraft dis-
21 patcher or air-traffic control-tower operator. It does not
22 include any individual employed outside the United
23 States, or any individual employed by a manufacturer of
24 aircraft, aircraft engines, propellers or appliances to
25 perform duties as inspector or mechanic in connection
26 therewith, or any individual performing inspection or
27 mechanical duties in connection with aircraft owned or
28 operated by him.

29 (d) "Air navigation" or "navigation" means the opera-
30 tion or navigation of aircraft in the air space over this
31 state, or upon any airport within this state.

32 (e) "Air navigation facility" means any facility other
33 than one owned or controlled by the federal government
34 used in, available for use in, or designed for use in aid of
35 air navigation, including airports, and any structures,

36 mechanisms, lights, beacons, markers, communications
37 system or other instrumentalities or devices used or
38 useful as an aid or constituting an advantage or convenience to the safe taking off, navigation and landing of
39 aircraft, or the safe and efficient operation or maintenance of an airport, and any combination of any or all of
40 such facilities.

43 (f) "Airport" means any area of land or water which is
44 used, or intended for use, for the landing and take off of
45 aircraft and any appurtenant areas which are used, or
46 intended for use, for airport buildings or other airport
47 facilities or rights-of-way, together with all airport
48 buildings and facilities located thereon.

49 (g) "Airport hazard" means any structure, object of
50 natural growth or use of land which obstructs the air
51 space required for the flight of aircraft in landing or
52 taking off at any airport or is otherwise hazardous to
53 such landing or taking off.

54 (h) "Commission" means the West Virginia state
55 aeronautics commission.

56 (i) "Director" means the director of aeronautics of this
57 state.

58 (j) "Municipality" means any county, city, town, village
59 or other political subdivision of this state. "Municipal"
60 means pertaining to a municipality as herein defined.

61 (k) "Operation of aircraft" or "operate aircraft" means
62 the use, navigation or piloting of aircraft in the airspace
63 over this state or upon the ground within this state.

64 (l) "Person" means any individual, firm, copartnership,
65 corporation, company, association, joint stock association or body politic and includes any trustee, receiver,
66 assignee or other similar representative thereof.

68 (m) The singular of any of the above defined terms
69 shall include the plural and plural the singular.

§29-2A-2. Creation and membership.

1 There is hereby created an aeronautics commission, to
2 be known as "The West Virginia State Aeronautics
3 Commission", to consist of five members to be appointed
4 by the governor, by and with the advice and consent of
5 the Senate. One of such members shall be the secretary
6 of transportation ex officio, whose term as such member
7 shall continue for the period that he or she holds the
8 office of secretary of transportation. The other four
9 members of the commission shall be appointed by the
10 governor, each to serve a term beginning the first day of
11 July, one thousand nine hundred forty-seven, one to
12 serve for a term of one year, one to serve for a term of
13 two years, one to serve for a term of three years and one
14 to serve for a term of four years. The successors of the
15 members (other than the secretary of transportation)
16 initially appointed as provided herein shall be appointed
17 for terms of four years each in the same manner as the
18 members originally appointed under this article, except
19 that any person appointed to fill a vacancy occurring
20 prior to the expiration of the term for which his or her
21 predecessor was appointed shall be appointed only for
22 the remainder of such term. Each member shall serve
23 until the appointment and qualification of his or her
24 successor. No more than three members of the commis-
25 sion shall be members of the same political party. All
26 members of the commission shall be citizens and resi-
27 dents of this state. The members of the commission who
28 shall be appointed by the governor as provided by this
29 section shall be selected with due regard to their fitness
30 by reason of their aeronautical knowledge and practical
31 experience in the field of aeronautics. In making such
32 appointments, the governor shall, so far as may be
33 possible and practicable, select the several members
34 from different geographical sections of the state.

35 No member shall receive any salary for his or her
36 services, but each shall be reimbursed for actual and
37 necessary expenses incurred by such member in the
38 performance of his or her duties in accordance with state
39 travel rules.

§29-2A-3. Powers and duties of commission.

