

RAILROAD CODE OF 1993 (EXCERPT)
Act 354 of 1993

462.359 Chemical test and analysis of operator's blood, urine, or breath.

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

(a) A violation of section 353 or 357 or of a local ordinance substantially corresponding to section 353(1) or (2) or 357.

(b) Manslaughter or murder resulting from the operation of a locomotive engine while the operator is alleged to have been impaired by or under the influence of alcoholic liquor or a controlled substance or a combination of alcoholic liquor and a controlled substance, or to have had a blood alcohol content of 0.04 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

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

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

(a) If there was at the time less than 0.04% grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, it shall be presumed that the person was not impaired by or under the influence of intoxicating liquor.

(b) If there was at the time 0.04% grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, it shall be presumed that the person was impaired by or under the influence of intoxicating liquor.

(4) A sample or specimen of urine or breath shall be taken and collected in a reasonable manner. Only a licensed physician, or an individual operating under the delegation of a licensed physician under section 16215 of the public health code, 1978 PA 368, MCL 333.16215, and qualified to withdraw blood acting in a medical environment, at the request of a peace officer, may withdraw blood for the purpose of determining the amount of alcohol or presence of a controlled substance or both in the person's blood, as provided in this section. Liability for a crime or civil damages predicated on the act of withdrawing or analyzing blood and related procedures shall not attach to a licensed physician or individual operating under the delegation of a licensed physician who withdraws blood or analyzes blood or assists in the withdrawal or analysis in accordance with this section unless the withdrawal or analysis is performed in a negligent manner.

(5) The tests shall be administered at the request of a peace officer having probable cause to believe the person has committed a crime described in subsection (1). A person who takes a chemical test administered at the request of a peace officer, as provided in this section, shall be given a reasonable opportunity to have a person of his or her own choosing administer 1 of the chemical tests described in this section within a reasonable time after his or her detention. The results of the test shall be admissible and shall be considered with other admissible evidence in determining the innocence or guilt of the defendant. If the person charged is administered a chemical test by a person of his or her own choosing, the person charged is responsible for obtaining a chemical analysis of the test sample. The person charged shall be informed that after taking a test administered at the request of a peace officer he or she has the right to demand that a person of his or her own choosing administer 1 of the tests provided for in subsection (1), that the results of the test shall be admissible and shall be considered with other admissible evidence in determining the innocence or guilt of the defendant, and that the person charged is responsible for obtaining a chemical analysis of the test sample.

(6) The person charged shall be advised that if the person refuses the request of a peace officer to take a test described in this section, a test shall not be given without a court order, but the officer may seek to obtain the court order.

(7) This section shall not be construed as limiting the introduction of any other competent evidence, including a video tape recording taken of, and with prior notice to the person, bearing upon the question of whether or not the person was impaired by or under the influence of alcoholic liquor or a controlled substance, or a combination of alcoholic liquor and a controlled substance, or whether the person had a blood alcohol content of 0.04 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

(8) If a jury instruction regarding a defendant's refusal to submit to a chemical test under this section is

requested by the prosecution or the defendant, the jury instruction shall be given as follows:

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

(9) If after an accident the operator of a locomotive engine involved in the accident is transported to a medical facility and a sample of the operator's blood is withdrawn at that time for the purpose of medical treatment, the result of a chemical analysis of that sample is admissible in any criminal proceeding to show the amount of alcohol or presence of a controlled substance or both in the person's blood at the time alleged, regardless of whether the person had been offered or had refused a chemical test. The medical facility or person performing the chemical analysis shall disclose the results of the analysis to a prosecuting attorney who requests the results for use in a criminal prosecution as provided in this subsection. A medical facility or person disclosing information in compliance with this subsection is not civilly or criminally liable for making the disclosure.

(10) If after an accident the operator of a locomotive engine involved in the accident is deceased, a sample of the decedent's blood shall be withdrawn by the medical examiner or attending personnel of the medical facility in a manner directed by the medical examiner for the purpose of determining the amount of alcohol or presence of a controlled substance or both. The results of the blood testing shall be released to a prosecuting attorney for use in a criminal prosecution as provided in this section. A medical facility disclosing information in compliance with this subsection is not civilly or criminally liable for making the disclosure.

(11) The obtaining or analysis of a person's blood, breath, or urine under this section shall not be performed in a manner prohibited by the federal railroad administration, United States department of transportation.

History: 1993, Act 354, Imd. Eff. Jan. 14, 1994;—Am. 2002, Act 658, Eff. Apr. 1, 2003.