

Official HB

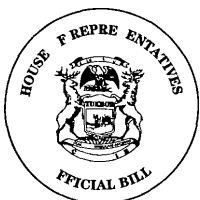
Clerk

Passed the House

Co Clerk of the House of Representatives

Passed the Senate

Secretary of the Senate





HOUSE BILL No. 5922

November 10 1994 Introduced by Rep Nye and referred to the Committee on Judiciary

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 ~~not~~ 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