CHAPTER 1

General Provisions

**SECTION 55‑1‑1.** Division of Aeronautics established within South Carolina Budget and Control Board; Aeronautics Commission shall govern.

 There is created a Division of Aeronautics within the South Carolina State Fiscal Accountability Authority that shall be governed by the Aeronautics Commission as provided in Chapter 1, Title 57.

HISTORY: 1993 Act No. 181, Section 1288, eff July 1, 1993; 1994 Act No. 361, Section 8, eff May 3, 1994; 2012 Act No. 270, Section 1, eff June 18, 2012.

Code Commissioner’s Note

At the direction of the Code Commissioner, reference in this section to the former Budget and Control Board was changed to the State Fiscal Accountability Authority, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1).

Editor’s Note

2012 Act No. 270, Section 15, provides as follows:

“A. The Aeronautics Commission, and the commission’s functions, powers, duties, and responsibilities transferred to the Budget and Control Board, or its successor entity, by this act must be maintained as a distinct component, function, power, duty, or responsibility of the Budget and Control Board, or its successor entity. Any funds appropriated to the commission must not be transferred to another component of the Budget and Control Board, or its successor entity. Any funds appropriated for a distinct function, power, duty, or responsibility of the commission must be exercised by the commission.

“B. Regulations promulgated by this commission as it formerly existed under the Department of Commerce are continued and are considered to be promulgated by this commission under the Budget and Control Board, or its successor entity.

“C. The Aeronautics Commission shall use its existing resources that are transferred to the Budget and Control Board, or its successor entity, including, but not limited to, funding, personnel, equipment, and supplies.

“D. Any reference to the Budget and Control Board shall mean the Budget and Control Board or its successor entity.”

Effect of Amendment

The 1994 amendment substituted “Secretary of Commerce” for “Director of the Department of Commerce”.

The 2012 amendment substituted “South Carolina Budget and Control Board that shall” for “Department of Commerce which shall”; substituted “Aeronautics Commission” for “Secretary of Commerce”; substituted “57” for “13”; and, made other, nonsubstantive, changes.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Aviation and Airports Section 21, Regulations in General.

Forms

Am. Jur. Pl. & Pr. Forms Aviation Section 1 , Introductory Comments.

**SECTION 55‑1‑5.** Definitions.

 For the purposes of Chapters 1 through 9, Title 55, the following words and terms are defined as follows:

 (1) “Aeronautics” means the act or practice of the art and science of transportation by aircraft, of operation, construction, repair or maintenance of aircraft, airports, landing fields, landing strips or air navigation facilities or of air instruction.

 (2) “Aircraft” means a device that is used or intended to be used for flight in the air.

 (3) “Airman” means a person who holds a pilot, flight instructor, flight engineer, or flight navigator certificate issued by the Federal Aviation Administration, including persons not holding these certificates but who are acting as a flight crew member or otherwise manipulating the controls of an aircraft while in flight or for the intended purpose of flight.

 (4) “Airport” means any area, private or public, either of land or water, which is used or which is made available for the landing and take‑off of aircraft, whether or not it provides facilities for the shelter, supply and repair of aircraft or for receiving or discharging passengers or cargo, and all appurtenant rights of ways; whether currently existing or hereafter established. The definition of an airport includes landing fields, heliports, seaplane ports, spaceports, and landing strips.

 (5) “Airport Land Use Zones” are areas where land uses incompatible with aircraft operations, including, but not limited to, lands affected by airport noise, aviation safety zones, high density development near airports, or activities where normal takeoff, departure, approach, or landing profiles or criteria, are or would be adversely affected.

 (6) “Airport Safety Zones” are those lands and waters on or near a public use airport which include airport property and surrounding adjacent and contiguous properties where aircraft operations, including taxi, takeoff, landing, approach, arrival, and departure would be adversely affected as a result of:

 (a) condition exists that interferes with, or has a reasonable potential to interfere with aircraft operations;

 (b) a condition that poses an increased risk to aviation safety;

 (c) the persistence of a condition such as an obstruction that would cause aircraft takeoff, landing, or approach criteria to be adversely impacted;

 (d) the existence of a condition that would constitute a nuisance to aircraft operation; or

 (e) planned or actual concentration of residential or commercial structures in close proximity to the flight path of arriving or departing aircraft.

