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## "DRUNK FLYING" AMENDMENTS

House Bill 4181 (Substitute H-2)  
First Analysis (2-9-95)

Sponsor: Rep. Michael E. Nye  
Committee: Judiciary

### ***THE APPARENT PROBLEM:***

While federal regulations provide civil remedies in the form of fines and licensure sanctions for pilots and other crewmembers who fly under the influence of alcohol or other drugs, reports are that criminal penalties are left to state law to provide. The Michigan aeronautics code was amended in 1985 to establish criminal penalties for various alcohol- and drug-related offenses. Anti-"drunk flying" provisions parallel those for drunk driving: flying under the influence of alcohol or a controlled substance is prohibited, as is allowing someone to fly under the influence, if one is in charge of an aircraft; a "per-se" unlawful blood alcohol level is specified (which currently is .04 percent, rather than the .10 percent that applies regarding noncommercial motor vehicles); repeat violators are subject to escalating sanctions; and, a person who operates an aircraft in Michigan is considered to have given consent for chemical tests for the presence of alcohol or controlled substances (this is the "implied consent" provision). Provisions for court-ordered community services, substance abuse screening and counseling, and chemical testing also echo analogous drunk driving provisions in the vehicle code.

The vehicle code's drunk driving provisions, on which the aeronautics provisions were in part modeled, have continued to evolve, reflecting efforts to enact firmer and more effective sanctions. Drunk driving laws underwent a substantial revision in 1992; further refinement occurred in 1994 with enactment of legislation aimed largely at tightening and clarifying the 1992 changes (other legislation that year also reduced the allowable blood alcohol level for drivers under the age of 21 to .02 percent). The recent attention to the drunk driving statutes has served to bring fresh attention to the aeronautics code, which has been examined with an eye to strengthening and clarifying the law.

Early impetus for change also came in the form of National Transportation Safety Board (NTSB) recommendations. In late 1992 and early 1993,

following a study of alcohol involvement in fatal airplane crashes (see *Background Information*), the board urged states to improve their laws on flying-while-impaired. Board recommendations for Michigan included suggestions that Michigan adopt a blood alcohol threshold of zero, penalize chemical test refusal, and prohibit flying while under the influence of non-controlled, over-the-counter substances. Subsequent to receiving these recommendations, the Michigan Aeronautics Commission recommended (in July 1993) that the implied consent provision be amended to provide for the use of a pre-arrest preliminary breath test (PBT), to extend drunk flying proscriptions to include flying under the influence of any drug or combination of drugs rendering a person incapable of safely acting as a crew member, to lower the maximum allowable blood alcohol concentration to .02 percent, and to expand the application of the drunk flying provisions to people acting or attempting to act as crew members.

Legislation to address various concerns has been proposed.

### ***THE CONTENT OF THE BILL:***

The bill would mend the Aeronautics Code (MCL 259.185 et al.) to reduce the threshold for unlawful blood alcohol content from .04 percent to .02 percent; extend "drunk flying" provisions to apply to people acting or attempting to act as crew members; proscribe flying 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; increase criminal penalties for first-time and repeat offenders; establish special felony penalties for drunk flying that caused death or serious injury; and, delete provisions for alleged violators and juries to be notified that a person has a right to refuse a chemical test (the bill would preserve current provisions for implied consent and for court-ordered

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testing over an alleged violator's objections. The bill would take effect June 1, 1995. Further details follow. (Note: For simplicity, this analysis will refer to "drunk flying" to include the non-alcohol drug violations to which drunk flying provisions also apply.)

**Proscriptions.** The bill would incorporate into drunk flying provisions proscriptions against flying under the influence of "any drug or combination of drugs that renders a person incapable of safely operating an aircraft or acting as a crew member of an aircraft." Current proscriptions forbid flying "under the influence," flying with an unlawful blood alcohol content, and flying within eight hours after having consumed alcohol or a controlled substance. The unlawful blood alcohol threshold would be lowered from .04 to .02 percent. As was recently done with drunk driving provisions, the bill would clarify that the amount of alcohol in the body may be measured by the amount in blood, breath, or urine, and specify the permissible amounts in each.

**Application.** The bill would extend to people acting or attempting to act as crew members provisions on drunk flying, including those proscribing flying "under the influence," establishing a threshold for unlawful blood alcohol level, identifying criminal penalties, and providing for chemical testing of alleged violators.

**Death, injury.** Special felony penalties (identical to those found in the vehicle code with regard to drunk driving) would apply to drunk flying that caused death or serious impairment of a body function. Causing a death would be punishable by up to 15 years in prison, a fine of \$2,500 to \$10,000, or both. Causing serious impairment of a body function would be punishable by up to five years in prison, a fine of \$1,000 to \$5,000, or both. "Serious impairment of a body function" would include various specified injuries; these are the same as those specified by the vehicle code. Separate provisions for manslaughter arising from drunk flying would be deleted.

