

HOUSE BILL No. 5634

March 26, 1990, Introduced by Reps. Camp, Stabenow, Fitzgerald, Emmons, Willis Bullard, Stacey, Bandstra, Crandall, Krause, Honigman, DeMars, Gubow, Profit, Ciaramitaro, Kosteva, Van Regenmorter, Strand, Martin, Power, Bender, Nye, Pitoniak, Van Singel, Hillegonds, Munsell and Oxender and referred to the Committee on Transportation.

A bill to amend sections 1, 2, 3, 4, 5, 6, and 9 of Act No. 4 of the Public Acts of 1986, entitled

"An act to prohibit the operation of a locomotive engine under certain circumstances; to prescribe the powers and duties of certain persons; to provide for certain presumptions; and to provide penalties,"

being sections 470.201, 470.202, 470.203, 470.204, 470.205, 470.206, and 470.209 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 1, 2, 3, 4, 5, 6, and 9 of Act No. 4 of
2 the Public Acts of 1986, being sections 470.201, 470.202,
3 470.203, 470.204, 470.205, 470.206, and 470.209 of the Michigan
4 Compiled Laws, are amended to read as follows:

5 Sec. 1. As used in this act: ~~-, "operator" means a person~~

1 (A) "CONDUCTOR" MEANS A PERSON WHO DETERMINES THE DIRECTION
2 AND SPEED OF A LOCOMOTIVE ENGINE ON RAILROAD TRACKS OR DETERMINES
3 THE ORDER AND ARRANGEMENT OF THE TRAIN CARS.

4 (B) "CONTROLLED SUBSTANCE OR CONTROLLED SUBSTANCE ANALOGUE"
5 MEANS THOSE TERMS AS DEFINED IN SECTION 7104 OF THE PUBLIC HEALTH
6 CODE, ACT NO. 368 OF THE PUBLIC ACTS OF 1978, BEING SECTION
7 333.7104 OF THE MICHIGAN COMPILED LAWS.

8 (C) "OPERATOR" MEANS A PERSON who is in actual physical con-
9 trol of a locomotive engine upon a railroad track OR ASSISTS IN
10 THE CONTROL AND OPERATION OF A LOCOMOTIVE ENGINE UPON A RAILROAD
11 TRACK.

12 Sec. 2. (1) A person who is under the influence of intoxi-
13 cating liquor or a controlled substance, CONTROLLED SUBSTANCE
14 ANALOGUE, or a combination of intoxicating liquor and a con-
15 trolled substance OR CONTROLLED SUBSTANCE ANALOGUE, shall not
16 ~~operate~~ FUNCTION AS AN OPERATOR OR CONDUCTOR OF a locomotive
17 engine upon the railroad tracks of this state. A peace officer
18 may, without a warrant, arrest a person when the peace officer
19 has reasonable cause to believe that the person, at the time of
20 an accident, was the operator OR CONDUCTOR of a locomotive engine
21 involved in the accident and was ~~operating the locomotive engine~~
22 ~~upon the railroad tracks of this state~~ FUNCTIONING AS AN OPERA-
23 TOR OR CONDUCTOR while under the influence of intoxicating liquor
24 or a controlled substance, CONTROLLED SUBSTANCE ANALOGUE, or a
25 combination of intoxicating liquor and a controlled substance OR
26 CONTROLLED SUBSTANCE ANALOGUE.

1 (2) A person whose blood contains 0.10% or more by weight of
2 alcohol shall not ~~operate~~ FUNCTION AS AN OPERATOR OR CONDUCTOR
3 OF a locomotive engine upon the railroad tracks of this state.

4 (3) A PERSON SHALL NOT FUNCTION AS AN OPERATOR OR CONDUCTOR
5 OF A LOCOMOTIVE ENGINE UPON THE RAILROAD TRACKS OF THIS STATE
6 WITHIN 8 HOURS AFTER THE CONSUMPTION OF AN INTOXICATING LIQUOR OR
7 A CONTROLLED SUBSTANCE, CONTROLLED SUBSTANCE ANALOGUE, OR A COM-
8 BINATION OF INTOXICATING LIQUOR AND A CONTROLLED SUBSTANCE OR
9 CONTROLLED SUBSTANCE ANALOGUE.

