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BILL ANALYSIS



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House Bill 4181 (as reported with amendment)
 Sponsor: Representative Michael E. Nye
 House Committee: Judiciary
 Senate Committee: Transportation and Tourism

Date Completed: 5-5-95

RATIONALE

Federal regulations provide civil penalties and licensure sanctions for pilots who fly under the influence of alcohol or drugs, while state laws provide criminal penalties for these offenders. Michigan's Aeronautics Code was amended in 1985 to establish criminal penalties for various alcohol- and drug-related offenses. Intoxicated flying provisions in the Aeronautics Code parallel provisions on drunk driving in Michigan's Vehicle Code, which has been amended to reflect efforts to enact firmer and more effective sanctions. This attention to drunk driving statutes, in part, has resulted in an examination of the Aeronautics Code in an effort to strengthen and clarify the law pertaining to the operation of aircraft while intoxicated. In addition, the National Transportation Safety Board (NTSB), following a study of alcohol involvement in fatal airplane crashes, urged states in 1993 to improve their laws on flying-while-impaired. Board recommendations for Michigan included suggestions that Michigan adopt a blood alcohol threshold of zero, penalize a person's refusal to be tested for chemical influence, and prohibit flying while under the influence of noncontrolled, over-the-counter substances. After receiving the NTSB's recommendations, the Michigan Aeronautics Commission in July 1993 recommended revisions to the Code pertaining to flying or acting as a crew member while under the influence of drugs or alcohol. Some people believe that the Aeronautics Code should reflect the revisions recommended by national and State aeronautics officials.

CONTENT

The bill would amend the Aeronautics Code to do the following:

- Reduce from .04% to .02% the blood alcohol level at which a person is prohibited from operating an aircraft, and prohibit a person with an unlawful alcohol content from acting as a crew member of an aircraft.
- Prohibit a person from operating an aircraft or acting as a crew member while under the influence of any drug or a combination of drugs that rendered a person incapable of safely operating an aircraft or acting as a crew member.
- Establish felony penalties for a person who caused another person's death or "serious impairment of a body function" while operating an aircraft or acting as a crew member.
- Revise penalties for first-time and subsequent misdemeanor violations under the Code.
- Revise provisions on chemical testing to determine alcohol and drug levels, and permit a person operating under the delegation of a licensed physician to draw blood for testing.
- Delete the jury instruction that must be given regarding a defendant's refusal to submit to a chemical test.

The bill would take effect October 1, 1995.

Prohibitions

Currently, a person, whether or not he or she holds an "airman's certificate of competency" issued by the United States or a foreign government, who is under the influence of intoxicating liquor or a controlled substance, or a combination of these substances, is prohibited from operating an aircraft over or upon State lands or waters. In addition, a

person is prohibited from operating an aircraft within eight hours after consuming an intoxicating liquor or a controlled substance. A peace officer, without warrant, may arrest a person when the peace officer has reasonable cause to believe that the person was, at the time of the accident, the operator of an aircraft involved in the accident and was operating the aircraft while under the influence of intoxicating liquor and/or a controlled substance. The bill would include in these provisions a person who was acting or attempting to act as a crew member of an aircraft while under the influence of liquor or a controlled substance. The bill also would add that a person could not operate an aircraft or act as a crew member while under the influence of an of any drug or combination of drugs that rendered a person incapable of safely operating an aircraft or acting as a crew member of an aircraft.

Blood Alcohol Levels

Under the Code, a person, whether or not he or she holds a certificate of competency, whose blood contains .04% or more by weight of alcohol is prohibited from operating an aircraft in the State. The bill would prohibit a person who had an alcohol content of .02 grams or more per 100 millimeters of blood, per 210 liters of breath, or per 67 millimeters of urine from operating or attempting to operate an aircraft or acting as a crew member of an aircraft.

Penalties

A person, whether or not he or she held a certificate of competency, who operated an aircraft or acted as a crew member in violation of the Code and by operating that aircraft or by serving as a crew member caused the death of another person, would be guilty of a felony, punishable by imprisonment for up to 15 years and/or a fine of at least \$2,500 but not more than \$10,000.

A person who operated an aircraft or acted as a crew member and caused a "serious impairment of a body function" of another person would be guilty of a felony punishable by imprisonment for up to five years and/or a fine of at least \$1,000 but not more than \$5,000. Serious impairment of a body function would include, but not be limited to, one of the following: loss of, or loss of use of, a limb, hand, foot, finger, thumb, eye, or ear; loss of or substantial impairment of a bodily function; serious visible disfigurement; a comatose state that lasted for more than three days; measurable brain damage or mental impairment; a skull

fracture or other serious bone fracture; or, a subdural hemorrhage or subdural hematoma.

