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A SURVEY OF STATE AERONAUTICAL LEGISLATION

FRED D. FAGG, JR.*

INTRODUCTION

One hundred years ago, the beginnings of our vast railway network were taking place along the Atlantic seaboard. The era, however, was one of canal and highway development, and few persons were inclined to look with favor upon the possibilities of rail transportation. The initial problems of the railway industry were associated with engineering difficulties, but economic and legal obstacles were soon encountered and these, in turn, proved to be more stubborn obstacles. For forty years, railway construction continued at increasing pace and popular interest seemed mainly concerned with having new lines built through certain towns instead of others. The prevailing spirit of local jealousy fostered a period of financial mismanagement at the hands of promoters and, with promotion profits available in abundance, there was a resultant overbuilding of lines. To protect individual interests, the roads began a system of rebating that ended only in cut-throat competition. Suffering under the disproportionate rate schedules, the farmer element, that had so readily aided in the financing of the roads, swept into political power and ushered in the drastic granger legislation. Laws enacted in different states proved to be conflicting in high degree and, as railway operation is almost necessarily interstate, the laws were manifestly a very great burden to the industry. Finally, in 1887, the Interstate Commerce Commission was set up in an attempt to bring order out of chaos.

Today, we have another form of transportation whose history closely parallels that of the railroad. The growing pains of aviation have been, and are, associated with engineering difficulties. But the importance of economic and legal problems is not to be underestimated. The very people who thrilled at sight of the first plane in their vicinity are tiring of airport dust and low-flying planes. Witness the recently tried cases in Massachusetts and Ohio as evi-

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dence!¹ The legislatures of the states have not been idle for nearly every state has a body of laws in force to govern flying. More legislation is to be expected, and more is needed. But, if railway operation is by nature interstate, air transportation, by virtue of its greater speed, is the more so. Since aircraft can operate from coast to coast in less than twenty-four hours, if the states continue to pass conflicting legislation there can be but this result: either the laws will be disobeyed and not enforced, or aviation development will suffer.

The states have endeavored to avoid the mistakes of the railway legislation, and the movement for uniformity in the law does not originate in this conference. It has existed for a long time, and the American Bar Association made a decided move in that direction in 1920² when it appointed a committee to investigate the needs of aviation and endeavor to bring about some uniformity in the law. That committee, despite its changing personnel, has done most excellent work. This conference, which is the first of its kind to be held in the United States, is called to continue the good results that have already been obtained, and to thus enlarge their usefulness. Its great significance lies in the fact that, instead of relying solely upon the experience and wisdom of a select committee, this meeting has been called to bring together representatives from every state in the union. By this means, individual experiences may be related, existing laws may be tested, and common difficulties discussed.

In planning the program of addresses, the object of the committee has been to develop the topics in an orderly way. A glance at the program will make clear that objective. Thus far, we have been most fortunate in having leading foreign and American experts present the international and national background of the important legal developments in aeronautics and, before considering the detailed problems that confront the states, it is entirely appropriate that some time be spent in considering just what they have already done, individually, in the matter. The purpose of this

1. *Harry Worcester Smith et al. v. New England Aircraft Co., Inc.* (Mass., 1930), 170 N. E. 385; *Frederick L. Swetland et al. v. Curtiss Airports Corporation et al.* (Ohio, 1930), 171 N. E. ... See, for example, clipping Chicago Tribune, July 19, 1930, from Mineola, L. I., stating "Night flying in Nassau county, where some of the country's most famous landing fields are located, has become such an annoyance to residents that District Attorney Elvin N. Edwards threatened today to bring public nuisance charges against all airports in the county which continue to permit aviators to shatter the evening quiet."

2. Reports of American Bar Association, Vol. 46, 1921, p. 499.

address, then, is to sketch, in rather broad lines, the state approach to aviation regulation and, by offering a bird's-eye view of the existing legislation, to indicate important points of similarity and difference. With this in mind, no attempt will be made here to offer an historical study of all state legislation enacted to date, nor to give a chronological record of bills submitted for passage.³

For purposes of convenience, this study will be limited to an examination of the aeronautical legislation existing in the forty-eight states of the union,⁴ and the following topics will be considered: I—Nature of the Legislation; II—Definitions; III—Regulatory Body; IV—Licenses and Permits; V—Flying Regulations; VI—Liability; VII—Violations; VIII—Enforcement; IX—General Features; and X—Conclusion.

I. NATURE OF THE LEGISLATION

A casual survey of the state legislation makes it apparent at once that, in many cases, there has been a real attempt to secure virtual uniformity. The Uniform State Law for Aeronautics⁵ has been frequently adopted in its entirety⁶ and, at other times, with but slight changes.⁷ The provisions of the Air Commerce Act of 1926 have been used as a pattern for state legislation⁸ and the Department of Commerce Regulations have often been adopted quite completely.⁹ Further, legislation appearing in one state very often

3. For a detailed statement of the legislation of 1928-29, see *Harry J. Freeman*, Survey of State Aeronautical Legislation, 1928-29, 1 *Air Law Review* 61 (1930); For an earlier analysis of the laws, together with a set of comparative charts, see *Legislative History of the Air Commerce Act of 1926*, August 1, 1928, by Frederic P. Lee, Part III, pp. 132-155.

4. The study omits the legislation of Alaska, Canal Zone, District of Columbia, Hawaii, Philippine Islands, Porto Rico and the Virgin Islands. No general aeronautical legislation for Alabama, Georgia, or Oklahoma is available for comparative study. That which exists in Georgia and Oklahoma appears to be confined to the subject of airports.

5. The Uniform State Law for Aeronautics, now sometimes called the old uniform state law—due to the newer state licensing law—was drawn up by the Committee of the American Bar Association, the draft being prepared by Dean Bogert. See *Reports of American Bar Association*. Vol. 46, 1922, pp. 413-15, and *Zollmann*, *Law of the Air*, pp. 32-36 for history of the law.

6. See article by *Freeman*, note 3 *supra*, for the list of adoptions, but note that Rhode Island is to be included in the last. (L. 1929, Ch. 1435.)

7. Missouri, Montana and Pennsylvania have not adopted the liability provisions of Sec. 5, Arizona has modified Sec. 5, Delaware has apparently repealed Sec. 9 (See *Dept. of Com. Aeronautics Bulletin No. 18*, p. 21) and there have been other minor changes made. (See 1928 U. S. 'Av. Rep., 472-6.)

8. Note, especially, the definition concepts adopted. See Part II, *infra*.

9. Note the instances of adoption of federal rules, Part V, *infra*.

appears in identical language in the subsequent legislation of the other states.¹⁰ Part of this uniformity has been due to a desire to bring about substantial uniformity in state regulation; part, no doubt, is due to following lines of least resistance—due to the press of legislation and to the fact that legislatures have not been entirely familiar with the subject matter of regulation.

Two main classes of legislation are to be distinguished: (1) the relatively inflexible type and (2) the flexible type. The standard of flexibility mentioned here depends upon how rapidly the regulation may be changed. In short, it depends upon whether or not there is established any regulatory body to provide rules governing all or certain flying operations within the state. If the entire state regulation is provided by legislation which can be altered only every other year, it is classed as of the relatively inflexible type. If certain matters may be controlled by some regulatory body—such as a State Aviation Commission—it belongs to the second type. It is believed that while the prevailing tendency has been toward regulation of the first type, there will be a growing tendency toward that of the more flexible type—even if no separate aviation body be set up to regulate, but the control is placed in the hands of an existing body such as the State Corporation Commission. Certain subjects can, and should be made definite, but others need to be left to the discretion of a qualified regulatory body.

Another classification might be based upon the relative completeness or incompleteness of the legislation—according to the number of subjects embraced within the regulatory provisions. Manifestly, the legislation of Connecticut and Pennsylvania would be indicative of the more complete type. It is believed that, upon analysis, most of the legislation will be found to be quite incomplete and, consequently, inadequate to the needs of aviation and the public at large.

II. DEFINITIONS

At least fifty-nine terms or concepts are the subjects of definition in the existing state legislation, but no single state has attempted to define half of them.¹¹ The great majority of states have not endeavored to define more than three or four terms, either avoiding a difficult task or believing definitions unnecessary. The latter theory is not unthinkable for the definitions chosen often appear to

10. Instances of this situation are too frequent to mention in detail, and no attempt will be made in this study to credit the state first using any given concept or regulatory provision.

11. Pennsylvania has defined 27 terms; Connecticut 25.

have been selected entirely at random—more as a gesture, than a scientific effort to deal with the question.

Definitions appearing in Section 9 of the Air Commerce Act of 1926 have been frequently chosen and, insofar as those definitions are accurate, the tendency is desirable. Some definitions appearing in the Department of Commerce Regulations have been imported into state legislation. The three definitions established by the Uniform State Law for Aeronautics¹² have been adopted verbatim by ten states,¹³ and other states have adopted one or more definitions. The number of cases wherein a definition established in one state has been adopted by other state laws is too numerous to mention, and would avail nothing if cited in detail. If the definition is good, its adoption may be desirable. Unfortunately, however, the fact that it is bad has not seemed to have prevented its adoption.