10 (4) ~~(3)~~ Except as otherwise provided, a person who vio-
11 lates this section is guilty of a misdemeanor, punishable by
12 imprisonment for not more than 90 days, or a fine of not less
13 than \$100.00 ~~nor~~ OR more than \$500.00, or both, together with
14 costs of the prosecution.

15 (5) ~~(4)~~ A person who violates this section or a local
16 ordinance substantially corresponding to ~~subsection (1) or (2)~~
17 THIS SECTION within 7 years of a prior conviction ~~may be sen-~~
18 ~~tenced to~~ IS GUILTY OF A MISDEMEANOR, PUNISHABLE BY imprisonment
19 for not more than 1 year, or a fine of not more than \$1,000.00,
20 or both, together with costs of the prosecution. ~~For purposes~~
21 ~~of this section, "prior conviction" means a conviction under this~~
22 ~~section, a local ordinance substantially corresponding to subsec-~~
23 ~~tion (1) or (2), or a law of another state substantially corre-~~
24 ~~sponding to subsection (1) or (2).~~

25 (6) ~~(5)~~ A person who violates this section or a local
26 ordinance substantially corresponding to ~~subsection (1) or (2)~~
27 THIS SECTION within 10 years of 2 or more prior convictions ~~, as~~

1 ~~defined in subsection (4),~~ is guilty of a felony, punishable by
2 imprisonment for not more than 4 years, or a fine of not more
3 than \$2,000.00, or both, together with costs of the prosecution.

4 (7) ~~(6)~~ As part of the sentence for a violation of this
5 section or a local ordinance substantially corresponding to
6 ~~subsection (1) or (2)~~ THIS SECTION, the court may order the
7 person to perform service to the community, as designated by the
8 court, without compensation, for a period not to exceed 12 days.
9 The person shall reimburse the state or appropriate local unit of
10 government for the cost of insurance incurred by the state or
11 local unit of government as a result of the person's activities
12 under this subsection.

13 (8) ~~(7)~~ Before imposing sentence for a violation of this
14 section or a local ordinance substantially corresponding to
15 ~~subsection (1) or (2)~~ THIS SECTION, the court shall order the
16 person to undergo screening and assessment by a person or agency
17 designated by the office of substance abuse services, to deter-
18 mine whether the person is likely to benefit from rehabilitative
19 services, including alcohol or drug education and alcohol or drug
20 treatment programs. As part of the sentence, the court may order
21 the person to participate in and successfully complete 1 or more
22 appropriate rehabilitative programs. The person shall pay for
23 the costs of the screening, assessment, and rehabilitative
24 services.

25 (9) ~~(8)~~ Before accepting a plea of guilty under this sec-
26 tion, the court shall advise the accused of the statutory

1 consequences possible as the result of a plea of guilty in
2 respect to the penalty imposed for violation of this section.

3 (10) AS USED IN THIS SECTION, "PRIOR CONVICTION" MEANS A
4 CONVICTION UNDER THIS SECTION, A LOCAL ORDINANCE SUBSTANTIALLY
5 CORRESPONDING TO THIS SECTION, OR A LAW OF ANOTHER STATE SUBSTAN-
6 Tially CORRESPONDING TO THIS SECTION.

7 Sec. 3. (1) A person shall not ~~operate~~ FUNCTION AS AN
8 OPERATOR OR CONDUCTOR OF a locomotive engine upon the railroad
9 tracks of this state ~~when~~ IF, due to the consumption of intoxi-
10 cating liquor, a controlled substance, CONTROLLED SUBSTANCE
11 ANALOGUE, or a combination of intoxicating liquor and a con-
12 trolled substance, OR CONTROLLED SUBSTANCE ANALOGUE, the person
13 has visibly impaired his or her ability to ~~operate~~ FUNCTION AS
14 THE OPERATOR OR CONDUCTOR OF the locomotive engine. If a person
15 is charged with violating section 2, a finding of guilty is per-
16 missible under this section.

17 (2) Except as otherwise provided, a person who violates this
18 section is guilty of a misdemeanor, punishable by imprisonment
19 for not more than 90 days, or a fine of not more than \$300.00, or
20 both, together with costs of the prosecution.

