

# SENATE BILL No. 168

February 22, 1989, Introduced by Senators EHLERS, CRUCE, J. HART, DE GROW, FESSLER, CARL, FREDRICKS, CROPSEY, BARCIA, FAUST and WELBORN 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 admissible into evidence in a criminal  
3 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 WHICH RESULTS IN A  
8 SERIOUS OR AGGRAVATED INJURY TO A PERSON OR THE DEATH OF A  
9 PERSON, resulting from the operation of an aircraft while the  
10 operator is alleged to have been under the influence of intoxi-  
11 cating liquor or a controlled substance or a combination of  
12 intoxicating liquor and a controlled substance, or to have had a  
13 blood alcohol content of 0.04% or more by weight of alcohol, or  
14 to have operated the aircraft within 8 hours after the consump-  
15 tion of an intoxicating 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 the admission of the results into evidence by the  
24 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 the  
21 introduction of any other competent evidence bearing upon the  
22 question of whether or not the person was under the influence of  
23 intoxicating liquor or a controlled substance, or a combination  
24 of intoxicating liquor and a controlled substance, or whether the  
25 person had a blood alcohol content of 0.04% or more by weight of  
26 alcohol, or whether the person operated the aircraft within

1 8 hours after the consumption of an intoxicating liquor or a  
2 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 admissible in a criminal prosecution  
18 for a crime described in subsection (1) to show the amount of  
19 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.

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

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

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