Some states define no terms¹⁴ and we can only speculate as to the reason. To facilitate a comparison of the various definitions employed, the following fairly complete table has been compiled. While it is admitted that the classification chosen is purely arbitrary, it is submitted that the list appearing in legislation is not complete and that some definitions are neither accurate nor even satisfactory for regulatory purposes. A reading of these definitions will suffice for our purposes, and no further attempt at comparison will be made.

DEFINITIONS EMPLOYED IN STATE LEGISLATION

A. GENERAL CONCEPTS:

Aviation (2)¹⁵—the steering, directing or managing of an aircraft, in or through the air, and such term is here used as a substitute for "aerial navigation." (Illinois, L. 1928, Sec. 1.)

—the art of operating heavier-than-air craft. (Connecticut, Pub. Acts 1929, Ch. 253, Sec. 1.)

Aviation (4)—the steering, directing or managing of an aircraft in or through the air, and such term is here used as a substitute for "aerial navigation." (New Jersey, L. 1928, Ch. 63, Sec. 2.)

Flight (4)—any kind of locomotion by aircraft while in the air. (Connecticut, Pub. Acts 1929, Ch. 253, Sec. 1.)

—every kind of locomotion by aircraft. (Pennsylvania, L. 1929, Act 316, Sec. 2(n).)

12. Aircraft, aeronaut, and passenger. See statement as to conflicting definitions, Reports of American Bar Association, Vol. 54, pp. 141, 142.

13. Arizona, Minnesota, Missouri, Nevada, North Carolina, Rhode Island, South Carolina, Tennessee, Utah and Wisconsin.

14. Alabama, Georgia and Oklahoma (no law); Kentucky, Louisiana, and Oregon. However, Kentucky does not intend to have difficulty due to lack of definition for there is a provision that the law shall be liberally interpreted. L. 1926, Ch. 107, Sec. 165-8.

15. The figures opposite each definition indicate the number of times the definition has been used in state legislation.

- Solo flight* (1)—a flight during which the air man or pilot has had sole and complete control of the aircraft being navigated. (Wyoming, L. 1929, Ch. 66, Sec. 2(k).)
- Aeronautics* (2)—the science and art pertaining to the flight of aircraft. (Connecticut, Pub. Acts 1929, Ch. 253, Sec. 1.)
—the act or practice of the art and science of transportation by aircraft, and operation, construction, repair or maintenance of aircraft, airports, landing fields, or air navigation facilities. (Pennsylvania, L. 1929, Act 316, Sec. 2(a).)
- Air commerce* (4)—transportation in whole or in part by aircraft of persons or property for hire, navigation of aircraft in furtherance of a business, or navigation of aircraft from one place to another for operation in the conduct of a business. (Air Commerce Act 1926, Sec. 1.)
—transportation in whole or in part by aircraft of persons or property for hire as common carriers. (Arizona Corp. Com. Gen. Order No. 113-L.)
- Navigable airspace* (2)—airspace above the minimum safe altitude of flight prescribed by the Secretary of Commerce under section 3, and such navigable airspace shall be subject to a public right of freedom of interstate and foreign air navigation. . . . (Air Commerce Act 1926, Sec. 10.)
—airspace above the minimum safe altitudes of flight prescribed by the State Aeronautics Commission. (Pennsylvania, L. 1929, Act 316, Sec. 2(k).)
- Air navigation facility* (4)—includes any airport, emergency landing field, light or other signal structure, radio directional finding facility, radio or other electrical communication facility, and any other structure or facility, used as an aid to air navigation. (Air Commerce Act 1926, Sec. 9(i).)
—shall include airports, landing fields, and water surfaces for landing aircraft, and all aids to air navigation, including, but not confined to, lights, marks, structures, and electrical communicating systems. (Pennsylvania, L. 1929, Act 316, Sec. 2(f).)
- Operating aircraft* (12)—performing the services of aircraft pilot. (Delaware, L. 1929, Ch. 248, Sec. 1.)
—performing the services of aircraft pilot, aviator, mechanic, rigger, or other person actively engaged in maintaining an aircraft in flight. (West Virginia, L. 1929, Ch. 61, Sec. 1.)
- Commercial flying* (2)—any flight or attempted flight in which passengers or merchandise are carried, or in which any other service is performed by the pilot or aircraft, for compensation or hire. (Massachusetts, Acts 1928, Ch. 388, Sec. 35.)
—any flight or attempted flight in which passengers, property, or merchandise are carried, or in which other service is performed by the pilot of aircraft, for compensation, hire or reward. (Pennsylvania, L. 1929, Act 316, Sec. 2(x).)
- Interstate commercial flying* (1)—commercial flying in which contract of hire requires, in substance, that the aircraft cross the borders of this Commonwealth into or from another State. (Pennsylvania, L. 1929, Act 316, Sec. 2(z).)
- Private flying* (1)—all flying other than commercial flying or flying conducted by a department or other agency of the United States or of this or another State thereof. (Massachusetts, Acts 1928, Ch. 388, Sec. 35.)
- Airway* (1)—a route in the navigable air space designed by the Secretary of Commerce of the United States or the Commissioner of the Department of Public Works, as a route suitable for interstate,

intrastate, or foreign air service. (Idaho, L. 1929, Ch. 137, Sec. 1(h).)

Civil airway (1)—a route in the navigable airspace designated by the Secretary of Commerce as a route suitable for interstate or foreign air commerce. (Air Commerce Act, 1926, Sec. 9(j).)

Person (8)—any individual, corporation, association, co-partnership, company, firm, or other aggregation of individuals. (Connecticut, Public Acts, 1929, Ch. 253, Sec. 1.)

—an individual, a partnership, or two or more individuals having a joint or common interest, or a corporation. (New Hampshire, L. 1929, Ch. 182, Sec. 1.)

Owner (2)—any person, firm, corporation, or association holding title to any aircraft or having a legal right to register the same. (Connecticut, Public Acts, 1929, Ch. 253, Sec. 1.)

Dealer (2)—any person who is actively engaged in the business of flying, selling or exchanging aircraft, and who has an established place of business. (Connecticut, Pub. Acts, 1929, Ch. 253, Sec. 1.)

—every person or corporation actively engaged in the business, of buying, selling, exchanging, or dealing in aircraft within the Commonwealth of Pennsylvania. (Pennsylvania, L. 1929, Act 316, Sec. 2(s).)

Manufacturer (2)—a person, partnership, association or corporation who, during the calendar year preceding application for registration, shall have manufactured or assembled one or more aircraft for sale, or who shall prove to the satisfaction of the Commissioner that he intends in good faith to manufacture or assemble one or more aircraft for sale during the year immediately ensuing. (Connecticut, Pub. Acts, 1929, Ch. 253, Sec. 1.)

B. REGULATORY BODY AND JURISDICTIONAL CONCEPTS:

Commission (2)—the State Aviation Commission. (Maryland, L. 1929, Ch. 318, Sec. 13.)

Commissioner (2)—a member of the State Aeronautics Commission. (Pennsylvania, L. 1929, Act 316, Sec. (p).)

Inspector (1)—the Commissioner of Aeronautics and any person appointed by said Commissioner as such, as hereinafter provided. (Connecticut, Pub. Acts, 1929, Ch. 253, Sec. 1.)

Aviation inspector (1)—a Commissioner, or any person appointed by the State Aeronautics Commission as such, as hereinafter provided. (Pennsylvania, L. 1929, Act 316, Sec. (q).)

Officer (2)—any constable, inspector of aviation, State policeman, or other officer authorized to make arrests or to serve process. (Pennsylvania, L. 1929, Act 316, Sec. (r).)

—any constable, inspector of aeronautics, State policeman, or other official authorized to make arrests, or to serve process, provided he shall be in uniform or shall display his badge of office in a conspicuous place when making an arrest. (Connecticut, Pub. Acts, 1929, Ch. 253, Sec. 1.)

Limits of city (2)—the land within, or the air above the land within the geographical boundaries of a city, municipality, town or village. (Arkansas, L. 1927, Act 17, Sec. 1.)

Limits of towns, cities or boroughs of the State (1)—the land or air above the land or pier heads of any of the towns, cities or boroughs of Connecticut. (Connecticut, Pub. Acts, 1929, Ch. 253, Sec. 1.)

C. LICENSING CONCEPTS:

Federal license (1)—shall mean, as the case may be, a valid, unrevoked and unsuspended aircraft certificate or airman certificate issued by

the Secretary of Commerce under the authority of the Federal Act and the lawful rules and regulations issued or which may be issued thereunder. (California, Stats. 1929, Ch. 850, Sec. 1(e).)

Registered and licensed as an aircraft of the United States (1)—an aircraft which is registered and entered as a licensed aircraft in an official license registry of the Secretary of Commerce as an aircraft of the United States. (Idaho, L. 1929, Ch. 137, Sec. 1 (g).)

Registration number (1)—the number assigned by said Commissioner to any aircraft, whether or not such number includes a letter or letters. (Connecticut, Pub. Acts, 1929, Ch. 253, Sec. 1.)

Aircraft (42)—any contrivance now known or hereafter invented, used, or designed for navigation of, or flight in the air, except a parachute or other contrivance designed for such navigation but used primarily as safety equipment. (Air Commerce Act 1926, Sec. 9(c).)

—includes balloon, airplane, hydroplane, and every other vehicle used for navigation through the air. 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; while being operated through the air otherwise than immediately above the water it shall be treated as an aircraft. (Uniform State Law for Aeronautics, Sec. 1.)