21 (3) A person who violates this section or a local ordinance
22 substantially corresponding to this section within 7 years of a
23 prior conviction ~~may be sentenced to~~ IS GUILTY OF A MISDEMEAN-
24 OR, PUNISHABLE BY imprisonment for not more than 1 year, or a
25 fine of not more than \$1,000.00, or both, together with costs of
26 the prosecution. ~~For purposes of this section, "prior~~
27 ~~conviction" means a conviction under this section, section 2, a~~

~~1 local ordinance substantially corresponding to this section or~~
~~2 section 2(1) or (2), or a law of another state substantially cor-~~
~~3 responding to this section or section 2(1) or (2).~~

4 (4) As part of the sentence for a violation of this section
5 or a local ordinance substantially corresponding to this section,
6 the court may order the person to perform service to the communi-
7 ty, as designated by the court, without compensation, for a
8 period not to exceed 12 days. The person shall reimburse the
9 state or appropriate local unit of government for the cost of
10 insurance incurred by the state or local unit of government as a
11 result of the person's activities under this subsection.

12 (5) Before imposing sentence for a violation of this section
13 or a local ordinance substantially corresponding to this section,
14 the court shall order the person to undergo screening and assess-
15 ment by a person or agency designated by the office of substance
16 abuse services, to determine whether the person is likely to ben-
17 efit from rehabilitative services, including alcohol or drug edu-
18 cation and alcohol or drug treatment programs. As part of the
19 sentence, the court may order the person to participate in and
20 successfully complete 1 or more appropriate rehabilitative
21 programs. The person shall pay for the costs of the screening,
22 assessment, and rehabilitative services.

23 (6) Before accepting a plea of guilty under this section,
24 the court shall advise the accused of the statutory consequences
25 possible as a result of a plea of guilty in respect to the pen-
26 alty imposed for violation of this section.

1 (7) AS USED IN THIS SECTION, "PRIOR CONVICTION" MEANS A
2 CONVICTION UNDER THIS SECTION, SECTION 2, OR A LOCAL ORDINANCE
3 SUBSTANTIALLY CORRESPONDING TO THIS SECTION OR SECTION 2, OR A
4 LAW OF ANOTHER STATE SUBSTANTIALLY CORRESPONDING TO THIS SECTION
5 OR SECTION 2(1), (2), OR (3).

6 Sec. 4. The owner of a locomotive engine, ~~or the person in~~
7 ~~charge or in control~~ THE OPERATOR of a locomotive engine, or a
8 person acting as a conductor ~~of any train of cars,~~ shall not
9 authorize or knowingly permit ~~the~~ A PERSON TO FUNCTION AS AN
10 OPERATOR OR CONDUCTOR OF A locomotive engine ~~to be operated~~
11 upon the railroad tracks of this state ~~by a~~ IF THAT person
12 ~~who~~ is under the influence of OR HAS VISIBLY IMPAIRED HIS OR
13 HER ABILITY TO FUNCTION AS AN OPERATOR OR CONDUCTOR DUE TO THE
14 CONSUMPTION OF intoxicating liquor or a controlled substance, or
15 CONTROLLED SUBSTANCE ANALOGUE, a combination of intoxicating
16 liquor and a controlled substance OR CONTROLLED SUBSTANCE ANALO-
17 GUE, OR HAS CONSUMED AN INTOXICATING LIQUOR OR CONTROLLED SUB-
18 STANCE, CONTROLLED SUBSTANCE ANALOGUE, OR A COMBINATION OF INTOX-
19 ICATING LIQUOR AND A CONTROLLED SUBSTANCE OR CONTROLLED SUBSTANCE
20 ANALOGUE, WITHIN 8 HOURS BEFORE FUNCTIONING IN THAT CAPACITY. A
21 person who violates this section is guilty of a misdemeanor, pun-
22 ishable by imprisonment for not more than 90 days, or a fine of
23 not less than \$100.00 ~~nor~~ OR more than \$500.00, or both,
24 together with costs of the prosecution.

