

# Michigan Register

Issue No. 3 – 2023 (Published March 1, 2023)



## GRAPHIC IMAGES IN THE MICHIGAN REGISTER

### COVER DRAWING

#### *Michigan State Capitol:*

This image, with flags flying to indicate that both chambers of the legislature are in session, may have originated as an etching based on a drawing or a photograph. The artist is unknown. The drawing predates the placement of the statue of Austin T. Blair on the capitol grounds in 1898.

(Michigan State Archives)

### PAGE GRAPHICS

#### *Capitol Dome:*

The architectural rendering of the Michigan State Capitol's dome is the work of Elijah E. Myers, the building's renowned architect. Myers inked the rendering on linen in late 1871 or early 1872. Myers' fine draftsmanship, the hallmark of his work, is clearly evident.

Because of their size, few architectural renderings of the 19<sup>th</sup> century have survived. Michigan is fortunate that many of Myers' designs for the Capitol were found in the building's attic in the 1950's. As part of the state's 1987 sesquicentennial celebration, they were conserved and deposited in the Michigan State Archives.

(Michigan State Archives)

#### *East Elevation of the Michigan State Capitol:*

When Myers' drawings were discovered in the 1950's, this view of the Capitol – the one most familiar to Michigan citizens – was missing. During the building's recent restoration (1989-1992), this drawing was commissioned to recreate the architect's original rendering of the east (front) elevation.

(Michigan Capitol Committee)

# Michigan Register

Published pursuant to § 24.208 of  
The Michigan Compiled Laws



Issue No. 3— 2023

(This issue, published March 1, 2023, contains  
documents filed from February 1, 2023 to February 15, 2023)

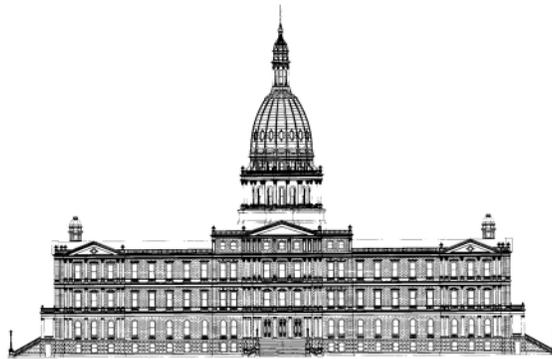
Compiled and Published by the  
Michigan Office of Administrative Hearings and Rules

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Printed in the United States of America

**Michigan Register (ISSN 0892-3124).** Published twice per month, with a cumulative index, by the Michigan Office of Administrative Hearings and Rules, pursuant to §24.208 of the Michigan Compiled Laws. Subscription \$400.00 per year, postpaid to points in the U.S. First class postage paid at Lansing, Michigan. Direct all mail concerning subscriptions to Michigan Office of Administrative Hearings and Rules, Ottawa Building – Second Floor, 611 W. Ottawa Street, Lansing, MI 48909.

Katie Wienczewski, Administrative Rules Division Director, Michigan Office of Administrative Hearings and Rules; Deidre O’Berry, Administrative Rules Specialist for Operations and Publications.

**Gretchen Whitmer, Governor**



**Garlin Gilchrist, Lieutenant Governor**

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## PREFACE

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### PUBLICATION AND CONTENTS OF THE MICHIGAN REGISTER

The Michigan Office of Administrative Hearings and Rules publishes the *Michigan Register*.

While several statutory provisions address the publication and contents of the *Michigan Register*, two are of particular importance.

**24.208 Michigan register; publication; cumulative index; contents; public subscription; fee; synopsis of proposed rule or guideline; transmitting copies to office of regulatory reform.**

Sec. 8.

(1) The office of regulatory reform shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:

- (a) Executive orders and executive reorganization orders.
- (b) On a cumulative basis, the numbers and subject matter of the enrolled senate and house bills signed into law by the governor during the calendar year and the corresponding public act numbers.
- (c) On a cumulative basis, the numbers and subject matter of the enrolled senate and house bills vetoed by the governor during the calendar year.
- (d) Proposed administrative rules.
- (e) Notices of public hearings on proposed administrative rules.
- (f) Administrative rules filed with the secretary of state.
- (g) Emergency rules filed with the secretary of state.
- (h) Notice of proposed and adopted agency guidelines.
- (i) Other official information considered necessary or appropriate by the office of regulatory reform.
- (j) Attorney general opinions.
- (k) All of the items listed in section 7(m) after final approval by the certificate of need commission under section 22215 of the public health code, 1978 PA 368, MCL 333.22215.

(2) The office of regulatory reform shall publish a cumulative index for the Michigan register.

(3) The Michigan register shall be available for public subscription at a fee reasonably calculated to cover publication and distribution costs.

(4) If publication of an agency's proposed rule or guideline or an item described in subsection (1)(k) would be unreasonably expensive or lengthy, the office of regulatory reform may publish a brief synopsis of the proposed rule or guideline or item described in subsection (1)(k), including information on how to obtain a complete copy of the proposed rule or guideline or item described in subsection (1)(k) from the agency at no cost.

(5) An agency shall electronically transmit a copy of the proposed rules and notice of public hearing to the office of regulatory reform for publication in the Michigan register.

**4.1203 Michigan register fund; creation; administration; expenditures; disposition of money received from sale of Michigan register and amounts paid by state agencies; use of fund; price of Michigan register; availability of text on internet; copyright or other proprietary interest; fee prohibited; definition.**

Sec. 203.

- (1) The Michigan register fund is created in the state treasury and shall be administered by the office of regulatory reform. The fund shall be expended only as provided in this section.
- (2) The money received from the sale of the Michigan register, along with those amounts paid by state agencies pursuant to section 57 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.257, shall be deposited with the state treasurer and credited to the Michigan register fund.
- (3) The Michigan register fund shall be used to pay the costs of preparing, printing, and distributing the Michigan register.
- (4) The department of management and budget shall sell copies of the Michigan register at a price determined by the office of regulatory reform not to exceed the cost of preparation, printing, and distribution.
- (5) Notwithstanding section 204, beginning January 1, 2001, the office of regulatory reform shall make the text of the Michigan register available to the public on the internet.
- (6) The information described in subsection (5) that is maintained by the office of regulatory reform shall be made available in the shortest feasible time after the information is available. The information described in subsection (5) that is not maintained by the office of regulatory reform shall be made available in the shortest feasible time after it is made available to the office of regulatory reform.
- (7) Subsection (5) does not alter or relinquish any copyright or other proprietary interest or entitlement of this state relating to any of the information made available under subsection (5).
- (8) The office of regulatory reform shall not charge a fee for providing the Michigan register on the internet as provided in subsection (5).
- (9) As used in this section, "Michigan register" means that term as defined in section 5 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.205.

