

Act No. 658  
Public Acts of 2002  
Approved by the Governor  
December 23, 2002  
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December 23, 2002  
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**STATE OF MICHIGAN  
91ST LEGISLATURE  
REGULAR SESSION OF 2002**

**Introduced by Senators Schwarz, Van Regenmorter, Hoffman, Stille, McManus, Steil, North, Gougeon,  
Goschka, Johnson and Dunaskiss**

# **ENROLLED SENATE BILL No. 1251**

AN ACT to amend 1993 PA 354, entitled "An act to revise, consolidate, and codify the laws relating to railroads and their employees; to prescribe powers and duties of certain state and local agencies and officials; to prescribe fees; to create certain funds; to provide for the disposition of certain money; to provide remedies and penalties; and to repeal certain acts and parts of acts," 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:*

Sec. 105. (1) "Active traffic control devices" means those traffic control devices located at or in advance of grade crossings, activated by the approach or presence of a train, such as flashing light signals, automatic gates and similar devices, manually operated devices, and a crossing watchperson, all of which display to operators of approaching vehicles positive warning of the approach or presence of a train.

(2) "Alcoholic liquor" means that term as defined in section 105 of the Michigan liquor control code, 1998 PA 58, MCL 436.1105.

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

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

(5) "Department" means the Michigan department of transportation.

(6) "Diagnostic study team" means a group of knowledgeable individuals from the department, road authorities, railroads, and others who meet and, using crossing safety management principles, evaluate conditions at proposed or existing crossings and assist the department in making determinations concerning safety needs.

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

(8) "Grade crossing" means the point at which any railroad intersects with any public street or highway, or a nonmotorized trail.

(9) "Grade separation" means an intersection of a railroad and a highway at different levels with either the railroad above or below the highway.

Sec. 109. (1) "Railroad" means a person, partnership, association, or corporation, their respective lessees, trustees, or receivers, appointed by a court, or other legal entity operating in this state either as a common carrier for hire or for private use as a carrier of persons or property upon cars operated upon stationary rails and includes any person, partnership, association, corporation, trustee, or receiver appointed by a court or any other legal entity owning railroad tracks.

(2) "Road authority" means a governmental agency having jurisdiction over public streets and highways. Road authority includes the department, any other state agency, and county, city, and village governmental agencies responsible for the construction, repair, and maintenance of streets and highways.

(3) "Serious impairment of a body function" means that term as defined in section 58c of the Michigan vehicle code, 1949 PA 300, MCL 257.58c.

(4) "Street railway" means an organization formed under the laws of this state for the purpose of operating a street railway system other than a railroad train for transporting persons or property. A street railway system is operated upon rails principally within a municipality utilizing streetcars, trolleys, and trams for the transportation of persons or property. Such organizations may accumulate, store, manufacture, conduct, use, sell, furnish, and supply electricity and electric power.

(5) "Street railway system" means the facilities, equipment, and personnel required to provide and maintain a public transportation service.

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

(7) "Watchperson" means a railroad employee who is stationed at an at-grade crossing to signal to operators of vehicles approaching the crossing of the impending movement of a train or other railroad on-track equipment over the crossing.

Sec. 353. (1) A person who is under the influence of alcoholic liquor or a controlled substance, or a combination of alcoholic liquor and a controlled substance, or whose ability to operate a locomotive engine is visibly impaired due to the consumption of alcoholic liquor or a controlled substance or both shall not operate a locomotive engine upon the railroad tracks of this state. A peace officer may, without a warrant, arrest a person when the peace officer has probable cause to believe that the person, at the time of an accident, was the operator of a locomotive engine involved in the accident and was operating the locomotive engine upon the railroad tracks of this state while impaired by or under the influence of alcoholic liquor or a controlled substance, or a combination of alcoholic liquor and a controlled substance.

(2) A person who has an alcohol content of 0.04 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine shall not operate a locomotive engine upon the railroad tracks of this state.

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

(4) A person who violates this section within 7 years of a prior conviction may be sentenced to imprisonment for not more than 1 year, or a fine of not less than \$200.00 or more than \$1,000.00, or both, together with costs of the prosecution.

(5) A person who violates this section within 10 years of 2 or more prior convictions is guilty of a felony, punishable by imprisonment for not more than 5 years, or a fine of not less than \$500.00 or more than \$5,000.00, or both, together with costs of the prosecution.

(6) A person who operates a locomotive engine in violation of subsection (1) or (2) and by the operation of that locomotive engine causes the death of another person is guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not less than \$2,500.00 or more than \$10,000.00, or both.

(7) A person who operates a locomotive engine in violation of subsection (1) or (2) and by the operation of that locomotive engine causes a serious impairment of a body function of another person is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not less than \$1,000.00 or more than \$5,000.00, or both.

(8) As part of the sentence for a violation of this section, the court may order the person to perform service to the community, as designated by the court, without compensation, for a period not to exceed 45 days. The person shall reimburse the state or appropriate local unit of government for the cost of insurance incurred by the state or local unit of government as a result of the person's activities under this subsection.

(9) Before imposing sentence for a violation of this section, the court shall order the person to undergo screening and assessment by a person or agency designated by the office of substance abuse services, to determine whether the person is likely to benefit from rehabilitative services, including alcohol or drug education and alcohol or drug treatment programs. As part of the sentence, the court may order the person to participate in and successfully complete 1 or more appropriate rehabilitative programs. The person shall pay for the costs of the screening, assessment, and rehabilitative services.

(10) Before accepting a plea of guilty under this section, the court shall advise the accused of the statutory consequences possible as the result of a plea of guilty in respect to the penalty imposed for violation of this section.

(11) As used in this section, "prior conviction" means a conviction under this section, a local ordinance substantially corresponding to subsection (1) or (2), or a law of another state or the United States substantially corresponding to subsection (1) or (2).

Sec. 357. The owner of a locomotive engine or the person in charge or in control of a locomotive engine, or a person acting as a conductor of any train of cars, shall not knowingly authorize or knowingly permit the locomotive engine to be operated upon the railroad tracks of this state by a person who is impaired by or under the influence of alcoholic liquor or a controlled substance, or a combination of alcoholic liquor and a controlled substance or who has an alcohol content of 0.04 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine. A person who violates this section is guilty of a misdemeanor, punishable by imprisonment for not more than 93 days, or a fine of not less than \$100.00 nor more than \$500.00, or both, together with costs of the prosecution.

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.

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

(a) The person is arrested for a violation of section 353 or a local ordinance substantially corresponding to section 353(1) or (2).

(b) The person is arrested for murder or manslaughter resulting from the operation of a locomotive engine, and the peace officer had probable cause to believe that the person was operating the locomotive engine while impaired by or under the influence of alcoholic liquor or a controlled substance or a combination of alcoholic liquor and a controlled substance, or while having 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) A person who is afflicted with hemophilia, diabetes, or a condition requiring the use of an anticoagulant under the direction of a physician shall not be considered to have given consent to the withdrawal of blood.

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

Sec. 365. If a person is convicted of a violation of section 353 or of a local ordinance substantially corresponding to section 353(1) or (2), a report of the conviction shall be forwarded by the court in which the conviction occurred to the

United States department of transportation. The form of the report shall be prescribed and furnished by the department of state police.

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

Enacting section 2. This amendatory act takes effect April 1, 2003.

*Carol Morey Viventi*

Secretary of the Senate.

*Jay E. Randall*

Clerk of the House of Representatives.

Approved .....

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Governor.