

Act No. 62  
Public Acts of 1995  
Approved by the Governor  
May 30, 1995  
Filed with the Secretary of State  
May 31, 1995

**STATE OF MICHIGAN  
88TH LEGISLATURE  
REGULAR SESSION OF 1995**

Introduced by Rep. Nye

# **ENROLLED HOUSE BILL No. 4181**

AN ACT to amend sections 185, 186, 187, 188, and 189 of Act No. 327 of the Public Acts of 1945, entitled as amended "An act relating to aeronautics in this state; providing for the development and regulation thereof; creating a state aeronautics commission; prescribing powers and duties; providing for the licensing, or registration, or supervision and control of all aircraft, airports and landing fields, schools of aviation, flying clubs, airmen, aviation instructors, airport managers, manufacturers, dealers, and commercial operation in intrastate commerce; providing for rules pertaining thereto; prescribing a privilege tax for the use of the aeronautical facilities on the lands and waters of this state; providing for the acquisition, development, and operation of airports, landing fields, and other aeronautical facilities by the state and by political subdivisions; providing jurisdiction of crimes, torts, and contracts; providing police powers for those entrusted to enforce this act; providing for civil liability of owners, operators, and others; making hunting from aircraft unlawful; providing for repair station operators lien; providing for appeals from rules or orders issued by the commission; providing for the transfer from the Michigan board of aeronautics to the aeronautics commission all properties and funds held by the board of aeronautics; providing for a state aeronautics fund and making an appropriation therefor; prescribing penalties; and making uniform the law with reference to state development and regulation of aeronautics," sections 185, 186, 188, and 189 as added by Act No. 81 of the Public Acts of 1985 and section 187 as amended by Act No. 185 of the Public Acts of 1985, being sections 259.185, 259.186, 259.187, 259.188, and 259.189 of the Michigan Compiled Laws.

*The People of the State of Michigan enact:*

Section 1. Sections 185, 186, 187, 188, and 189 of Act No. 327 of the Public Acts of 1945, sections 185, 186, 188, and 189 as added by Act No. 81 of the Public Acts of 1985 and section 187 as amended by Act No. 185 of the Public Acts of 1985, being sections 259.185, 259.186, 259.187, 259.188, and 259.189 of the Michigan Compiled Laws, are amended to read as follows:

Sec. 185. (1) A person, whether or not the person is the holder of a certificate of competency issued pursuant to section 83, who is under the influence of intoxicating liquor or a controlled substance, or any drug or combination of drugs that renders a person incapable of safely operating an aircraft or acting as a crew member of an aircraft, or a combination of intoxicating liquor and a controlled substance or any drug or combination of drugs that renders a person incapable of safely operating an aircraft or acting as a crew member of an aircraft, shall not operate an aircraft or act or attempt to act as a crew member of an aircraft over or upon the lands or waters of this state. A peace officer may, without a warrant, arrest a person when the peace officer has reasonable cause to believe that the person was, at the time of an accident, the operator or crew member of an aircraft involved in the accident and was operating or acting or attempting to act as a crew member of the aircraft over or upon the lands or waters of this state while under the influence of intoxicating liquor or a controlled substance, or any drug or combination of drugs that renders a person incapable of safely operating an aircraft or acting as a crew member of an aircraft, or a combination of intoxicating liquor and a controlled substance or any drug or combination of drugs that renders a person incapable of safely operating an aircraft or acting as a crew member of an aircraft.

(2) A person, whether or not the person is the holder of a certificate of competency issued pursuant to section 83, who has an alcohol content of 0.02 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters

of urine shall not operate an aircraft or act or attempt to act as a crew member of an aircraft over or upon the lands or waters of this state.

(3) A person, whether or not the person is the holder of a certificate of competency issued pursuant to section 83, shall not operate an aircraft or act or attempt to act as a crew member of an aircraft over or upon the lands or waters of this state within 8 hours after the consumption of an intoxicating liquor or a controlled substance, or any drug or combination of drugs that renders a person incapable of safely operating an aircraft or acting as a crew member of an aircraft.

(4) A person, whether or not the person is the holder of a certificate of competency issued pursuant to section 83, who operates an aircraft or acts as a crew member of an aircraft in violation of subsection (1), (2), or (3) and by the operation of that aircraft or by serving as a crew member of that aircraft causes the death of another person is guilty of a felony, punishable by imprisonment for not more than 15 years or a fine of not less than \$2,500.00 or more than \$10,000.00, or both.

