

LEGISLATIVE BILL 903

Approved by the Governor April 17, 1978

Introduced by Mills, 44

AN ACT relating to operation of aircraft; to prohibit such operation while under the influence of alcoholic liquor or drugs as prescribed; to provide for implied consent of operator to chemical testing; and to provide penalties.
Be it enacted by the people of the State of Nebraska,

Section 1. It shall be unlawful for any person to operate or be in the actual physical control of any aircraft while under the influence of alcoholic liquor or of any drug or when that person has five-hundredths of one per cent or more by weight of alcohol in his body fluid as shown by chemical analysis of his blood, breath, or urine.

Sec. 2. Any person who shall operate or be in the actual physical control of any aircraft while under the influence of alcoholic liquor or of any drug or while having five-hundredths of one per cent by weight of alcohol in his body fluid as shown by chemical analysis of his blood, breath, or urine shall be deemed guilty of a crime and, upon conviction thereof, shall be punished as provided in sections 3 to 5 of this act.

Sec. 3. If such conviction is for a first offense, such person shall be guilty of a Class III misdemeanor and the court shall as part of the judgment of conviction, order such person not to operate any aircraft for any purpose for a period of six months from the date of his final discharge from the county jail, or the date of payment or satisfaction of any fine, whichever is the later, except that if the court shall suspend the proceedings and place such person on probation as provided by law, the court as one of the conditions of probation shall order such person not to operate any aircraft for any purpose for a period of thirty days from the date of the order.

Sec. 4. If such conviction is for a second offense such person shall be guilty of a Class III misdemeanor and shall be imprisoned in the county jail for not less than five days and the court shall, as part of the judgment of conviction, order such person not to operate any aircraft for any purpose for a period of one year from the date of his final discharge from the county

jail, or the date of payment or satisfaction of any fine, whichever is the later, and if the aircraft which such person was operating or was actually physically controlling, while under the influence of alcoholic liquor or any drug, is registered in the name of such person, the aircraft shall be impounded by the court for a period of not less than two months nor greater than one year at the expense and risk of the owner thereof; except that any aircraft so impounded shall be released to the holder of a bona fide lien thereon, executed prior to such impounding, when possession of such aircraft is requested in writing by such lienholder for the purpose of foreclosing and satisfying his lien thereon.

Sec. 5. If such conviction is for a third offense, or subsequent offense thereafter, such person shall be guilty of a Class IV felony, and the court shall as part of the judgment of conviction, order such person not to operate any aircraft for any purpose for a period of one year after the date of final discharge from imprisonment for such crime, or the date of payment or satisfaction of any fine, whichever is the later.

Sec. 6. Any person who operates or has in his actual physical control an aircraft within this state shall be deemed to have given his consent to submit to a chemical test of his blood, urine, or breath, for the purpose of determining the amount of alcoholic content in his body fluid.

Sec. 7. Any law enforcement officer who has been duly authorized to make arrests for violations of traffic laws of this state or of ordinances of any city or village may require any person arrested for any offense arising out of acts alleged to have been committed while the person was operating or was in actual physical control of an aircraft while under the influence of alcoholic liquor to submit to a chemical test of his blood, breath, or urine for the purpose of determining the alcoholic content of his body fluid, when the officer has reasonable grounds to believe that such person was operating or was in the actual physical control of an aircraft within this state while under the influence of alcoholic liquor.

Sec. 8. Any law enforcement officer who has been duly authorized to make arrests for violation of traffic laws of this state or ordinances of any city or village may require any person who operates or has in his actual physical control an aircraft within the airspace of this state to submit to a preliminary test of his breath for alcohol content if the officer has reasonable grounds to believe that such person has alcohol in his

body, or has committed a violation of flying regulations, or has been involved in an aircraft accident. Any person who refuses to submit to such preliminary breath test or whose preliminary breath test results indicate an alcohol content of five-hundredths of one per cent or more shall be placed under arrest. Any person who refuses to submit to such preliminary breath test shall be guilty of a Class V misdemeanor.

Sec. 9. Any person arrested pursuant to this act may, upon the direction of a law enforcement officer, be required to submit to a chemical test of his blood, breath, or urine for a determination of the alcohol content. Any person who refuses to submit to a chemical blood, breath, or urine test required pursuant to this act shall be guilty of a crime and, upon conviction thereof, shall be punished in the same manner as he would be if convicted for a violation of section 1 or this act.

Sec. 10. Any person who is required to submit to a preliminary breath test, or to a chemical blood, breath, or urine test pursuant to this act shall be advised of the consequences of refusing to submit to such test.