

SENATE BILL No. 1251

April 25, 2002, Introduced by Senators SCHWARZ and VAN REGENMORTER and referred to the Committee on Judiciary.

A bill to amend 1993 PA 354, entitled
"Railroad code of 1993,"
by amending sections 105, 109, 353, 357, 359, 361, and 365
(MCL 462.105, 462.109, 462.353, 462.357, 462.359, 462.361, and
462.365); and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 105. (1) "Active traffic control devices" means those
2 traffic control devices located at or in advance of grade cross-
3 ings, activated by the approach or presence of a train, such as
4 flashing light signals, automatic gates and similar devices, man-
5 ually operated devices, and a crossing watchperson, all of which
6 display to operators of approaching vehicles positive warning of
7 the approach or presence of a train.

1 (2) "ALCOHOLIC LIQUOR" MEANS THAT TERM AS DEFINED IN SECTION
2 105 OF THE MICHIGAN LIQUOR CONTROL CODE, 1998 PA 58,
3 MCL 436.1105.

4 (3) ~~-(2)-~~ "Bridge" means a structure including supports
5 erected over a depression or an obstruction, such as water, a
6 highway, or a railway, having a track or passageway for carrying
7 traffic or other moving loads, and having an opening measured
8 along the center of the roadway of more than 20 feet between
9 undercopings of abutments or spring lines of arches, or extreme
10 ends of openings for multiple boxes where the clear distance
11 between openings is less than half of the smaller contiguous
12 opening.

13 (4) ~~-(3)-~~ "Bridge carrying railroad traffic" means any
14 bridge carrying a railroad track on which locomotives, railroad
15 cars, or railroad maintenance machinery may be operated or
16 moved. Bridge carrying railroad traffic includes unloading pits,
17 turntables, and ferry aprons which meet the physical criteria for
18 the definition of a bridge.

19 (5) ~~-(4)-~~ "Department" means the Michigan department of
20 transportation.

21 (6) ~~-(5)-~~ "Diagnostic study team" means a group of knowl-
22 edgeable individuals from the department, road authorities, rail-
23 roads, and others who meet and, using crossing safety management
24 principles, evaluate conditions at proposed or existing crossings
25 and assist the department in making determinations concerning
26 safety needs.

1 (7) ~~-(6)-~~ "Flagger" means a person, other than a railroad
2 employee, clearly visible to approaching traffic at all times,
3 who controls highway traffic through work areas using a hand-held
4 paddle sign during daylight hours and approved lights and reflec-
5 torized paddle signs at night.

6 (8) ~~-(7)-~~ "Grade crossing" means the point at which any
7 railroad intersects with any public street or highway, or a non-
8 motorized trail.

9 (9) ~~-(8)-~~ "Grade separation" means an intersection of a
10 railroad and a highway at different levels with either the rail-
11 road above or below the highway.

12 Sec. 109. (1) "Railroad" means a person, partnership, asso-
13 ciation, or corporation, their respective lessees, trustees, or
14 receivers, appointed by a court, or other legal entity operating
15 in this state either as a common carrier for hire or for private
16 use as a carrier of persons or property upon cars operated upon
17 stationary rails and includes any person, partnership, associa-
18 tion, corporation, trustee, or receiver appointed by a court or
19 any other legal entity owning railroad tracks.

20 (2) "Road authority" means a governmental agency having
21 jurisdiction over public streets and highways. Road authority
22 includes the department, any other state agency, and county,
23 city, and village governmental agencies responsible for the con-
24 struction, repair, and maintenance of streets and highways.

25 (3) "SERIOUS IMPAIRMENT OF A BODY FUNCTION" MEANS THAT TERM
26 AS DEFINED IN SECTION 58C OF THE MICHIGAN VEHICLE CODE, 1949 PA
27 300, MCL 257.58C.