 (7) Notwithstanding another provision of law, “Aviation Fuel” means gasoline and aviation jet fuel manufactured exclusively for use in airplanes and sold for these purposes.

 (8) “Civil Aircraft” means an aircraft other than a government aircraft having a civil airworthiness certificate issued by the Federal Aviation Administration.

 (9) “Commission” means the Aeronautics Commission which shall assist and oversee the operation of the division.

 (10) “Division” unless otherwise indicated, means the Division of Aeronautics of the South Carolina State Fiscal Accountability Authority.

 (11) Notwithstanding another provision of law, “Executive Director” means the person or persons appointed by the Governor in accordance with Section 13‑1‑1080 and serving at the pleasure of the Aeronautics Commission to supervise and carry out the functions and duties of the Division of Aeronautics as provided for by law.

 (12) “Government aircraft” means aircraft used only in the service of a government, or a political subdivision. It does not include any government‑owned aircraft engaged in carrying persons or property for commercial purposes.

 (13) “Governmental entity” means a county, municipality, or political subdivision of this State.

 (14) “Operator” means a person who is exercising actual physical control of an aircraft.

 (15) “Owner” means the following persons who may be legally responsible for the operation of an aircraft:

 (a) a person who holds the legal title to an aircraft;

 (b) a lessee of an aircraft;

 (c) a conditional vendee, a trustee under a trust receipt, a mortgagor, or other person holding an aircraft subject to a security interest.

 (16) “Passenger” means a person in, on, or boarding an aircraft for the purpose of riding on it, or alighting there from following a flight or attempted flight on it.

 (17) “Person” means any individual, association, copartnership, firm, company, corporation or other association of individuals.

 (18) “Public airport” means an airport for public use, publicly owned and under control of a governmental or quasi‑governmental agency.

 (19) “Public use airports” means an airport open to the public without prior permission, regardless of ownership.

 (20) “Restricted use airport” means an airport where the owner prohibits or restricts public use.

 (21) “Seaplane” means an aircraft which is capable of landing and taking off on the water.

 (22) “State” means any state, the District of Columbia, any territory or possession of the United States and the Commonwealth of Puerto Rico.

HISTORY: 1993 Act No. 181, Section 1288, eff July 1, 1993; 1994 Act No. 361, Section 7, eff May 3, 1994; 2005 Act No. 11, Section 1.C, eff upon approval (became law without the Governor’s signature on January 13, 2005); 2012 Act No. 270, Section 1, eff June 18, 2012.

Code Commissioner’s Note

At the direction of the Code Commissioner, reference in (10) to the former Budget and Control Board was changed to the State Fiscal Accountability Authority, pursuant to the directive of the South Carolina Restructuring Act, 2014 Act No. 121, Section 5(D)(1).

Editor’s Note

Prior Laws: 1962 Code Sections 2‑2, 2‑53; 1952 Code Sections 2‑2, 2‑53; 1942 Code Sections 7100, 7112; 1935 (39) 447; 1932 Code Section 7100; 1929 (36) 220; 1978 Act No. 563 Section 1; 1988 Act No. 624, Section 3; 1993 Act No. 181, Sections 1289, 1290; 2005 Act No. 11, Section 1.D; 1976 Code Sections 55‑3‑20, 55‑5‑20, 55‑8‑10.

Effect of Amendment

The 1994 amendment rewrote this section.

The 2005 amendment rewrote item (3).

The 2012 amendment rewrote this section.

CROSS REFERENCES

State funding of air carrier hub terminal facilities, definitions, see Section 55‑11‑500.

**SECTION 55‑1‑7.** Fees and fines deposited into State Aviation Fund.

 All fees and fines assessed by the division under this title must be deposited into the State Aviation Fund.

HISTORY: 2012 Act No. 270, Section 1, eff June 18, 2012.

**SECTION 55‑1‑10.** Liability of owners and operators generally to guests.

 No person transported by the owner or operator of an aircraft as his guest without payment for this transportation shall have a cause of action for damages against the aircraft, its owner or operator for injury, death, or loss in case of accident unless the accident was intentional on the part of the owner or operator or caused by his heedlessness or his reckless disregard of the rights of others.