**CITATION TO THE MICHIGAN REGISTER**

The *Michigan Register* is cited by year and issue number. For example, 2023 MR 1 refers to the year of issue (2023) and the issue number (1).

**CLOSING DATES AND PUBLICATION SCHEDULE**

The deadlines for submitting documents to the Michigan Office of Administrative Hearings and Rules for publication in the *Michigan Register* are the first and fifteenth days of each calendar month, unless the submission day falls on a Saturday, Sunday, or legal holiday, in which event the deadline is extended to include the next day which is not a Saturday, Sunday, or legal holiday. Documents filed or received after 5:00 p.m. on the closing date of a filing period will appear in the succeeding issue of the *Michigan Register*.

The Michigan Office of Administrative Hearings and Rules is not responsible for the editing and proofreading of documents submitted for publication.

Documents submitted for publication should be delivered or mailed in an electronic format to the following address: MICHIGAN REGISTER, Michigan Office of Administrative Hearings and Rules, Ottawa Building – Second Floor, 611 W. Ottawa Street, Lansing, MI 48933.

### **RELATIONSHIP TO THE MICHIGAN ADMINISTRATIVE CODE**

The *Michigan Administrative Code* (1979 edition), which contains all permanent administrative rules in effect as of December 1979, was, during the period 1980-83, updated each calendar quarter with the publication of a paperback supplement. An annual supplement contained those permanent rules, which had appeared in the 4 quarterly supplements covering that year.

Quarterly supplements to the Code were discontinued in January 1984, and replaced by the monthly publication of permanent rules and emergency rules in the *Michigan Register*. Annual supplements have included the full text of those permanent rules that appear in the twelve monthly issues of the *Register* during a given calendar year. Emergency rules published in an issue of the *Register* are noted in the annual supplement to the Code.

### **SUBSCRIPTIONS AND DISTRIBUTION**

The *Michigan Register*, a publication of the State of Michigan, is available for public subscription at a cost of \$400.00 per year. Submit subscription requests to: Michigan Office of Administrative Hearings and Rules, Ottawa Building –Second Floor, 611 W. Ottawa Street, Lansing, MI 48933. Checks Payable: State of Michigan. Any questions should be directed to the Michigan Office of Administrative Hearings and Rules (517) 335-2484.

### **INTERNET ACCESS**

The *Michigan Register* can be viewed free of charge on the website of the Michigan Office of Administrative Hearings and Rules – Administrative Rules Division: [www.michigan.gov/ard](http://www.michigan.gov/ard).

Issue 2000-3 and all subsequent editions of the *Michigan Register* can be viewed on the Michigan Office of Administrative Hearings and Rules website. The electronic version of the *Register* can be navigated using the blue highlighted links found in the Contents section. Clicking on a highlighted title will take the reader to related text, clicking on a highlighted header above the text will return the reader to the Contents section.

Executive Director,  
Michigan Office of Administrative Hearings and Rules

## 2023 PUBLICATION SCHEDULE

Issue No.	Closing Date for Filing or Submission Of Documents (5 p.m.)	Publication Date
1	January 15, 2023	February 1, 2023
2	February 1, 2023	February 15, 2023
3	February 15, 2023	March 1, 2023
4	March 1, 2023	March 15, 2023
5	March 15, 2023	April 1, 2023
6	April 1, 2023	April 15, 2023
7	April 15, 2023	May 1, 2023
8	May 1, 2023	May 15, 2023
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23	December 15, 2023	January 1, 2024
24	January 1, 2024	January 15, 2024

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**PROPOSED ADMINISTRATIVE RULES,  
NOTICES OF PUBLIC HEARINGS**

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*MCL 24.242(3) states in part:*

*“... the agency shall submit a copy of the notice of public hearing to the Office of Regulatory Reform for publication in the Michigan register. An agency's notice shall be published in the Michigan register before the public hearing and the agency shall file a copy of the notice of public hearing with the Office of Regulatory Reform.”*

*MCL 24.208 states in part:*

*“Sec. 8. (1) The Office of Regulatory Reform shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:*

\*       \*       \*

*(d) Proposed administrative rules.*

*(e) Notices of public hearings on proposed administrative rules.”*

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**PROPOSED ADMINISTRATIVE RULES**

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DEPARTMENT OF STATE POLICE

SPECIAL OPERATIONS DIVISION

**DRUNK DRIVING PREVENTION EQUIPMENT AND TRAINING FUND**

Filed with the secretary of state on

These rules **become effective** ~~take effect~~ immediately **after** ~~upon~~ filing with the secretary of state unless adopted under section 33, 44, or 45a(9) of the administrative procedures act of 1969, 1969 PA 306, MCL 24.233, 24.244, or 24.245a. Rules adopted under these sections become effective 7 days after filing with the secretary of state.

(By authority conferred on the department of state police by section 625h of the Michigan vehicle code, 1949 PA 300, MCL 257.625h ~~Act No. 300 of the Public Acts of 1949, as amended, being S257.625h of the Michigan Compiled Laws~~)

R 257.991, R 257.992, R 257.993, R 257.994, and R 257.996 of the Michigan Administrative Code are amended, as follows:

R 257.991 Definitions.

Rule 1. As used in these rules:

(a) "Act" means ~~Act No.~~ **the Michigan vehicle code, 1949 PA 300, of the Public Acts of 1949, as amended, being sect. 257.1 et seq. of the Michigan Compiled Laws MCL 257.1 to 257.923.**

(b) "Breath alcohol test instrument" means an evidential breath-testing device that indicates a specific breath alcohol concentration expressed as grams of alcohol per 210 liters of breath.

(c) "Department" means the department of state police.

(d) "Fund" means the drunk driving prevention equipment and training fund described in section 625h of the act, **MCL 257.625h.**

(e) ~~Other~~ **Preliminary** breath alcohol test instrument" means a breath alcohol ~~testing~~ **screening** device ~~which is used either alone or in conjunction with a breath alcohol test instrument and which may indicate that indicates either a specific breath alcohol concentration or the presence or absence of alcohol in the individual's breath.~~

R 257.992 Fund.