1 The commission shall assume, carry on and succeed to
2 all the duties, rights, powers, obligations and liabilities
3 heretofore belonging to, exercised by, or assumed by the
4 state board of aeronautics, pursuant to statutory author-
5 ity heretofore existing and as changed or modified by the
6 provisions of this article. It may enter into any contracts
7 necessary to the execution of the powers granted to it by
8 this article. It is empowered and directed to encourage,
9 foster and assist in the development of aeronautics in
10 this state and to encourage the establishment of airports
11 and air navigation facilities. It shall cooperate with and
12 assist the federal government, the municipalities of this
13 state and other persons in the development of aeronau-
14 tics and shall act to coordinate the aeronautical activi-
15 ties of these bodies and persons. Municipalities are
16 authorized to cooperate with the commission in the
17 development of aeronautics and aeronautics facilities in
18 this state. The commission is hereby given the power
19 and authority to make such rules as it may deem neces-
20 sary and advisable for the public safety, governing the
21 designing, laying out, locating, building, equipping and
22 operating of all airports and the conduct of all other
23 phases of aeronautics.

24 The commission shall keep on file with the secretary of
25 state, and at the principal office of the commission, a
26 copy of all its rules and orders having general effect for
27 public inspection. It shall provide for the publication and
28 general distribution of all its orders, rules and proce-
29 dures having general effect. Copies of any such orders or
30 rules shall be delivered to any person interested, free of
31 charge, upon request. The publication and distribution
32 of any such order or rule as provided herein shall be
33 sufficient notice to the public of the provisions, require-
34 ments and effect thereof.

35 Each rule of the commission shall be promulgated as a
36 legislative rule pursuant to the provisions of chapter
37 twenty-nine-a of this code.

38 Except where otherwise prohibited, the commission is
 39 authorized to permit the state board of investments to
 40 invest, as provided by this code, any funds received by
 41 the commission pursuant to the provisions of this code.

**§29-2A-4. Organization of commission; meetings; reports;
 offices.**

1 The commission shall make, and may from time to time
 2 amend, rules for the administration of the powers
 3 granted to it by this article as are not inconsistent
 4 therewith and as the commission may deem expedient.
 5 The commission shall organize by electing from among
 6 its members a chairman who shall serve as such for a
 7 period of two years. Such chairman shall have the power
 8 to sign documents, execute contracts and otherwise act
 9 for and in the name of the commission in all matters
 10 within the lawful powers of the commission and duly
 11 authorized by a majority of its members.

12 The commission shall determine the number, date and
 13 place of its regular meetings, but at least one such
 14 meeting shall be held annually at the commission's
 15 established offices in the city of Charleston. Whenever
 16 the convenience of the public or of interested persons
 17 may be promoted, or delay or expense may be prevented,
 18 the commission may hold meetings, hearings or proceed-
 19 ings at any other place designated by it.

20 The commission shall report in writing to the governor
 21 on or before the thirty-first day of August of each year.
 22 The report shall contain a summary of the commission's
 23 proceedings during the preceding fiscal year, a detailed
 24 and itemized statement of all revenue received and all
 25 expenditures made by or on behalf of the commission,
 26 such other information as it may deem necessary or
 27 useful and any additional information which may be
 28 requested by the governor. The fiscal year of the com-
 29 mission shall conform to the fiscal year of the state.

30 An office shall be established and maintained by the
 31 commission in the city of Charleston. In addition, the

32 commission may establish and maintain such other
33 offices within the state as it may deem necessary and
34 expedient.

§29-2A-5. Director of aeronautics; appointment, qualifications, compensation, powers and duties; administrative and other assistants.

1 A director of aeronautics shall be appointed by the
2 commission, who shall serve for an indefinite term at the
3 pleasure of the commission. The director shall be
4 appointed with due regard to his or her fitness, by
5 aeronautical education and by knowledge of and recent
6 practical experience in aeronautics, for the efficient
7 dispatch of the powers and duties vested in and imposed
8 upon him by this article. The director shall hold or have
9 held an airman's license issued by the United States as
10 described in section fourteen of this article. The director
11 shall devote his or her time to the duties of his or her
12 office as required and prescribed by this article and shall
13 not have any pecuniary interest in, or any stock in, or
14 bonds of, any civil aeronautical enterprise. The director
15 shall receive such compensation as the commission may
16 determine, which said compensation shall, however,
17 conform in general to the compensation received by
18 persons occupying positions of similar importance and
19 responsibility with other agencies of this state. The
20 director shall be reimbursed for all traveling and other
21 expenses incurred by him or her in the discharge of his
22 or her official duties in accordance with state travel
23 rules. The director shall be the executive officer of the
24 commission and under its supervision shall administer
25 the provisions of this article and the rules and orders
26 established thereunder and all other laws of the state
27 relative to aeronautics. The director shall attend, but
28 not vote, at all meetings of the commission. The director
29 shall act as secretary of the commission and shall be in
30 charge of its offices and responsible to the commission
31 for the preparation of reports and the collection and
32 dissemination of data and other public information
33 relating to aeronautics. At the direction of the commis-

