



# HOUSE BILL No. 4181

January 30, 1995, Introduced by Rep. Nye and referred to the Committee on Judiciary and Civil Rights.

A bill to amend sections 185, 186, 187, 188, and 189 of Act No. 327 of the Public Acts of 1945, entitled as amended

"Aeronautics code of the state of Michigan,"

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:

1 Section 1. Sections 185, 186, 187, 188, and 189 of Act  
2 No. 327 of the Public Acts of 1945, sections 185, 186, 188, and  
3 189 as added by Act No. 81 of the Public Acts of 1985 and  
4 section 187 as amended by Act No. 185 of the Public Acts of 1985,  
5 being sections 259.185, 259.186, 259.187, 259.188, and 259.189 of  
6 the Michigan Compiled Laws, are amended to read as follows:

1        Sec. 185. (1) A person, whether or not the person is the  
2 holder of a certificate of competency issued pursuant to section  
3 83, who is under the influence of intoxicating liquor or a con-  
4 trolled substance OR ANY DRUG OR COMBINATION OF DRUGS THAT RENDER  
5 A PERSON INCAPABLE OF SAFELY OPERATING AN AIRCRAFT OR ACTING AS A  
6 CREW MEMBER OF AN AIRCRAFT, or a combination of intoxicating  
7 liquor and a controlled substance OR ANY DRUG OR COMBINATION OF  
8 DRUGS THAT RENDER A PERSON INCAPABLE OF SAFELY OPERATING AN AIR-  
9 CRAFT OR ACTING AS A CREW MEMBER OF AN AIRCRAFT, shall not oper-  
10 ate an aircraft OR ACT OR ATTEMPT TO ACT AS A CREW MEMBER OF AN  
11 AIRCRAFT over or upon the lands or waters of this state. A peace  
12 officer may, without a warrant, arrest a person when the peace  
13 officer has reasonable cause to believe that the person was, at  
14 the time of an accident, the operator OR CREW MEMBER of an air-  
15 craft involved in the accident and was operating OR ACTING OR  
16 ATTEMPTING TO ACT AS A CREW MEMBER OF the aircraft over or upon  
17 the lands or waters of this state while under the influence of  
18 intoxicating liquor or a controlled substance OR ANY DRUG OR COM-  
19 BINATION OF DRUGS THAT RENDER A PERSON INCAPABLE OF SAFELY OPER-  
20 ATING AN AIRCRAFT OR ACTING AS A CREW MEMBER OF AN AIRCRAFT, or a  
21 combination of intoxicating liquor and a controlled substance OR  
22 ANY DRUG OR COMBINATION OF DRUGS THAT RENDER A PERSON INCAPABLE  
23 OF SAFELY OPERATING AN AIRCRAFT OR ACTING AS A CREW MEMBER OF AN  
24 AIRCRAFT.

25        (2) A person, whether or not the person is the holder of a  
26 certificate of competency issued pursuant to section 83, ~~whose~~  
27 ~~blood contains 0.04% or more by weight of alcohol~~ WHO HAS AN

1 ALCOHOL CONTENT OF 0.02 GRAMS OR MORE PER 100 MILLILITERS OF  
2 BLOOD, PER 210 LITERS OF BREATH, OR PER 67 MILLILITERS OF URINE  
3 AT THE TIME OF TESTING IF THE TEST IS AT LEAST 3 HOURS AFTER THE  
4 TIME THE PERSON OPERATED AN AIRCRAFT OR ACTED OR ATTEMPTED TO ACT  
5 AS A CREW MEMBER OF AN AIRCRAFT, shall not operate an aircraft OR  
6 ACT OR ATTEMPT TO ACT AS A CREW MEMBER OF AN AIRCRAFT over or  
7 upon the lands or waters of this state.

8 (3) A person, whether or not the person is the holder of a  
9 certificate of competency issued pursuant to section 83, shall  
10 not operate an aircraft OR ACT OR ATTEMPT TO ACT AS A CREW MEMBER  
11 OF AN AIRCRAFT over or upon the lands or waters of this state  
12 within 8 hours after the consumption of an intoxicating liquor or  
13 a controlled substance OR ANY DRUG OR COMBINATION OF DRUGS THAT  
14 RENDER A PERSON INCAPABLE OF SAFELY OPERATING AN AIRCRAFT OR  
15 ACTING AS A CREW MEMBER OF AN AIRCRAFT.