(5) A person, whether or not the person is the holder of a certificate of competency issued pursuant to section 83, who operates an aircraft or acts as a crew member of an aircraft in violation of subsection (1), (2), or (3) and by the operation of that aircraft or by serving as a crew member of that aircraft causes a serious impairment of a body function of another person is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not less than \$1,000.00 or more than \$5,000.00, or both. As used in this subsection, "serious impairment of a body function" includes, but is not limited to, 1 or more of the following:

- (a) Loss of a limb or use of a limb.
- (b) Loss of a hand, foot, finger, or thumb or use of a hand, foot, finger, or thumb.
- (c) Loss of an eye or ear or use of an eye or ear.
- (d) Loss or substantial impairment of a bodily function.
- (e) Serious visible disfigurement.
- (f) A comatose state that lasts for more than 3 days.
- (g) Measurable brain damage or mental impairment.
- (h) A skull fracture or other serious bone fracture.
- (i) Subdural hemorrhage or subdural hematoma.

(6) Except as otherwise provided, a person who violates this section is guilty of a misdemeanor, punishable by imprisonment for not more than 93 days, or a fine of not less than \$100.00 or more than \$500.00, or both, together with costs of the prosecution.

(7) A person who violates this section or a local ordinance substantially corresponding to subsection (1), (2), or (3) within 7 years of a prior conviction may be sentenced to imprisonment for not more than 1 year, or a fine of not less than \$200.00 or more than \$1,000.00, or both, together with costs of the prosecution. For purposes of this section, "prior conviction" means a conviction under this section, a local ordinance substantially corresponding to subsection (1), (2), or (3) or a law of another state substantially corresponding to subsection (1), (2), (3), (4), or (5).

(8) A person who violates this section or a local ordinance substantially corresponding to subsection (1), (2), or (3) within 10 years of 2 or more prior convictions, as defined in subsection (7), is guilty of a felony, punishable by imprisonment for not more than 5 years, or a fine of not less than \$500.00 or more than \$5,000.00, or both, together with costs of the prosecution.

(9) As part of the sentence for a violation of this section or a local ordinance substantially corresponding to subsection (1), (2), or (3), the court may order the person to perform service to the community, as designated by the court, without compensation, for a period not to exceed 45 days. The person shall reimburse the state or appropriate local unit of government for the cost of insurance incurred by the state or local unit of government as a result of the person's activities under this subsection.

(10) Before imposing sentence for a violation of this section or a local ordinance substantially corresponding to subsection (1), (2), or (3), the court shall order the person to undergo screening and assessment by a person or agency designated by the office of substance abuse services, to determine whether the person is likely to benefit from rehabilitative services, including alcohol or drug education and alcohol or drug treatment programs. As part of the sentence, the court may order the person to participate in and successfully complete 1 or more appropriate rehabilitative programs. The person shall pay for the costs of the screening, assessment, and rehabilitative services.

(11) Before accepting a plea of guilty or nolo contendere under this section, the court shall advise the accused of the statutory consequences possible as the result of a plea of guilty or nolo contendere in respect to the penalty imposed for violation of this section.

Sec. 186. The owner of an aircraft or the person in charge or in control of an aircraft shall not knowingly permit the aircraft to be operated over or upon the lands or waters of this state by a person who is under the influence of intoxicating liquor or a controlled substance, or any drug or combination of drugs that renders a person incapable of safely operating an aircraft or acting as a crew member of an aircraft, or a combination of intoxicating liquor and a controlled substance or any drug or combination of drugs that renders a person incapable of safely operating an aircraft

or acting as a crew member of an aircraft, or who consumed an intoxicating liquor or a controlled substance, or any drug or combination of drugs that renders a person incapable of safely operating an aircraft or acting as a crew member of an aircraft, within 8 hours before operating the aircraft or acting or attempting to act as a crew member of an aircraft. A person who violates this section is guilty of a misdemeanor, punishable by imprisonment for not more than 93 days, or a fine of not less than \$100.00 or more than \$500.00, or both, together with costs of the prosecution.

Sec. 187. (1) The amount of alcohol or the presence of a controlled substance, or both, or any drug or combination of drugs that renders a person incapable of safely operating an aircraft or acting as a crew member of an aircraft, in the operator's blood at the time alleged as shown by chemical analysis of that person's blood, urine, or breath is admissible into evidence in a criminal prosecution for a violation of section 185, 186, or of a local ordinance substantially corresponding to section 185(1), (2), or (3), or section 186.

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

(3) Except in a prosecution relating solely to a violation of section 185(2), it shall be presumed that the operator was under the influence of intoxicating liquor if the person's blood at the time contained 0.02 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine at the time of testing as shown by chemical analysis of that person's blood, urine, or breath.

(4) A sample or specimen of urine or breath shall be taken and collected in a reasonable manner. Only a licensed physician, or an individual operating under the delegation of a licensed physician under section 16215 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.16215 of the Michigan Compiled Laws, and qualified to withdraw blood acting in a medical environment, at the request of a peace officer, may withdraw blood for the purpose of determining the amount of alcohol or the presence of a controlled substance, or both, or the presence of any drug or combination of drugs that renders a person incapable of safely operating an aircraft or acting as a crew member of an aircraft, in the person's blood, as provided in this act. Liability for a crime or civil damages predicated on the act of withdrawing blood and related procedures shall not attach to a licensed physician or individual operating under the delegation of a licensed physician who withdraws or analyzes blood or assists in the withdrawal or analysis in accordance with this act unless the withdrawal or an analysis is performed in a negligent manner.