25 Sec. 5. (1) The amount of alcohol or presence of a con-
26 trolled substance, CONTROLLED SUBSTANCE ANALOGUE, or ~~both~~ A
27 COMBINATION OF INTOXICATING LIQUOR AND A CONTROLLED SUBSTANCE OR

1 CONTROLLED SUBSTANCE ANALOGUE in the operator's OR CONDUCTOR'S
2 blood at the time alleged as shown by chemical analysis of that
3 person's blood, urine, or breath shall be admissible into evi-
4 dence in a criminal prosecution for any of the following:

5 (a) A violation of section 2, 3, or 4, or of a local ordi-
6 nance substantially corresponding to section ~~2(1) or (2), (3),~~
7 ~~or (4)~~ 2, 3, OR 4.

8 (b) Manslaughter resulting from the ~~operation~~ PERSON'S
9 ACTIONS AS AN OPERATOR OR CONDUCTOR of a locomotive engine while
10 ~~the operator is~~ alleged to have been VISIBLY impaired by or
11 under the influence of intoxicating liquor or a controlled
12 substance, CONTROLLED SUBSTANCE ANALOGUE, or a combination of
13 intoxicating liquor and a controlled substance, or CONTROLLED
14 SUBSTANCE ANALOGUE, to have had a blood alcohol content of 0.10%
15 or more by weight of alcohol, OR TO HAVE FUNCTIONED AS AN OPERA-
16 TOR OR CONDUCTOR OF A LOCOMOTIVE ENGINE WITHIN 8 HOURS AFTER THE
17 CONSUMPTION OF AN INTOXICATING LIQUOR, A CONTROLLED SUBSTANCE,
18 CONTROLLED SUBSTANCE ANALOGUE, OR A COMBINATION OF INTOXICATING
19 LIQUOR AND A CONTROLLED SUBSTANCE OR CONTROLLED SUBSTANCE
20 ANALOGUE.

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

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

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

8 (a) If there was at the time ~~0.07%~~ 0.04% or less by weight
9 of 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%~~ 0.04% but
12 less than 0.10% by weight of alcohol in the person's blood, it
13 shall be presumed that the person's ability to ~~operate~~ FUNCTION
14 AS AN OPERATOR OR CONDUCTOR OF a locomotive engine was impaired
15 within the provisions of section 3 due to the consumption of
16 intoxicating liquor.

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

20 (4) A sample or specimen of urine or breath shall be taken
21 and collected in a reasonable manner. Only a licensed physician,
22 or a licensed nurse or medical technician under the direction of
23 a licensed physician and qualified to withdraw blood acting in a
24 medical environment, at the request of a peace officer, may with-
25 draw blood for the purpose of determining the amount of ~~alcohol~~
26 INTOXICATING LIQUOR or presence of a controlled substance,
27 CONTROLLED SUBSTANCE ANALOGUE, or ~~both~~ A COMBINATION OF

1 INTOXICATING LIQUOR AND A CONTROLLED SUBSTANCE OR CONTROLLED
2 SUBSTANCE ANALOGUE in the person's blood, as provided in this
3 section. Liability for a crime or civil damages predicated on
4 the act of withdrawing blood and related procedures shall not
5 attach to a qualified person who withdraws blood or assists in
6 the withdrawal in accordance with this section unless the with-
7 drawal is performed in a negligent manner.

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

1 responsible for obtaining a chemical analysis of the test
2 sample.

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

7 (7) This section shall not be construed as limiting the
8 introduction of any other competent evidence, including a video
9 tape recording taken of, and with prior notice to the person,
10 bearing upon the question of whether or not the person was
11 VISIBLY impaired by or under the influence of intoxicating liquor
12 or a controlled substance, CONTROLLED SUBSTANCE ANALOGUE, or a
13 combination of intoxicating liquor and a controlled substance OR
14 CONTROLLED SUBSTANCE ANALOGUE, or whether the person had a blood
15 alcohol content of 0.10% or more by weight of alcohol.