34 sion the director shall, together with the chairman of the
35 commission, execute all contracts entered into by the
36 commission which are legally authorized and for which
37 funds are provided in any appropriations act. The
38 commission may, by written order filed in its office,
39 delegate to the director any of the powers or duties
40 vested or imposed upon it by this article. Such delegated
41 powers and duties may be exercised by such director in
42 the name of the commission. The commission may also
43 employ such administrative, engineering, technical and
44 clerical assistance as may be required. The director and
45 such other assistants may, under the supervision of the
46 commission, insofar as is reasonably possible, make
47 available the engineering and other technical services of
48 the commission, without charge to any municipality, and
49 with or without charge to any other person desiring
50 them, in connection with the construction, maintenance
51 or operation, or proposed construction, maintenance or
52 operation of any airport.

§29-2A-7. Federal aid.

1 (a) The commission is authorized to cooperate with the
2 government of the United States, and any agency or
3 department thereof, in the planning, acquisition, con-
4 struction, improvement, maintenance and operation of
5 airports and other air navigation facilities in this state
6 and is authorized to accept federal aid either outright or
7 by way of matching the same, in whole or in part, as may
8 be required, and when funds for matching are available
9 to the commission, and to comply with the provisions of
10 the laws of the United States and any regulations made
11 thereunder for the expenditure of federal moneys upon
12 such airports and other air navigation facilities.

13 (b) The commission is authorized to accept, receive and
14 receipt for federal moneys and other moneys, either
15 public or private, for and in behalf of this state, or any
16 municipality thereof, for the planning, acquisition,
17 construction, improvement, maintenance and operation
18 of airports and other air navigation facilities, whether

19 such work is to be done by the state or by such municipi-
20 pality, or jointly, aided by grants of aid from the United
21 States, upon such terms and conditions as are or may be
22 prescribed by the laws of the United States and any rules
23 or regulations made thereunder, and it is hereby desig-
24 nated as the agency of the state, and is authorized to and
25 may act as agent of any municipality of this state upon
26 the request of such municipality, in accepting, receiving
27 and receipting for such moneys in its behalf for airports
28 or other air navigation facility purposes, and in contract-
29 ing for the planning, acquisition, construction, improve-
30 ment, maintenance or operation of airports or other air
31 navigation facilities, financed, either/in whole or in part,
32 by federal moneys; and any such municipality is autho-
33 rized to and may enter into an agreement with the
34 commission prescribing the terms and conditions of such
35 agency in accordance with federal laws, rules and
36 regulations and with this article. Such moneys as are
37 paid over by the United States government shall be
38 retained by the state or paid over to said municipalities
39 under such terms and conditions as may be imposed by
40 the United States government in making such grants.

41 (c) All contracts for the planning, acquisition, con-
42 struction, improvement, maintenance and operation of
43 airports, or other air navigation facilities made by the
44 commission, either as the agent of the state or as the
45 agent of any municipality therein, shall be made pursu-
46 ant to the laws of this state governing the making of like
47 contracts: *Provided*, That where the planning, acquisi-
48 tion, construction, improvement, maintenance and
49 operation of any airport or other air navigation facility
50 is financed wholly or partially with federal moneys, the
51 commission, as agent of the state or of any municipality
52 thereof, may let contracts in the manner prescribed by
53 the federal authorities, acting under the laws of the
54 United States, and any rules or regulations made there-
55 under, notwithstanding any other state law to the
56 contrary.

57 (d) All moneys accepted for disbursement by the

58 commission pursuant to this section shall be deposited in
 59 the state treasury, and, unless otherwise prescribed by
 60 the authority from which the money is received, kept in
 61 separate funds, designated according to the purposes for
 62 which the moneys were made available, and held by the
 63 state in trust for such purposes. All such moneys are
 64 hereby appropriated for the purposes for which the same
 65 were made available and shall be expended in accor-
 66 dance with federal laws and regulations and with the
 67 provisions of this article. The commission is authorized,
 68 whether acting for this state or as the agent of any
 69 municipality therein, when requested by the United
 70 States government or any agency or department thereof,
 71 or when requested by the state or municipality for which
 72 the money has been made available, to disburse such
 73 moneys for the designated purposes, but this shall not
 74 preclude any other authorized method of disbursement.