(5) The tests shall be administered at the request of a peace officer having reasonable grounds to believe the person has committed a crime described in subsection (1). A person who takes a chemical test administered at the request of a peace officer, as provided in this section, shall be given a reasonable opportunity to have a person of his or her own choosing administer 1 of the chemical tests described in this section within a reasonable time after his or her detention, and the results of the test shall be admissible and shall be considered with other competent evidence in determining the innocence or guilt of the defendant. If the person charged is administered a chemical test by a person of his or her own choosing, the person charged shall be responsible for obtaining a chemical analysis of the test sample. The person charged shall be informed that he or she has the right to demand that a person of his or her own choosing administer 1 of the tests provided for in subsection (1), that the results of the test shall be admissible and shall be considered with other competent evidence in determining the innocence or guilt of the defendant, and that the person charged shall be responsible for obtaining a chemical analysis of the test sample.

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

(a) That if the person refuses the lawful request of a peace officer to take a test described in this section, a test shall not be given without a court order.

(b) That a written report will be forwarded by the peace officer to the federal aviation district office having jurisdiction over the county in which the person refused to submit to the test.

(c) That the person may be subject to sanctions as provided under federal law and regulations promulgated pursuant to federal law.

(7) This section shall not be construed as limiting the introduction of any other competent evidence bearing upon the question of whether or not the person was under the influence of intoxicating liquor or a controlled substance, or any drug or combination of drugs that renders a person incapable of safely operating an aircraft or acting as a crew member of an aircraft, or a combination of intoxicating liquor and a controlled substance or any drug or combination of drugs that renders a person incapable of safely operating an aircraft or acting as a crew member of an aircraft, or whether the person had an alcohol content of 0.02 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, or whether the person acted or attempted to act as a crew member of an aircraft or operated an aircraft within 8 hours after the consumption of an intoxicating liquor or a controlled substance or any drug or combination of drugs that renders a person incapable of safely operating an aircraft or acting as a crew member of an aircraft.

(8) If after an accident the operator of an aircraft or a crew member of an aircraft involved in the accident is transported to a medical facility and a sample of the person's blood is withdrawn at that time for the purpose of medical treatment, the result of a chemical analysis of that sample shall be admissible in a criminal prosecution for a crime

described in subsection (1) to show the amount of alcohol or the presence of a controlled substance, or both, or the presence of any drug or combination of drugs that renders a person incapable of safely operating an aircraft or acting as a crew member of an aircraft, in the person's blood at the time alleged, regardless of whether the person had been offered or had refused a chemical test. The medical facility or person performing the chemical analysis shall disclose the results of the analysis to a prosecuting attorney who requests the results for use in a criminal prosecution as provided in this subsection. A medical facility or person disclosing information in compliance with this subsection shall not be civilly or criminally liable for making the disclosure.

(9) If after an accident the operator of an aircraft or a crew member of an aircraft involved in the accident is deceased, a sample of the decedent's blood shall be withdrawn in a manner directed by the medical examiner for the purpose of determining blood alcohol content or presence of a controlled substance, or both, or the presence of any drug or combination of drugs that renders a person incapable of safely operating an aircraft or acting as a crew member of an aircraft.

Sec. 188. (1) A person who operates or who is a crew member of an aircraft over or upon the lands or waters of this state is considered to have given consent to chemical tests of his or her blood, breath, or urine for the purpose of determining the amount of alcohol or the presence of a controlled substance, or both, or the presence of any drug or combination of drugs that renders a person incapable of safely operating an aircraft or acting as a crew member of an aircraft, in his or her blood if the person is arrested for a violation of section 185 or a local ordinance substantially corresponding to section 185(1), (2), or (3).

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

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

Sec. 189. If a person refuses the lawful request of a peace officer to submit to a chemical test offered pursuant to section 187, a test shall not be given without a court order. A written report shall be forwarded by the peace officer to the federal aviation commission's general aviation district office having jurisdiction over the county in which the person refused to submit to the test. The report shall state that the officer had reasonable grounds to believe that the person committed a crime described in section 188, and that the person refused to submit to the test upon the request of the peace officer and was advised of the consequences of the refusal. The form of the report shall be prescribed and furnished by the Michigan aeronautics commission.

Section 2. This amendatory act shall take effect October 1, 1995.

This act is ordered to take immediate effect.

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Clerk of the House of Representatives.

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Secretary of the Senate.

Approved -----

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Governor.