HISTORY: 1962 Code Section 2‑21; 1952 Code Section 2‑21; 1942 Code Section 5908; 1932 Code Section 5908; 1930 (36) 1164; 1935 (39) 356; 1960 (51) 1926; 1993 Act No. 181, Section 1288, eff July 1, 1993; 2012 Act No. 270, Section 1, eff June 18, 2012.

Effect of Amendment

The 1993 amendment reprinted this section with no apparent change.

The 2012 amendment made nonsubstantive changes throughout the section.

CROSS REFERENCES

Liability for collisions, generally, see Section 55‑3‑70.

Liability of public carriers, see Section 55‑1‑20.

Regulation of common carriers, see SC Const, Art IX, Section 1.

**SECTION 55‑1‑20.** Liability of public carriers.

 Section 55‑1‑10 shall not relieve a public carrier of responsibility for injuries sustained by a passenger being transported by the public carrier.

HISTORY: 1962 Code Section 2‑22; 1952 Code Section 2‑22; 1942 Code Section 5908; 1932 Code Section 5908; 1930 (36) 1164; 1935 (39) 356; 1993 Act No. 181, Section 1288, eff July 1, 1993; 2012 Act No. 270, Section 1, eff June 18, 2012.

Effect of Amendment

The 1993 amendment reprinted this section with no apparent change.

The 2012 amendment made nonsubstantive changes throughout the section.

CROSS REFERENCES

Public carriers, generally, see Section 58‑1‑10 et seq.

**SECTION 55‑1‑30.** Unlawful removing or damaging of airport facility or equipment.

 It is unlawful to remove or damage an airport facility or equipment with malicious intent. A person violating the provisions of this section is guilty of a felony and, upon conviction, must be:

 (1) fined not less than ten thousand dollars or imprisoned not more than five years, or both;

 (2) fined not less than ten thousand dollars or imprisoned not more than ten years, or both, if injury results from malicious damage or removal of airport facilities or equipment;

 (3) imprisoned not more than thirty years if death results from the malicious damage or removal of airport facilities or equipment.

 This section shall not apply to damage that is neither malicious nor intentional to crushable materials, collapsible structures, or aircraft arresting systems that are designed to deform when used.

HISTORY: 1962 Code Section 2‑23; 1972 (57) 2344; 1993 Act No. 181, Section 1288, eff July 1, 1993; 1993 Act No. 184, Section 80, eff January 1, 1994; 2012 Act No. 270, Section 1, eff June 18, 2012.

Editor’s Note

This section was amended by 1993 Act No. 181 and Act No. 184. As set out above, this section reads as amended by Act No. 184, as the amendment by Act No. 181 made no substantive change in the section, and pursuant to the direction of 1993 Act No. 181, Section 1614, which provides as follows:

“SECTION 1614. Notwithstanding any permanent or temporary provision of law, any enactment, or portion thereof, of the General Assembly in 1993 in conflict with any provision of this act shall be suspended as to its force and effect until March 1, 1994. Where there is no conflict the provisions of any other enactments shall supersede the provisions of this act. For the purposes of this section, ‘conflict’ shall not include:

“(1) where provisions of the Code of Laws of 1976, as amended, are repeated herein so as to incorporate only changes in the names of agencies, divisions or departments, except so far as such change in name conflicts with another enactment or a portion of another enactment, or.

“(2) where provisions of the Code of Laws of 1976, as amended, are repeated herein so as to incorporate only changes in the governance or structure of an agency, division or department except so far as such governance or structure is in conflict with another enactment or some portion of another enactment.”

Effect of Amendment

The first 1993 amendment made grammatical changes.

The second 1993 amendment rewrote this section so as to change portions from misdemeanors to felonies and the maximum term of imprisonment to conform to the new crime classification system.

The 2012 amendment, in subsections (1) and (2), substituted “ten” for “one” preceding “thousand dollars”; and added the undesignated paragraph at the end of the section.

CROSS REFERENCES

Post‑conviction DNA procedures, see Sections 17‑28‑10 et seq.

Preservation of DNA evidence, see Sections 17‑28‑310 et seq.