1 (4) ~~-(3)-~~ "Street railway" means an organization formed
2 under the laws of this state for the purpose of operating a
3 street railway system other than a railroad train for transport-
4 ing persons or property. A street railway system is operated
5 upon rails principally within a municipality utilizing street-
6 cars, trolleys, and trams for the transportation of persons or
7 property. Such organizations may accumulate, store, manufacture,
8 conduct, use, sell, furnish, and supply electricity and electric
9 power.

10 (5) ~~-(4)-~~ "Street railway system" means the facilities,
11 equipment, and personnel required to provide and maintain a
12 public transportation service.

13 (6) ~~-(5)-~~ "Traffic control device" means a sign, signal,
14 marking, or other device placed on or adjacent to a street or
15 highway by the road authority having jurisdiction over that
16 street or highway to regulate, warn, or guide traffic.

17 (7) ~~-(6)-~~ "Watchperson" means a railroad employee who is
18 stationed at an at-grade crossing to signal to operators of vehi-
19 cles approaching the crossing of the impending movement of a
20 train or other railroad on-track equipment over the crossing.

21 Sec. 353. (1) A person who is under the influence of
22 ~~intoxicating~~ ALCOHOLIC liquor or a controlled substance, or a
23 combination of ~~intoxicating~~ ALCOHOLIC liquor and a controlled
24 substance, OR WHOSE ABILITY TO OPERATE A LOCOMOTIVE ENGINE IS
25 VISIBLY IMPAIRED DUE TO THE CONSUMPTION OF ALCOHOLIC LIQUOR OR A
26 CONTROLLED SUBSTANCE OR BOTH shall not operate a locomotive
27 engine upon the railroad tracks of this state. A peace officer

1 may, without a warrant, arrest a person when the peace officer
2 has reasonable cause to believe that the person, at the time of
3 an accident, was the operator of a locomotive engine involved in
4 the accident and was operating the locomotive engine upon the
5 railroad tracks of this state while under the influence of
6 ~~intoxicating~~ ALCOHOLIC liquor or a controlled substance, or a
7 combination of ~~intoxicating~~ ALCOHOLIC liquor and a controlled
8 substance.

9 (2) A person ~~whose blood contains 0.10% or more by weight~~
10 ~~of alcohol~~ WHO HAS AN ALCOHOL CONTENT OF 0.02 GRAMS OR MORE PER
11 100 MILLILITERS OF BLOOD, PER 210 LITERS OF BREATH, OR PER 67
12 MILLILITERS OF URINE shall not operate a locomotive engine upon
13 the railroad tracks of this state.

14 (3) Except as otherwise provided, a person who violates this
15 section is guilty of a misdemeanor, punishable by imprisonment
16 for not more than ~~90~~ 93 days, or a fine of not less than
17 \$100.00 nor more than \$500.00, or both, together with costs of
18 the prosecution.

19 (4) A person who violates this section or a local ordinance
20 substantially corresponding to subsection (1) or (2) within 7
21 years of a prior conviction may be sentenced to imprisonment for
22 not more than 1 year, or a fine of not LESS THAN \$200.00 OR more
23 than \$1,000.00, or both, together with costs of the prosecution.
24 For purposes of this section, "prior conviction" means a convic-
25 tion under this section, a local ordinance substantially corre-
26 sponding to subsection (1) or (2), or a law of another state
27 substantially corresponding to subsection (1) or (2).

1 (5) A person who violates this section or a local ordinance
2 substantially corresponding to subsection (1) or (2) within 10
3 years of 2 or more prior convictions, as defined in subsection
4 (4), is guilty of a felony, punishable by imprisonment for not
5 more than ~~4~~ 5 years, or a fine of not LESS THAN \$500.00 OR more
6 than ~~\$2,000.00~~ \$5,000.00, or both, together with costs of the
7 prosecution.