16 (4) Except as otherwise provided, a person who violates this  
17 section is guilty of a misdemeanor, punishable by imprisonment  
18 for not more than 90 days, or a fine of not less than \$100.00  
19 ~~nor~~ OR more than \$500.00, or both, together with costs of the  
20 prosecution.

21 (5) A person who violates this section or a local ordinance  
22 substantially corresponding to subsection (1), (2), or (3) within  
23 7 years of a prior conviction may be sentenced to imprisonment  
24 for not more than 1 year, or a fine of not more than \$1,000.00,  
25 or both, together with costs of the prosecution. For purposes of  
26 this section, "prior conviction" means a conviction under this  
27 section, a local ordinance substantially corresponding to

1 subsection (1), (2), or (3) or a law of another state  
2 substantially corresponding to subsection (1), (2), or (3).

3 (6) A person who violates this section or a local ordinance  
4 substantially corresponding to subsection (1), (2), or (3) within  
5 10 years of 2 or more prior convictions, as defined in subsection  
6 (5), is guilty of a felony, punishable by imprisonment for not  
7 more than 4 years, or a fine of not more than \$2,000.00, or both,  
8 together with costs of the prosecution.

9 (7) As part of the sentence for a violation of this section  
10 or a local ordinance substantially corresponding to subsection  
11 (1), (2), or (3), the court may order the person to perform serv-  
12 ice to the community, as designated by the court, without compen-  
13 sation, for a period not to exceed 12 days. The person shall  
14 reimburse the state or appropriate local unit of government for  
15 the cost of insurance incurred by the state or local unit of gov-  
16 ernment as a result of the person's activities under this  
17 subsection.

18 (8) Before imposing sentence for a violation of this section  
19 or a local ordinance substantially corresponding to subsection  
20 (1), (2), or (3), the court shall order the person to undergo  
21 screening and assessment by a person or agency designated by the  
22 office of substance abuse services, to determine whether the  
23 person is likely to benefit from rehabilitative services, includ-  
24 ing alcohol or drug education and alcohol or drug treatment  
25 programs. As part of the sentence, the court may order the  
26 person to participate in and successfully complete 1 or more  
27 appropriate rehabilitative programs. The person shall pay for

1 the costs of the screening, assessment, and rehabilitative  
2 services.

3 (9) Before accepting a plea of guilty or nolo contendere  
4 under this section, the court shall advise the accused of the  
5 statutory consequences possible as the result of a plea of guilty  
6 or nolo contendere in respect to the penalty imposed for viola-  
7 tion of this section.

8 Sec. 186. The owner of an aircraft or the person in charge  
9 or in control of an aircraft shall not knowingly permit the air-  
10 craft to be operated over or upon the lands or waters of this  
11 state by a person who is under the influence of intoxicating  
12 liquor or a controlled substance OR ANY DRUG OR COMBINATION OF  
13 DRUGS THAT RENDER A PERSON INCAPABLE OF SAFELY OPERATING AN AIR-  
14 CRAFT OR ACTING AS A CREW MEMBER OF AN AIRCRAFT or a combination  
15 of intoxicating liquor and a controlled substance OR ANY DRUG OR  
16 COMBINATION OF DRUGS THAT RENDER A PERSON INCAPABLE OF SAFELY  
17 OPERATING AN AIRCRAFT OR ACTING AS A CREW MEMBER OF AN AIRCRAFT,  
18 or who consumed an intoxicating liquor or a controlled substance  
19 OR ANY DRUG OR COMBINATION OF DRUGS THAT RENDER A PERSON  
20 INCAPABLE OF SAFELY OPERATING AN AIRCRAFT OR ACTING AS A CREW  
21 MEMBER OF AN AIRCRAFT within 8 hours before operating the air-  
22 craft OR ACTING OR ATTEMPTING TO ACT AS A CREW MEMBER OF AN  
23 AIRCRAFT. A person who violates this section is guilty of a mis-  
24 demeanor, punishable by imprisonment for not more than 90 days,  
25 or a fine of not less than \$100.00 ~~nor~~ OR more than \$500.00, or  
26 both, together with costs of the prosecution.