—any weight-carrying device or structure designed to be supported by the air, either by buoyancy or by dynamic action. (Connecticut, Pub. Acts, 1929, Ch. 253, Sec. 1.)

—any aeroplane, hydroplane, seaplane, dirigible, balloon or other apparatus carrying one or more passengers into or through the air, propelled by currents, or by power, or motors contained in said apparatus. (Kansas, L. 1921, Ch. 264, 3-101.)

—any contrivance, now or hereafter invented, for aviation of or flight in the air, except a parachute or other contrivance designed for use and carried primarily for safety equipment. (New York, L. 1928, Ch. 233, Art. 14, Sec. 240.)

Public aircraft (10)—an aircraft used exclusively in the governmental service. (Air Commerce Act, 1926, Sec. 9(d).)

—an aircraft used exclusively in the governmental service of the United States or of any of the States. (Iowa, L. 1929, Ch. 135, Sec. 1.)

—an aircraft used exclusively in the governmental service of the United States or of any State or Territory thereof. (Maine, L. 1929, Ch. 265, Sec. 1.)

—an aircraft used exclusively in the governmental service. (North Dakota, L. 1929, Ch. 85, Sec. 1.)

Private aircraft (1)—all other aircraft operated in this State except commercial aircraft. (Colorado, Acts, 1927, Ch. 64, Sec. 3.)

Civil aircraft (11)—any aircraft other than a public aircraft. (Air Commerce Act 1926, Sec. 9(e).)

—not of the military forces of a State or country. (Pennsylvania, L. 1929, Act 316, Sec. 2(c).)

Commercial aircraft (1)—the term "Air Commerce" means transportation in whole or in part by aircraft of persons or property for hire, navigation of aircraft in furtherance of a business, or navigation of aircraft from one place to another for operation in the conduct of a business and aircraft so operated shall be termed "Commercial Aircraft." (Colorado, Acts 1927, Ch. 64, Sec. 3.)

Passenger aircraft (1)—aircraft designed and used for the purpose of transporting persons with or without their necessary personal belongings. (Connecticut, Pub. Acts, 1929, Ch. 253, Sec. 1.)

Passenger and commercial aircraft (1)—aircraft designed for use and used for passenger and commercial purposes. (Connecticut, Pub. Acts, 1929, Ch. 253, Sec. 1.)

Airworthiness (1)—means conformity with requirements prescribed or deviations therefrom approved by the Assistant Secretary of Commerce for Aeronautics. (Air Commerce Regulations, 1929, Ch. 1, Sec. 9.)

—a condition meeting the minimum requirements of the rules and regulations governing the rating and re-rating of aircraft adopted by the State Aeronautics Commissions. (Pennsylvania, L. 1929, Act 316, Sec. 2(e).)

Airman (17)—any individual (including the person in command and any pilot, mechanic, or member of the crew) who engages in the navigation of aircraft while under way, and any individual who is in charge of inspection, overhauling, or repairing of aircraft. (Air Commerce Act 1926, Sec. 9(k).)

—any individual who engages in the navigation of aircraft while under way in the air. (Florida, L. 1925, Ch. 11339, Sec. 13.)

—any person who engages in the navigation of aircraft while under way, and any individual who is in charge of the inspection, overhauling, or repairing of aircraft. (Iowa, L. 1929, Ch. 135, Sec. 1.)

—any individual in command of an aircraft, any pilot who engages in the navigation of aircraft while under way, and any individual who is in charge of the inspection, overhauling, or repairing of aircraft. (New Hampshire, L. 1929, Ch. 182, Sec. 1.)

—includes aviator, pilot, balloonist, and every other person having any part in the operation of aircraft while in flight. (New Jersey, L. 1929, Ch. 311, Sec. 1.)

Aeronaut (9)—includes aviator, pilot, balloonist and every other person having any part in the operation of aircraft while in flight. (Uniform State Law for Aeronautics, Sec. 1.)

Pilot (4)—every person who, being in or upon any aircraft, undertakes to direct its ascent, flight or descent in the air. (Arkansas, L. 1927, Act 17, Sec. 3.)

—any person who shall undertake to direct a course of any aircraft while in the air. (Connecticut, Pub. Act, 1929, Ch. 253, Sec. 1.)

—all persons in command of, or piloting, aircraft in flight are classed as pilots. (Virginia State Corp. Commission Regulations, July 1, 1929, Sec. 1.)

Commercial pilot (1)—any person who has had two hundred hours or over of solo flying and has passed an examination showing that he possesses the required physical and mental qualifications for flying. (Connecticut, Pub. Acts, 1929, Ch. 253, Sec. 1.)

Transport pilot (1)—any person who has had five hundred or over of solo flying and has passed an examination showing that he possesses the required physical and mental qualifications for flying. (Connecticut, Pub. Acts, 1929, Ch. 253, Sec. 1.)

Commercial flyer (1)—any person, association, partnership or corporation engaged in commercial flying. (Pennsylvania, L. 1929, Act 316, Sec. 2(aa).)

Limited commercial pilot (1)—any person who has had one hundred or over of solo flying and has passed an examination showing that he possesses the required physical and mental qualifications for flying. (Connecticut, Pub. Acts, 1929, Ch. 253, Sec. 1.)

Private pilot (1)—any person who has had not less than twenty-five hours of solo flying and has passed an examination showing that he

possesses the required physical and mental qualifications for flying. (Connecticut, Pub. Acts, 1929, Ch. 253, Sec. 1.)

—"Wyoming private pilot" any one possessing a Wyoming private pilot license, and who is not necessarily navigating aircraft for commercial purposes. (Wyoming, L. 1929, Ch. 66, Sec. 2(1).)

Student pilot (1)—any person who has completed the primary course of instruction in flying and who has passed an examination showing that he possesses the required physical and mental qualifications for flying. (Connecticut, Pub. Acts, 1929, Ch. 253, Sec. 1.)

Solo stage (2)—that point in the course of flying instruction, where a student undertakes to pilot aircraft alone, as provided herein. (Arkansas, L. 1927, Act 17, Sec. 3.)

Parachute pilot (1)—any person who shall use a parachute in the air for commercial or exhibition purposes. (Connecticut, Pub. Acts, 1929, Ch. 253, Sec. 1.)

Passenger (14)—any person riding in an aircraft but having no part in its operation. (Uniform State Law for Aeronautics, Sec. 1.)

—any person riding in an aircraft other than its pilot or a member of its crew. (Iowa, L. 1929, Ch. 135, Sec. 1.)

—any person not the pilot or member of the crew of any aircraft. (Michigan, Pub. Acts, 1927, Number 138, Sec. 1.)

Pay passenger (2)—any person who shall pay or agree to pay any sum of money or thing of value for a flight in the air in any aircraft. (Michigan, Pub. Acts, 1927, No. 138, Sec. 1.)

Mechanic (1)—all persons repairing or adjusting aircraft in flight and persons in charge of the ground inspection, overhauling, or repairing of aircraft are classed as mechanics. (Virginia State Corp. Com. Rules and Regulations, July 1, 1929, Sec. 1.)

Non-resident (3)—any person who has no regular place of abode or of business in this State for a longer period than thirty days, or parts thereof, not necessarily consecutive, in the calendar year. (Connecticut, Pub. Acts, 1929, Ch. 253, Sec. 1.)

—any person who has no regular place of abode or of business, in this State, for a longer period than ninety days in the calendar year. (Vermont, L. 1929, No. 79, Sec. 1.)

D. AIRPORT CONCEPTS:

Airport (6)—any locality, either of water or land, which is adapted for the landing and taking off of aircraft and which provides facilities for shelter, supply, and repair of aircraft; or a place used regularly for receiving or discharging passengers or cargo by air. (Air Commerce Act 1926, Sec. 9(g).)

—any definite area, set aside for the landing and taking off of civil aircraft engaged in commercial aviation, which is open to public use and at which storage and/or inspection and/or repair of aircraft is provided, or from which any civil aircraft, owned, leased, or controlled by the operator of the field, is operated in commercial aviation, shall be designated as an airport. (Virginia, State Corp. Com. Rules and Regulations, July 1, 1929, Sec. 1.)

Airdrome (1)—any area of supporting surface which is to be used for the maintenance or operating from, of aircraft navigated by persons, except any such area or supporting surface, which is not operated for profit and which is used by the owner tenant solely for his storage, maintenance or repair of aircraft used exclusively for the personal use of himself, family or friends. (Florida, L. 1925, Ch. 11339, Sec. 13.)

Landing field (2)—any locality, either of water or land, which is adapted for the landing and taking off of aircraft, but which is not equipped

with facilities for shelter, supply, and repair of aircraft. (Pennsylvania, L. 1929, Act 316, Sec. 2(h).)

—any field of such size and nature as to permit of aircraft landing and taking off in safety, which field may or may not be part of an airport. (Connecticut, Pub. Acts, 1929, Ch. 253, Sec. 1.)

Public landing field (1)—any definite area, set aside for the landing and taking off of civil aircraft, which is open to public use, and which does not come within the definition of an airport as above defined, shall be designated as a public landing field. (Virginia State Corp. Com. Rules and Regulations, July 1, 1929, Sec. 1.)

