

HOUSE BILL No. 6430

September 14, 2010, Introduced by Reps. Slavens, Rick Jones, Ball and Liss and referred to the Committee on Judiciary.

A bill to amend 1993 PA 354, entitled
"Railroad code of 1993,"
by amending section 107 (MCL 462.107) and by adding section 364.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 107. (1) "High speed rail corridor" means any railroad
2 line having been formally designated by the United States
3 department of transportation as a high speed rail corridor.

4 (2) "Nonmotorized trail" means a public or privately owned or
5 operated traveled way, the use of which is restricted to
6 pedestrians or nonmotorized conveyances including, but not limited
7 to, bicycles and horses.

8 (3) "Notice" means the written expression of the department's
9 findings that certain conditions observed at a crossing are not in

1 compliance with state law, and that these conditions must be
2 corrected.

3 (4) "Order" means an administrative document, signed by the
4 department director or his or her designee, that details certain
5 findings of fact and, based on those findings, specifies certain
6 work to be performed by railroads or other parties in compliance
7 with law and specifies a time period within which the work is to be
8 completed. An order is based upon the department's statutory
9 authority to require the performance of that work.

10 (5) "Passive traffic control devices" means those types of
11 traffic control devices, including signs, markings, and other
12 devices, located at or in advance of grade crossings to indicate
13 the presence of a crossing but ~~which~~ **THAT** do not change aspect upon
14 the approach or presence of a train.

15 (6) **"PRELIMINARY CHEMICAL ANALYSIS" MEANS EITHER OF THE**
16 **FOLLOWING, AS APPLICABLE:**

17 (A) **A PRELIMINARY CHEMICAL BREATH ANALYSIS. AS USED IN THIS**
18 **SUBDIVISION, "PRELIMINARY CHEMICAL BREATH ANALYSIS" MEANS THE ON-**
19 **SITE TAKING AND ANALYSIS OF A PERSON'S BREATH TO DETERMINE THE**
20 **PRESENCE OF ALCOHOL IN THE PERSON'S BODY.**

21 (B) **PRELIMINARY CHEMICAL ORAL FLUIDS ANALYSIS. AS USED IN THIS**
22 **SUBDIVISION:**

23 (i) **"IMMUNOCHEMICAL ASSAY" MEANS A SCIENTIFIC TECHNIQUE THAT**
24 **USES SPECIFIC BINDING BETWEEN AN ANTIGEN AND ITS HOMOLOGOUS**
25 **ANTIBODY TO IDENTIFY AND QUANTIFY A SUBSTANCE IN A SAMPLE.**

26 (ii) **"PRELIMINARY CHEMICAL ORAL FLUIDS ANALYSIS" MEANS THE ON-**
27 **SITE TAKING AND ANALYSIS BY IMMUNOCHEMICAL ASSAY OF THE ORAL FLUIDS**

1 OF A PERSON FOR THE PURPOSE OF DETECTING THE PRESENCE OF CONTROLLED
2 SUBSTANCES WITHIN THE PERSON'S BODY.

3 (7) ~~(6)~~—"Private crossing" means any at-grade intersection of
4 a railroad with any traveled way not under the jurisdiction of a
5 road authority.

6 (8) ~~(7)~~—"Public street or highway" means any improved
7 thoroughfare maintained by a road authority that has been dedicated
8 and constructed in accordance with law.

9 SEC. 364. A PEACE OFFICER HAVING PROBABLE CAUSE TO BELIEVE THE
10 PERSON HAS VIOLATED SECTION 353 BY OPERATING A LOCOMOTIVE ENGINE
11 WHILE UNDER THE INFLUENCE OF, OR VISIBLY IMPAIRED BY, ALCOHOLIC
12 LIQUOR OR A CONTROLLED SUBSTANCE MAY REQUIRE THE PERSON TO SUBMIT
13 TO A PRELIMINARY CHEMICAL ANALYSIS. ALL OF THE FOLLOWING APPLY WITH
14 RESPECT TO A PRELIMINARY CHEMICAL ANALYSIS ADMINISTERED UNDER THIS
15 SECTION:

16 (A) A PEACE OFFICER MAY ARREST A PERSON BASED IN WHOLE OR IN
17 PART UPON THE RESULTS OF A PRELIMINARY CHEMICAL ANALYSIS.

18 (B) SUBJECT TO ADMISSIBILITY UNDER THE MICHIGAN RULES OF
19 EVIDENCE, THE RESULTS OF A PRELIMINARY CHEMICAL ANALYSIS ARE
20 ADMISSIBLE IN A CRIMINAL PROSECUTION FOR A CRIME ENUMERATED IN
21 SECTION 353 OR IN AN ADMINISTRATIVE HEARING TO ASSIST THE COURT OR
22 HEARING OFFICER IN DETERMINING A CHALLENGE TO THE VALIDITY OF AN
23 ARREST. THIS SUBDIVISION DOES NOT LIMIT THE INTRODUCTION OF OTHER
24 COMPETENT EVIDENCE OFFERED TO ESTABLISH THE VALIDITY OF AN ARREST.

25 (C) THE RESULTS OF A PRELIMINARY CHEMICAL ORAL FLUIDS ANALYSIS
26 ARE ADMISSIBLE AS EVIDENCE FOR PURPOSES OTHER THAN THE PURPOSES
27 LISTED UNDER SUBDIVISION (B) ONLY IF THE RESULTS OF THE PRELIMINARY

1 CHEMICAL TEST ARE CONFIRMED BY LIQUID CHROMATOGRAPHY WITH MASS
2 SPECTROMETRY X 2 IN A LABORATORY APPROVED BY THE DEPARTMENT OF
3 STATE POLICE.

4 (D) A PERSON WHO SUBMITS TO A PRELIMINARY CHEMICAL ANALYSIS
5 REMAINS SUBJECT TO THE REQUIREMENTS OF SECTIONS 359, 361, AND 363
6 FOR PURPOSES OF CHEMICAL TESTS DESCRIBED IN THOSE SECTIONS.

7 (E) A PERSON WHO REFUSES TO SUBMIT TO A PRELIMINARY CHEMICAL
8 ANALYSIS UPON A LAWFUL REQUEST BY A PEACE OFFICER IS RESPONSIBLE
9 FOR A CIVIL INFRACTION.