1       Sec. 187. (1) The amount of alcohol or THE presence of a  
2 controlled substance OR ANY DRUG OR COMBINATION OF DRUGS THAT  
3 RENDER A PERSON INCAPABLE OF SAFELY OPERATING AN AIRCRAFT OR  
4 ACTING AS A CREW MEMBER OF AN AIRCRAFT, or both, in the  
5 operator's blood at the time alleged as shown by chemical analy-  
6 sis of that person's blood, urine, or breath ~~shall be~~ IS admis-  
7 sible into evidence in a criminal prosecution for any of the  
8 following:

9       (a) A violation of section 185, 186, or of a local ordinance  
10 substantially corresponding to section 185(1), (2), or (3), or  
11 section 186.

12       (b) Manslaughter resulting from the operation of an aircraft  
13 while the operator is alleged to have been under the influence of  
14 intoxicating liquor or a controlled substance OR ANY DRUG OR COM-  
15 BINATION OF DRUGS THAT RENDER A PERSON INCAPABLE OF SAFELY OPER-  
16 ATING AN AIRCRAFT OR ACTING AS A CREW MEMBER OF AN AIRCRAFT or a  
17 combination of intoxicating liquor and a controlled substance OR  
18 ANY DRUG OR COMBINATION OF DRUGS THAT RENDER A PERSON INCAPABLE  
19 OF SAFELY OPERATING AN AIRCRAFT OR ACTING AS A CREW MEMBER OF AN  
20 AIRCRAFT, or to have had ~~a blood~~ AN alcohol content of ~~0.04%~~  
21 0.02 GRAMS or more ~~by weight of alcohol~~ PER 100 MILLILITERS OF  
22 BLOOD, PER 210 LITERS OF BREATH, OR PER 67 MILLILITERS OF URINE  
23 AT THE TIME OF TESTING IF THE TEST IS AT LEAST 3 HOURS AFTER THE  
24 TIME THE PERSON OPERATED THE AIRCRAFT OR ACTED OR ATTEMPTED TO  
25 ACT AS A CREW MEMBER OF THE AIRCRAFT, or to have operated the  
26 aircraft OR ACTED OR ATTEMPTED TO ACT AS A CREW MEMBER OF AN  
27 AIRCRAFT within 8 hours after the consumption of an intoxicating

1 liquor or a controlled substance OR ANY DRUG OR COMBINATION OF  
2 DRUGS THAT RENDER A PERSON INCAPABLE OF SAFELY OPERATING AN AIR-  
3 CRAFT OR ACTING AS A CREW MEMBER OF AN AIRCRAFT.

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

13 (3) Except in a prosecution relating solely to a violation  
14 of section 185(2), it shall be presumed that the operator was  
15 under the influence of intoxicating liquor if ~~there was~~ THE  
16 PERSON'S BLOOD at the time ~~0.04%~~ CONTAINED 0.02 GRAMS or more  
17 ~~by weight of alcohol in the operator's blood~~ PER 100 MILLILI-  
18 TERS OF BLOOD, PER 210 LITERS OF BREATH, OR PER 67 MILLILITERS OF  
19 URINE AT THE TIME OF TESTING IF THE TEST IS AT LEAST 3 HOURS  
20 AFTER THE TIME THE PERSON OPERATED THE AIRCRAFT OR ACTED OR  
21 ATTEMPTED TO ACT AS A CREW MEMBER OF THE AIRCRAFT as shown by  
22 chemical analysis of that person's blood, urine, or breath.

23 (4) A sample or specimen of urine or breath shall be taken  
24 and collected in a reasonable manner. Only a licensed physician,  
25 or a licensed nurse or medical technician under the direction of  
26 a licensed physician and qualified to withdraw blood acting in a  
27 medical environment, at the request of a peace officer, may

1 withdraw blood for the purpose of determining the amount of  
2 alcohol or THE presence of a controlled substance OR ANY DRUG OR  
3 COMBINATION OF DRUGS THAT RENDER A PERSON INCAPABLE OF SAFELY  
4 OPERATING AN AIRCRAFT OR ACTING AS A CREW MEMBER OF AN AIRCRAFT,  
5 or both, in the person's blood, as provided in this act.

6 Liability for a crime or civil damages predicated on the act of  
7 withdrawing blood and related procedures shall not attach to a  
8 qualified person who withdraws blood or assists in the withdrawal  
9 in accordance with this act unless the withdrawal is performed in  
10 a negligent manner.

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



1 considered with other competent evidence in determining the  
2 innocence or guilt of the defendant, and that the person charged  
3 shall be responsible for obtaining a chemical analysis of the  
4 test sample.