Emergency landing field (1)—any locality, either of water or land, which is adapted for the landing and taking off of aircraft, is located along an airway, and is intermediate to airports connected by the airway, but which is not equipped with facilities for shelter, supply, and repair of aircraft and is not used regularly for the receipt or discharge of passengers or cargo by air. (Air Commerce Act 1926, Sec. 9(h); Wyoming, L. 1929, Ch. 66, Sec. 2.)

Intermediate landing field (2)—any locality, either of water or land, which is adapted for the landing and taking off of aircraft, is located along an airway, and is intermediate to airports and landing fields connected by the airway but which is not equipped with facilities for shelter, supply, and repair of aircraft, and is not used regularly for the receiving or discharging of passengers or cargo by air. (Pennsylvania, L. 1929, Act 316, Sec. 2(i).)

Landing strip (1)—an area, at least five hundred (500) feet wide, which forms part of an airport, landing field, intermediate or auxiliary field, and which is suitable by natural condition or artificial construction for the landing and taking off of airplanes. (Federal Airport Rating Regulations, Jan. 1, 1929; Pennsylvania, L. 1929 Act 316, Sec. 2(l).)

Runway (1)—an artificial landing strip or portion thereof. (Pennsylvania, L. 1929, Act 316, Sec. 2(m).)

III. REGULATORY BODY

An analysis of the situation as to organized control of aviation in the various states shows the following result:

1. *Regulation of Aviation by Special Aviation Body*.....17 states
 - (a) *Essentially in the hands of one person*.....2 states
 Connecticut, Commissioner of Aeronautics.¹⁶
 Ohio, Director of Aeronautics, and Bureau.¹⁷
 - (b) *State Aviation Commission*.....9 states
 Arkansas, State Honorary Aircraft Board.¹⁸
 Colorado, Colorado Commission of Aeronautics.¹⁹
 Kansas, State Aircraft Board.²⁰
 Kentucky, Air Board of Kentucky.²¹
 Maryland, State Aviation Commission.²²
 Michigan, Michigan Board of Aeronautics.²³

16. Pub. Acts 1929, Ch. 253, Secs. 2-5.

17. L. 1929, p. 28, Ch. 21-a, Secs. 6310-38.

18. L. 1927, Act 17, Secs. 1-2; L. 1929, Act 96.

19. Act 1927, Ch. 64, Secs. 1-2-4.

20. L. 1921, Chs. 264, 74-801, 74-802; L. 1929, Ch. 11.

21. L. 1926, Ch. 107, Secs. 165-1, 165-2; L. 1928, Ch. 77.

22. L. 1929, Ch. 318, Sec. 14A, Sec. 15.

23. Pub. Acts 1919, No. 177, Secs. 1-2.

- Oregon, State Board of Aeronautics.²⁴
 Pennsylvania, State Aeronautics Commission.²⁵
 Wyoming, Wyoming Aeronautics Board.²⁶
- (c) *Special or Contingent Commission*.....2 states
 Rhode Island, State Airport Commission.²⁷
 California, California Aeronautical Commission.²⁸
- (d) *Investigating Commission*.....4 states
 Illinois, Illinois Aerial Commission.²⁹
 New Jersey, New Jersey Aviation Commission.³⁰
 New York, Temporary State Commission.³¹
 Wisconsin, Joint Interim Committee on Aviation.³²
2. *Regulation of Aviation by Prior Existing Body*.....13 states
- (a) *Essentially in the hands of one person*.....6 states
 Florida, State Comptroller.³³
 Idaho, Commissioner of Public Works.³⁴
 Maine, Secretary of State.³⁵
 Massachusetts, State Registrar.³⁶
 Minnesota, Registrar of Motor Vehicles.³⁷
 Vermont, Commissioner of Motor Vehicles.³⁸
- (b) *State Corporation Commission*.....3 states
 Arizona, Arizona Corporation Commission.³⁹
 New Mexico, State Corporation Commission.⁴⁰
 Virginia, State Corporation Commission.⁴¹
- (c) *State Public Service Commission*.....2 states
 Nevada, Public Service Com. of Nevada.⁴²
 New Hampshire, Public Service Commission.⁴³
- (d) *State Railway Commission*.....2 states
 Nebraska, State Railway Commission.⁴⁴
 North Dakota, Board of Ry. Commissioners.⁴⁵
3. *States having no Regulatory Body at all*.....18 states

While much of the legislation relative to the regulatory body is fragmentary only, still it is at once apparent that the states listed

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24. L. 1929, Ch. 352, Sec. 1.
 25. L. 1929, Act 316, Sec. 201; L. 1929, Act 175, Sec. 407.
 26. L. 1929, Ch. 66, Sec. 1.
 27. L. 1929, Ch. 1353, Secs. 1-2.
 28. Stat. 1929, Ch. 850.
 29. Commission appointed by Governor Emmerson, Reed G. Landis, Chr., and Howard Knotts, Sec'y.
 30. Joint Reso. No. 21, 1929, U. S. Av. Rep. 686.
 31. L. 1929, Ch. 53, Secs. 1-4.
 32. L. 1929, Ch. 520 (appropriation), 1929 U. S. Av. Rep. 880.
 33. L. 1925, Ch. 11339, Sec. 6.
 34. L. 1929, Ch. 137.
 35. L. 1929, Ch. 265, Sec. 3.
 36. Acts 1928, Ch. 388, G. L. 90 Par 35-59 amended, Sec. 37.
 37. L. 1929, Ch. 290, Secs. 7-8.
 38. L. 1929, No. 79, Sec. 2.
 39. See statement in Gen. Order No. 113-L, 1929 U. S. Av. Rep. 409.
 40. L. 1929, Ch. 71, Sec. 7.
 41. L. 1928, Title 33A, Ch. 146A, Sec. 3775(2).
 42. Flying Rules of Feb. 5, 1930, Rule 7; 1929 U. S. Av. Rep. 668.
 43. L. 1929, Ch. 182, Sec. 3-4.
 44. L. 1929, Ch. 34, Sec. 7.
 45. L. 1929, Ch. 85, Sec. 2.

in division "one" have, as a group, a far more comprehensive and systematic set of provisions than those listed in the second division. Of course, complete uniformity is not at all essential, but, assuming the ultimate desirability of having some special aviation commission established, the following items might be mentioned as they have been considered by some of the states, although no single state law has covered them all.

1. *Appointment authority:*

- By governor alone—Arkansas, Colorado, Kentucky, Maryland, Wyoming.
- By governor, by and with the consent of the senate—Michigan.
- By third person—Kansas, adjutant general.

2. *Membership of Commission:*

- (a) *Number*—The number varies from 3-7 and is, no doubt, partly determined by the volume of work with which the body is to be charged.
- (b) *Qualification of members*—
 - (1) Having aeronautical experience as pilots—
 - Qualified Air Pilots (2 of 3) Arkansas.
 - Federally licensed pilots (2 of 3) Colorado.
 - Licensed pilots, or 5 years experience as pilots (3 of 5) Maryland.
 - Transport pilots (majority) Oregon.
 - Citizens who have soloed 200 hours (2 of 3) Wyoming.
 - (2) Having aeronautical experience as engineers—
 - Qualified in aero designing and engineering, Arkansas.
 - Aeronautical engineer (1 of 3) Kansas.
 - (3) Having aeronautical experience as physician—
 - Graduate Army School of Medicine or qualified to examine for licenses (1 of 3) Colorado.
 - (4) Other requirements—
 - Practical business man (1 of 3) Arkansas.
 - 25 years of age, Kentucky.
 - Citizen of U. S. and resident of state one year, Oregon, Wyoming.
 - Not to be engaged in any business incompatible with duties as Commissioner, Pennsylvania.
- (c) *Tenure of Office*—
 - (1) Definite term (most common practice, 3-6 years).
 - (2) Indefinite term (at pleasure of governor, or third person).
 - (3) Mode of appointment—
 - To prevent all members retiring at one time, the membership is divided so that one is appointed for 2 years, one for 4 years, and one for 6 years, etc.
 - (4) Vacancies—appointment to fill temporarily (See law, Connecticut).
 - (5) Removal—only for cause, and after hearing (Colorado).
- (d) *Expenses*—
 - (1) Salaries of Commissioners—
 - Where there is one commissioner, a salary is provided, but not otherwise (Connecticut and Ohio).

3. *Powers of Commission:*

- (a) To have an official seal (Maryland).
- (b) To sue and be sued (Kentucky).
- (c) To employ clerical assistance (Maryland).
- (d) To administer the act (Maryland).
- (e) To make rules and regulations
provision relative to quorum
majority of commission required to incur liability (Kentucky).
- (f) To suspend or revoke licenses (Colorado, Wyoming).
- (g) To conduct investigations and hearings (Pennsylvania).
- (h) To incur expenditures
as provided in budget (Ohio).
- (i) Powers of individual officers (Pennsylvania)
of chairman
of vice-chairman
of secretary.
- (j) Jurisdiction of commission
over all state aircraft
over state common carriers by aircraft (Arizona).
over all aircraft under jurisdiction of commission (Nevada).

