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SENATE BILL 687

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Manny M. Aragon

AN ACT

RELATING TO CRIMINAL LAW; ENACTING THE FLYING WHILE INTOXICATED ACT; PRESCRIBING PENALTIES FOR OPERATING AN AIRCRAFT WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; AUTHORIZING TESTING OF A PERSON'S BLOOD OR BREATH FOR ALCOHOL OR DRUGS; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1 through 12 of this act may be cited as the "Flying While Intoxicated Act".

Section 2. [NEW MATERIAL] DEFINITIONS. -- As used in the Flying While Intoxicated Act:

A. "aircraft" means any contrivance used or designed for navigation of or flight in the air, except a parachute or other contrivance designed for such navigation but

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1 used primarily as safety equipment;

2 B. "bodily injury" means an injury to a person that  
3 is not likely to cause death or great bodily harm to the  
4 person, but does cause painful temporary disfigurement or  
5 temporary loss or impairment of the functions of any member or  
6 organ of the person's body;

7 C. "conviction" means an adjudication of guilt and  
8 does not include imposition of a sentence; and

9 D. "operate" means to physically handle the  
10 controls of an aircraft, set an aircraft in motion or pilot an  
11 aircraft.

12 Section 3. [NEW MATERIAL] OPERATING AN AIRCRAFT WHILE  
13 UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS. --

14 A. It is unlawful for a person who is under the  
15 influence of intoxicating liquor to operate an aircraft.

16 B. It is unlawful for a person who is under the  
17 influence of any drug to a degree that renders him incapable of  
18 safely operating an aircraft to operate an aircraft.

19 C. It is unlawful for a person who has an alcohol  
20 concentration of four one hundredths or more in his blood or  
21 breath to operate an aircraft.

22 D. Every person under first conviction pursuant to  
23 this section shall be punished, notwithstanding the provisions  
24 of Section 31-18-13 NMSA 1978, by imprisonment for not more  
25 than ninety days or by a fine of not more than five hundred

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1 dollars (\$500), or both; provided that if the sentence is  
2 suspended in whole or in part or deferred, the period of  
3 probation may extend beyond ninety days but shall not exceed  
4 one year. On a first conviction pursuant to this section, any  
5 time spent in jail for the offense prior to the conviction for  
6 that offense shall be credited to any term of imprisonment  
7 fixed by the court. A deferred sentence pursuant to this  
8 subsection shall be considered a first conviction for the  
9 purpose of determining subsequent convictions.

10 E. A second or subsequent conviction pursuant to  
11 this section shall be punished, notwithstanding the provisions  
12 of Section 31-18-13 NMSA 1978, by imprisonment for not more  
13 than three hundred sixty-four days or by a fine of not more  
14 than seven hundred fifty dollars (\$750), or both; provided that  
15 if the sentence is suspended in whole or in part, the period of  
16 probation shall not exceed one year.

17 F. If a person is convicted of a violation pursuant  
18 to this section, a report of the conviction shall be forwarded  
19 by the court in which the conviction occurred to the federal  
20 aviation administration flight standards district office having  
21 jurisdiction over the county in which the violation occurred.

22 Section 4. [NEW MATERIAL] GUILTY PLEAS--LIMITATIONS.--  
23 When a complaint or information alleges a violation of Section  
24 3 of the Flying While Intoxicated Act, any plea of guilty  
25 thereafter entered in satisfaction of the charges shall include

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1 at least a plea of guilty to the violation of one of the  
2 subsections of Section 3 of that act, and no other disposition  
3 by plea of guilty to any other charge in satisfaction of the  
4 charge shall be authorized if the results of a test performed  
5 pursuant to that act disclose that the blood or breath of the  
6 person charged contains an alcohol concentration of four one  
7 hundredths or more.

8 Section 5. [NEW MATERIAL] MUNICIPAL AND COUNTY  
9 ORDINANCES--UNLAWFUL ALCOHOL CONCENTRATION LEVEL FOR FLYING  
10 WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS.--No  
11 municipal or county ordinance prohibiting the operation of an  
12 aircraft while under the influence of intoxicating liquor or  
13 drugs shall be enacted that provides for an unlawful alcohol  
14 concentration level that is different than the alcohol  
15 concentration level provided in Section 3 of the Flying While  
16 Intoxicated Act.

