

SENATE BILL No. 85

February 14, 1991, Introduced by Senators EHLERS, CISKY, CARL and DE GROW and referred to the Committee on Judiciary.

A bill to amend sections 187 and 188 of Act No. 327 of the Public Acts of 1945, entitled as amended "Aeronautics code of the state of Michigan," section 187 as amended by Act No. 185 of the Public Acts of 1985 and section 188 as added by Act No. 81 of the Public Acts of 1985, being sections 259.187 and 259.188 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 187 and 188 of Act No. 327 of the
2 Public Acts of 1945, section 187 as amended by Act No. 185 of the
3 Public Acts of 1985 and section 188 as added by Act No. 81 of the
4 Public Acts of 1985, being sections 259.187 and 259.188 of the
5 Michigan Compiled Laws, are amended to read as follows:

6 Sec. 187. (1) The amount of alcohol or presence of a
7 controlled substance or both in the operator's blood at the time

1 alleged as shown by chemical analysis of that person's blood,
2 urine, or breath ~~shall be~~ IS admissible into evidence in a
3 criminal prosecution for any of the following:

4 (a) A violation of section 185 ~~—~~ OR 186, or of a local
5 ordinance substantially corresponding to section 185(1), (2), or
6 (3), or section 186.

7 (b) Manslaughter, OR ANOTHER OFFENSE THAT RESULTS IN A SERI-
8 OUS OR AGGRAVATED INJURY TO A PERSON OR THE DEATH OF A PERSON,
9 resulting from the operation of an aircraft while the operator is
10 alleged to have been under the influence of intoxicating liquor
11 or a controlled substance or a combination of intoxicating liquor
12 and a controlled substance, or to have had a blood alcohol con-
13 tent of 0.04% or more by weight of alcohol, or to have operated
14 the aircraft within 8 hours after the consumption of an intoxi-
15 cating liquor or a controlled substance.

16 (2) If a test is given, the results of the test shall be
17 made available to the person charged or the person's attorney
18 upon written request to the prosecution, with a copy of the
19 request filed with the court. The prosecution shall furnish the
20 report at least 2 days before the day of the trial and the
21 results shall be offered as evidence by the prosecution in a
22 criminal proceeding. Failure to fully comply with the request
23 ~~shall bar~~ BARS the admission of the results into evidence by
24 the prosecution.

25 (3) Except in a prosecution relating solely to a violation
26 of section 185(2), it shall be presumed that the operator was
27 under the influence of intoxicating liquor if there was at the

1 time 0.04% or more by weight of alcohol in the operator's blood
2 as shown by chemical analysis of that person's blood, urine, or
3 breath.

4 (4) A sample or specimen of urine or breath shall be taken
5 and collected in a reasonable manner. Only a licensed physician,
6 or a licensed nurse or medical technician under the direction of
7 a licensed physician and qualified to withdraw blood acting in a
8 medical environment, at the request of a peace officer, may with-
9 draw blood for the purpose of determining the amount of alcohol
10 or presence of a controlled substance or both in the person's
11 blood, as provided in this act. Liability for a crime or civil
12 damages predicated on the act of withdrawing blood and related
13 procedures shall not attach to a qualified person who withdraws
14 blood or assists in the withdrawal in accordance with this act
15 unless the withdrawal is performed in a negligent manner.

16 (5) The tests shall be administered at the request of a
17 peace officer having reasonable grounds to believe the person has
18 committed a crime described in subsection (1). A person who
19 takes a chemical test administered at the request of a peace
20 officer, as provided in this section, shall be given a reasonable
21 opportunity to have a person of his or her own choosing adminis-
22 ter 1 of the chemical tests described in this section within a
23 reasonable time after his or her detention, and the results of
24 the test shall be admissible and shall be considered with other
25 competent evidence in determining the innocence or guilt of the
26 defendant. If the person charged is administered a chemical test
27 by a person of his or her own choosing, the person charged shall

1 be responsible for obtaining a chemical analysis of the test
2 sample. The person charged shall be informed that he or she has
3 the right to demand that a person of his or her own choosing
4 administer 1 of the tests provided for in subsection (1), that
5 the results of the test shall be admissible and shall be consid-
6 ered with other competent evidence in determining the innocence
7 or guilt of the defendant, and that the person charged shall be
8 responsible for obtaining a chemical analysis of the test
9 sample.