4. *Duties of Commission:*

- (a) To license aircraft
to make rules and regulations (airworthiness)
to provide for registration
to provide for expiration, suspension, revocation of
to provide certificates of approval for common carriers.
- (b) To license airmen
to provide for examination (periodic examination, Colorado)
to provide for rating of
to provide for registration of
to provide for expiration, suspension, revocation.
- (c) To license airports, landing fields, air navigation facilities
to provide for licensing thereof
to provide for rating.
- (d) To regulate flying schools and ground schools (Penn. and Mich.)
to license
to adopt rules and regulations as to instruction.
- (e) To establish air traffic rules
for protection and identification of aircraft
as to safe altitudes of flight
as to acrobatic flying
as to prohibited flying (intoxication and drugs)
as to exemptions (industrial flying)
as to exceptions (air races, speed courses)
other rules.
- (f) To investigate and report accidents
to record and report.
- (g) To establish and chart civil airways (Pennsylvania)
to provide for publication of maps
to grant no exclusive right of airway use.
- (h) To enforce the law (Wyoming)
or to co-operate in the enforcement
to act as arbiter in disputes.
- (i) To co-operate with the Department of Commerce (Colorado)
with U. S. Army Corps
with any other government department dealing with aviation.
- (j) To exchange information (Colorado).
- (k) To report to governor (Maryland).

- (l) To give bond (in case of single commissioner, Conn. and Ohio).
- (m) To study possibilities for aviation development (Colorado).
- (n) To encourage aviation development (Idaho)
in counties and municipalities and private interests.

It is at once obvious that most of the provisions presented in the foregoing are to be found in the legislation of those states which provide for state licenses rather than federal licenses. Thus, it will be noted, many of the provisions are found in the laws of Arkansas, Connecticut, Kansas, Massachusetts, and Pennsylvania. But this criterion cannot be relied on entirely, for strong commissions will be found even where all licensing is to be conducted by the federal government. It is submitted that a rather close correlation might be found between the volume of flying in any given state and the organization of a regulatory commission. Manifestly, as flying activities increase, there will be need to strengthen the provisions as to the regulatory body. Since uniformity in this matter is not essential, the details of the state treatment will not be presented at greater length. One observation, however, should be made—relative to the jurisdiction of the regulatory body. If the commission, of whatever sort, has not control of all aircraft in the state, its effectiveness is lessened in a material degree.

IV. LICENSES AND PERMITS

The matter of providing for the licensing of aircraft and of airmen is one of the two most important subjects when considering the desirability of uniformity in state legislation. In this regard, uniformity is desirable for a two-fold reason: (1) to insure protection of the public by guarding against faulty equipment and unskilled personnel; (2) to promote aviation by establishing a single standard (or set of standards) to facilitate aircraft construction and the training of airmen for an industry whose operations are, by nature, interstate. Any opposition to state licensing is founded, in large part, upon one or the other of these two considerations. Unless adequate state funds are available, it is feared that standards of airworthiness cannot be tested in a satisfactory way by the individual states. The same principle, in somewhat lesser degree, applies to the testing of airmen. If the examination, preliminary to the licensing, is inadequate, the public is not protected. On the other hand, if state funds are provided in abundance, there is no reason why state officials (provided experts can be obtained in sufficient number) cannot conduct the examinations in an entirely efficient manner. But, any assumption of capability overlooks the

fact of duplication of effort which, from an economic viewpoint, is necessarily wasteful.

The real objection, it is believed, to state licensing is not founded upon the capability of the examiners nor the expense incurred thereby, but is founded upon the probability of non-uniformity and consequent injury to the industry. The present legislation clearly manifests the existing unfamiliarity with the subject matter of regulation—aviation. If, in addition, each state is to establish its own standards of aircraft construction and design, together with requisites for airmen, there can be but one result—an unending chaos.

Realizing this difficulty, there has been a well-defined movement toward uniformity by urging the several states to prescribe federal requirements, or to have the actual licensing performed by the federal government. There has been some difficulty encountered as to the method of importing federal regulations into state legislation⁴⁶ but there is a growing tendency to bring about substantial uniformity. The Committee on Aeronautical Law of the American Bar Association has drawn up a Uniform State Air Licensing Act which has not as yet been officially approved by that body, although it has been adopted in some of the states.⁴⁷

A tabulated form of the present situation would show the following result:⁴⁸

46. See *Fred D. Fagg, Jr., Incorporating Federal Law into State Legislation*, 1 JOUR. AIR LAW 199 (1930).

47. See Reports of American Bar Association, Vol. 54, 1929, pp. 141-5; 287-300.

48. See tabulations contained in Aeronautics Bulletin No. 18, p. 9; Reports of American Bar Association, Vol. 54, 1929, p. 289.

State	Federal License		Federal or State	State License	Comment	
	For all aircraft For all airmen	Commercial aircraft Commercial airmen	For all aircraft For all airmen	For all aircraft For all airmen	No law	
1. Alabama					x	(civil aircraft, airmen carrying passengers)
2. Arizona	x x			x x		
3. Arkansas						
4. California	x x					
5. Colorado		x x				
6. Connecticut				x x		
7. Delaware	x x					
8. Florida				x x		
9. Georgia					x	
10. Idaho	x x					
11. Illinois	x	x				
12. Indiana	x x					
13. Iowa	x	x				
14. Kansas				x x		
15. Kentucky	x x					
16. Louisiana					x	
17. Maine			x x			
18. Maryland			x x			
19. Massachusetts				x x		
20. Michigan	x x					
21. Minnesota			x x			
22. Mississippi	x x					
23. Missouri		x x				
24. Montana	x x					
25. Nebraska	x	x				
26. Nevada		x x				
27. New Hampshire			x x			
28. New Jersey		x x				
29. New Mexico	x x					
30. New York		x x				
31. North Carolina		x x				
32. North Dakota	x x					
33. Ohio		x x				
34. Oklahoma					x	
35. Oregon			x x			
36. Pennsylvania				x x		
37. Rhode Island	x x					
38. South Carolina					x	
39. South Dakota	x x					
40. Tennessee					x	
41. Texas	x x					
42. Utah					x	
43. Vermont	x x					
44. Virginia			x x			
45. Washington	x x					
46. West Virginia		x x				
47. Wisconsin	x x					
48. Wyoming	x x					
Total	20 19	9 10	6 6	6 6	7	

Besides the licensing of aircraft and airmen, there has been a tendency on the part of some of the states to establish regulations concerning airports. The legislation of eight states contains such provisions and these laws might be grouped into the following three classes:

(1) *Laws placing the burden on the operator:*

- (a) Virginia (L. 1928, Title 33A, Ch. 146A, Sec. 3775 (6)).
"It shall be unlawful for any person, firm or corporation to establish, maintain, operate or conduct any airport or landing field for the landing or departure of any *civil aircraft engaged* in commercial aviation until a permit therefor shall have been issued by the State Corporation Commission."
- (b) Idaho (L. 1929, Ch. 137, Sec. 2 (h)).
"It shall be unlawful for any person, firm . . . to operate . . . any airport or landing field for the landing or departure of *aircraft engaged in air commerce*, or to establish any other air navigation facility until a permit therefor shall be issued"
- (c) Michigan (Pub. Acts 1929, No. 177, Sec. 3).
"All airports and landing fields *used for commercial purposes* . . . shall . . . make application to the board for its approval of such airport. . . . No airport or landing field *used for commercial purposes* . . . shall be operated without the approval of this board."
- (d) Pennsylvania (L. 1929, Act 316, Sec. 1101-1103).
"No person, firm, co-partnership, association, corporation, county, city, incorporated town, borough, township, or other political subdivision of this Commonwealth shall hereafter establish, equip, maintain or operate *any airport*, landing field, or intermediate landing field *within this Commonwealth*, unless a license therefor shall be issued by the commission; Provided"—does not apply to those established or controlled by the federal government.

(2) *Laws placing burden on operators of aircraft and airport:*

- (a) Florida (L. 1925, Ch. 11339, Sec 8).
"No person shall operate any airdrome *or from any airdrome* in this State unless there is in force in respect to it a valid operating airdrome certificate as required by this Act."