Rule 2. (1) The department shall allocate sufficient money from the fund to cover **the following:** ~~salaries and other necessary expenses to administer the fund.~~

(a) **The salaries and other necessary expenses to administer the fund.**

(b) **The acquisition and maintenance of breath alcohol test instruments, supplies, and accessories.**

(c) **The training required for law enforcement personnel on the use of breath alcohol testing instruments.**

(2) The department shall ~~may~~ **allocate fund money for the acquisition of preliminary breath alcohol test instruments, supplies, and accessories. all of the following:**

~~(a) Breath alcohol test instruments.~~

~~(b) Other breath alcohol test instruments.~~

~~–(c) Accessories and supplies for the instruments.~~

R 257.993 Purchase of breath alcohol test instruments.

Rule 3. The department shall purchase, **maintain**, and retain ownership of; breath alcohol test instruments. **At least 1 breath alcohol test instrument must be placed in each county at a location determined by the department. Additional instruments must be placed, maintained, or moved by the department according to considerations including, but not limited to, population density, proximity of additional instruments, historical usage, instrument accessibility, and the department’s ability to adequately maintain the instruments.** ~~and shall distribute them as follows:~~

~~–(a) To the Detroit metropolitan area as follows:~~

~~–(i) One instrument to each county.~~

~~–(ii) One instrument to each Detroit police department precinct.~~

~~–(iii) One instrument to each lockup facility.~~

~~–(iv) One instrument to any location that has conducted a minimum of 100 tests for each current instrument in a 12-month period.~~

~~–(b) To the outstate area as follows:~~

~~–(i) One instrument to each county.~~

~~–(ii) One instrument to any location that has conducted a minimum of 250 tests for each current instrument in a 12-month period.~~

~~–(iii) One instrument to each lockup facility.~~

R 257.994 Maintenance of equipment.

Rule 4. The department shall **manage** ~~contract for and pay for~~ the maintenance of instruments that are purchased from the fund.

R 257.996 Purchase of ~~other~~ **preliminary** breath alcohol test instruments.

Rule 6. (1) The department shall evaluate and designate **preliminary** ~~other~~ breath alcohol test instruments **that can be purchased by all law enforcement agencies in this state.**

(2) The department may expend fund money as grants to law enforcement agencies for **preliminary** ~~other~~ breath alcohol test instruments, including the maintenance of the instruments. The following agencies may apply for **preliminary** ~~other~~ breath alcohol test instruments:

(a) The department.

(b) County sheriff departments.

(c) Local law enforcement agencies.

(3) An agency shall submit an application for grant funding to the department on the form and in the manner prescribed by the department. The completed application ~~shall~~**must** contain all of the information required by the department.

(4) The department ~~shall~~ **may** distribute **preliminary** ~~other~~ breath alcohol test instruments as follows:

(a) A certified law enforcement agency that does not have any instruments **must** ~~shall~~ receive at least 1 instrument.

(b) The ratio of distribution of fund money among the department, sheriff departments, and local agencies ~~shall~~**must** be based ~~upon~~ the ratio of marked patrol vehicles at the department, sheriff departments, and local agencies.

(c) The department shall allocate money from the fund each fiscal year for other breath alcohol test instruments.

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**NOTICE OF PUBLIC HEARING**

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Department of State Police  
Forensic Science Division  
Administrative Rules for Drunk Driving Equipment and Training Fund  
Rule Set 2022-33 SP

NOTICE OF PUBLIC HEARING  
Tuesday, March 14, 2023  
03:00 PM

Centennial Room  
Michigan State Police Headquarters, 7150 Harris Drive, Dimondale, MI 48221

The Department of State Police will hold a public hearing to receive public comments on proposed changes to the Drunk Driving Equipment and Training Fund rule set.

The purpose of the rules is to implement the framework for administering the drunk driving prevention equipment and training fund pursuant to MCL 257.625h. That section requires that monies in the fund be used to administer the fund, purchase and maintain breath alcohol testing equipment, and provide training to law enforcement personnel in the use of the testing equipment. The rules are intended to clarify the department's authority to place, move, or remove its breath alcohol testing equipment based on available resources, practical, operational, and historical needs.

By authority conferred on the department of state police by section 625h of the Michigan vehicle code, 1949 PA 300, MCL 257.625h.

The proposed rules will take effect immediately after filing with the Secretary of State. The proposed rules are published on the State of Michigan's website at [www.michigan.gov/ARD](http://www.michigan.gov/ARD) and in the 3/1/2023 issue of the Michigan Register. Copies of these proposed rules may also be obtained by mail or electronic mail at the following email address: [mSPforensics@Michigan.gov](mailto:mSPforensics@Michigan.gov).

Comments on these proposed rules may be made at the hearing, by mail, or by electronic mail at the following addresses until 3/14/2023 at 05:00PM.

Department of State Police Forensic Science Division

Michigan State Police Headquarters, Forensic Science Division 7150 Harris Drive, Dimondale, MI 48221

[mSPforensics@Michigan.gov](mailto:mSPforensics@Michigan.gov)

The public hearing will be conducted in compliance with the 1990 Americans with Disabilities Act. If the hearing is held at a physical location, the building will be accessible with handicap parking available. Anyone needing assistance to take part in the hearing due to disability may call 517-281-6660 to make arrangements.

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**PROPOSED ADMINISTRATIVE RULES**

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DEPARTMENT OF STATE POLICE

~~TRAFFIC SAFETY DIVISION~~ **TRAINING DIVISION**

TESTS FOR BREATH ALCOHOL

Filed with the secretary of state on

These rules **become effective** ~~take effect~~ immediately **after** ~~upon~~ filing with the secretary of state unless adopted under section 33, 44, or 45a(9) of the administrative procedures act of 1969, 1969 PA 306, MCL 24.233, 24.244, or 24.245a. Rules adopted under these sections become effective 7 days after filing with the secretary of state.

(By authority conferred on the department of state police by section 190 of the Aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.190, and section 625a of the Michigan vehicle code, 1949 PA 300, MCL 257.625a)

R 325.2651, R 325.2652, R 325.2653, R 325.2655, and R 325.2658 of the Michigan Administrative Code are amended, R 325.2656a, R 325.2657a, and R 325.2659 are added, and R 335.2654 is rescinded, as follows:

R 325.2651 Definitions.