Violent crimes defined, see Section 16‑1‑60.

**SECTION 55‑1‑40.** Unlawful entry of aircraft; damaging or removing equipment.

 (1) It is unlawful for a person to enter an aircraft or damage or remove from it any equipment or other property attached to it, affined to or otherwise on or in an aircraft without the permission of the owner or a person authorized by the owner to grant such permission.

 (2) The provisions of this section do not apply to any airport personnel or other persons while acting in an official capacity except when such capacity is used to accomplish an unlawful purpose.

 (3) A person violating the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not less than five thousand dollars nor more than ten thousand dollars or imprisoned not less than one year nor more than ten years.

 (4) The provisions of this section are cumulative.

HISTORY: 1962 Code Section 2‑24; 1974 (58) 2365; 1993 Act No. 181, Section 1288, eff July 1, 1993; 2012 Act No. 270, Section 1, eff June 18, 2012.

Effect of Amendment

The 1993 amendment made grammatical changes.

The 2012 amendment inserted “affined to or otherwise on or in an aircraft” in subsection (1); substituted “five” for “one” following “must be fined not less than” in subsection (3); and, made other, nonsubstantive, changes.

**SECTION 55‑1‑50.** Landing or taking off on public highways.

 It is unlawful for a person to land or cause to be landed any aircraft on or take off from a public highway in this State except in situations authorized by an authorized employee of the division, by law enforcement, or in an emergency or cautionary situation in which the safety of the aircraft is involved. In a prosecution for violation of this section, the burden of proving that the emergency or cautionary situation existed shall be upon the person landing the aircraft on the highway or causing it to take off from it.

 A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than two thousand dollars or imprisoned for not more than sixty days.

HISTORY: 1962 Code Section 2‑25; 1974 (58) 2320; 1993 Act No. 181, Section 1288, eff July 1, 1993; 2012 Act No. 270, Section 1, eff June 18, 2012.

Effect of Amendment

The 1993 amendment made grammatical changes and substituted “deputy director of the division” for “Director of the State Aeronautics Commission”.

The 2012 amendment, in the first paragraph, substituted “an authorized employee of the division, by law enforcement,” for “the deputy director of the division”, and inserted “or cautionary” following “emergency” throughout; in the second paragraph, substituted “two thousand” for “five hundred”; and, made other, nonsubstantive, changes.

CROSS REFERENCES

Highways, generally, see Section 57‑1‑10 et seq.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Aviation and Airports Section 13, Operation of Aircraft Off Airports.

**SECTION 55‑1‑60.** Reserved by 2012 Act No. 270, Section 1, eff June 18, 2012.

Editor’s Note

Former Section 55‑1‑60 was entitled “Operator of intrastate scheduled airline service to obtain certificate” and was derived from 1962 Code Section 2‑81; 1957 (50) 358; 1993 Act No. 181, Section 1288.

**SECTION 55‑1‑70.** Reserved by 2012 Act No. 270, Section 1, eff June 18, 2012.

Editor’s Note

Former Section 55‑1‑70 was entitled “Rules and regulations for intrastate scheduled airlines” and was derived from 1962 Code Section 2‑82; 1957 (50) 358; 1993 Act No. 181, Section 1288.

**SECTION 55‑1‑80.** Appointment of additional members to county aviation commission.

 (A) Any county aviation commission or like authority may be increased by two members, one of whom must be appointed by the House of Representatives’ delegation of the county and one of whom must be appointed by the Senatorial delegation of the county. The additional members shall serve terms of the same length as other members of the commission or like authority.

 (B) Any county governing body who has the authority to appoint members to the aviation commission or like authority may add two members for terms as provided in this section.

 (C) In counties that have two municipalities with a population in excess of fifty thousand persons according to the latest official United States Census, and the county has an aviation commission or like authority, then the mayors of such municipalities having a population in excess of the fifty thousand persons shall serve, ex officio, as members of the commission or authority.

 (D) The provisions of this section do not apply in the case of any multicounty aviation commission or authority.

HISTORY: 2015 Act No. 10 (S.376), Section 1, eff May 7, 2015.