(3) *Laws placing burden on the operator of aircraft alone:*

- (a) Connecticut (Pub. Acts, 1929, Ch. 253, Sec. 37).
"No pilot shall operate any aircraft *commercially* from any airport or landing field which has not been inspected and approved by the Commissioner or an inspector of the Department of Aeronautics."
- (b) Kentucky (Acts 1930, Ch. 11, Sec. 10).
"It shall be unlawful for any person, firm or corporation to operate any aircraft for hire from any airport or landing field of any nature whatsoever if it has been declared unfit for such operation by the Air Board of Kentucky."
- (c) Maryland (L. 1929, Ch. 219, Sec. 20).
"It shall be unlawful for any person or corporation to operate aircraft *regularly* for the purpose of *carrying passengers for hire* from any airport or landing field which has not been rated as *safe for the purpose for which it is to be used*"

Three or four of the States require a certificate of public convenience and necessity either as provided in the law or in the regulations established by the governing commission. Thus, the Arizona Corporation Commission⁴⁹ requires such a certificate for all aircraft operated as common carriers for compensation. A similar requisite can be found in the flying rules set up by the Public Service Commission of Nevada.⁵⁰ The law of New Mexico defines the term "common carrier"⁵¹ and provides that the state commission may regulate, but there seems to be no certificate as yet required. Pennsylvania has a definite provision requiring a certificate of public convenience and necessity for civil aircraft operated as common carriers.⁵²

The laws of ten states⁵³ contain provisions granting, under certain conditions, permits to non-residents enabling the latter to operate in the given state for a determined period of time prior to obtaining state sanction by regular formality, as follows:

State	Number of Days allowed				Must possess valid license of		Cannot engage in any Commercial operations during period	Must report to proper officer to give notice of arrival within 48 hours
	10	15	30	90	State of Origin	Federal Gov't		
1. Arkansas ⁵⁴		x			x		x	
2. Colorado ⁵⁵	x		x		x	or x	x	x
3. Connecticut ⁵⁶		x						x
4. Florida ⁵⁷			x					
5. Idaho ⁵⁸							x	
6. Kansas ⁵⁹			x		x		x	
7. Massachusetts ⁶⁰	x				x	or x	x	
8. Pennsylvania ⁶¹			x		x	or x	x	
9. Vermont ⁶²				x			x	x
10. Washington ⁶³			x		x		x	

49. Gen. Order No. 113-L.

50. Flying Rules and Regulations, Feb. 5, 1929, Rules 7, 8, and 9.

51. L. 1929, Ch. 71, Sec. 6.

52. L. 1929, Act 316, Sec. 1203(3).

53. Arkansas, Colorado, Connecticut, Florida, Idaho, Kansas, Massachusetts, Pennsylvania, Vermont, and Washington.

54. Cannot so operate unless he complies with the provision of the Arkansas law governing registration, etc., L. 1927, Act. 17, Sec. 5.

55. The law is stated negatively. See Regulations of Colorado Commission of Aeronautics, Sec. 2, 1929 U. S. Av. Rep. 450.

56. Pub. Acts, 1929, Ch. 253, Sec. 20.

57. L. 1925, Ch. 11339, Sec. 12.

58. L. 1929, Ch. 137, Sec. 3(e).

59. L. 1921, Ch. 264, 3-103. Cannot engage in commercial operations unless there has been compliance with the laws of Kansas.

60. Acts 1928, Ch. 388, Sec. 41. But note that one can engage in commercial flying during the ten days if he complies with certain requirements—such as appointing the Registrar as his attorney to receive process, etc.

61. L. 1929, Act 316, Sec. 409.

62. L. 1929, No. 79, Sec. 6.

63. L. 1929, Ch. 157, Secs. 2-4.

In this connection, it must be remembered that where the state law provides only for licenses for aircraft and airmen engaged in commercial operations, there need be no concern on the part of non-resident airmen wishing to engage in pleasure flying only.

V. FLYING REGULATIONS

The first attempt made toward uniform air traffic rules is to be found in the provisions of the Uniform State Law for Aeronautics, the important sections of which read as follows:

- Sec. 4. (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 aeronaut shall be liable as provided in Section 5.
- Sec. 9. (Dangerous Flying a Misdemeanor.)—Any aeronaut or passenger who, while in flight over a thickly inhabited area or over a public gathering within this State, shall engage in trick or acrobatic flying, or in any acrobatic feat, or shall, except while in landing or in taking off, fly at such a low level as to endanger the persons on the surface beneath, or drop any object except loose water or loose sand ballast shall be guilty of a misdemeanor and punishable by a fine of not more than \$500 or imprisonment for not more than one year, or both.
- Sec. 10. (Hunting from Aircraft a Misdemeanor.)—Any aeronaut or passenger who, while in flight within this State shall intentionally kill or attempt to kill any birds or animals shall be guilty of a misdemeanor and punishable by a fine of not more than or by imprisonment for not more than or both.

Almost all the states which have adopted the uniform law have incorporated these sections into their legislation, although there have been some changes or omissions.⁶⁴ With the establishment of the Air Commerce Regulations, there was set up in Chapter 7 a set of federal air traffic rules which are to be found in Sec. 74, and which read in part as follows:

- (G) *Height over congested and other areas.*—Exclusive of taking off from or landing on an established landing field, airport, or on property

64. Delaware has repealed Sec. 4, Montana and Pennsylvania have omitted Secs. 9 and 10, and Vermont has altered Sec. 9. Missouri has omitted Sec. 10. It is understood that New Jersey allows hunting from aircraft if there be a state bounty on the animal, and California does not prohibit the hunting of whales from aircraft. While New Hampshire has not adopted the uniform law, it is interesting to note that the new rules adopted by the Public Service Commission, on July 3, 1930 (See U. S. Daily, July 5, 1930, p. 5), under the head of hunting from aircraft, provide that "no person shall fire or discharge any firearms from any aircraft whether in flight or grounded." The context is far broader than the title.

designated for that purpose by the owner, and except as permitted by Section 79, aircraft shall not be flown—

- (1) Over the congested parts of cities, towns, or settlements, except at a height sufficient to permit of a reasonably safe emergency landing, which in no case shall be less than 1,000 feet.
 - (2) Elsewhere at height less than 500 feet, except where indispensable to an industrial flying operation.
- (H) *Height over assembly of persons.*—No flight under 1,000 feet in height shall be made over any open-air assembly of persons except with the consent of the Secretary of Commerce. Such consent will be granted only for limited operations.
- (I) *Acrobatic flying.*—(1) Acrobatic flying means intentional maneuvers not necessary to air navigation.
- (2) No person shall acrobatically fly an aircraft—
 - (a) Over a congested area of any city, town, or settlement.
 - (b) Over any open-air assembly of persons or below 2,000 feet in height over any established civil airway, or at any height over any established airport or landing field, or within 1,000 feet horizontally thereof.
 - (c) Any acrobatic maneuvers performed over any other place shall be concluded at a height greater than 1,500 feet.
 - (d) No person shall acrobatically fly any airplane carrying passengers for hire.
 - (e) When performing acrobatics not prohibited by these regulations each person in the aircraft must be properly equipped with a parachute of a type and design which has been tested and approved by a competent agency of the United States Government.
 - (f) Dropping objects or things.—When an aircraft is in flight the pilot shall not drop or release, or permit any person to drop or release, any object or thing which may endanger life or injure property, except when necessary to the personal safety of the pilot, passengers, or crew. The discharge of human waste from aircraft in flight is also prohibited.

Although eight states⁶⁵ have no air traffic rules, there has been a rather general tendency to follow the federal provisions. In many cases the federal rules have been adopted verbatim,⁶⁶ while in others only very slight changes have been made.⁶⁷ Another method of securing substantial uniformity has been to authorize the regulatory body (of whatever sort) to provide rules and regulations—

65. Alabama, Georgia, Kentucky, Louisiana, Mississippi, New York, Oklahoma, and Texas.

66. See, for example, the laws of Delaware, Iowa, Nebraska, Nevada (by Pub. S. Com.) and Washington.

67. See laws of Illinois and Wyoming.

with the proviso that these rules must be consistent with the federal regulations.⁶⁸

While uniformity as to air traffic rules is not necessarily essential, it is very desirable for reasons of general safety and enforcement. If there be a single set of rules, every pilot can be expected to know and to observe them. On the contrary, a multiplicity of rules provokes non-observance by virtue of the fact that they cannot be remembered. In automobile traffic, speed limits may be easily observed from well-placed sign posts. There is no such simple and effective device indicating air traffic rules. Consequently, the rules should be uniform as to requirements, clearly stated, reasonable in their demands, and rigorously enforced.

Relative to the matter of low flying, one might be inclined to question the principle behind the federal provision which sets a minimum of 1,000 feet, but which places the burden rather generally upon the pilot to regulate his altitude so that he may make a "reasonably safe emergency landing" outside the congested area of any city, etc. The general statement is due, of course, to the well-known fact that different types of aircraft have different gliding ratios, and that a safe altitude for one plane might be entirely too low for another. But which of the two standards is to govern? Suppose, for example, a plane should be 1,200 feet above the congested area and should be forced to make an emergency landing, due to motor failure. If the pilot failed to make a safe emergency landing, could he be liable for a violation of this rule? It is submitted that he could be held, despite the fact that he was flying at 1,200 feet. Risk of violation must rest, not upon the non-observance of the minimum altitude requirement, but upon the judgment of the pilot.

