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Draft Uniform State Law on Non-Scheduled Aircraft During National Emergencies Circulated by NASAO

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STATE AND LOCAL REVIEW

DRAFT UNIFORM STATE LAW ON NON-SCHEDULED AIRCRAFT DURING NATIONAL EMERGENCIES CIRCULATED BY NASAO

The draft set forth below was circulated by Mr. Joseph K. McLaughlin, President of NASAO, in June 1953 for study purposes.

MODEL STATE ACT

A Bill

To authorize (State) Department of Aeronautics to prohibit, restrict, and control non-scheduled civil aircraft movements during periods of military emergency.

1. Immediately upon there obtaining a state military emergency, and coincident with the duration thereof, as the same shall be constituted, for purposes of this section, by any one of the following situations:

- (1) Presidential proclamation and/or Congressional declaration that a state of war exists
- (2) a directive to such effect issued by the Joint Chiefs of Staff
- (3) a declaration to such effect issued by the Commanding General, Air Defense Command, when intelligence indicates a hostile attack on the continental limits of the United States is imminent
- (4) an enemy attack upon the continental United States

the Department shall be vested with emergency police powers to prohibit, restrict, and control the initiation of non-scheduled civil aircraft movements from airports within this state, including assignment of flight priority classifications, to the extent that it shall be requested to do so by cognizant military or civil authority of the federal government, as required to supplement otherwise existing aircraft traffic control facilities in achieving the degree of military air defense effectiveness determined by the cognizant military air defense commander to be required under the circumstances and conditions obtaining at any given time;

- (a) In the implementation and execution of the emergency powers herein vested, the Director of Aeronautics is hereby authorized to delegate in writing, in advance of a state of military emergency obtaining, to managers or operators of such commercial airports within this state as he shall determine to be appropriate, authority, under and during a state of military emergency constituted as hereinabove set forth, to prohibit, restrict or control as appropriate the initiation of non-scheduled civil aircraft movements from such airports and to assign flight-movement priority classifications, according to directives thereto relating issued by the Director compatible with currently effective standards or directives issued by appropriate federal military or civil authority; such delegated authority shall include the authority to detain in the name of the People of the State of the person of any aircraft operator or pilot.

(b) In the implementation and execution of the emergency powers herein vested, general police powers are hereby conferred upon the Department, each of its officers, and such of its employees as are designated by the Director to exercise such powers. It shall be the duty of every state, county and municipal officer charged with the enforcement of State, county, and municipal laws to enforce and assist in the enforcement of actions taken pursuant to the authority herein vested, upon request by the Department or by any airport operator or manager delegated emergency authority in writing by the Director pursuant to subsection (a) above, including arrest if and as the circumstances may require.

2. For purposes of this section notices of the existence of a state of military emergency and of currently prevailing air traffic control requirements shall be constituted of notices to airmen thereto appertaining issued to the Department and to civil and military aviation facilities of the state over the Federal Interstate Airways Communications System and the state emergency fan-out communications system components of the Civil Air Defense Warning Net.

3. Toward the end of facilitating a reliable and adequate state fan-out communications system as shall be required for rapid dissemination of notices to airmen and civil aviation facilities in this state respecting such aircraft movement control as shall be required on the part of the Department and airport operators and managers during a state of military emergency, the utilization therefor, to the extent of capacity, of the radio network and facilities of the state police, county sheriff offices, and city police departments is hereby authorized.

4. This section shall be construed as encompassing civil aircraft operations during a pre-disaster state of military emergency, as well as post-disaster Civil Defense mobilization operations of aircraft in this state.

5. Pilots and owners of out-of-state non-scheduled civil aircraft utilizing any of the airport facilities of this state under a state of military emergency constituted as hereinabove set forth, shall by so doing render themselves subject to the exercise of the emergency powers herein vested in the Department or as delegated by the Department to airport managers and operators pursuant to the provision of this section thereto appertaining.