

AERONAUTICS

CHAPTER 84

SENATE BILL NO. 2072
(Doherty, Longmire, Pyle, Schultz, Unruh)
(From Legislative Council Study)

AIRCRAFT OPERATION

AN ACT to amend and reenact subsections 1 and 2 of section 2-03-01, and sections 2-03-04, 2-03-05, 2-03-06, 2-03-08, 2-03-09, 2-03-10, and 2-03-14 of the North Dakota Century Code, relating to the lawfulness of flight over land and water, the method of operations of aircraft, and liability for damages caused by the operation of aircraft or in accidents involving aircraft; and providing a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Subsections 1 and 2 of section 2-03-01 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. "Aircraft" means any contrivance now known or hereafter invented, used, or designed for navigation of or flight in the air. Provided, a hydroplane, while at rest on water and while being operated on or immediately above water, shall be governed by the rules regarding water navigation.
2. "Airman" means any individual who engages, as the person in command, or as pilot or member of the crew, in the operating and navigation of an aircraft while underway.

SECTION 2. AMENDMENT.) Section 2-03-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2-03-04. **LAWFULNESS OF FLIGHT.**) Flight in aircraft over the lands and waters of this state is lawful, unless at such a low altitude as to interfere with the then existing use to which the land or water, or the space over the land or water is put by the owner, or unless so conducted as to be imminently dangerous to persons or property lawfully on the land or water beneath. The landing of an aircraft on the lands or waters of another, without his consent, is unlawful except in the case of a forced landing. For damages caused by a forced landing, however, the owner or lessee of the aircraft or the airman shall be liable, as provided in section 2-03-05.

SECTION 3. AMENDMENT.) Section 2-03-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2-03-05. DAMAGE TO PERSONS AND PROPERTY.) The owner and the pilot, or either of them, of every aircraft which is operated over the lands or waters of this state shall be liable for injuries to persons or property on the land or water beneath caused by the ascent, descent, or flight of the aircraft, or the dropping or falling of any object therefrom, in accordance with the rules of law applicable to torts in this state, unless the injury is caused in whole or in part by the negligence of the person injured, or of the owner or bailee of the property injured. If the aircraft is leased at the time of the injury to person or property, both owner and lessee shall be liable and they may be sued jointly, or either or both of them may be sued separately. An airman who is not the owner or lessee shall be liable only for the consequences of his own negligence. The injured person, or owner, or bailee of the injured property, shall have a lien on the aircraft causing the injury to the extent of the damage caused by the aircraft or objects falling from it.

As used in this section, "owner" shall include a person having full title to aircraft and operating it through servants, and shall also include a bona fide lessee or bailee of such aircraft, whether gratuitously or for hire; but "owner", as used in this section, shall not include a bona fide bailor or lessor of such aircraft, whether gratuitously or for hire, or a mortgagee, conditional seller, trustee for creditors of such aircraft or other person having a security title only, nor shall the owner of such aircraft be liable when the pilot thereof is in possession thereof as a result of theft or felonious conversion.

The person in whose name an aircraft is registered with the United States department of transportation or the aeronautics commission of this state shall be prima facie the owner of such aircraft within the meaning of this section.

SECTION 4. AMENDMENT.) Section 2-03-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2-03-06. COLLISION OF AIRCRAFT.) The liability of the owner of one aircraft to the owner of another aircraft, or to the airmen or passengers on either aircraft, for damage caused by collision on land or in the air, shall be determined by the rules of law applicable to torts on land.

SECTION 5. AMENDMENT.) Section 2-03-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2-03-08. JURISDICTION OVER CRIMES AND TORTS.) All crimes, torts, and other wrongs committed by or against an airman or passenger while in flight over this state shall be governed by

the laws of this state, and the question whether damage occasioned by or to an aircraft while in flight over this state constitutes a tort, crime, or other wrong by or against the owner of such aircraft, shall be determined by the laws of this state.

SECTION 6. AMENDMENT.) Section 2-03-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2-03-09. JURISDICTION OVER CONTRACTS.) All contractual and other legal relations entered into by airmen or passengers while in flight over this state shall have the same effect as if entered into on the land or water beneath.

SECTION 7. AMENDMENT.) Section 2-03-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2-03-10. RECKLESS OPERATION - OPERATION WHILE INTOXICATED - TAMPERING WITH AIRCRAFT - MISDEMEANORS - PENALTIES.)

