

8(E) Pilots and Transportation Workers

See page 10-83 for information about drunk driving convictions and commercial driver's licensees.

There are two separate areas of concern for pilots—the airman's certificate (pilot's license) and the medical certificate.

Federal Aviation Regulation (FAR), 14 C.F.R. §61.15 (set forth in full in Appendix B), covers offenses by pilots which involve alcohol or drugs but which are not related to the use or operation of an aircraft. The section defines a "motor vehicle action" involving alcohol or drugs, and requires reporting of such an "action" within 60 days. For information on complying with the 60-day reporting requirement call Hattie Taylor (310 297 1300; FAX: 310 297 0344) at the F.A.A. Office of Aviation Medicine, Western-Pacific Region.

A "motor vehicle action" under §61.15 is:

- (1) a conviction of any statute relating to the operation of a motor vehicle while intoxicated by alcohol or a drug, while impaired by alcohol or a drug, or while under the influence of alcohol or a drug;
- (2) the cancellation or suspension of a license for a cause related to the above; and
- (3) the denial of a state to issue a license for any cause above listed.

Section 61.15 also provides that any separate incident of a motor vehicle action occurring within three years of a previous action is grounds for revocation or suspension of an airman's certificate. It is also grounds to deny an application for any certificate or rating for one year after the last action.

Whether or not a wet reckless conviction (Veh. C. §23103 as specified in Veh. C. §23103.5) is an "action" is not clear. Section 23103.5 refers to "consumption" of an alcoholic beverage or drug, not "intoxication", "impairment" or "under the influence".

Whether or not a pilot's medical certificate will be affected is a much more difficult area to pin down. The FAA's Medical Branch is concerned with whether or not the airman may have an alcohol or drug problem or may be a person who is prone to break regulations (14 C.F.R. §67.15(d)). Certainly it is doubtful that one conviction, barring no other known or reported substance abuse incidents, would have any affect on a pilot's medical certificate. However, more than one incident (and these must be reported not only under FAR §61.15, when they are "motor vehicle actions", but also every time a pilot applies for a medical certificate) might pose a problem, independent of the problems that a pilot could have under FAR §61.15.

John D. Cahners (650 493 3900), Palo Alto, has experience in these matters.

Fay Arfa (310 479 0547, FAX: 310 474 6926) is a California Certified Criminal Law Specialist who previously was on the staff of the F.A.A. She has expertise in defending pilots in F.A.A. proceedings that are the consequence of a drunk driving conviction.

14 C.F.R. §61.14 (set forth in full in Appendix B) covers refusal to submit to a drug or alcohol test, and 14 C.F.R. §61.16 (set forth in full in Appendix B) covers refusal to submit to an alcohol test or to furnish test results.

Federal Aviation Regulations (FAR's) are also available on the internet at:

<http://www.faa.gov>

<http://www.access.gpo.gov>

<http://aeeps.com/aeeps/awregs.html>

For more information:

60 Fed. Reg. 19318 - FAA index of decisions and orders in civil penalty cases, with digests, for the purpose of assisting litigants.

“Alcohol, Drugs and Transportation”, *Alcohol, Drugs and Driving*, 8 No. 3 & 4, July-December, 1992 (Los Angeles: Southern California Research Institute).

Foster v. Skinner 70 F3d 1084 (9th Cir 1995) - FAA authority to revoke pilot licenses.

Trichter, Gary, and Samuelson, Christian, “Pilots, DWI, Suspensions and Legal Malpractice”, *the Champion*, XXIII No. 5, June 1999 (Washington, D.C.: N.A.C.D.L.) 18.

Shesgreen, Deirdre, “ADA: Shield for Errant Lawyers?”, *The Recorder*, 120 No. 193, October 4, 1996 (San Francisco: Recorder Publishing Co.) 1 - The Americans With Disabilities Act (42 U.S.C. §§ 12101 et seq.) may require accommodation for alcoholics by professional licensing authorities.

8(F) Government Employees

See *Keith v. Director, San Bernardino County Retirement Board* (1990) 222 CA3d 411, 271 CR 649, regarding government employment consequences of drunk driving convictions.

8(G) Attorney's Fees in Civil Action After Felony Conviction

C.C.P. §1021.4 authorizes attorney's fees to a plaintiff who wins a civil action arising from an incident for which the defendant was convicted of a felony. It doesn't matter if the plaintiff was drunk too (*Somers v. Erb* (1992) 2 CA4th 1644, 4 CR2d 52). The attorney's fee risk is not insurable (*Baker v. Mid-Century Insurance Company* (1993) 20 CA4th 921, 25 CR2d 34).

8(H) Emergency Response Costs

Gov. C. §§ 53150 et seq. (set forth in full in Appendix B) and Pen. C. §1203.11 (small L) provide for up to \$1000.00 liability of drunk drivers for emergency response to an “incident”. The statutory scheme authorizes collection by civil suit or by order as a restitution condition of probation. In either case, the defendant has the right to a hearing on the amount. Many attorneys advise their clients to ignore the bills, unless payment is a condition of probation. However, some cities send them to collection agencies that enter the data in credit records as a past due account.

Must Be Negligence Which Causes An “Incident”: Despite a growing tendency for local governments to bill for emergency response costs based solely upon arrest, no appellate