**Criminal penalties.** First-offense drunk flying would continue to be a misdemeanor carrying a possible fine of \$100 to \$500, but the maximum jail term would be increased from 90 to 93 days. A second offense within seven years of a prior offense would continue to be a one-year misdemeanor, but a minimum fine of \$200 would be established (this would apply when a fine was ordered; the maximum

fine would remain \$1,000). A third offense within ten years of two previous offenses would continue to be a felony, but the maximum prison term would be increased from four to five years, the maximum fine increased from \$2,000 to \$5,000, and a minimum fine of \$500 established (for those instances where a fine was ordered). Community service could be ordered for as much as 45 days, up from the current maximum of 12 days.

It would continue to be a misdemeanor for someone in charge of an aircraft to allow someone under the influence to operate an aircraft (or, under the bill, to allow someone under the influence to act or attempt to act as a crew member), but the maximum jail term would be increased from 90 to 93 days. Any fine for this offense would continue to be set at \$100 to \$500.

**Chemical tests.** Someone delegated by a physician to draw blood samples, and qualified to do so, would be explicitly allowed to take blood samples for the purpose of chemical testing for drunk flying. Someone charged with drunk flying would no longer have to be advised that he or she is not required to take a test, although he or she would continue to be informed that if he or she refused, a test would not be given without a court order. Under the bill, the person also would be notified that he or she may be subject to federal sanctions. Language providing for jury instructions regarding test refusal would be deleted.

### **BACKGROUND INFORMATION:**

The National Transportation Safety Board studied alcohol and other drug involvement in fatal general aviation accidents that occurred from 1983 through 1988. The board noted that "despite a downward trend in alcohol-involved fatal general aviation accidents, about 6 percent of the fatally injured pilots in the study were flying while impaired. The mean blood alcohol concentration (BAC) of the alcohol-positive pilots was 0.15 percent, nearly four times the 0.04-percent BAC offense level established by current Federal Aviation Administration (FAA) regulations. More than 95 percent of the alcohol-positive pilots had a BAC that exceeded the 0.04-percent BAC offense level, more than 74 percent had a BAC that exceeded the .10-percent level established as illegal for drivers by most of the driving-while-intoxicated laws enacted by states, and more than 47 percent had a BAC that exceeded 0.15 percent."

**FISCAL IMPLICATIONS:**

Fiscal information is not available at present. (2-9-95)

**ARGUMENTS:****For:**

Although Michigan already benefits from one of the better "drunk flying" laws in the nation, there is room for improvement. The bill would clarify, update, and strengthen the law in a number of ways. Stiffer criminal sanctions and special penalties for causing death or injury would echo recent changes to drunk driving laws, while other provisions, such as those including crew members within the drunk flying law, are adapted from federal regulations. Federal regulations also set .02 percent as the maximum allowable blood alcohol level for pilots and other crew members in for-hire flights; while the federal standard for private pilots is still at .04 percent, efforts reportedly are underway to change this, and the National Transportation Safety Board reports that blood alcohol levels below .04 percent can produce impairment. One penalty enhancement, though seemingly minor, may be of particular use: by increasing the maximum jail term for a first offender to 93 days, the bill would trigger statutory fingerprinting and criminal recordkeeping requirements, thereby helping authorities to identify repeat offenders. Criminal sanctions evidently are largely left to the states to apply; the bill would significantly strengthen penalties against drunk flying, and in the process strengthen the deterrent value that such penalties may hold for would-be offenders. The importance of strong state statute can scarcely be overemphasized, especially with regard to private planes flying out of smaller airports. If no federal authorities are on hand to deal with a problem, the only available recourse is through state law.

**Against:**

The bill may fall short in a number of respects. It fails to include various NTSB and Aeronautics Commission recommendations regarding allowable blood alcohol levels (the NTSB recommends zero), the adoption of an explicit penalty for test refusal, and the use of pre-arrest preliminary breath tests.

**Response:**

Adoption of a .02 percent blood alcohol standard is the reasonable equivalent of adoption of a "zero-tolerance" figure. This is the figure the state

adopted last year for underage drinking drivers, and it accommodates naturally-occurring body alcohol content as well as a single dose of medicine or sip of sacramental wine.

**POSITIONS:**

The Michigan Aeronautics Commission supports the bill. (2-8-95)

The Department of State Police supports the bill. (2-8-95)

The Prosecuting Attorneys Association of Michigan is reviewing the bill and does not have a formal position at this time. (2-8-95)