75 (e) The state or any municipality therein is authorized
 76 to cooperate with the government of the United States,
 77 and any agency or department thereof, in the acquisition,
 78 construction, improvement, maintenance and operation
 79 of airports and other air navigation facilities in this state
 80 and is authorized to accept federal aid, either by way of
 81 outright grant or by matching the same, in whole or in
 82 part, as may be required, and to comply with the provi-
 83 sions of the laws of the United States and any regula-
 84 tions made thereunder for the expenditure of federal
 85 moneys upon such airports and other navigation facili-
 86 ties.

**§29-2A-11. 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 is under the influence of alcohol; or
- 4 (B) He is under the influence of any controlled sub-
 5 stance; or

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

7 (D) He is under the combined influence of alcohol and
8 any controlled substance or any other drug; or

9 (E) He has an alcohol concentration in his or her blood
10 of four hundredths of one percent or more, by weight;
11 and

12 (2) When so operating an aircraft does any act forbid-
13 den by law or fails to perform any duty imposed by law
14 in the operation of such aircraft, which act or failure
15 proximately causes bodily injury to any person other
16 than himself, is guilty of a felony, and, upon conviction
17 thereof, shall be imprisoned in the penitentiary for a
18 definite term of imprisonment of not less than one year
19 nor more than five years, or in the discretion of the
20 court, be confined in jail not more than one year and be
21 fined not more than five hundred dollars.

22 (b) Any person who:

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

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

25 (B) He is under the influence of any controlled sub-
26 stance; or

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

28 (D) He is under the combined influence of alcohol and
29 any controlled substance or any other drug; or

30 (E) He has an alcohol concentration in his or her blood
31 of four hundredths of one percent or more, by weight;

32 (2) Is guilty of a misdemeanor, and, upon conviction
33 thereof, shall be confined in jail not more than one year
34 or fined not more than five hundred dollars, or both, in
35 the discretion of the court.

36 (c) Any person who:

37 (1) Knowingly permits his or her aircraft to be oper-
38 ated in this state by any other person who is:

39 (A) Under the influence of alcohol; or

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

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

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

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

46 (2) Is guilty of a misdemeanor, and, upon conviction
47 thereof, shall be confined in jail not more than one year
48 or fined not more than five hundred dollars, or both, in
49 the discretion of the court.

50 (d) A person violating any provision of subsection (a) of
51 this section is, for the second offense under this section,
52 guilty of a felony, and, upon conviction thereof, shall be
53 imprisoned in the penitentiary for a definite term of
54 imprisonment of not less than one year nor more than
55 five years.

56 (e) A person violating any provision of subsection (b) or
57 (c) of this section is, for the second offense under this
58 section, guilty of a felony, and, upon conviction thereof,
59 shall be imprisoned in the penitentiary for a definite
60 term of imprisonment of not less than one year nor more
61 than three years.

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

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

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

72 (g) A person may be charged in a warrant or indict-

73 ment or information for a second or subsequent offense
74 under this section if the person has been previously
75 arrested for or charged with a violation of this section
76 which is alleged to have occurred within the applicable
77 time periods for prior offenses, notwithstanding the fact
78 that there has not been a final adjudication of the
79 charges for the alleged previous offense. In such case,
80 the warrant or indictment or information must set forth
81 the date, location and particulars of the previous offense
82 or offenses. No person may be convicted of a second or
83 subsequent offense under this section unless the conviction
84 for the previous offense has become final.

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

92 (i) For purposes of this section, the term "controlled
93 substance" shall have the meaning ascribed to it in
94 chapter sixty-a of this code.

95 (j) When any person is convicted of violating any
96 provision of this section, the clerk of the court in which
97 such conviction is had shall, within seventy-two hours
98 after such conviction is had, transmit to the commission
99 a certified abstract of the judgment of conviction. The
100 commission shall, within seventy-two hours after receipt
101 thereof, transmit a true copy thereof to the federal
102 aviation administration.

§29-2A-11a. 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 shall
2 be deemed to have given his or her consent by the
3 operation thereof to a preliminary breath analysis and a

4 secondary chemical test of either his or her blood, breath
5 or urine for the purposes of determining the alcoholic
6 content of his or her blood. A preliminary breath
7 analysis may be administered in accordance with the
8 provisions of section eleven-b of this article whenever a
9 law-enforcement officer has reasonable cause to believe
10 a person to have committed an offense prohibited by
11 section eleven of this article. A secondary test of blood,
12 breath or urine shall be incidental to a lawful arrest and
13 shall be administered at the direction of the arresting
14 law-enforcement officer having reasonable grounds to
15 believe the person to have committed an offense prohib-
16 ited by said section. The law-enforcement agency by
17 which such law-enforcement officer is employed shall
18 designate which one of the aforesaid secondary tests
19 shall be administered: *Provided*, That if the test so
20 designated is a blood test and the person so arrested
21 refuses to submit to such blood test, then the law-
22 enforcement officer making such arrest shall designate
23 in lieu thereof either a breath or urine test to be adminis-
24 tered.

