



SENATE BILL No. 87

January 17, 1995, Introduced by Senator VAN
REGENMORTER and referred to the Committee on
Transportation and Tourism.

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 185, 187, and 188 of Act No. 327 of the
2 Public Acts of 1945, sections 185 and 188 as added by Act No. 81
3 of the Public Acts of 1985 and section 187 as amended by Act
4 No. 185 of the Public Acts of 1985, being sections 259.185,
5 259.187, and 259.188 of the Michigan Compiled Laws, are amended
6 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 a combination of intoxicating liquor and a
5 controlled substance, shall not operate an aircraft over or upon
6 the lands or waters of this state. A peace officer may, without
7 a warrant, arrest a person when the peace officer has reasonable
8 cause to believe that the person was, at the time of an accident,
9 the operator of an aircraft involved in the accident and was
10 operating the aircraft over or upon the lands or waters of this
11 state while under the influence of intoxicating liquor or a con-
12 trolled substance, or a combination of intoxicating liquor and a
13 controlled substance.

14 (2) A person, whether or not the person is the holder of a
15 certificate of competency issued pursuant to section 83, whose
16 blood contains ~~0.04%~~ 0.02% or more by weight of alcohol, shall
17 not operate an aircraft over or upon the lands or waters of this
18 state.

19 (3) A person, whether or not the person is the holder of a
20 certificate of competency issued pursuant to section 83, shall
21 not operate an aircraft over or upon the lands or waters of this
22 state within 8 hours after the consumption of an intoxicating
23 liquor or a controlled substance.

24 (4) Except as otherwise provided, a person who violates this
25 section is guilty of a misdemeanor, punishable by imprisonment
26 for not more than 90 days, or a fine of not less than \$100.00

1 ~~nor~~ OR more than \$500.00, or both, together with costs of the
2 prosecution.

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

12 (6) A person who violates this section or a local ordinance
13 substantially corresponding to subsection (1), (2), or (3) within
14 10 years of 2 or more prior convictions, as defined in subsection
15 (5), is guilty of a felony, punishable by imprisonment for not
16 more than 4 years, or a fine of not more than \$2,000.00, or both,
17 together with costs of the prosecution.

18 (7) As part of the sentence for a violation of this section
19 or a local ordinance substantially corresponding to subsection
20 (1), (2), or (3), the court may order the person to perform serv-
21 ice to the community, as designated by the court, without compen-
22 sation, for a period not to exceed 12 days. The person shall
23 reimburse the state or appropriate local unit of government for
24 the cost of insurance incurred by the state or local unit of gov-
25 ernment as a result of the person's activities under this
26 subsection.

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

13 (9) Before accepting a plea of guilty or nolo contendere
14 under this section, the court shall advise the accused of the
15 statutory consequences possible as the result of a plea of guilty
16 or nolo contendere in respect to the penalty imposed for viola-
17 tion of this section.

18 Sec. 187. (1) The amount of alcohol or presence of a con-
19 trolled substance or both in the operator's blood at the time
20 alleged as shown by chemical analysis of that person's blood,
21 urine, or breath shall be admissible into evidence in a criminal
22 prosecution for any of the following:

23 (a) A violation of section 185, 186, or of a local ordinance
24 substantially corresponding to section 185(1), (2), or (3), or
25 section 186.

26 (b) Manslaughter resulting from the operation of an aircraft
27 while the operator is alleged to have been under the influence of

1 intoxicating liquor or a controlled substance or a combination of
2 intoxicating liquor and a controlled substance, or to have had a
3 blood alcohol content of ~~0.04%~~ 0.02% or more by weight of alco-
4 hol, or to have operated the aircraft within 8 hours after the
5 consumption of an intoxicating liquor or a controlled substance.

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

15 (3) Except in a prosecution relating solely to a violation
16 of section 185(2), it shall be presumed that the operator was
17 under the influence of intoxicating liquor if there was at the
18 time ~~0.04%~~ 0.02% or more by weight of alcohol in the operator's
19 blood as shown by chemical analysis of that person's blood,
20 urine, or breath.

21 (4) A sample or specimen of urine or breath shall be taken
22 and collected in a reasonable manner. Only a licensed physician,
23 or a licensed nurse or medical technician under the direction of
24 a licensed physician and qualified to withdraw blood acting in a
25 medical environment, at the request of a peace officer, may with-
26 draw blood for the purpose of determining the amount of alcohol
27 or presence of a controlled substance or both in the person's

1 blood, as provided in this act. Liability for a crime or civil
2 damages predicated on the act of withdrawing blood and related
3 procedures shall not attach to a qualified person who withdraws
4 blood or assists in the withdrawal in accordance with this act
5 unless the withdrawal is performed in a negligent manner.

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

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

2 (a) That he or she is not required to take a test as
3 provided in this section.

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

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

11 (7) This section shall not be construed as limiting the
12 introduction of any other competent evidence bearing upon the
13 question of whether or not the person was under the influence of
14 intoxicating liquor or a controlled substance, or a combination
15 of intoxicating liquor and a controlled substance, or whether the
16 person had a blood alcohol content of ~~0.04%~~ 0.02% or more by
17 weight of alcohol, or whether the person operated the aircraft
18 within 8 hours after the consumption of an intoxicating liquor or
19 a controlled substance.

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

24 "Evidence was admitted in this case which, if believed by
25 the jury, could prove that the defendant had exercised his or her
26 right to refuse a chemical test. You are instructed that such a
27 refusal is within the statutory rights of the defendant and is

1 not evidence of his or her guilt. You are not to consider such a
2 refusal in determining the guilt or innocence of the defendant."

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

18 (10) If after an accident the operator of an aircraft
19 involved in the accident is deceased, a sample of the decedent's
20 blood shall be withdrawn in a manner directed by the medical
21 examiner for the purpose of determining blood alcohol content or
22 presence of a controlled substance, or both.

23 Sec. 188. (1) A person who operates an aircraft over or
24 upon the lands or waters of this state is considered to have
25 given consent to chemical tests of his or her blood, breath, or
26 urine for the purpose of determining the amount of alcohol or

1 presence of a controlled substance or both in his or her blood
2 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 was operating the air-
9 craft while under the influence of intoxicating liquor or a con-
10 trolled substance or a combination of intoxicating liquor and a
11 controlled substance, or while having a blood alcohol content of
12 ~~0.04%~~ 0.02% or more by weight of alcohol, or while consuming an
13 intoxicating liquor or a controlled substance within 8 hours
14 before operating the aircraft.

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

19 (3) The tests shall be administered as provided in section
20 187.