17 Section 6. [NEW MATERIAL] BLOOD-ALCOHOL TESTS--PERSONS  
18 QUALIFIED TO PERFORM TESTS--RELIEF FROM CIVIL AND CRIMINAL  
19 LIABILITY.--Only a physician, licensed professional or  
20 practical nurse or laboratory technician or technologist  
21 employed by a hospital or physician shall withdraw blood from a  
22 person in the performance of a blood-alcohol or drug test. A  
23 physician, nurse, technician or technologist who withdraws  
24 blood from a person in the performance of a blood-alcohol or  
25 drug test that has been directed by a law enforcement officer,

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1 or by a judicial or probation officer, shall not be held liable  
2 in a civil or criminal action for assault, battery, false  
3 imprisonment or any conduct of a law enforcement officer,  
4 except for negligence, nor shall a person assisting in the  
5 performance of the test, or a hospital wherein blood is  
6 withdrawn in the performance of the test, be subject to civil  
7 or criminal liability for assault, battery, false imprisonment  
8 or any conduct of a law enforcement officer, except for  
9 negligence.

10 Section 7. [NEW MATERIAL] BLOOD-ALCOHOL TEST--LAW  
11 ENFORCEMENT, JUDICIAL OR PROBATION OFFICER UNAUTHORIZED TO MAKE  
12 ARREST OR DIRECT TEST EXCEPT IN PERFORMANCE OF OFFICIAL DUTIES  
13 AUTHORIZED BY LAW.--Nothing in the Flying While Intoxicated Act  
14 is intended to authorize a law enforcement officer, or a  
15 judicial or probation officer, to make an arrest or direct the  
16 performance of a blood-alcohol or drug test, except in the  
17 performance of his official duties or as otherwise authorized  
18 by law.

19 Section 8. [NEW MATERIAL] IMPLIED CONSENT TO SUBMIT TO  
20 CHEMICAL TEST.--

21 A. A person who operates an aircraft within this  
22 state shall be deemed to have given consent, subject to the  
23 provisions of the Flying While Intoxicated Act, to chemical  
24 tests of his blood or breath or both, approved by the  
25 scientific laboratory division of the department of health

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1 pursuant to the provisions of Section 24-1-22 NMSA 1978 as  
2 determined by a law enforcement officer, or for the purposes of  
3 determining the drug or alcohol content of his blood if  
4 arrested for any offense arising out of acts alleged to have  
5 been committed while the person was operating an aircraft under  
6 the influence of an intoxicating liquor or drug.

7 B. The arrested person shall be advised by a law  
8 enforcement officer that failure to submit to a chemical test  
9 may be introduced into evidence in court and that the court,  
10 upon conviction, may impose increased penalties for the  
11 person's failure to submit to a chemical test.

12 C. A test of blood or breath or both, approved by  
13 the scientific laboratory division of the department of health  
14 pursuant to the provisions of Section 24-1-22 NMSA 1978, shall  
15 be administered at the direction of a law enforcement officer  
16 having reasonable grounds to believe the person to have been  
17 operating an aircraft while under the influence of an  
18 intoxicating liquor or drug.

19 D. A person who operates an aircraft in this state  
20 and who is involved in a fatal flying incident shall be deemed  
21 to have given consent, subject to the provisions of the Flying  
22 While Intoxicated Act, to mandatory chemical tests of his blood  
23 or breath or both, as determined by a law enforcement officer  
24 and approved by the scientific laboratory division of the  
25 department of health pursuant to the provisions of Section

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1 24-1-22 NMSA 1978.

2 Section 9. [NEW MATERIAL] CONSENT OF PERSON INCAPABLE OF  
3 REFUSAL NOT WITHDRAWN. --A person who is dead, unconscious or  
4 otherwise in a condition rendering him incapable of refusal  
5 shall be deemed not to have withdrawn the consent provided by  
6 the Flying While Intoxicated Act, and the test designated by  
7 the law enforcement officer may be administered.

8 Section 10. [NEW MATERIAL] ADMINISTRATION OF CHEMICAL  
9 TEST-- PAYMENT OF COSTS-- ADDITIONAL TESTS. --

10 A. Only the persons authorized by the Flying While  
11 Intoxicated Act shall withdraw blood from a person for the  
12 purpose of determining its alcohol or drug content. This  
13 limitation does not apply to the taking of samples of breath.

14 B. The person tested shall be advised by the law  
15 enforcement officer of the person's right to be given an  
16 opportunity to arrange for a physician, licensed professional  
17 or practical nurse or laboratory technician or technologist who  
18 is employed by a hospital or physician of his own choosing to  
19 perform a chemical test in addition to a test performed at the  
20 direction of a law enforcement officer.

21 C. Upon the request of the person tested, full  
22 information concerning the test performed at the direction of  
23 the law enforcement officer shall be made available to him as  
24 soon as it is available from the person performing the test.

25 D. The agency represented by the law enforcement

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1 officer at whose direction the chemical test is performed shall  
2 pay for the chemical test.

3 E. If a person exercises his right under Subsection  
4 B of this section to have a chemical test performed upon him by  
5 a person of his own choosing, the cost of that test shall be  
6 paid by the agency represented by the law enforcement officer  
7 at whose direction a chemical test was administered pursuant to  
8 Section 8 of the Flying While Intoxicated Act.