8 (6) A PERSON WHO OPERATES A LOCOMOTIVE ENGINE IN VIOLATION
9 OF SUBSECTION (1) OR (2) AND BY THE OPERATION OF THAT LOCOMOTIVE
10 ENGINE CAUSES THE DEATH OF ANOTHER PERSON IS GUILTY OF A FELONY
11 PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 15 YEARS OR A FINE
12 OF NOT LESS THAN \$2,500.00 OR MORE THAN \$10,000.00, OR BOTH.

13 (7) A PERSON WHO OPERATES A LOCOMOTIVE ENGINE IN VIOLATION
14 OF SUBSECTION (1) OR (2) AND BY THE OPERATION OF THAT LOCOMOTIVE
15 ENGINE CAUSES A SERIOUS IMPAIRMENT OF A BODY FUNCTION OF ANOTHER
16 PERSON IS GUILTY OF A FELONY PUNISHABLE BY IMPRISONMENT FOR NOT
17 MORE THAN 5 YEARS OR A FINE OF NOT LESS THAN \$1,000.00 OR MORE
18 THAN \$5,000.00, OR BOTH.

19 (8) ~~-(6)-~~ As part of the sentence for a violation of this
20 section or a local ordinance substantially corresponding to sub-
21 section (1) or (2), the court may order the person to perform
22 service to the community, as designated by the court, without
23 compensation, for a period not to exceed ~~12~~ 45 days. The
24 person shall reimburse the state or appropriate local unit of
25 government for the cost of insurance incurred by the state or
26 local unit of government as a result of the person's activities
27 under this subsection.

1 (9) ~~-(7)-~~ Before imposing sentence for a violation of this
2 section or a local ordinance substantially corresponding to sub-
3 section (1) or (2), 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 (10) ~~-(8)-~~ Before accepting a plea of guilty under this sec-
14 tion, the court shall advise the accused of the statutory conse-
15 quences possible as the result of a plea of guilty in respect to
16 the penalty imposed for violation of this section.

17 Sec. 357. The owner of a locomotive engine or the person in
18 charge or in control of a locomotive engine, or a person acting
19 as a conductor of any train of cars, shall not authorize or know-
20 ingly permit the locomotive engine to be operated upon the rail-
21 road tracks of this state by a person who is IMPAIRED BY OR under
22 the influence of ~~intoxicating~~ ALCOHOLIC liquor or a controlled
23 substance, or a combination of ~~intoxicating~~ ALCOHOLIC liquor
24 and a controlled substance OR WHO HAS AN ALCOHOL CONTENT OF 0.02
25 GRAMS OR MORE PER 100 MILLILITERS OF BLOOD, PER 210 LITERS OF
26 BREATH, OR PER 67 MILLILITERS OF URINE. A person who violates
27 this section is guilty of a misdemeanor, punishable by

1 imprisonment for not more than ~~90~~ 93 days, or a fine of not
2 less than \$100.00 nor more than \$500.00, or both, together with
3 costs of the prosecution.

4 Sec. 359. (1) The amount of alcohol or presence of a con-
5 trolled substance or both in the operator's blood at the time
6 alleged as shown by chemical analysis of that person's blood,
7 urine, or breath shall be admissible into evidence in a criminal
8 prosecution for any of the following:

9 (a) A violation of section 353 ~~—, 355,~~ or 357 ~~—~~ or of a
10 local ordinance substantially corresponding to section 353(1) or
11 (2) ~~—, 355,~~ or 357.

12 (b) Manslaughter resulting from the operation of a locomo-
13 tive engine while the operator is alleged to have been impaired
14 by or under the influence of ~~intoxicating~~ ALCOHOLIC liquor or a
15 controlled substance or a combination of ~~intoxicating~~ ALCOHOLIC
16 liquor and a controlled substance, or to have had a blood alcohol
17 content of ~~0.10% 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.

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

1 the request shall bar the admission of the results into evidence
2 by the prosecution.