Currently, a person who violates the Code's prohibition against operating an aircraft while under the influence of an intoxicating liquor or controlled substance is guilty of a misdemeanor punishable by imprisonment for up to 90 days and/or fines as established in the Code. The bill would increase the maximum term of imprisonment to 93 days. In addition, a person who commits intoxicated flying within seven years of a prior conviction may be imprisoned for up to one year and/or fined up to \$1,000. The bill would establish a minimum fine of \$200. The bill also would add to the definition of "prior conviction" causing the death of another person or serious impairment of a body function due to operating an aircraft or acting as a crew member while under the influence of liquor or drugs. Further, the bill would increase from four to five years the maximum term of imprisonment for a subsequent offense within 10 years of two or more prior convictions, as well as establishing a minimum fine of \$500 and increasing the maximum fine from \$2,000 to \$5,000. The bill also would increase from 12 to 45 the number of days that a court may order a person to perform community service without compensation as part of a sentence for a violation.

An aircraft owner or a person in charge of or in control of an aircraft is prohibited from allowing an aircraft to be operated by a person under the influence of intoxicating liquor or a controlled substance, or by a person who consumed liquor or a controlled substance within eight hours before operating the aircraft. The bill would include in the prohibition permitting a person to operate an aircraft or act as a crew member while under the influence of any drug or combination of drugs that rendered a person incapable of safely operating an aircraft or acting as a crew member. The bill would increase from 90 to 93 days the maximum term of imprisonment for a violation of this provision.

Chemical Analysis

The Code specifies that the amount of alcohol and/or the presence of a controlled substance in an operator's blood, urine, or breath is admissible into evidence in a criminal prosecution for a violation of the Code's provisions on operating an aircraft while intoxicated or under the influence of a controlled substance and for manslaughter resulting from operating an aircraft while the

operator is under the influence of an intoxicating liquor and/or a controlled substance. The bill also would allow the admission of evidence of the presence of any drug or a combination of drugs that rendered a person incapable of safely operating an aircraft or acting as a crew member of an aircraft. The bill would delete provisions allowing the admission of chemical analysis evidence in a criminal prosecution for manslaughter resulting from operating an aircraft while under the influence.

Currently, only a licensed physician or a licensed nurse or medical technician under the direction of a licensed physician qualified to withdraw blood at the request of a peace officer may do so to determine the amount of alcohol and/or presence of a controlled substance in a person's blood. The bill would delete reference to a nurse and medical technician and specify, instead, that an individual operating under the delegation of a licensed physician under the Public Health Code could draw blood.

The bill would delete the current provision that a person who has been charged must be advised that he or she is not required to take a blood test. The bill would require that a person who has been charged be advised that he or she could be subject to sanctions as provided under Federal law and regulations promulgated pursuant to Federal law.

The bill also would delete a requirement that, if either the prosecutor or the defendant requests a jury instruction regarding the defendant's refusal to submit to a chemical test, the jury be instructed that refusal is within the defendant's statutory rights and is not evidence of his or her guilt.

In addition, the bill would delete the Code's provisions regarding implied consent to chemical tests if a person is arrested for manslaughter resulting from intoxicated flying.

MCL 259.185 et al.

SENATE COMMITTEE ACTION

The Senate Committee on Transportation and Tourism adopted an amendment to the bill to change the effective date from June 1, 1995, to October 1, 1995.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The bill would strengthen the Aeronautics Code by reducing the allowable blood alcohol level for pilots, establishing criminal penalties for persons who caused a person's death or serious impairment of a body function while operating an aircraft, and expanding the scope of the intoxicated flying provisions to include persons acting or attempting to act as a crew member on an aircraft. In addition, the bill would increase the maximum jail term for a first offender from 90 to 93 days. According to the Aeronautics Bureau, this increase would trigger statutory fingerprinting and criminal record-keeping requirements that aid authorities in identifying repeat offenders. Provisions in the bill also would be consistent with recent amendments to the State's drunk driving law. By strengthening Michigan's efforts to penalize persons who operate aircraft, or act as crew members on aircraft, while impaired, the bill also could protect the flying public.

Opposing Argument

The bill fails to include certain NTSB and Aeronautics Commission recommendations. Although the bill would reduce from .04% to .02% the blood alcohol concentration at which a person is prohibited from operating an aircraft, the NTSB has recommended a zero blood alcohol concentration. In addition, the NTSB has recommended that the Code include an explicit penalty for refusal to take a chemical test, and the Aeronautics Commission recommended that the Code's implied consent provision be revised to provide for the use of a pre-arrest preliminary breath test.

Response: A .02% blood alcohol standard is considered a reasonable equivalent of a zero tolerance level, since it accommodates a naturally occurring blood alcohol content as well as a single dose of medicine, for example. In addition, the State recently adopted the .02% level for underage drinking drivers.

Legislative Analyst: L. Arasim

FISCAL IMPACT

The bill would have an indeterminate, although most likely small fiscal impact on the Department of Corrections.

The increased penalties, and expanded provisions of impaired flying contained in the bill could result in increased costs for prosecuting and sanctioning violators. Although there are very few data regarding the number of pilots or crew members who violate current standards of “drunk flying” in Michigan each year, the increased costs to the criminal justice system as a result of the new expanded provisions in the bill are not expected to be significant.

Fiscal Analyst: M. Hansen

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.