Editor’s Note

Prior laws. Former 55‑1‑80, titled Appointment of additional members to county aviation commission, had the following history: 1984 Act No. 471; 1985 Act No. 64; 1993 Act No. 181, Section 1288, eff July 1, 1993; reserved by 2012 Act No. 270, Section 1, eff June 18, 2012.

2015 Act No. 10, Section 2, repealed 2007 Act No. 130, which provided: “The Charleston County Aviation Authority shall be increased by two members who shall be the Chairman and Vice Chairman of the Charleston County Legislative Delegation, or their designees”.

Effect of Amendment

2015 Act No. 10, Section 1, unreserved and added the section. The section had been reserved by 2012 Act No. 270. The new section is the text prior to being reserved with the addition of (D).

**SECTION 55‑1‑90.** State‑owned aircraft to be used by state agencies in the normal course of business; written statement required for use of aircraft by governmental bodies not part of the state government; use of aircraft by hospitals or medical centers.

 State‑owned aircraft may be used by state agencies, and other governmental bodies or political subdivisions within the state for matters pertinent to, and in the normal course of business for the governmental entities. Use of state aircraft by other governmental bodies or political subdivisions that are not a part of South Carolina State government must be accompanied by a written statement by a legislative sponsor or a sponsor from an agency of the State attesting to the need for one or more flight operations. The written statement must be in a manner acceptable to the division.

 Nothing in this section shall prohibit the division from entering into agreements with a public hospital or medical center owned, operated, or supported in whole or in part by state funds for the purpose of transporting personnel or patients, whether on an emergency basis or otherwise, as long as payment is made, including any insurance proceeds, to the State Treasurer. All funds paid for use of state aircraft under this section must be deposited into the general fund and credited to the division. The division may adopt rules and promulgate regulations governing this section.

HISTORY: 1984 Act No. 512, Part II, Section 56; 1993 Act No. 181, Section 1288, eff July 1, 1993; 2012 Act No. 270, Section 1, eff June 18, 2012.

Effect of Amendment

The 1993 amendment substituted “division” for “State Aeronautics Commission”.

The 2012 amendment rewrote the section.

**SECTION 55‑1‑100.** Operating or acting as flight crew member of aircraft while under influence of alcohol or drugs unlawful; criminal prosecution and rights of accused; penalties.

 (A) It is unlawful for a person to operate or act as a flight crew member of an aircraft in this State:

 (1) within eight hours after the consumption of any alcoholic beverage;

 (2) while under the influence of alcohol;

 (3) while using an illegal drug or controlled substance that affects the person’s faculties in a manner contrary to safety; or

 (4) with four one‑hundredths of one percent or more by weight of alcohol in his blood at the time of the alleged violation.

 (B) A person who operates or acts as a flight crew member of an aircraft in this State may consent to a chemical test of his breath for the purpose of determining the alcoholic content of his blood if arrested for violating the provisions of subsection (A). The test must be administered at the direction of a law enforcement officer who has apprehended a person while or after operating or acting as a flight crew member of any aircraft in this State while under the influence of alcohol. The test must be administered by a person trained and certified by and using methods approved by the South Carolina Law Enforcement Division, using methods approved by the division. The arresting officer may not administer the test, and no test may be administered unless the defendant has been informed that he does not have to take the test. A person who refuses to submit to the test violates the provisions of this subsection and is subject to a civil fine of two thousand dollars. The penalties provided for in this subsection are in addition to those provided for in subsection (E).

 No person is required to submit to more than one test for any one offense for which he has been charged, and the test must be administered as soon as practicable without undue delay.

 The person tested may have a physician, qualified technician, chemist, registered nurse, or other qualified person of his own choosing conduct a test or tests in addition to the test administered by the law enforcement officer. The failure or inability of the person tested to obtain an additional test does not preclude the admission of evidence relating to the test taken at the direction of the law enforcement agency or officer.

 The arresting officer and the person conducting the test shall inform the person tested of his right to obtain an additional test, and the arresting officer or the person conducting the chemical test of the person apprehended promptly shall assist that person to contact a qualified person to conduct additional tests.

 The division shall administer the provisions of this subsection and may make regulations as may be necessary to carry out its provisions. The Department of Health and Environmental Control and SLED shall cooperate with the division in carrying out its duties.