Rule 1. (1) As used in these rules:

(a) "Acts" **means the Aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.1 to 259.208; the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923; the railroad code of 1993, 1993 PA 354, MCL 462.101 to 462.451; and the natural resources and environmental protection act, 1994 PA 451, MCL 324.101 to 324.90106.** ~~means 1945 PA 327, MCL 259.190, 1949 PA 300, MCL 257.625a, 1993 PA 354, MCL 462.359, 1994 PA 451, MCL 324.80181, MCL 324.81136, and MCL 324.82137.~~

(b) "Alcohol standard" means a certified alcohol standard.

~~(c) "Calendar month" means 12:01 a.m. on the first date of any of the 12 named months of the year to midnight on the last date of the same month.~~

~~(d)~~(c) "Calendar week" means 12:01 a.m. Sunday to midnight Saturday.

~~(e)~~(d) "Class" ~~means a classification of operator status as certified by the department, based on training and function as specified in R 325.2658.~~ **"Certified" means the operator completed the required training and possesses a certificate of training.**

~~(f)~~(e) "Department" ~~means the department of state police.~~ **"Class" means a classification of operator status as certified by the department, based on training and function as specified in R 325.2658.**

~~(g)~~(f) "Equipment" ~~means evidential and preliminary breath alcohol test instruments, simulator devices, calibration stations, forms, and any accessories and supplies necessary for compliance with the procedures in these rules or law.~~ **"Class I operator" means an operator certified to conduct a subject test with a preliminary breath testing instrument.**

~~(h)(g)~~ "Evidential breath alcohol analysis" means chemical analysis of an essentially alveolar breath sample that indicates a specific result in grams of alcohol per 210 liters of breath. **"Class II operator" means an operator certified to calibrate a preliminary breath testing instrument.**

~~(i)(h)~~ "Evidential breath alcohol test instrument" means an evidential breath testing device that indicates a specific result in grams of alcohol per 210 liters of breath. **"Class III operator" means an operator certified to conduct a subject test with an evidential breath testing instrument.**

~~(j)(i)~~ "Preliminary breath alcohol analysis" means chemical analysis of essentially alveolar breath samples that indicates the presence or absence of alcohol in a person's blood. **"Class IVA operator" means an operator certified to instruct the class I, II, and III certification courses.**

~~(k)(j)~~ "Preliminary breath alcohol test instrument" means a breath alcohol screening device that indicates the presence or absence of alcohol in a person's blood. **"Class IVB operator" means an operator certified to calibrate and repair an evidential breath testing instrument.**

~~(f)(k)~~ "Department" means the department of state police.

~~(g)(l)~~ "Equipment" means evidential and preliminary breath alcohol test instruments, simulator devices, calibration stations, forms, and any accessories and supplies necessary for ~~compliance to~~ **comply** with the procedures in these rules or law.

~~(h)(m)~~ "Evidential breath alcohol analysis" means chemical analysis of an essentially alveolar breath sample that indicates a specific result in grams of alcohol per 210 liters of breath.

~~(i)(n)~~ "Evidential breath alcohol test instrument" means an evidential breath testing device that indicates a specific result in grams of alcohol per 210 liters of breath.

~~(j)(o)~~ "Preliminary breath alcohol analysis" means chemical analysis of essentially alveolar breath samples that indicates the presence or absence of alcohol in **an individual's** ~~person's~~ blood.

~~(k)(p)~~ "Preliminary breath alcohol test instrument" means a breath alcohol screening device that indicates the presence or absence of alcohol in **an individual's** ~~person's~~ blood.

~~(l)(r)~~ "Shall" means that a function is mandatory.

~~(m)(s)~~ "Should" means that a function is recommended, but not mandatory, with reasonable deviation allowed.

(2) Terms used in the acts have the same meanings when used in these rules.

R 325.2652 Approved equipment.

Rule 2. (1) **Except as provided in subrule (2) of this rule,** ~~Evidential~~ evidential and preliminary breath alcohol test instruments **must** ~~shall be tested by, and shall~~ meet the existing model specifications for evidential breath alcohol analysis as established by, ~~the~~ United States Department of Transportation, National Highway Traffic Safety Administration. The specifications are identified as "Model Specifications for Devices to Measure Breath Alcohol" 49 FR 48855 et seq., (December 14, 1984), as amended by 58 FR 48705, (September 17, 1993), **as amended by 82 FR 50940 et seq., (November 2, 2017)** 62 FR 43416 et seq., (August 13, 1997), 69 FR 42237 et seq., (July 14, 2004), 71 FR 37159 et seq., (June 29, 2006), 72 FR 71480 et seq., (December 17, 2007), and FR Doc. 2012-14582 (June 14, 2012), and are adopted in these rules by reference. ~~A copy~~ **Copies** of the specifications and a current conforming products list are available from the **United States U.S.** Department of Transportation, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, D.C. 20590 ; **and its website at [nhtsa.gov](http://nhtsa.gov),** or from the Michigan State Police, ~~Training Division Records Resource Section,~~ 7150 Harris Drive, P.O. Box 30634, Lansing, MI, 48909 ; **and its website at [www.michigan.gov/msp/services/foia](http://www.michigan.gov/msp/services/foia).** A fee of \$1.00 may be charged for each requested copy. A copy of the specifications and conforming products list may be inspected at the Michigan State Police, Training Division, 7426 N Canal Road, Lansing, MI, 48913 during normal business hours.

(2) If the United States Department of Transportation discontinues the testing of evidential breath alcohol test instruments or the issuance of model specifications for ~~that test such testing~~, only those instruments tested and approved by the department ~~can~~ **shall** be used.

(3) An application for equipment approval ~~shall~~ **must** be submitted to the department.

(4) ~~Only Operators shall only use~~ equipment approved by the department for evidential and preliminary breath alcohol analysis. ~~shall be utilized by operators.~~

R 325.2653 Equipment accuracy **evidential breath test instruments.**

Rule 3. (1) **For evidential breath test instruments that do not examine a known standard with each subject test, an** ~~An~~ appropriate class operator who has been certified in accordance with R 325.2658 shall verify an evidential breath alcohol test instrument for accuracy at least once each calendar week, or more frequently as the department may require. Alternatively, a pre-programmed self-test for accuracy may be initiated by the evidential breath alcohol test instrument and recorded by an appropriate class operator who has been certified in accordance with R 325.2658, if the instrument is so equipped and programmed. The tests for accuracy are not required to be performed within 7 days of each other. The test for accuracy ~~must shall~~ be made using an alcohol standard that is approved by the department. For the evidential breath alcohol test instrument to meet the requirements for accuracy, a test result ~~must not exceeding exceed~~ **must** ~~not exceeding~~ **exceed**  $\pm 5\%$  ~~shall be obtained~~ when using a controlled device. Controlled devices include both of the following:

(a) ~~A~~ **W**et bath device that delivers an alcohol vapor concentration test result of ~~.080~~ **0.080** grams of alcohol per 210 liters of vapor.