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

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

26 (9) If after an accident the operator OR CONDUCTOR of a
27 locomotive engine involved in the accident is transported to a

1 medical facility and a sample of the ~~operator's~~ PERSON'S blood
2 is withdrawn at that time for the purpose of medical treatment,
3 the result of a chemical analysis of that sample shall be admis-
4 sible in a criminal prosecution for a crime described in subsec-
5 tion (1) to show the amount of ~~alcohol~~ INTOXICATING LIQUOR or
6 presence of a controlled substance, CONTROLLED SUBSTANCE
7 ANALOGUE, or ~~both~~ A COMBINATION OF INTOXICATING LIQUOR AND A
8 CONTROLLED SUBSTANCE OR CONTROLLED SUBSTANCE ANALOGUE in the
9 person's blood at the time alleged, regardless of whether the
10 person had been offered or had refused a chemical test. The med-
11 ical facility or person performing the chemical analysis shall
12 disclose the results of the analysis to a prosecuting attorney
13 who requests the results for use in a criminal prosecution as
14 provided in this subsection. A medical facility or person dis-
15 closing information in compliance with this subsection shall not
16 be civilly or criminally liable for making the disclosure.

17 (10) If after an accident the operator OR CONDUCTOR of a
18 locomotive engine involved in the accident is deceased, a sample
19 of the decedent's blood shall be withdrawn by the medical
20 examiner or attending personnel of the medical facility in a
21 manner directed by the medical examiner for the purpose of deter-
22 mining blood alcohol content or presence of a controlled
23 substance, CONTROLLED SUBSTANCE ANALOGUE, or ~~both~~ A COMBINATION
24 OF INTOXICATING LIQUOR AND A CONTROLLED SUBSTANCE OR CONTROLLED
25 SUBSTANCE ANALOGUE. The results of the blood testing shall be
26 released to the department of state police and medical examiner.
27 A medical facility disclosing information in compliance with this

1 subsection shall not be civilly or criminally liable for making
2 the disclosure.

3 Sec. 6. (1) A person who ~~operates~~ FUNCTIONS AS AN OPERA-
4 TOR OR CONDUCTOR OF a locomotive engine upon the railroad tracks
5 of this state is considered to have given consent to chemical
6 tests of his or her blood, breath, or urine for the purpose of
7 determining the amount of ~~alcohol~~ INTOXICATING LIQUOR or pres-
8 ence of a controlled substance, ~~of both~~ CONTROLLED SUBSTANCE
9 ANALOGUE, OR A COMBINATION OF INTOXICATING LIQUOR AND A CON-
10 TROLLED SUBSTANCE OR CONTROLLED SUBSTANCE ANALOGUE in his or her
11 blood ~~if~~ UNDER THE FOLLOWING CIRCUMSTANCES:

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

15 (b) The person is arrested for manslaughter resulting from
16 the ~~operation~~ PERSON'S ACTIONS AS AN OPERATOR OR CONDUCTOR of a
17 locomotive engine, and the peace officer had reasonable grounds
18 to believe that the person was ~~operating~~ FUNCTIONING AS AN
19 OPERATOR OR CONDUCTOR OF the locomotive engine while VISIBLY
20 impaired by or under the influence of intoxicating liquor or a
21 controlled substance, CONTROLLED SUBSTANCE ANALOGUE, or a combi-
22 nation of intoxicating liquor and a controlled substance ~~—~~ or
23 CONTROLLED SUBSTANCE ANALOGUE while having a blood alcohol con-
24 tent of 0.10% or more by weight of alcohol, OR WAS FUNCTIONING AS
25 AN OPERATOR OR CONDUCTOR OF A LOCOMOTIVE ENGINE WITHIN 8 HOURS
26 AFTER CONSUMPTION OF AN INTOXICATING LIQUOR OR A CONTROLLED
27 SUBSTANCE, CONTROLLED SUBSTANCE ANALOGUE, OR A COMBINATION OF

1 INTOXICATING LIQUOR AND A CONTROLLED SUBSTANCE OR CONTROLLED
2 SUBSTANCE ANALOGUE.

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

7 (3) The chemical tests shall be administered as provided in
8 section 5.

9 Sec. 9. If a person is convicted of a violation of section
10 ~~2~~ 2(1), (2), OR (3) or 3, or of a local ordinance substantially
11 corresponding to section 2(1), ~~or~~ (2), OR (3) or 3, a report of
12 the conviction shall be forwarded by the court in which the con-
13 viction occurred to the federal department of transportation.
14 The form of the report shall be prescribed and furnished by the
15 ~~Michigan department of transportation~~ STATE TRANSPORTATION
16 DEPARTMENT.