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

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

8 (A) ~~(b)~~ That if the person refuses the LAWFUL request of a  
9 peace officer to take a test described in this section, ~~a test~~  
10 ~~shall not be given without a court order~~ THE PERSON IS GUILTY OF  
11 A MISDEMEANOR, PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 90  
12 DAYS, OR A FINE OF NOT MORE THAN \$100.00, OR BOTH.

13 (B) ~~(c)~~ That a written report will be forwarded by the  
14 peace officer to the federal aviation district office having  
15 jurisdiction over the county in which the person refused to  
16 submit to the test.

17 (7) This section shall not be construed as limiting the  
18 introduction of any other competent evidence bearing upon the  
19 question of whether or not the person was under the influence of  
20 intoxicating liquor or a controlled substance OR ANY DRUG OR COM-  
21 BINATION OF DRUGS THAT RENDER A PERSON INCAPABLE OF SAFELY OPER-  
22 ATING AN AIRCRAFT OR ACTING AS A CREW MEMBER OF AN AIRCRAFT, or a  
23 combination of intoxicating liquor and a controlled substance OR  
24 ANY DRUG OR COMBINATION OF DRUGS THAT RENDER A PERSON INCAPABLE  
25 OF SAFELY OPERATING AN AIRCRAFT OR ACTING AS A CREW MEMBER OF AN  
26 AIRCRAFT, or whether the person had ~~a blood~~ AN alcohol content  
27 of ~~0.04%~~ 0.02 GRAMS or more ~~by weight of alcohol~~ PER 100

1 MILLILITERS OF BLOOD, PER 210 LITERS OF BREATH, OR PER 67  
2 MILLILITERS OF URINE AT THE TIME OF TESTING IF THE TEST IS AT  
3 LEAST 3 HOURS AFTER THE TIME THE PERSON OPERATED THE AIRCRAFT OR  
4 ACTED OR ATTEMPTED TO ACT AS A CREW MEMBER OF THE AIRCRAFT, or  
5 whether the person ~~operated the~~ ACTED OR ATTEMPTED TO ACT AS A  
6 CREW MEMBER OF AN aircraft OR OPERATED AN AIRCRAFT within 8 hours  
7 after the consumption of an intoxicating liquor or a controlled  
8 substance OR ANY DRUG OR COMBINATION OF DRUGS THAT RENDER A  
9 PERSON INCAPABLE OF SAFELY OPERATING AN AIRCRAFT OR ACTING AS A  
10 CREW MEMBER OF AN AIRCRAFT.

11 ~~(8) If a jury instruction regarding a defendant's refusal~~  
12 ~~to submit to a chemical test under this section is requested by~~  
13 ~~the prosecution or the defendant, the jury instruction shall be~~  
14 ~~given as follows:~~

15 ~~"Evidence was admitted in this case which, if believed by~~  
16 ~~the jury, could prove that the defendant had exercised his or her~~  
17 ~~right to refuse a chemical test. You are instructed that such a~~  
18 ~~refusal is within the statutory rights of the defendant and is~~  
19 ~~not evidence of his or her guilt. You are not to consider such a~~  
20 ~~refusal in determining the guilt or innocence of the defendant."~~

21 (8) ~~(9)~~ If after an accident the operator of an aircraft  
22 OR A CREW MEMBER OF AN AIRCRAFT involved in the accident is  
23 transported to a medical facility and a sample of the  
24 ~~operator's~~ PERSON'S blood is withdrawn at that time for the  
25 purpose of medical treatment, the result of a chemical analysis  
26 of that sample shall be admissible in a criminal prosecution for  
27 a crime described in subsection (1) to show the amount of alcohol

1 or THE presence of a controlled substance OR ANY DRUG OR  
2 COMBINATION OF DRUGS THAT RENDER A PERSON INCAPABLE OF SAFELY  
3 OPERATING AN AIRCRAFT OR ACTING AS A CREW MEMBER OF AN AIRCRAFT,  
4 or both, in the person's blood at the time alleged, regardless of  
5 whether the person had been offered or had refused a chemical  
6 test. The medical facility or person performing the chemical  
7 analysis shall disclose the results of the analysis to a prose-  
8 cuting attorney who requests the results for use in a criminal  
9 prosecution as provided in this subsection. A medical facility  
10 or person disclosing information in compliance with this subsec-  
11 tion shall not be civilly or criminally liable for making the  
12 disclosure.