(b) ~~A~~ **C**ompressed alcohol gas device that delivers a test result of ~~.080~~ **0.080** grams of alcohol per 210 liters of vapor **before applying applicable barometric pressure correction. To meet this requirement, the instrument must analyze the known ethanol gas standard within  $\pm 5\%$  of the adjusted, or corrected alcohol concentration, based on the barometric correction.** ~~after applying applicable altitude or topographic elevation correction factor supplied by the manufacturer. The correction factor may be applied by the operator or by the evidential breath alcohol test instrument if so pre-programmed.~~

(2) ~~A weekly test is not required for evidential breath test instruments that examine a known alcohol standard, either wet bath or compressed gas, with each test subject. If an accuracy check is conducted, then the results must be retained either in log form by the agency where the instrument is installed or electronically within the instruments memory. An appropriate class operator who has been certified in accordance with R 325.2658 shall verify for accuracy a preliminary breath alcohol test instrument at least monthly, or more frequently as the department may require. The test for accuracy shall be made using an alcohol standard that is approved by the department. For the preliminary breath alcohol test instrument to meet the requirements for accuracy, a test result not exceeding  $\pm 5\%$  shall be obtained when using a controlled device. Controlled devices include both of the following:~~

~~(a) Wet bath device that delivers an alcohol vapor concentration of .080 grams of alcohol per 210 liters of vapor.~~

~~(b) Compressed alcohol gas device that delivers a test result of .080 grams of alcohol per 210 liters of vapor after applying applicable altitude or topographic elevation correction factor supplied by the manufacturer. The correction factor may be applied by the operator or by the preliminary breath alcohol test instrument calibration station if so pre-programmed.~~

(3) Approved evidential breath alcohol test instruments **that do not examine a known alcohol standard with each test subject must** ~~shall~~ be inspected, verified for accuracy, and certified as to their proper working order within 120 days ~~of~~ **after** the previous inspection by either an appropriate class

operator who has been certified in accordance with R 325.2658, or a manufacturer-trained representatives approved by the department.

**(4) Approved evidential breath alcohol test instruments that examine a known alcohol standard with each subject test must be inspected, verified for accuracy, and certified as to their proper working order not less than 2 times annually by either an appropriate class operator who has been certified in accordance with R 325.2658, or a manufacturer-trained representative approved by the department.**

R 325.2654 **Rescinded.** ~~Equipment repair and service.~~

~~Rule 4. (1) The repair and service of equipment approved by the department for evidential and preliminary breath alcohol analysis shall be at the expense of the agency using the equipment. The department or the agency using the equipment may arrange to have this service provided either by an appropriate class operator who has been certified in accordance with R 325.2658 or a manufacturer-trained authorized representatives approved by the department.~~

~~(2) After repair or service and before being placed in service, evidential and preliminary breath alcohol test instruments shall be verified for accuracy in accordance with the provisions of R 325.2653 and records of verification shall be kept as required by the department.~~

R 325.2655 Techniques and procedures – **evidential breath test instruments.**

Rule 5. ~~(1)~~ A procedure that is used in conjunction with evidential breath alcohol analysis **must shall** be approved by the department and **shall comply with the** ~~be in compliance with all of the following requirements: provisions:~~

(a) Except as provided otherwise in these rules, evidential breath alcohol test instruments **must shall** ~~only~~ be operated by appropriate class operators who **are** ~~have been~~ certified in accordance with R 325.2658.

(b) All analyses **must shall** be conducted following procedures approved by the department and using forms approved by the department, as required.

(c) Records of operation, analyses, and results **must shall** be maintained at the evidential breath alcohol test instrument location as prescribed by the department, and **copies must be** ~~copies~~ forwarded to the department as required.

(d) The department shall test samples from each lot of alcohol standards used in **this the** state, in conjunction with evidential breath alcohol test instruments. The department shall certify for use those lots of alcohol standards that are found to be proper in chemical composition.

(e) ~~An person individual may shall~~ be administered an evidential breath alcohol analysis on an evidential breath alcohol test instrument only after being observed for **not less than** 15 minutes before collection of the breath sample by at least 1 appropriate class operators ~~who that~~ is certified in accordance with R 325.2658. The observation period may be conducted by more than 1 operator working in concert. During the observation period, the ~~person individual~~ shall not have smoked, regurgitated, or placed anything in his or her mouth, except for the mouthpiece associated with the performance of the evidential breath alcohol analysis. The operator need not stare continuously at the ~~person individual~~, but **shall must** be close enough to be aware of the **individual's person's** actions and conditions. The operator may complete paperwork, enter data into the evidential breath alcohol test instrument, or conduct other reasonable tasks during the observation period, **provided if** the **individual person** is within the operator's field of vision. Breaks in the observation period lasting only a few seconds do not invalidate the observation **if** the operator can reasonably determine that the **individual person** did not smoke, regurgitate, or place anything in his or her mouth during the breaks in the observation.

(f) The operator shall request a second evidential breath ~~sample alcohol~~ from the **subject after the first sample is provided and analyzed by the instrument, unless an item person being tested and administered, unless the person refuses to give the second breath sample** or a substance is found in the **subject's person's mouth after** subsequent to the first evidential breath ~~alcohol~~ **sample** analysis that could interfere with the ~~breath sample~~ result. Obtaining the first breath sample result is sufficient to meet the requirements for evidentiary purposes prescribed in section 625c of the Michigan vehicle code, 1949 PA 300, MCL 257.625c. The purpose of obtaining a second breath sample result is to confirm the result of the first breath sample result.

(g) **For instruments reporting 2 digits after the decimal, a** A second breath sample result shall **must** not vary from the first breath sample result by more than the allowable variation listed in Table 1. **Tables 1 and 2 read as follows:**

Table 1

~~Breath alcohol allowable~~ **Allowable** variation of second breath sample result range from the first ~~breath~~ sample result.