3 ~~-(3) Except in a prosecution relating solely to a violation~~
4 ~~of section 353(2), the amount of alcohol in the operator's blood~~
5 ~~at the time alleged as shown by chemical analysis of that~~
6 ~~person's blood, urine, or breath shall give rise to the following~~
7 ~~presumptions:~~

8 ~~(a) If there was at the time 0.07% or less by weight of~~
9 ~~alcohol in the person's blood, it shall be presumed that the~~
10 ~~person was not under the influence of intoxicating liquor.~~

11 ~~(b) If there was at the time in excess of 0.07% but less~~
12 ~~than 0.10% by weight of alcohol in the person's blood, it shall~~
13 ~~be presumed that the person's ability to operate a locomotive~~
14 ~~engine was impaired within the provisions of section 355 due to~~
15 ~~the consumption of intoxicating liquor.~~

16 ~~(c) If there was at the time 0.10% or more by weight of~~
17 ~~alcohol in the person's blood, it shall be presumed that the~~
18 ~~person was under the influence of intoxicating liquor.~~

19 (3) ~~-(4)-~~ A sample or specimen of urine or breath shall be
20 taken and collected in a reasonable manner. Only a licensed phy-
21 sician, or ~~a licensed nurse or medical technician under the~~
22 ~~direction~~ AN INDIVIDUAL OPERATING UNDER THE DELEGATION of a
23 licensed physician UNDER SECTION 16215 OF THE PUBLIC HEALTH CODE,
24 1978 PA 368, MCL 333.16215, and qualified to withdraw blood
25 acting in a medical environment, at the request of a peace offi-
26 cer, may withdraw blood for the purpose of determining the amount
27 of alcohol or presence of a controlled substance or both in the

1 person's blood, as provided in this section. Liability for a
2 crime or civil damages predicated on the act of withdrawing OR
3 ANALYZING blood and related procedures shall not attach to a
4 ~~qualified person~~ LICENSED PHYSICIAN OR INDIVIDUAL OPERATING
5 UNDER THE DELEGATION OF A LICENSED PHYSICIAN who withdraws blood
6 OR ANALYZES BLOOD or assists in the withdrawal OR ANALYSIS in
7 accordance with this section unless the withdrawal OR ANALYSIS is
8 performed in a negligent manner.

9 (4) ~~(5)~~ The tests shall be administered at the request of
10 a peace officer having ~~probable cause~~ REASONABLE GROUNDS to
11 believe the person has committed a crime described in subsection
12 (1). A person who takes a chemical test administered at the
13 request of a peace officer, as provided in this section, shall be
14 given a reasonable opportunity to have a person of his or her own
15 choosing administer 1 of the chemical tests described in this
16 section within a reasonable time after his or her detention. ~~—~~
17 ~~and the~~ THE results of the test shall be admissible and shall be
18 considered with other ~~competent~~ ADMISSIBLE evidence in deter-
19 mining the innocence or guilt of the defendant. If the person
20 charged is administered a chemical test by a person of his or her
21 own choosing, the person charged ~~shall be~~ IS responsible for
22 obtaining a chemical analysis of the test sample. The person
23 charged shall be informed that after taking a test administered
24 at the request of a peace officer he or she has the right to
25 demand that a person of his or her own choosing administer 1 of
26 the tests provided for in subsection (1), that the results of the
27 test shall be admissible and shall be considered with other

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

5 (5) ~~(6)~~ The person charged shall be advised that if the
6 person refuses the request of a peace officer to take a test
7 described in this section, a test shall not be given without a
8 court order, BUT THE OFFICER MAY SEEK TO OBTAIN THE COURT ORDER.

9 (6) ~~(7)~~ This section shall not be construed as limiting
10 the introduction of any other competent evidence, including a
11 video tape recording taken of, and with prior notice to the
12 person, bearing upon the question of whether or not the person
13 was impaired by or under the influence of ~~intoxicating~~
14 ALCOHOLIC liquor or a controlled substance, or a combination of
15 ~~intoxicating~~ ALCOHOLIC liquor and a controlled substance, or
16 whether the person had a blood alcohol content of ~~0.10% or more~~
17 ~~by weight of alcohol~~ 0.02 GRAMS OR MORE PER 100 MILLILITERS OF
18 BLOOD, PER 210 LITERS OF BREATH, OR PER 67 MILLILITERS OF URINE.

