House
Legislative
Analysis
Section

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REPEAL AIRCRAFT FINANCIAL RESPONSIBILITY ACT

House Bill 4277 as introduced
First Analysis (3-14-95)

Sponsor: Rep. Michael E. Nye
Committee: Judiciary and Civil Rights

THE APPARENT PROBLEM:

Under the aeronautics code (Public Act 327 of 1945), private airplanes owned by Michigan residents must be registered every year with the state, just as motor vehicle owners must annually register their vehicles under the Motor Vehicle Code. However, unlike motor vehicle owners, who (because of Michigan's no-fault automobile insurance system) cannot register their vehicles without providing proof that they carry liability insurance on their motor vehicles, aircraft owners can register their aircraft without providing any proof that they have liability insurance for their aircraft. There is a Michigan law that addresses the issue of "financial security" for private aircraft, the Uniform Aircraft Financial Responsibility Act (Public Act 257 of 1955), that requires the Bureau of Aeronautics in the Department of Transportation to gather certain data on aircraft accidents in order to determine the financial ability of private aircraft owners or operators to pay possible claims for damages that resulted from the accident. (Informally, this act is known as the "crash and pay" act, because it isn't applicable until after an accident has occurred.)

Under the act, whenever a private aircraft is involved in an accident that results in either personal injury or property damages of over $100, the Bureau of Aeronautics in the Department of Transportation is required to conduct an investigation to decide (up to certain -- very low -- maximums specified in the act) how much "financial security" the owner or operator needs to cover any legal judgment for damages resulting from the accident. The only penalty for failing to deposit with the state treasurer the amount determined by the bureau to be "sufficient" is suspension of the owner's or operator's registration (or, if he or she lives outside Michigan, of his or her operating privileges). Despite a reference in section 9 of the act to "the security required under this act . . . in such amounts as the agency [i.e. bureau] may require," the act in fact nowhere clearly does require private aircraft owners to carry either liability insurance or collision ("hull damage") insurance.

A group of legislators who are interested in aviation has requested that the act be repealed, and legislation has been introduced that would do this.

THE CONTENT OF THE BILL:

The bill would repeal the Uniform Aircraft Financial Responsibility Act, Public Act 257 of 1955.

MCL 259.671 et al.

BACKGROUND INFORMATION:

The act also has a number of other provisions, such as requiring, upon the written request of the Bureau of Aeronautics, aircraft operators to notify the bureau whenever such accidents occur; requiring the law enforcement agency within whose jurisdiction the accident happened to notify the bureau within 48 hours after learning about it; exemptions to the security and suspension provisions; the amounts and forms of security required for personal injury and for property damage; when security can be released; risks not covered; certificates of self-insurance; registration and operating privilege actions, including suspensions and restoration or renewal; actions required when state residents have accidents in other states or when non-residents have accidents in Michigan; and penalties for violations.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill has no fiscal implications for the state. (3-9-95)

ARGUMENTS:

For:

By all accounts, the Uniform Aircraft Financial Liability Responsibility Act is outmoded, ineffectual, time-consuming to enforce, and unnecessary. The act, which has never been amended since its enactment in 1955, apparently was intended to address the issue of liability and collision ("hull damage") insurance on private aircraft (commercial carriers are covered by federal law). But the act doesn't even actually require that private aircraft owners and operators carry insurance; it only requires that after an accident involving a private plane the state investigate to see whether or not the owner has such insurance. And there already are enough other entities -- the Federal Aviation Agency, the National Transportation Safety Board, the various professional pilots and aircraft owners associations, banks (who require that aircraft bought with a bank loan be insured), and, certainly, the courts -- that are better able to determine whether someone should carry (or should have carried) insurance, and how much. In fact, reportedly, virtually all private aircraft carry liability insurance even though not required by law.

The act is outmoded both in the amounts it requires for liability and collision ("hull damage") insurance and in the violations it recognizes and penalties it imposes. For example, the maximum security for damages to property or for injury to, or the death of, one person is $25,000, a ridiculously low amount. If two or more people are injured or killed, the maximum is $50,000, except in the case of aircraft operated for hire, in which case, the maximum security is $50,000 times the number of passenger seats. Although the act does have criminal (misdemeanor) penalty provisions, the violations listed in the act -- failure to make an accident report when required to do so by the Bureau of Aeronautics, lying in such a report, operating an aircraft with a suspended registration, and failing to turn in a suspended registration -- don't even include a failure to carry sufficient liability or collision insurance. Further, the existing penalties for violations (maximum fines ranging from $100, for failing to make a required report, to $1,000, for lying on a report or flying with a suspended license plus possible jail time) are too low to be effective even in enforcing the existing inadequate requirements.

It also is time-consuming for the Bureau of Aeronautics to enforce this act, and can cause needless suffering to grieving families of airplane owner-pilots who die in airplane accidents. The bureau, like many other areas of state government, has been "down-sized" in recent years, and the required accident investigations and determination of liability can be very time-consuming. But enforcing the act not only can take considerable amounts of time, at a time when the bureau's staff has been reduced, it also can cause needless suffering to surviving family members of pilot-owners who die in aircraft accidents. Because the law only goes into effect after an accident takes place, if the owner is operating the aircraft and dies in the accident, the Bureau of Aeronautics is put in the somewhat awkward position of having to contact surviving family members to find out whether an insurance policy was in effect. And if none was, then the bureau must request proof either of the availability of enough money to cover the security requirement or the purchase of a surety bond. In either event, the act seems to require a needless intrusion on people who may be dealing with the loss of a loved one.

In fact, requiring the bureau to investigate accidents involving private aircraft in order to determine appropriate liability levels seems both somewhat odd and even counterproductive in terms of promoting aviation safety. For one thing, the actual liability in a great many of the accidents that occur today would certainly exceed the maximums allowed by law, which would seem to make such determinations meaningless (because the maximum allowed is so low) much of the time. But further, requiring bureau employees to determine liability in the first place puts the bureau in the business of gathering data for possible legal actions instead of gathering data, as historically has been the case for aviation investigations, in order to prevent or reduce the number of future such accidents. Repealing the act would relieve the bureau from the burden of having to gather information and make liability determinations that could be done much better by other entities (such as the courts), and would allow it instead to concentrate on gathering data to enhance aviation safety.

Finally, reportedly many or most of the other states (which include California, Connecticut, Massachusetts, Minnesota, and New Hampshire) that enacted similar "uniform" laws are considering repealing their laws as well, while as long ago as 1978 the National Conference of Commissioners on

Uniform State Laws (NCCUSL) declared this uniform act obsolete (because it was "procedurally and substantively inadequate").

Although there always will be some people who aren't responsible and who won't get insurance on their aircraft, sheer common sense will dictate that owners of expensive aircraft will protect their investments by having liability and collision insurance (even though, reportedly, "hull damage" insurance is extremely expensive). In fact, according to the Aeronautics Commission, the number of private aircraft who have liability insurance is comparable to the number of motor vehicle owners who have liability insurance (and who are required by law to have such insurance). The act should be repealed.

POSITIONS:

The Department of Transportation does not yet have an official position on the bill, though the Bureau of Aeronautics has recommended support. (3-9-95)