10 (6) The person charged shall be advised of the following:

11 (a) That he or she is not required to take a test as pro-
12 vided in this section.

13 (b) That if the person refuses the request of a peace offi-
14 cer to take a test described in this section, a test shall not be
15 given without a court order.

16 (c) That a written report will be forwarded by the peace
17 officer to the federal aviation district office having jurisdic-
18 tion over the county in which the person refused to submit to the
19 test.

20 (7) This section ~~shall not be construed as limiting~~ DOES
21 NOT LIMIT the introduction of any other competent evidence bear-
22 ing upon the question of whether or not the person was under the
23 influence of intoxicating liquor or a controlled substance, or a
24 combination of intoxicating liquor and a controlled substance, or
25 whether the person had a blood alcohol content of 0.04% or more
26 by weight of alcohol, or whether the person operated the aircraft

1 within 8 hours after the consumption of an intoxicating liquor or
2 a controlled substance.

3 (8) If a jury instruction regarding a defendant's refusal to
4 submit to a chemical test under this section is requested by the
5 prosecution or the defendant, the jury instruction shall be given
6 as follows:

7 "Evidence was admitted in this case which, if believed by
8 the jury, could prove that the defendant had exercised his or her
9 right to refuse a chemical test. You are instructed that such a
10 refusal is within the statutory rights of the defendant and is
11 not evidence of his or her guilt. You are not to consider such a
12 refusal in determining the guilt or innocence of the defendant."

13 (9) If after an accident the operator of an aircraft
14 involved in the accident is transported to a medical facility and
15 a sample of the operator's blood is withdrawn at that time for
16 the purpose of medical treatment, the result of a chemical analy-
17 sis of that sample ~~shall be~~ IS admissible in a criminal prose-
18 cution for a crime described in subsection (1) to show the amount
19 of alcohol or presence of a controlled substance or both in the
20 person's blood at the time alleged, regardless of whether the
21 person had been offered or had refused a chemical test. The med-
22 ical facility or person performing the chemical analysis shall
23 disclose the results of the analysis to a prosecuting attorney
24 who requests the results for use in a criminal prosecution as
25 provided in this subsection. A medical facility or person dis-
26 closing information in compliance with this subsection shall not
27 be civilly or criminally liable for making the disclosure.

1 (10) If after an accident the operator of an aircraft
2 involved in the accident is deceased, a sample of the decedent's
3 blood shall be withdrawn in a manner directed by the medical
4 examiner for the purpose of determining blood alcohol content or
5 presence of a controlled substance, or both. THE MEDICAL
6 EXAMINER OR ATTENDING PHYSICIAN SHALL REPORT THE BLOOD ALCOHOL
7 CONTENT LEVEL TO THE INVESTIGATING POLICE AGENCY AND THE DEPART-
8 MENT OF STATE POLICE.

9 Sec. 188. (1) A person who operates an aircraft over or
10 upon the lands or waters of this state is considered to have
11 given consent to chemical tests of his or her blood, breath, or
12 urine for the purpose of determining the amount of alcohol or
13 presence of a controlled substance or both in his or her blood
14 if:

15 (a) The person is arrested for a violation of section 185 or
16 a local ordinance substantially corresponding to section 185(1),
17 (2), or (3).

18 (b) The person is arrested for manslaughter, OR ANOTHER
19 OFFENSE THAT RESULTS IN SERIOUS OR AGGRAVATED INJURY TO A PERSON
20 OR THE DEATH OF A PERSON, resulting from the operation of an air-
21 craft, and the peace officer had reasonable grounds to believe
22 that the person was operating the aircraft while under the influ-
23 ence of intoxicating liquor or a controlled substance or a combi-
24 nation of intoxicating liquor and a controlled substance, or
25 while having a blood alcohol content of 0.04% or more by weight
26 of alcohol, or ~~while~~ WITHIN 8 HOURS AFTER consuming an

1 intoxicating liquor or a controlled substance. ~~within 8 hours~~
2 ~~before operating the aircraft.~~

3 (2) A person who is afflicted with hemophilia, diabetes, or
4 a condition requiring the use of an anticoagulant under the
5 direction of a physician shall not be considered to have given
6 consent to the withdrawal of blood.

7 (3) The tests shall be administered as provided in
8 section 187.