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

23 ~~"Evidence was admitted in this case which, if believed by~~
24 ~~the jury, could prove that the defendant had exercised his or her~~
25 ~~right to refuse a chemical test. You are instructed that such a~~
26 ~~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 (7) ~~-(9)-~~ If after an accident the operator of a locomotive
4 engine involved in the accident is transported to a medical
5 facility and a sample of the operator's blood is withdrawn at
6 that time for the purpose of medical treatment, the result of a
7 chemical analysis of that sample ~~shall be~~ IS admissible in ~~a~~
8 ~~criminal prosecution for a crime described in subsection (1)~~ ANY
9 CIVIL OR CRIMINAL PROCEEDING to show the amount of alcohol or
10 presence of a controlled substance or both in the person's blood
11 at the time alleged, regardless of whether the person had been
12 offered or had refused a chemical test. The medical facility or
13 person performing the chemical analysis shall disclose the
14 results of the analysis to a prosecuting attorney who requests
15 the results for use in a criminal prosecution as provided in this
16 subsection. A medical facility or person disclosing information
17 in compliance with this subsection ~~shall~~ IS not ~~be~~ civilly or
18 criminally liable for making the disclosure.

19 (8) ~~-(10)-~~ If after an accident the operator of a locomotive
20 engine involved in the accident is deceased, a sample of the
21 decedent's blood shall be withdrawn by the medical examiner or
22 attending personnel of the medical facility in a manner directed
23 by the medical examiner for the purpose of determining ~~blood~~
24 THE AMOUNT OF alcohol ~~content~~ or presence of a controlled sub-
25 stance or both. The results of the blood testing shall be
26 released to ~~the department of state police and medical examiner~~
27 A PROSECUTING ATTORNEY FOR USE IN A CRIMINAL PROSECUTION AS

1 PROVIDED IN THIS SECTION. A medical facility disclosing
2 information in compliance with this subsection ~~shall~~ IS not
3 ~~be~~ civilly or criminally liable for making the disclosure.

4 Sec. 361. (1) A person who operates a locomotive engine
5 upon the railroad tracks of this state is considered to have
6 given consent to chemical tests of his or her blood, breath, or
7 urine for the purpose of determining the amount of alcohol or
8 presence of a controlled substance or both in his or her blood
9 if:

10 (a) The person is arrested for a violation of section 353
11 ~~or 355~~ or a local ordinance substantially corresponding to sec-
12 tion 353(1) or (2). ~~or 355.~~

13 (b) The person is arrested for manslaughter resulting from
14 the operation of a locomotive engine, and the peace officer had
15 probable cause to believe that the person was operating the loco-
16 motive engine while impaired by or under the influence of
17 ~~intoxicating~~ ALCOHOLIC liquor or a controlled substance or a
18 combination of ~~intoxicating~~ ALCOHOLIC liquor and a controlled
19 substance, or while having a blood alcohol content of ~~0.10% or~~
20 ~~more by weight of alcohol~~ 0.02 GRAMS OR MORE PER 100 MILLILITERS
21 OF BLOOD, PER 210 LITERS OF BREATH, OR PER 67 MILLILITERS OF
22 URINE.

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

1 (3) The chemical tests shall be administered as provided in
2 section 359.

3 Sec. 365. If a person is convicted of a violation of sec-
4 tion 353 ~~or 355,~~ or of a local ordinance substantially corre-
5 sponding to section 353(1) or (2), ~~or 355,~~ a report of the con-
6 viction shall be forwarded by the court in which the conviction
7 occurred to the United States department of transportation. The
8 form of the report shall be prescribed and furnished by the
9 department of state police.

10 Enacting section 1. Section 355 of the railroad code of
11 1993, 1993 PA 354, MCL 462.355, is repealed.