The state prohibitions against low flying are generally clear and adequate although there is some difference in the altitude requirements and some ambiguity. Thus, Connecticut⁶⁹ requires a minimum of 2,000 feet over congested areas and West Virginia⁷⁰ increases the minimum to 2,500 feet. The minimum over non-congested areas is dropped to 250 feet in Arkansas⁷¹ and Kansas.⁷² These are not radical changes, but they provide confusion if they

68. Laws of Maine, Maryland, Michigan, Minnesota, and New Hampshire.

69. Pub. Acts 1929, Ch. 253, Sec. 26.

70. L. 1929, Ch. 61, Sec. 12.

71. L. 1927, Act 17, Sec. 11.

72. L. 1921, Ch. 264, 3-108.

occur in great number. The law of Oregon is somewhat ambiguous and reads as follows:

"Sec. 7. No person shall operate or fly over buildings, persons or animals in such a manner or in such an altitude as to endanger his own life or the lives or safety of those below him or the safety of himself or his passengers, if he be carrying passengers; nor shall any person operate aircraft over the thickly settled district of any city or town except for the purpose of embarking from or alighting on designated landing places."⁷³

Some of the laws allow no exemptions, but Massachusetts,⁷⁴ for example, provides for low flying in case special permission is obtained from the Registrar. This would seem necessary in view of desirable exhibitions and air races, although the Michigan provision might seem a little broad in that no permission must be secured. The law reads:

"Sec. 1. No person shall operate an aeroplane or flying machine over open-air assemblies of people at a height of less than 1,500 feet from the ground: Provided, That this Act shall not apply to groups assembled for the purpose of witnessing aerial exhibitions and stunt flying, nor to groups assembled at a flying field."⁷⁵

Few of the states which have adopted the uniform state law have gone further in the matter of regulating acrobatic flying. The usual provision, in the other states which have established such rules, is to the effect that there shall be no acrobatic flying over any city or population center or assembly of persons and, at other places, below a certain minimum altitude. Further, that passenger-carrying aircraft shall not engage in acrobatics except in case of student instruction—in which case both student and instructor shall be equipped with parachutes.⁷⁶

Relative to the dropping of objects while in flight, several states, in addition to those adopting the uniform state law, have provided against the discharge or release of any instruments, tools, handbills, circulars, cards, or containers, except in case of necessity, unless the discharge occurs over a place established for that purpose, or over open water.⁷⁷ Massachusetts permits the release of fine sand or liquid over thinly settled areas, and states that the provision does not apply to parachutes when used for safe descent.⁷⁸ The Wyoming law provides that, in proper cases, permission will be granted

73. L. 1921, Ch. 45, Sec. 7.

74. L. 1922, Ch. 534, Sec. 51.

75. Pub. Acts 1926, No. 9.

76. See, for example, the law of Connecticut, Pub. Acts 1929, Ch. 253, Secs. 26 and 35.

77. Connecticut, Pub. Acts 1929, Ch. 253, Sec. 26. See, also, the laws of Arkansas, Illinois, Kansas, Massachusetts.

78. Acts 1928, Ch. 388, Sec. 53.

by the Governor for the dropping of objects or materials from aircraft engaged in industrial operations.⁷⁹ Such permission seems, elsewhere, not to be required.

Provisions against the operation of aircraft while under the influence of liquor or drugs are written into the legislation of at least three states,⁸⁰ but there are different views as to the penalties to be imposed. In California, the first offense is punishable by a penitentiary sentence of from one to five years. In Idaho, one who violates the law may receive only thirty days in the county or municipal jail. No matter what damage is done to persons on the ground, the maximum penalty in Idaho would only be six months in jail together with a \$500 fine. It is believed that, if the penalty is to be considered as a deterrent factor, the California provision is the better one.

These are the general subjects of regulation under the head of air traffic rules, but, for a more detailed list of provisions than is to be found in the federal regulations, the laws of Connecticut and Massachusetts, should be consulted.⁸¹

VI. LIABILITY

In the present study, we are concerned with those provisions governing liability which have been enacted into state legislation rather than with the principles of law upon which the provisions rest.⁸² For convenience, the subject will be divided into three divisions as follows: (1) liability to persons and for property on the ground; (2) liability to passengers and for goods carried, and (3) collision liability.

(1) Twenty-eight⁸³ of the forty-eight states have no legislation specifically governing aircraft liability, seventeen⁸⁴ of the twenty-one

79. L. 1927, Ch. 72, Sec. 6 (B) (j).

80. California, Stats. 1929, Ch. 850, Sec. 9; Connecticut, Pub. Acts, 1929, Ch. 253, Sec. 38(a); Idaho, L. 1929, Ch. 137, Sec. 5(b).

81. See, also, rules adopted by New Hampshire Public Service Commission, July 3, 1930, U. S. Daily, July 5, 1930, p. 5.

82. For a discussion of aircraft liability, see texts by *Fixel, Hotchkiss, Logan, and Zollmann*. For a statement of the positions of the various states, see *Rowan A. Greer, The Civil Liability of an Aviator as Carrier of Goods and Passengers*, 1 JOUR. AIR LAW, 241-263 (1930).

83. Alabama, Arkansas, California, Colorado, Florida, Georgia, Illinois, Iowa, Kansas, Louisiana, Maine, Massachusetts, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Mexico, New York, Ohio, Oklahoma, Oregon, Texas, Virginia, Washington, West Virginia, and Wyoming.

84. Delaware, Idaho, Indiana, Maryland, Michigan, Minnesota, Nevada, New Jersey, North Carolina, North Dakota, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, and Wisconsin.

adopting the uniform state law have also adopted Sec. 5 which provides for absolute liability and which reads as follows:

"Sec. 5. (Damage on Land)—The owner of every aircraft which is operated over the lands or waters of this State is absolutely 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, whether such owner was negligent or not, 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 aeronaut 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."

Two other states, which have adopted the uniform law, have modified the provision relative to liability.

(a) Arizona (L. 1929, Ch. 38, Sec. 11).

"Each pilot shall be responsible for all damage to any person or property caused by any aircraft directed by him or under his control, *which damages shall have resulted from the negligence of such pilot*, either in controlling such aircraft or while giving instructions to another, and, if such pilot be the agent or employee of another, both he and his principal or employer shall be responsible for such damage."⁸⁵

(b) Pennsylvania (L. 1929, Act 317, Sec. 6).

"The owner and the operator, or either of them, of every aircraft which is operated over the lands or waters of this Commonwealth, shall be liable for injuries or damage to persons or property on or over the land or water beneath, caused by the ascent, descent, or flight of aircraft, or the dropping or falling of any object therefrom in accordance with the rules of law applicable to torts on land in this Commonwealth."

The law of the remaining state, Connecticut, is as follows:

"Each pilot shall be responsible for all damage to any person or property caused by any aircraft directed by him or under his control, *which damage shall have resulted from the negligence of such pilot*, either in controlling such aircraft himself or while giving instructions to another, and, if such pilot be the agent or employee of another, both he and his principal or employer shall be responsible for such damage, *provided any pilot and his principal or employer shall be responsible for injuries to any passenger only when such injury shall result from the negligence of such pilot*." (Pub. Acts, 1929, Ch. 253, Sec. 32.)⁸⁶

(2) Relative to liability to passengers and for property carried,⁸⁷ there is no provision in the uniform state law governing

85. Italics ours.

86. Italics ours.

87. See Edward A. Harriman, Carriage of Passengers by Air, 1 JOUR. AIR LAW, 33-52; Carl Zollmann, Aircraft as Common Carriers, 1 JOUR. AIR LAW, 190-9; John K. Edmunds, Aircraft Passenger Ticket Contracts, 1 JOUR. AIR LAW, 321-34.

such liability and only the laws of Arizona and Connecticut cover the subject. Louisiana approaches this problem through the medium of insurance as does Virginia. The most important provisions of these laws are as follows:

Louisiana (L. 1926, Act No. 52).

"Sec. 1. That it shall be the duty of every person, firm or corporation engaged in the business of operating aeroplanes, whether as owner, lessee, or otherwise, for the purpose of carrying passengers for hire in this State to procure and execute an indemnity bond in the amount hereinafter provided with a good and solvent surety company authorized to do business in this State, as surety, with the obligation running in favor of any person who may be injured in person or property, or otherwise suffer loss or damage, by the operation of any aeroplane so used by said person, firm or corporation in said business in the State of Louisiana."

"Sec. 2. That the said bond shall be drawn in favor of the Governor of this State, but it shall inure to the benefit of anyone having an interest therein who shall have a right of action thereon in his own name for the recovery of any loss or damage to his person or property, or any other loss or damage to his person or property, or any other loss or damage which he may sustain, or for the recovery of such damages as he may be entitled to recover as the one to whom such right of action shall survive under the laws of this State, in case of death."

"Sec. 4. That if the said person, firm, or corporation engaged in said business uses in said business only one aeroplane which is used or intended to be used for the purpose of carrying passengers for hire in this State then the amount of said bond shall be the sum of fifteen thousand dollars, and for every additional such aeroplane that the said person, firm or corporation may so use the amount of said bond shall be increased by one thousand dollars."⁸⁸

Virginia (State Corporation Commission Regulations)

"Rule 33. *Liability and Property Damage Insurance*.—No operator of commercial aircraft used for intrastate flights (except aircraft carrying United States mail), or holder of a Virginia license for the operation of an airport, shall engage in commercial aviation in Virginia without having first obtained liability and property damage insurance covering all aircraft so operated, in the amounts hereinafter set forth, and no holder of a Virginia license for the operation of an airport shall operate such airport without having first obtained Employees' Liability and/or Workmen's Compensation insurance in the amounts hereinafter set forth.

"A. *Liability Insurance*.—Five thousand dollars for loss sustained by the insured by reason of bodily injury to, or death of, any one passenger in one accident.

"Ten thousand dollars for loss sustained by the insured by reason of bodily injury to, or death of, more than one passenger in any one accident.

"B. *Property Damage Insurance*.—Two thousand dollars for damage to property of any person other than the assured.

"C. *Employees Liability Insurance*"

(3) Relative to collision liability,^{88a} nineteen of the twenty-one states adopting the uniform state law have also adopted the

88. For the inferences which might be drawn, see article by *Rowan A. Greer*, referred to in Note 82, *supra*. See also the new bills introduced in Louisiana by Senator Labbe, *Aviation News*, July 12, 1930, p. 9.