<b>First Sample</b>	<b>Allowable variation</b>
0.00 - 0.14	+/- 0.01
0.15 - 0.24	+/- 0.02
0.25 - 0.34	+/- 0.03
0.35 - or more	+/- 0.04

**For instruments reporting 3 digits after the decimal, the second breath sample result must not vary from the first sample result by more than the allowed variation listed in Table 2.**

Table 2

**Allowable variation of second breath sample result from the first breath sample result.**

<b>First Sample</b>	<b>Allowable Variation</b>
<b>0.000 - 0.149</b>	<b>+/- 0.010</b>
<b>0.150 – 0.249</b>	<b>+/- 0.020</b>
<b>0.250 – 0.349</b>	<b>+/- 0.030</b>
<b>0.350 or more</b>	<b>+/- 0.040</b>

(h) If the variation is more than ~~that~~ allowed in **either table under subdivision (g) of this rule, Table 1** the operator shall request a third breath sample from the **subject person being tested** and a third breath sample result may be obtained. If the third breath sample result does not conform to the allowable ~~variation~~ **variations of either of the first 2 tests based on the allowable variation listed in either table under subdivision (g) of this rule, the subject** in Table 1 of either of the first 2 tests, the person shall be requested to submit a blood or urine sample for analysis in accordance with ~~the acts MCL 257.625a~~ and the procedures established in R 325.2671 to R 325.2677.

(i) ~~(g)~~ The results of an evidential breath alcohol analysis of a ~~person's~~ **subject's** breath shall **must** be expressed in terms of grams of alcohol per 210 liters of breath, truncated to the second decimal place **or expressed to 3 decimals if the instrument is programed to do so.** ~~For example, 0.237 found shall be reported as 0.23.~~

(j) **If the instrument analyzes a known ethanol standard during a subject's breath test, the results of that analysis must be no lower than 0.074 g/210L and no higher than 0.084 g/210L of the nominal value of the standard. If the analysis is not within the prescribed standard the**

**instrument must abort the test indicating the ethanol standard was not within the required range. The operator may attempt additional tests.**

~~(2) A procedure that is used in conjunction with preliminary breath alcohol analysis must be approved by the department and shall be in compliance with all of the following provisions:~~

~~(a) Except as provided otherwise in these rules, preliminary breath alcohol test instruments shall only be operated by appropriate class operators who have been certified in accordance with R 325.2658~~

~~(b) A person may be administered a preliminary breath alcohol analysis on a preliminary breath alcohol test instrument only after the operator determines that the person has not smoked, regurgitated, or placed anything in his or her mouth for at least 15 minutes.~~

~~(c) Records shall be maintained at the preliminary breath alcohol test instrument location as prescribed by the department and copies shall be forwarded to the department as required.~~

~~(3) A person's welfare shall be protected by requesting medical assistance if the result of the evidential or preliminary breath alcohol analysis is 0.35 or more. Failure to request medical assistance does not affect the validity or evidential value of the result of an evidential or preliminary breath alcohol analysis.~~

#### **R 325.2656a Equipment Accuracy – Preliminary Breath Test Instrument.**

**Rule 6a. An appropriate class operator who has been certified in accordance with R 325.2658 shall verify for accuracy a preliminary breath alcohol test instrument at least monthly, or more frequently as the department may require. The test for accuracy must be made using an alcohol standard that is approved by the department. For the preliminary breath alcohol test instrument to meet the requirements for accuracy, a test result not exceeding +/- 5% must be obtained when using a controlled device. Controlled devices include both of the following:**

**(a) A wet bath device that delivers an alcohol vapor concentration of 0.080 grams of alcohol per 210 liters of vapor.**

**(b) A compressed alcohol gas device that delivers a test result of 0.080 grams of alcohol per 210 liters of vapor before applying applicable altitude or topographic evaluation correction factor supplied by the manufacturer. The correction factor may be applied by the operator or by the preliminary breath alcohol test instrument calibration station, if pre-programmed.**

#### **R 325.2657a Techniques and Procedures – Preliminary Breath Test Instruments.**

**Rule 7a. (1) A procedure that is used in conjunction with preliminary breath alcohol analysis must be approved by the department and comply with all of the following:**

**(a) Except as provided otherwise in these rules, preliminary breath alcohol test instruments must only be operated by appropriate class operators who have been certified in accordance with R 325.2658.**

**(b) An individual may be administered a preliminary breath alcohol analysis on a preliminary breath alcohol test instrument only after the operator determines that the individual has not smoked, regurgitated, or placed anything in his or her mouth for not less than 15 minutes.**

**(c) Records must be maintained at the preliminary breath alcohol test instrument location as prescribed by the department and copies must be forwarded to the department as required.**

**(2) An individual's welfare must be protected by requesting medical assistance if the result of the evidential or preliminary breath alcohol analysis is 0.35 or more. Failure to request medical assistance does not affect the validity or evidential value of the result of an evidential or preliminary breath alcohol analysis.**

#### **R 325.2658 Operator training and certification.**

**Rule 8. (1) The department shall train and certify personnel of law enforcement agencies to perform various functions as described in this rule, and shall designate those such individuals persons as class I,**

class II, class IIIA, ~~class IIIB~~, class IVA, or class IVB operators. An operator may hold multiple and concurrent classifications. ~~Operator certification is non-expiring.~~ **To maintain a class III certification, each class III operator certified after January 1, 2022 is required to re-certify every 2 years. Class III operators certified before January 1, 2022 are required to recertify before December 31, 2023, and every 2 years after that. Any class III operator who fails to re-certify before the current certification expires is required to attend and successfully complete the class III operator training as detailed in R 325.2658(2)(c). An operator whose certification has lapsed can testify about incidents that occurred during their valid certification period.**

(2) The minimum training requirements and proficiency standards for operator certification are as follows:

(a) A class I operator shall complete a class I training course approved by the department, **and obtain a minimum score of 70% on a written examination administered by the department. An individual that fails the examination is provided an opportunity to retake the written examination. An individual that fails the second attempt to pass the written examination shall retake the class I training course and successfully pass the examination to qualify for the class I certification.** ~~And demonstrate proficiency in the operation of a preliminary breath alcohol test instrument to the department. The department shall provide a person who fails to pass the written examination or demonstrate the required proficiency a second opportunity to take the written examination or demonstrate the required proficiency. A person who fails on his or her second opportunity to successfully pass the written examination or demonstrate the required proficiency must retake the class I training course, successfully pass the written examination, and demonstrate the required proficiency, in order to qualify for class I operator certification.~~