1. Any person who shall operate any aircraft within the airspace over, above, and upon the lands and waters of this state, carelessly and heedlessly in willful or wanton disregard of the rights or safety of others, or without due caution and circumspection in a manner so as to endanger or be likely to endanger any person or property, shall be guilty of a misdemeanor.
2. Whoever operates, or attempts to operate, any aircraft in this state on any airport, landing field, or landing strip, or whoever operates, or attempts to operate, any aircraft in the air in this state while in an intoxicated condition or while under the influence of alcoholic beverages or any depressant, stimulant, or hallucinogenic drug, shall be guilty of a misdemeanor. No person may act or attempt to act as a crewmember of any aircraft or start an engine or attempt to start an engine of any aircraft within eight hours after the consumption of any alcoholic beverage or while using any drug that affects his faculties in any way contrary to safety. Anyone violating the provisions of this subsection shall be punishable by a fine of not less than one hundred dollars or more than five hundred dollars, or by imprisonment not exceeding one year, or by both such fine and imprisonment.
3. No person shall, without express or implied authority of the owner, operate, climb upon, enter, manipulate the controls or accessories of, set in motion, remove parts or contents therefrom, or otherwise tamper with any civil aircraft within this state with intent to injure the same or cause inconvenience to the owner or operator thereof, or knowingly cause or permit the

same to be done.

Any person who violates any of the provisions of this subsection shall be guilty of a misdemeanor, and upon the conviction thereof shall be punishable by a fine of not to exceed one hundred dollars or by imprisonment for not to exceed three months. The North Dakota aeronautics commission, its members, the director, employees of the commission, any highway patrolman, any sheriff, any city police officer, any peace officer, any airport authority or any airport manager or his agents, may arrest without a warrant, day or night, any person on any airport or in any private or public building upon a public airport whoever violates any of the provisions of this section, in his presence.

SECTION 8. AMENDMENT.) Section 2-03-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2-03-14. CIVIL LIABILITY FOR INJURIES TO GUEST PASSENGER.) No person transported by the owner or operator of any aircraft as a guest without payment for such transportation shall have a cause of action for damages against the owner or operator for injury, death, or loss in case of accident, unless the accident shall have been caused by the gross negligence, intoxication, or willful and wanton misconduct of the owner or operator of the aircraft, and unless the gross negligence, intoxication, or willful and wanton misconduct of the owner or operator of the aircraft contributed to the injury, death, or loss for which the action is brought. No person so transported shall have such cause of action if he has willfully or by want of ordinary care brought the injury upon himself. For purposes of this section, the word "guest" means any person other than an employee of the owner or registrant of any aircraft, or of a person responsible for its operation with the owner's or registrant's express or implied consent, being in or upon, entering or leaving the same, except any passenger for hire and except any passenger while the aircraft is being used in the business of demonstrating or testing. The sharing of expense shall not constitute a carriage for hire within the meaning of this section.

Approved March 17, 1971

CHAPTER 85

SENATE BILL NO. 2239
(Doherty, Thoreson, Jones)

BONDING OF AIR TRANSPORTATION ENTITIES

AN ACT to create and enact section 2-05-15.1 of the North Dakota Century Code, relating to bonding requirements of certain air transportation entities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1.) Section 2-05-15.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

2-05-15.1. BOND REQUIRED.) Before issuance or transfer of any common carrier certificate by aircraft as provided for in section 2-05-15 to any entity, the North Dakota aeronautics commission shall require such entity to post a bond issued by a licensed surety company, or in cash with the North Dakota aeronautics commission payable to the North Dakota aeronautics commission as trustee for the state treasurer, in an amount equal to the estimated annual utility taxes to be assessed upon such air transportation entity and assessed and collected pursuant to chapters 57-06, 57-07, 57-08, 57-13, and 57-32, as amended, for each calendar year that such air transportation entity holds a common carrier certificate issued or transferred to it by the state aeronautics commission, authorizing such holder to engage in the business of common carrier by aircraft operating on a definite schedule between fixed termini in North Dakota. The state aeronautics commission shall consult with the state tax commissioner and such air transportation entity to determine the estimated annual utility taxes to be assessed to each such air transportation entity and the state aeronautics commission shall set the bond amount based on reasonable estimates. The bond amount posted and required for each such air transportation entity shall be secured by the state aeronautics commission, after such utility taxes become delinquent, in an amount equal to such utility taxes and penalties and the state aeronautics commission shall pay such proceeds to the state treasurer, after the state treasurer has notified the state aeronautics commission in writing that the utility taxes on such air transportation entity are delinquent and unpaid with the amount of taxes and penalties due. In the event such air transportation entity fails to sufficiently maintain its bond at any time, the state aeronautics commission shall take action to revoke any common carrier certificate by aircraft that such air transportation entity holds, that was issued by the North Dakota aeronautics commission.

Approved March 12, 1971