9 Section 11. [NEW MATERIAL] USE OF TESTS IN CRIMINAL OR  
10 CIVIL ACTIONS--LEVELS OF INTOXICATION--MANDATORY CHARGING. --

11 A. The results of a test performed pursuant to the  
12 Flying While Intoxicated Act may be introduced into evidence in  
13 a civil action or criminal action arising out of the acts  
14 alleged to have been committed by the person tested for  
15 operating an aircraft while under the influence of intoxicating  
16 liquor or drugs.

17 B. When the blood or breath of the person tested  
18 contains an alcohol concentration of four one hundredths or  
19 more, the arresting officer shall charge him with a violation  
20 of Section 3 of the Flying While Intoxicated Act.

21 C. The determination of alcohol concentration shall  
22 be based on the grams of alcohol in one hundred milliliters of  
23 blood or the grams of alcohol in two hundred ten liters of  
24 breath.

25 D. The alcohol concentration in a person's blood or

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1 breath shall be determined by a chemical test administered to  
2 the person within three hours of the alleged flying while under  
3 the influence of intoxicating liquor. In a prosecution  
4 pursuant to the provisions of the Flying While Intoxicated Act,  
5 it is a rebuttable presumption that a person is in violation of  
6 the provisions of that act if he has an alcohol concentration  
7 of four one hundredths or more in his blood or breath as  
8 determined by a chemical test administered to the person within  
9 three hours of the alleged flying while under the influence of  
10 intoxicating liquor. If the chemical test is administered more  
11 than three hours after the alleged flying while under the  
12 influence of intoxicating liquor, the test result is admissible  
13 as evidence of the alcohol concentration in the person's blood  
14 or breath at the time of the alleged flying and the trier of  
15 fact shall determine what weight to give the test result.

16 E. If a person is convicted of operating an  
17 aircraft while under the influence of intoxicating liquor or  
18 drugs, the trial judge shall be required to inquire into past  
19 convictions of the person for operating an aircraft while under  
20 the influence of intoxicating liquor or drugs before sentence  
21 is entered in the matter.

22 Section 12. [NEW MATERIAL] AIRCRAFT--INFLUENCE OF  
23 INTOXICATING LIQUOR OR DRUGS--FEE UPON CONVICTION.--

24 A. A person convicted of a violation of the Flying  
25 While Intoxicated Act shall be assessed by the court, in

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1 addition to any other fee or fine, a fee of sixty-five dollars  
2 (\$65.00) to defray the costs of chemical and other tests used  
3 to determine the influence of intoxicating liquor or drugs.

4 B. All fees collected pursuant to the provisions of  
5 this section shall be transmitted monthly to the crime  
6 laboratory fund. All balances in the crime laboratory fund  
7 collected pursuant to this section are appropriated to the  
8 administrative office of the courts for payment upon invoice to  
9 the scientific laboratory division of the department of health  
10 for the costs of chemical and other tests used to determine the  
11 influence of intoxicating liquor or drugs.

12 C. Payment of funds out of the crime laboratory  
13 fund of fees collected pursuant to this section shall be made  
14 upon vouchers issued and signed by the director of the  
15 administrative office of the courts upon warrants drawn by the  
16 department of finance and administration.

17 Section 13. Section 24-1-22 NMSA 1978 (being Laws 1981,  
18 Chapter 165, Section 1) is amended to read:

19 "24-1-22. SCIENTIFIC LABORATORY DIVISION-- TESTING  
20 METHODS-- CERTIFICATION. --

21 A. The scientific laboratory division of the  
22 [~~health and environment~~] department of health is authorized to  
23 promulgate and approve satisfactory techniques or methods to  
24 test persons believed to be operating a motor vehicle or an  
25 aircraft under the influence of drugs or alcohol and to issue

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1 certification for test operators and their instructors [~~which~~  
2 that shall be subject to termination or revocation at the  
3 discretion of the scientific laboratory division. The  
4 scientific laboratory division is further authorized to  
5 establish or approve quality control measures for alcohol  
6 breath testing and to establish or approve standards of  
7 training necessary to [~~assure~~] ensure the qualifications of  
8 individuals conducting these analyses or collections.

9 B. The scientific laboratory division [~~will~~] shall  
10 establish criteria and specifications for equipment, training,  
11 quality control, testing methodology, blood-breath  
12 relationships and the certification of operators, instructors  
13 and collectors of breath samples.

14 C. All laboratories analyzing breath, blood or  
15 urine samples pursuant to the provisions of the Implied Consent  
16 Act and the Flying While Intoxicated Act shall be certified by  
17 the scientific laboratory division. The certification shall be  
18 granted in accordance with the rules and regulations of the  
19 scientific laboratory division and shall be subject to  
20 termination or revocation for cause. "

21 Section 14. EFFECTIVE DATE. --The effective date of the  
22 provisions of this act is July 1, 2003.