25 For the purpose of this article the term "law-enforce-
26 ment officer" means and is limited to: (1) Any member
27 of the division of public safety of this state; (2) any
28 sheriff and any deputy sheriff of any county; (3) any
29 member of a police department in any municipality as
30 defined in section two, article one, chapter eight of this
31 code; and (4) any conservation officer of the division of
32 natural resources. If any municipality or the division of
33 natural resources does not have available to its law-
34 enforcement officers the testing equipment or facilities
35 necessary to conduct any secondary test which a law-
36 enforcement officer may administer under this article,
37 any member of the division of public safety, the sheriff
38 of the county wherein the arrest is made or any deputy
39 of such sheriff or any municipal law-enforcement officer
40 of another municipality within the county wherein the
41 arrest is made may, upon the request of such arresting
42 law-enforcement officer and in his or her presence,

43 conduct such secondary test and the results of such test
44 may be used in evidence to the same extent and in the
45 same manner as if such test had been conducted by such
46 arresting law-enforcement officer. Only the person
47 actually administering or conducting such test shall be
48 competent to testify as to the results and the veracity of
49 such test.

**§29-2A-11b. Preliminary analysis of breath to determine
alcoholic content of blood.**

1 When a law-enforcement officer has reason to believe
2 a person has committed an offense prohibited by section
3 eleven of this article, the law-enforcement officer may
4 require such person to submit to a preliminary breath
5 analysis for the purpose of determining such person's
6 blood alcohol content. Such breath analysis must be
7 administered as soon as possible after the
8 law-enforcement officer has a reasonable belief that the
9 person has been operating an aircraft while under the
10 influence of alcohol, controlled substances or drugs. Any
11 preliminary breath analysis required under this section
12 must be administered with a device and in a manner
13 approved by the bureau of public health for that pur-
14 pose. The results of a preliminary breath analysis shall
15 be used solely for the purpose of guiding the officer in
16 deciding whether an arrest should be made. When an
17 operator is arrested following a preliminary breath
18 analysis, the tests as hereinafter provided in this article
19 shall be administered in accordance with the provisions
20 thereof.

**§29-2A-11c. 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
2 nurse, or trained medical technician at the place of his or
3 her employment, acting at the request and direction of
4 the law-enforcement officer, may withdraw blood for the
5 purpose of determining the alcoholic content thereof.

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

§29-2A-11d. Interpretation and use of chemical test.

1 (a) (1) Upon trial for the offense of operating an
2 aircraft in this state while under the influence of alcohol,
3 controlled substances or drugs, or upon the trial of any
4 civil or criminal action arising out of acts alleged to have
5 been committed by any person operating an aircraft
6 while under the influence of alcohol, controlled sub-
7 stances or drugs, evidence of the amount of alcohol in
8 the person's blood at the time of the arrest or of the acts
9 alleged, as shown by a chemical analysis of his or her
10 blood, breath or urine, is admissible, if the sample or
11 specimen was taken within two hours from and after the
12 time of arrest or of the acts alleged, and shall give rise to

13 the following presumption or have the following effect:
14 Evidence that there was, at that time, four hundredths of
15 one percent or more, by weight, of alcohol in his or her
16 blood, shall be prima facie evidence that the person was
17 under the influence of alcohol.

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

21 (b) A chemical analysis of a person's blood, breath or
22 urine, in order to give rise to the presumption or to have
23 the effect provided for in subsection (a) of this section,
24 must be performed in accordance with methods and
25 standards approved by the state bureau of public health.
26 A chemical analysis of blood or urine to determine the
27 alcoholic content of blood shall be conducted by a
28 qualified laboratory or by the state police scientific
29 laboratory of the criminal identification bureau of the
30 bureau of public safety.

31 (c) The provisions of this article shall not limit the
32 introduction in any administrative or judicial proceeding
33 of any other competent evidence bearing on the question
34 of whether the person was under the influence of alco-
35 hol, controlled substances or drugs.

§29-2A-11e. Right to demand test.