 (C) In a criminal prosecution for the violation of this section, the amount of alcohol in the defendant’s blood at the time of the alleged violation, as shown by chemical analysis of the defendant’s breath, is admissible as evidence.

 The provisions of this subsection do not limit the introduction of any other competent evidence bearing upon the question whether or not the defendant was under the influence of alcohol. Nothing contained in this section prohibits the introduction of:

 (1) the results of additional tests of the person’s breath or other bodily fluids;

 (2) evidence that may corroborate or question the validity of the breath or bodily fluid test result including, but not limited to, evidence of:

 (a) field sobriety tests;

 (b) the amount of alcohol consumed by the person; and

 (c) the person’s action while operating an aircraft;

 (3) a videotape of the person’s conduct at the incident site and breath testing site taken pursuant to Section 56‑5‑2953 which is subject to redaction under the South Carolina Rules of Evidence; or

 (4) any other evidence of the state of a person’s faculties to operate an aircraft which would call into question the results of a breath or bodily fluid test.

 At trial, a person charged with a violation of this section is entitled to a jury instruction stating that the factors enumerated above and the totality of the evidence produced at trial may be used by the jury to determine guilt or innocence. A person charged with a violation of this section must be given notice of intent to prosecute under the provisions of this section at least fourteen days before his trial date.

 (D) The person conducting the chemical test for the law enforcement officer shall record in writing the time of arrest, the time of the test, and the results of the test, a copy of which must be furnished to the person tested or his attorney prior to any trial or other proceedings in which the results of the test are used as evidence. A person administering any additional test shall record in writing the time, type, and results of the test and promptly furnish a copy of the test to the arresting officer. A copy of the results of the test may be furnished to the Federal Aviation Administration and the division by the arresting officer or the agency involved in the arrest.

 (E) A person who violates the provisions of subsection (A), upon conviction, must be punished by a fine of one thousand dollars or imprisonment for not less than forty‑eight hours or more than one year, or both.

 (F) For the purposes of this section “flight crew member” means a pilot, flight engineer, or flight navigator on duty or in an aircraft during flight time.

 Notwithstanding another provision of law, a person charged with a violation of this section has the right to compulsory process for obtaining witnesses, documents, or both, including, but not limited to, state employees charged with the maintenance of breath testing devices in this State and the administration of breath testing pursuant to this chapter. This process may be issued under the official signature of the magistrate, judge, clerk, or other officer of the court of competent jurisdiction. The term “documents” includes, but is not limited to, a copy of the computer software program of breath testing devices. The portion of compulsory process provided for in this section that requires the attendance, at any administrative hearing or court proceeding, of state employees charged with the maintenance of breath testing devices in this State and the administration of breath testing pursuant to this article, takes effect once the compulsory process program at SLED is specifically, fully, and adequately funded.

 In addition, at the time of arrest for a violation of this section, the arresting officer, in addition to other notice requirements, must inform the defendant of his right to all hearings provided by law to include those if a breath test is refused or taken with a result that would require license suspension. The arresting officer, if the defendant wishes to avail himself of any hearings, depending on the choices made or the breath test results obtained, must provide the defendant with the appropriate form to request the hearing. The defendant must acknowledge receipt of the notice requirements and receipt of the hearing form if a hearing is desired.

HISTORY: 1987 Act No. 105 Section 1; 1993 Act No. 181, Section 1288, eff July 1, 1993; 2012 Act No. 270, Section 1, eff June 18, 2012.

Effect of Amendment

The 1993 amendment substituted “division” for “South Carolina Aeronautics Commission”.

The 2012 amendment rewrote the section.

LIBRARY REFERENCES

2A C.J.S., Aeronautics & A Sections 104, 147, 164.

RESEARCH REFERENCES

Encyclopedias

84 Am. Jur. Proof of Facts 3d 1, Data and Voice Recorders in Airplanes, Motor Vehicles and Trains.

S.C. Jur. Aviation and Airports Section 12, Operation of Aircraft.

LAW REVIEW AND JOURNAL COMMENTARIES

Corpus delicti in DUI Cases. 49 S.C. L. Rev. 1115 (Summer 1998).