(b) A class II operator shall complete a class II training course approved by the department, **and obtain a minimum score of 70% on a written examination administered by the department. An individual that fails the examination is provided an opportunity to retake the written examination. An individual that fails the second attempt to pass the written examination shall retake the class I training course and successfully pass the examination to qualify for the class II certification.** ~~And demonstrate proficiency in the operation of an evidentiary breath alcohol test instrument to the department. The department shall provide a person who fails to pass the written examination or demonstrate the required proficiency a second opportunity to take the written examination or demonstrate the required proficiency. A person who fails on his or her second opportunity to successfully pass the written examination or demonstrate the required proficiency must retake the class II training course, successfully pass the written examination, and demonstrate the required proficiency, in order to qualify for class II operator certification.~~

(c) A class ~~IIIA~~ **III** operator shall be currently certified as a class ~~I~~ **II** operator, complete a class ~~IIIA~~ **III** training course approved by the department, obtain a minimum score of 70% on a written examination administered by the department, and demonstrate proficiency in the **use of an evidential breath testing instrument.** ~~verification and calibration of a preliminary breath alcohol test instruments to the department. An individual that fails the examination or fails to demonstrate the required proficiency is provided an opportunity to retake the written examination or demonstrate the required proficiency. An individual that fails the second attempt to pass the written examination or fails to demonstrate the required proficiency shall retake the class III training course and successfully pass the written examination and demonstrate the required proficiency to qualify for the class III certification. The department shall provide a person who fails to pass the written examination or demonstrate the required proficiency a second opportunity to take the written examination or demonstrate the required proficiency. A person who fails on his or her second opportunity to successfully pass the written examination or demonstrate the required proficiency shall be~~

~~required to retake the class IIIA training course, successfully pass the written examination, and demonstrate the required proficiency in order to qualify for class IIIA operator certification.~~

~~(d) A class ~~IIIB~~ IVA operator shall be currently certified as a class ~~II~~ III operator, and complete a class ~~IIIB~~ IVA training course approved by the department, obtain a minimum score of 70% on a written examination administered by the department, and demonstrate proficiency in the limited service of an evidentiary breath alcohol test instruments to the department. The department shall provide a person who fails to pass the written examination or demonstrate the required proficiency a second opportunity to take the written examination or demonstrate the required proficiency. A person who fails on his or her second opportunity to successfully pass the written examination or demonstrate the required proficiency shall be required to retake the class ~~IIIB~~ training course, successfully pass the written examination, and demonstrate the required proficiency in order to qualify for class ~~IIIB~~ operator certification.~~

(e) A class ~~IVA~~ **IVB** operator shall be currently certified as a class ~~III~~ **IVA** operator. **Before class IVB certification, the class IVB operator shall receive additional training in the repair and service of evidential breath instruments from the manufacturer of the instruments or by a current class IVB operator, if the manufacturer is unavailable for training.** ~~complete a class IVA training course approved by the department, and demonstrate proficiency instructing class II and class IIIA operator training courses approved by the department. The department shall provide a person who fails to demonstrate the required proficiency a second opportunity to demonstrate the required proficiency. A person who fails on his or her second opportunity to demonstrate the required proficiency shall be required to retake the class IVA training course and demonstrate the required proficiency in order to qualify for class IVA operator certification.~~

~~(f) A class IVB operator shall be currently certified as a class IVA operator that has been designated by the department to administer the breath alcohol testing program for the state of Michigan. Before class IVB designation, the class IVB operator shall receive additional training in the repair and service of evidential and preliminary breath alcohol test instruments by the manufacturer of such instruments.~~

(3) The department shall develop and distribute to each certified operator a training manual for each of the operator's classifications. Training manuals must specify the functions performed by each class pursuant to this rule, as well as the knowledge and skills necessary to perform the appropriate functions.

(4) The primary functions of each class are described in Table 23. Additional functions not described in Table 23 may be designated by the department and described and explained in the appropriate training manual.

~~(5) A person who~~ **An individual that** meets the training requirements and proficiency standards for operator certification in accordance with this rule ~~shall be~~ **is** issued a certification card for the appropriate class by the department. The certification card ~~shall~~ **must** remain the property of the department.

(6) A class I, class ~~I~~ **II**, class ~~IIIA~~ **III**, ~~class IIIB~~, class IVA, and class IVB operator shall comply with all applicable department rules, policies, and procedures or the department may suspend his or her operator certification. ~~A person whose operator certification has been suspended by the department shall return his or her certification card to the department within 7 days of receiving notice of the suspension.~~ **An individual person shall may** make a request for reinstatement of operator certification to the department in writing and, ~~upon~~ **after** approval, the department may require the **individual person** to complete an operator training **class**, pass a written examination, ~~and/or~~ demonstrate required proficiency, **or any combination thereof.**

**(7) The requirements for each class of operators are included in Table 3 as follows:**

Table 2 3

OPERATOR FUNCTION	OPERATOR CLASS					
	I	II	III A	III B	IV A	IV B
<del>Train and certify class I operators</del>			X		X	X
<del>Train and certify class II operators</del>					X	X
<del>Train and certify class III A operators</del>					X	X
<del>Train and certify class III B operators</del>						X
<del>Train and certify class IV A operators</del>						X
<del>Administer preliminary breath alcohol analyses using preliminary breath alcohol test instruments approved for use by the department</del>	X	X	X		X	X
<del>Administer evidentiary breath alcohol analyses using evidential breath alcohol test instruments approved for use by the department</del>		X		X	X	X
<del>Verify for accuracy and calibrate preliminary breath alcohol test instruments approved for use by the department</del>			X		X	X
<del>Verify for accuracy evidential breath alcohol test instruments approved for use by the department</del>		X		X	X	X
<del>Inspect, certify, service, repair, and calibrate evidentiary breath alcohol test instruments approved for use by the department for proper working order</del>						X
<del>Provide service on preliminary breath alcohol test instruments approved for use by the department</del>						X
<del>Conduct inspections for compliance with applicable department rules, policies, and procedures</del>						X
<del>Provide limited service on evidentiary breath alcohol test instruments specified by the department</del>				X		

