

No. 2005-10

AN ACT

HB 129

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

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

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

CHAPTER 65
FLYING WHILE IMPAIRED

Sec.

6501. Definitions.

6502. Offense.

6503. Penalty.

6504. Testing.

6505. Reporting.

§ 6501. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

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

“Law enforcement officer.” Includes any officer with current certification as provided for in 53 Pa.C.S. Ch. 21 Subch. D (relating to municipal police education and training).

§ 6502. Offense.

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

- (1) while under the influence of alcohol;
- (2) while under the influence of a controlled substance which affects the individual’s faculties in any way contrary to safety;
- (3) when the alcohol concentration in the individual’s blood or breath, as measured within two hours of the time of operation, or attempted operation, is 0.02% or more;
- (4) while under the influence of any combination of a controlled substance and alcohol which affects the individual’s faculties in any way contrary to safety; or

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

(b) Owner.—An owner of an aircraft or the person in charge of an aircraft may not knowingly permit an individual to act or attempt to act as flight crew of an aircraft if the individual is under the influence of alcohol or a controlled substance, or any combination thereof, which affects the individual’s faculties in any way contrary to safety.

§ 6503. Penalty.

(a) General rule.—Except as provided in subsection (b), an individual who violates section 6502 (relating to offense) commits a misdemeanor of the second degree and shall, upon conviction, be sentenced to all of the following:

- (1) To pay a fine of not less than \$1,000 nor more than \$5,000.
- (2) To imprisonment for not less than 72 consecutive hours.
- (3) For a violation of section 6502(a), to undergo evaluation for substance abuse and, if the evaluation indicates substance abuse, to undergo treatment ordered by the court.

(b) Accidents.—An individual who violates section 6502 where there was an accident resulting in bodily injury, serious bodily injury or death of any person or in damage to an aircraft or other property commits a misdemeanor of the second degree and shall, upon conviction, be sentenced as follows:

- (1) To pay a fine of not less than \$5,000 nor more than \$10,000.
- (2) To undergo imprisonment for not less than 30 days.
- (3) For a violation of section 6502(a), to undergo evaluation for substance abuse and, if the evaluation indicates substance abuse, to undergo treatment ordered by the court.

§ 6504. Testing.

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

(b) Postarrest.—If an individual is arrested for violation of section 6502(a), the individual shall submit to one or more chemical tests of breath, blood or urine for the purpose of determining the alcoholic content of blood

or the presence of a controlled substance. It shall be the duty of the law enforcement officer to inform the individual at the time of the request of the penalties for refusal under subsection (c) and the reporting requirements under section 6505. If the individual after being notified of the penalties and reporting requirements refuses to submit to chemical testing, the test shall not be conducted.

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

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

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

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

(ii) For purposes of blood and urine testing to determine blood alcohol or controlled substance content levels, the procedures and equipment prescribed by the Department of Health shall be reviewed within 120 days of the effective date of this subparagraph and at least every two years thereafter to ensure that consideration is given to scientific and technological advances so that testing conducted in accordance with the prescribed procedures utilizing the prescribed

equipment will be as accurate and reliable as science and technology permit.

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

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

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

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

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

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

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

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

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

§ 6505. Reporting.

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

- (1) the name of the individual and the results of the individual's chemical test administered under section 6504(b) (relating to testing); and
- (2) the name of an individual that refused to submit to a chemical test under this chapter.

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

APPROVED—The 5th day of July, A.D. 2005.

EDWARD G. RENDELL