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

§29-2A-11f. Fee for withdrawing blood sample and making urine test; payment of fees.

1 A reasonable fee shall be allowed to the person with-

2 drawing a blood sample or administering a urine test at
3 the request and direction of a law-enforcement officer in
4 accordance with the provisions of this article. If the
5 person whose blood sample was withdrawn or whose
6 urine was tested was arrested and charged with a
7 violation of section eleven of this article, the county
8 having venue of such charge shall pay said fee and if said
9 person is subsequently convicted of such charge, such fee
10 shall be taxed as a part of the costs of the criminal
11 proceeding and shall be paid, notwithstanding any other
12 provision of this code to the contrary, into the general
13 fund of said county.

§29-2A-20. Enforcement of aeronautics laws.

1 It shall be the duty of the commission, its members, the
2 director, officers and such employees of the commission
3 as may be designated by it, and every state and municipi-
4 pal officer charged with the enforcement of state and
5 municipal laws, to enforce and assist in the enforcement
6 of this article and of all rules and orders issued pursuant
7 thereto and of all other laws of this state relating to
8 aeronautics; and in that connection each of the aforesaid
9 persons is authorized to inspect and examine at reason-
10 able hours any aircraft, the credentials of any airman or
11 other person engaged in aeronautics required by the laws
12 of this state or of the United States to have in his or her
13 possession credentials evidencing his or her authority or
14 permission to engage in aeronautics, any premises and
15 the buildings and other structures thereon, where
16 airports, air navigation facilities, or other aeronautical
17 activities are operated or conducted.

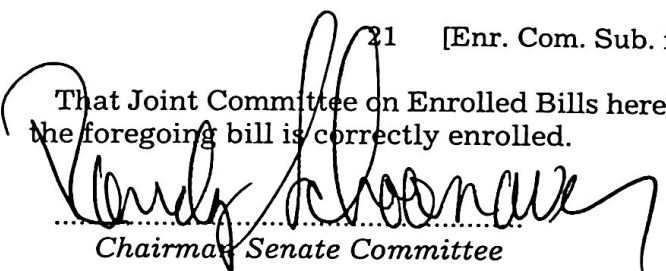
18 The commission is authorized in the name of the state
19 to enforce the provisions of this article and the rules and
20 orders issued pursuant thereto by injunction or other
21 legal process in the courts of this state.

§29-2A-22. Commission orders, notices and opportunity for hearings.

1 Every order of the commission requiring performance

2 of certain acts or compliance with certain requirements
3 and any denial or revocation of an approval shall set
4 forth the reasons and shall state the acts to be done or
5 requirements to be met before approval by the commis-
6 sion will be given or the approval granted or restored or
7 the order modified or changed. Orders issued by the
8 commission pursuant to the provisions of this article
9 shall be served upon the persons affected either by
10 certified mail or in the manner provided by section one,
11 article two, chapter fifty-six of this code. In every case
12 where notice and opportunity for hearing are required
13 under the provisions of this article, the order of the
14 commission shall, on not less than ten days' notice,
15 specify a time when and place where the person affected
16 may be heard, or the time within which he may request
17 a hearing, and such order shall become effective upon
18 the expiration of the time for exercising such opportu-
19 nity for hearing unless a hearing is held or requested
20 within the time provided, in which case the order shall
21 be suspended until the commission shall affirm, disaf-
22 firm or modify such order after hearing held or default
23 by the person affected.

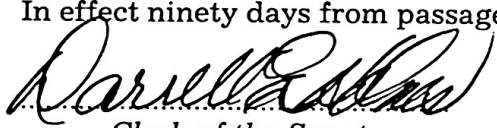
That Joint Committee on Enrolled Bills hereby certifies that
the foregoing bill is correctly enrolled.

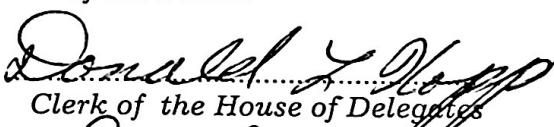

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Chairman Senate Committee

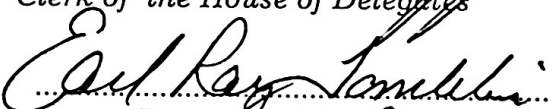

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Chairman House Committee


Originated in the Senate.

In effect ninety days from passage.


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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within this the.....

day of, 1995.

.....
Governor

PRESENTED TO THE

GOVERNOR

Date

Time

3/24/95
4:00 PM