	Class I	Class II	Class III	Class IV A	Class IV B
<b>Administer preliminary breath alcohol analyses using preliminary breath alcohol test instruments approved for use by the department.</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>

Calibrate preliminary breath alcohol test instruments approved for use by the department.		X	X	X	X
Administer evidential breath alcohol analyses using an evidential breath instrument approved by the department.			X	X	X
Record weekly verification for approved evidential breath test instruments that do not examine a known standard with each subject test.			X	X	X
Train and certify all lower-level class operators.				X	X
Calibrate and service an evidential breath testing instrument approved for use by the department.					X

**R 325.2659 Equipment Repair and Service. Rescinded.**

**Rule 9. (1) The repair and service of equipment provided by the department for evidential and preliminary breath alcohol analysis must be at the expense of the agency using the equipment.**

**(2) The department or the agency using the equipment may arrange to have this service provided either by an appropriate class operator who has been certified in accordance with R 325.2658 or a manufacturer-trained authorized representative approved by the department.**

**(3) After repair or service and before being placed in service, evidential and preliminary breath alcohol test instruments must be verified for accuracy in accordance with R 325.2653. Records of verification must be maintained as required by the department.**

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**NOTICE OF PUBLIC HEARING**

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Department of State Police  
Forensic Science Division  
Administrative Rules for Tests for Breath Alcohol  
Rule Set 2022-34 SP

NOTICE OF PUBLIC HEARING  
Tuesday, March 14, 2023  
01:00 PM

Centennial Room  
Michigan State Police Headquarters, 7150 Harris Drive, Dimondale, MI 48221

The Department of State Police will hold a public hearing to receive public comments on proposed changes to the Tests for Breath Alcohol rule set.

The proposed rules are changes to existing rules that have accompanied the current evidential breath alcohol test instrument since the adoption, purchase, and installation of those instruments. The State of Michigan is purchasing new instruments with additional technology, features, and expanded capabilities and will need to amend the existing rules to accommodate both the technology and new features. The amendments to the rules also apply to training users and technicians on the operation of the new instrument.

The rules are promulgated by the authority conferred on the Department of State Police by PA 300 of 1949, MCL 257.625a. These rules will take effect immediately after filing with the Secretary of State.

The proposed rules will take effect immediately after filing with the Secretary of State. The proposed rules are published on the State of Michigan's website at [www.michigan.gov/ARD](http://www.michigan.gov/ARD) and in the 3/1/2023 issue of the Michigan Register. Copies of these proposed rules may also be obtained by mail or electronic mail at the following email address: [mSPforensics@Michigan.gov](mailto:mSPforensics@Michigan.gov).

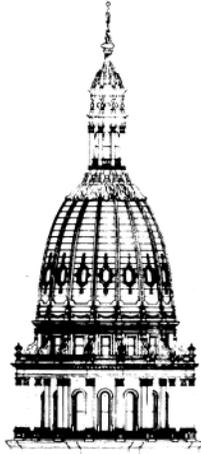
Comments on these proposed rules may be made at the hearing, by mail, or by electronic mail at the following addresses until 3/14/2023 at 05:00PM.

Michigan State Police, Forensic Science Division, 7150 Harris Drive, Dimondale, MI 48221

Michigan State Police, Forensic Science Division, 7150 Harris Drive, Dimondale, MI 48221

[mSPforensics@Michigan.gov](mailto:mSPforensics@Michigan.gov)

The public hearing will be conducted in compliance with the 1990 Americans with Disabilities Act. If the hearing is held at a physical location, the building will be accessible with handicap parking available. Anyone needing assistance to take part in the hearing due to disability may call 517-281-6660 to make arrangements.



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**ADMINISTRATIVE RULES  
ENROLLED SENATE AND HOUSE BILLS  
SIGNED INTO LAW OR VETOED  
(2022 SESSION)**

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*Mich. Const. Art. IV, §33 provides: “Every bill passed by the legislature shall be presented to the governor before it becomes law, and the governor shall have 14 days measured in hours and minutes from the time of presentation in which to consider it. If he approves, he shall within that time sign and file it with the secretary of state and it shall become law . . . If he does not approve, and the legislature has within that time finally adjourned the session at which the bill was passed, it shall not become law. If he disapproves . . . he shall return it within such 14-day period with his objections, to the house in which it originated.”*

*Mich. Const. Art. IV, §27, further provides: “No act shall take effect until the expiration of 90 days from the end of the session at which it was passed, but the legislature may give immediate effect to acts by a two-thirds vote of the members elected to and serving in each house.”*

*MCL 24.208 states in part:*

*“Sec. 8. (1) The Office of Regulatory Reform shall publish the Michigan register at least once each month. The Michigan register shall contain all of the following:*

\* \* \*

*(b) On a cumulative basis, the numbers and subject matter of the enrolled senate and house bills signed into law by the governor during the calendar year and the corresponding public act numbers.*

*(c) On a cumulative basis, the numbers and subject matter of the enrolled senate and house bills vetoed by the governor during the calendar year.”*

# 2023 Michigan Public Acts Table

Legislative Service Bureau  
Legal Division, Statutory Compiling and Law Publications Unit  
124 W. Allegan, Lansing, MI 48909

February 15, 2023  
Compiled through PA 3 of 2023

PA No.	ENROLLED		I.E.* Yes/No	Governor Approved	Filed Date	Effective Date	SUBJECT
	HB	SB					
0001		0007	Yes	1/31/2023	1/31/2023	1/31/2023	<b>Appropriations; supplemental;</b> appropriations for multiple departments and branches for fiscal years 2021-2022 and 2022-2023; provide for. <b>(Sen. Sarah Anthony)</b>
0002		0013	No	2/1/2023	2/1/2023	**	<b>Elections; presidential primary;</b> presidential primary election date; revise. <b>(Sen. Jeremy Moss)</b>
0003		0008	Yes	2/14/2023	2/14/2023	2/14/2023	<b>Appropriations; supplemental;</b> supplemental appropriations in the school aid act for fiscal years 2021-2022 and 2022-2023; provide for. <b>(Sen. Sarah Anthony)</b>

\* - I.E. means Legislature voted to give the Act immediate effect.  
 \*\* - Act takes effect on the 91st day after sine die adjournment of the Legislature.  
 \*\*\* - See Act for applicable effective date.  
 + - Line item veto.  
 ++ - Pocket veto.  
 # - Tie bar.