13 (9) ~~(10)~~ If after an accident the operator of an aircraft  
14 OR A CREW MEMBER OF AN AIRCRAFT involved in the accident is  
15 deceased, a sample of the decedent's blood shall be withdrawn in  
16 a manner directed by the medical examiner for the purpose of  
17 determining blood alcohol content or presence of a controlled  
18 substance OR ANY DRUG OR COMBINATION OF DRUGS THAT RENDER A  
19 PERSON INCAPABLE OF SAFELY OPERATING AN AIRCRAFT OR ACTING AS A  
20 CREW MEMBER OF AN AIRCRAFT, or both.

21 Sec. 188. (1) A person who operates OR WHO IS A CREW MEMBER  
22 OF an aircraft over or upon the lands or waters of this state is  
23 considered to have given consent to chemical tests of his or her  
24 blood, breath, or urine for the purpose of determining the amount  
25 of alcohol or THE presence of a controlled substance OR ANY DRUG  
26 OR COMBINATION OF DRUGS THAT RENDER A PERSON INCAPABLE OF SAFELY

1 OPERATING AN AIRCRAFT OR ACTING AS A CREW MEMBER OF AN AIRCRAFT,  
2 or both, in his or her blood if:

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

6 (b) The person is arrested for manslaughter resulting from  
7 the operation of an aircraft, and the peace officer had reason-  
8 able grounds to believe that the person EITHER was operating the  
9 aircraft OR WAS A CREW MEMBER OF THE AIRCRAFT while under the  
10 influence of intoxicating liquor or a controlled substance OR ANY  
11 DRUG OR COMBINATION OF DRUGS THAT RENDER A PERSON INCAPABLE OF  
12 SAFELY OPERATING AN AIRCRAFT OR ACTING AS A CREW MEMBER OF AN  
13 AIRCRAFT or a combination of intoxicating liquor and a controlled  
14 substance OR ANY DRUG OR COMBINATION OF DRUGS THAT RENDER A  
15 PERSON INCAPABLE OF SAFELY OPERATING AN AIRCRAFT OR ACTING AS A  
16 CREW MEMBER OF AN AIRCRAFT, or while having ~~a blood~~ AN alcohol  
17 content of ~~0.04% or more by weight of alcohol~~ 0.02 GRAMS OR  
18 MORE PER 100 MILLILITERS OF BLOOD, PER 210 LITERS OF BREATH, OR  
19 PER 67 MILLILITERS OF URINE AT THE TIME OF TESTING IF THE TEST IS  
20 AT LEAST 3 HOURS AFTER THE TIME THE PERSON OPERATED AN AIRCRAFT,  
21 or while consuming an intoxicating liquor or a controlled sub-  
22 stance OR ANY DRUG OR COMBINATION OF DRUGS THAT RENDER A PERSON  
23 INCAPABLE OF SAFELY OPERATING AN AIRCRAFT OR ACTING AS A CREW  
24 MEMBER OF AN AIRCRAFT within 8 hours before operating the  
25 aircraft.

26 (2) A person who is afflicted with hemophilia, diabetes, or  
27 a condition requiring the use of an anticoagulant under the

1 direction of a physician shall not be considered to have given  
2 consent to the withdrawal of blood.

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

5 Sec. 189. If a person refuses the LAWFUL request of a peace  
6 officer to submit to a chemical test offered pursuant to section  
7 187, ~~a test shall not be given without a court order~~ THE PERSON  
8 IS GUILTY OF A MISDEMEANOR, PUNISHABLE BY IMPRISONMENT FOR NOT  
9 MORE THAN 90 DAYS, OR A FINE OF NOT MORE THAN \$100.00, OR BOTH.  
10 A written report shall be forwarded by the peace officer to the  
11 federal aviation commission's general aviation district office  
12 having jurisdiction over the county in which the person refused  
13 to submit to the test. The report shall state that the officer  
14 had reasonable grounds to believe that the person ~~had~~ committed  
15 a crime described in section 188, and that the person ~~had~~  
16 refused to submit to the test upon the request of the peace offi-  
17 cer and ~~had been~~ WAS advised of the consequences of the  
18 refusal. The form of the report shall be prescribed and fur-  
19 nished by the Michigan aeronautics commission.