

HOUSE BILL No. 6133

November 8, 1990, Introduced by Reps. Kulchitsky and Bryant
and referred to the Committee on Transportation.

A bill to amend sections 185, 186, 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, 186, 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, 259.186, 259.187,
and 259.188 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 185, 186, 187, and 188 of Act No. 327
2 of the Public Acts of 1945, sections 185, 186, and 188 as added
3 by Act No. 81 of the Public Acts of 1985 and section 187 as
4 amended by Act No. 185 of the Public Acts of 1985, being sections
5 259.185, 259.186, 259.187, and 259.188 of the Michigan Compiled
6 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 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%~~ 0.01% 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~~ 12 hours after the consumption of an intoxicat-
23 ing 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 ~~not~~ 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~~ AFTER a prior conviction may be sentenced to impris-
6 onment for not more than 1 year, or a fine of not more than
7 \$1,000.00, or both, together with costs of the prosecution. For
8 purposes of this section, "prior conviction" means a conviction
9 under this section, a local ordinance substantially corresponding
10 to subsection (1), (2), or (3) or a law of another state substan-
11 tially 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~~ AFTER 2 or more prior convictions, as defined in
15 subsection (5), is guilty of a felony, punishable by imprisonment
16 for not more than 4 years, or a fine of not more than \$2,000.00,
17 or both, 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. 186. The owner of an aircraft or the person in charge
19 or in control of an aircraft shall not knowingly permit the air-
20 craft to be operated over or upon the lands or waters of this
21 state by a person who is under the influence of intoxicating
22 liquor or a controlled substance or a combination of intoxicating
23 liquor and a controlled substance, or who consumed an intoxicat-
24 ing liquor or a controlled substance within ~~8~~ 12 hours before
25 operating the aircraft. A person who violates this section is
26 guilty of a misdemeanor, punishable by imprisonment for not more

1 than 90 days, or a fine of not less than \$100.00 ~~nor~~ OR more
2 than \$500.00, or both, together with costs of the prosecution.

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

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

11 (b) Manslaughter resulting from the operation of an aircraft
12 while the operator is alleged to have been under the influence of
13 intoxicating liquor or a controlled substance or a combination of
14 intoxicating liquor and a controlled substance, or to have had a
15 blood alcohol content of ~~0.04%~~ 0.01% or more by weight of alco-
16 hol, or to have operated the aircraft within ~~8~~ 12 hours after
17 the consumption of an intoxicating liquor or a controlled
18 substance.

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

1 (3) Except in a prosecution relating solely to a violation
2 of section 185(2), it shall be presumed that the operator was
3 under the influence of intoxicating liquor if there was at the
4 time ~~0.04%~~ 0.01% or more by weight of alcohol in the operator's
5 blood as shown by chemical analysis of that person's blood,
6 urine, or breath.

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

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

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

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

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

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

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

23 (7) This section shall not be construed as limiting the
24 introduction of any other competent evidence bearing upon the
25 question of whether or not the person was under the influence of
26 intoxicating liquor or a controlled substance, or a combination
27 of intoxicating liquor and a controlled substance, or whether the

1 person had a blood alcohol content of ~~0.04%~~ 0.01% or more by
2 weight of alcohol, or whether the person operated the aircraft
3 within ~~8~~ 12 hours after the consumption of an intoxicating
4 liquor or a controlled substance.

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

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

15 (9) If after an accident the operator of an aircraft
16 involved in the accident is transported to a medical facility and
17 a sample of the operator's blood is withdrawn at that time for
18 the purpose of medical treatment, the result of a chemical analy-
19 sis of that sample shall be admissible in a criminal prosecution
20 for a crime described in subsection (1) to show the amount of
21 alcohol or presence of a controlled substance or both in the
22 person's blood at the time alleged, regardless of whether the
23 person had been offered or had refused a chemical test. The med-
24 ical facility or person performing the chemical analysis shall
25 disclose the results of the analysis to a prosecuting attorney
26 who requests the results for use in a criminal prosecution as
27 provided in this subsection. A medical facility or person

1 disclosing information in compliance with this subsection shall
2 not be civilly or criminally liable for making the disclosure.

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

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

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

17 (b) The person is arrested for manslaughter resulting from
18 the operation of an aircraft, and the peace officer had reason-
19 able grounds to believe that the person was operating the air-
20 craft while under the influence of intoxicating liquor or a con-
21 trolled substance or a combination of intoxicating liquor and a
22 controlled substance, or while having a blood alcohol content of
23 ~~0.04%~~ 0.01% or more by weight of alcohol, or while consuming an
24 intoxicating liquor or a controlled substance within ~~8~~ 12 hours
25 before operating the 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.