88a. See *Greunke v. North American Airways Co.* (1930), 230 N. W. 618, and comment thereon 1 *JOUR. AIR LAW* 363.

provision of Sec. 6 governing liability in case of collision of aircraft. No other state seems to have any regulation governing the subject.

While the principles of airport operator liability have been discussed,⁸⁹ there has been no state legislation to specifically govern.

VII. VIOLATIONS

The uniformity or non-uniformity of penalty provisions for violations of the state legislation is a matter of minor importance. With the exception of one state,⁹⁰ all others which have enacted laws pertaining to aircraft have inserted sections establishing certain penalties for violations. The larger number of states provide for a blanket penalty of fine or imprisonment or both to be imposed for any violation whatsoever. However, twenty-two states have graded the penalty to the offense committed. For example, Delaware⁹¹ provides a fine of not more than \$100 for a license provision violation and one of not more than \$500 for a flying rule violation. Louisiana⁹² reaches a high limit of \$1000 for carrying passengers for hire without complying with the requirements, and Idaho⁹³ has a separate penalty for unlawfully conducting an airport. The most detailed treatment of penalties is to be found in the law of Connecticut.⁹⁴

Three of the states⁹⁵ have included provision for second offenses, and the penalty imposed is very materially increased. The penalties for flying while intoxicated or under the influence of narcotic drugs have been briefly discussed in Part V.

VIII. ENFORCEMENT

As Mr. John M. Vorys is to follow with an address upon the subject, "What State Body Should Regulate Aeronautics?" only a brief indication of what some of the state laws have already provided will be attempted here.

Relatively few of the states have particular sections devoted to the matter of enforcement—the more common method being to place the duty of enforcement upon the regulatory body established

89. *George B. Logan, The Liability of Airport Proprietors, 1 JOUR. AIR LAW 263-74.*

90. Kentucky.

91. L. 1929, Ch. 248, Sec. 8; Ch. 249, Sec. 5.

92. L. 1926, Act 52, Sec. 8. See, also, Sec. 9.

93. L. 1929, Ch. 137, Sec. 5(c).

94. L. 1929, Ch. 253. See individual sections.

95. Delaware, Idaho, and Wisconsin.

or appointed, in very broad and general language. In Wyoming,⁹⁶ for instance, it is provided that the board shall co-operate in the enforcement of the state air laws.

Some sample provisions read as follows:

Arkansas (L. 1927, Act 17, Sec. 9).

"That it shall be the duty of every sheriff and his deputies, constable, chief of police and his officers, city marshals and all other officers charged with the enforcement of the state, county, or city laws or ordinances to enforce the penalties of this Act."

Connecticut (Pub. Acts, 1929, Ch. 253, Sec. 39).

"The Commissioner may call upon the State police department for aid in enforcing the provisions of this Act. The State police shall, upon such request, make arrests in all cases of violation of the provisions of this Act which they may witness or upon speedy information thereof."

Idaho (L. 1929, Ch. 137, Sec. 5(e)).

"It is hereby made the duty of all State, county, city and precinct peace officers to enforce this Act. Provided, that counties and municipalities shall have the authority to prescribe rules and regulations in respect to aircraft in their respective jurisdictions not in conflict"

Maryland (L. 1929, Ch. 219, Sec. 24).

"The State Aviation Commission is authorized in the name of the State of Maryland to enforce the provisions of this sub-title by injunction." (The sub-title deals with the regulation of airports.)

Massachusetts (Acts 1928, Ch. 388, Sec. 60).

"The Superior Court shall have jurisdiction in equity to enforce the provisions of Sections 35-59, inclusive, and rules, regulations and orders made thereunder, and to restrain the violation thereof."

In Illinois, the enforcement work of Major Ralph Royce was conducted under the auspices of Cook County—there being no provision for an Air Supervisor, in the Illinois Law.⁹⁷ Other enforcement activities have been conducted by air police operating over certain municipalities.⁹⁸

IX. GENERAL FEATURES

While it is undesirable to discuss all the subjects of regulation in the various states, it will be of interest to mention a few. Ohio provides that the legislative authority of every municipality in the state shall cause said municipality to be marked for aeronautical purposes.⁹⁹

96. L. 1929, Ch. 66, Sec. 1(c).

97. See *Reed G. Landis*, State Agencies of Control and Enforcement of Aeronautical Laws, 1 *JOUR. AIR LAW* 186, and the Royce Report recommendations.

98. Note the activities of Police Commissioner Whalen of New York with an air traffic squad.

99. L. 1929, Ch. 21-a, Sec. 6310-44.

Relative to damaged aircraft, we find the following regulations:

Massachusetts (L. 1922, Ch. 534, Sec. 50).

"When any registered aircraft shall have been damaged in any structural part other than the engine or tires, such damage shall be reported to the Registrar and, in the case of a commercial aircraft, such aircraft shall not again be operated until the damaged part has been replaced in whole by a suitable new part, or, if it is not so replaced, until the aircraft has been approved by the advisory board.

"When such damage occurs while the aircraft is outside the Commonwealth, it must be reported before the aircraft is again operated within the Commonwealth.

"When any registered aircraft shall, in the opinion of the advisory board, have become unfit for operation through deterioration or otherwise, notice thereof shall be given to the owner and such aircraft shall not again be operated until it has been repaired and has been approved by the advisory board."

New Hampshire (State Rules on Aviation)¹⁰⁰

"Damaged Aircraft—No damaged aircraft shall be flown in the State until all the requirements of the United States Department of Commerce and the Commission have been complied with.

"Repair and Reconstruction of Commercial Aircraft—The repair or reconstruction of aircraft used in the transporting of passengers or freight for gain or hire shall be done under the direct supervision of an airman duly licensed by the United States Department of Commerce."

Nebraska,¹⁰¹ through the State Railway Commission, has provided that it shall be unlawful for any person to have charge of the inspection, overhauling or repairing of aircraft within the state unless he is the holder of a mechanic's license, issued under or pursuant to the laws of the United States then in force. Wisconsin¹⁰² has a similar provision which is a little broader in that it covers the repair and overhaul of aircraft engines as well as of aircraft.

The rules adopted by the New Hampshire Public Service Commission relative to safety precautions on the ground are very clearly and briefly stated as follows:

"(a) No aircraft motor shall be permitted to run unattended by an airman. (b) It shall be the duty of airmen to suitably guard against passengers or the public being injured by a revolving propeller. (c) It shall be the duty of the owners or operators of a landing field or airport to suitably guard against anyone being injured by a revolving propeller."

For rules of this nature, however, it is desirable to consult the provisions of the Pennsylvania and Connecticut statutes.

The various state regulations pertaining to airports have not been considered here due to the fact that they form a special subject of regulation and require different treatment and analysis.

100. July 3, 1930, U. S. Daily July 5, 1930, p. 5.

101. Nebraska Railway Commission Rules, Resolution No. 112, Sec. 6.

102. L. 1929, Ch. 285, 114.17.

X. CONCLUSION

The present survey of the existing state aeronautical legislation would lead to the following conclusions:

- (1) *That the movement toward uniformity is already strong and that it is growing each year.*
- (2) *That the present legislation is, with some few exceptions, of a fragmentary nature and, specifically:*
 - (a) *that the definitions chosen are inadequate and, too frequently, inaccurate or poorly expressed;*
 - (b) *that the provisions as to the regulatory body are decidedly inadequate as to membership qualifications, powers, and duties;*
 - (c) *that the licensing requirements are more nearly adequate, and that there is a distinct tendency toward adopting federal standards, or in requiring federal licenses;*
 - (d) *that the flying regulations are of general uniformity but are incomplete in their provisions;*
 - (e) *that the important subject of liability is hardly dealt with, and that a complete re-examination of the legal principles is necessary;*
 - (f) *that enforcement provisions are entirely inadequate to the needs of safety and aviation development.*
- (3) *That much assistance should be received from the American Bar Association Committee on Aeronautical Law through its preparation of a Uniform State Aeronautical Code.*¹⁰³

CHAIRMAN NICHOLS: Mr. Fagg, I want to congratulate you most heartily on a remarkably thorough, and complete and intelligent presentation of that paper. I think it is very apparent to all of us that this paper must have required a tremendous amount of preparation, and I know I voice the sentiment of the members present when I say we are truly grateful to you.

Apparently Mr. Fagg is as thorough in the preparation of his papers as he is in the inspection of aeroplanes in Cook County.

The next paper scheduled for this afternoon was to have been presented by the Honorable Chester W. Cuthell, who will not be present until tomorrow, and as a result Major Rowland W. Fixel of Detroit has been kind

103. See Report of American Bar Association Committee on Aeronautical Law, Advance Program of the 53rd Annual Meeting of A. B. A., pp. 43-47.

enough to take Mr. Cuthell's place on today's program, and Major Fixel's place on tomorrow's program will be taken by Mr. Cuthell.

I take particular pleasure at this time in introducing the next speaker. First I want to say that not only was Major Fixel of great assistance to us at Milwaukee, but he has been identified with questions of Air Law for some time, and in August, '27, published a book entitled "Laws of Aerial Navigation," so for at least three years he has been an authority on this subject.

The subject assigned to him is, "The Regulation of Airports," and I take particular pleasure in introducing Major Rowland W. Fixel. (Applause.)