

# SENATE BILL No. 167

February 22, 1989, Introduced by Senators EHLERS, CRUCE, J. HART, DE GROW, FESSLER, CARL, FREDRICKS, CROPSEY, BARCIA, FAUST and WELBORN and referred to the Committee on Judiciary.

A bill to amend sections 625a and 625c of Act No. 300 of the Public Acts of 1949, entitled as amended

"Michigan vehicle code,"

as amended by Act No. 310 of the Public Acts of 1982, being sections 257.625a and 257.625c of the Michigan Compiled Laws.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Section 1. Sections 625a and 625c of Act No. 300 of the  
2 Public Acts of 1949, as amended by Act No. 310 of the Public Acts  
3 of 1982, being sections 257.625a and 257.625c of the Michigan  
4 Compiled Laws, are amended to read as follows:

5       Sec. 625a. (1) The amount of alcohol or presence of a con-  
6 trolled substance or both in the driver's blood at the time  
7 alleged as shown by chemical analysis of the person's blood,  
8 urine, or breath shall be admissible into evidence in a criminal  
9 prosecution for any of the following:

1 (a) A violation of section 625(1), (2), or (3), or 625b, or  
2 of a local ordinance substantially corresponding to section  
3 625(1), (2), or (3), or 625b.

4 (b) Felonious driving, negligent homicide, ~~or~~  
5 manslaughter, OR OTHER OFFENSE WHICH RESULTS IN A SERIOUS OR  
6 AGGRAVATED INJURY TO A PERSON OR THE DEATH OF A PERSON, resulting  
7 from the operation of a motor vehicle while the driver is alleged  
8 to have been impaired by or under the influence of intoxicating  
9 liquor or a controlled substance or a combination of intoxicating  
10 liquor and a controlled substance, or to have had a blood alcohol  
11 content of 0.10% or more by weight of alcohol.

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

21 (3) Except in a prosecution relating solely to a violation  
22 of section 625(2), the amount of alcohol in the driver's blood at  
23 the time alleged as shown by chemical analysis of the person's  
24 blood, urine, or breath shall give rise to the following  
25 presumptions:

1 (a) If there was at the time 0.07% or less by weight of  
2 alcohol in the defendant's blood, it shall be presumed that the  
3 defendant was not under the influence of intoxicating liquor.

4 (b) If there was at the time in excess of 0.07% but less  
5 than 0.10% by weight of alcohol in the defendant's blood, it  
6 shall be presumed that the defendant's ability to operate a vehi-  
7 cle was impaired within the provisions of section 625b due to the  
8 consumption of intoxicating liquor.

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

12 (4) A sample or specimen of urine or breath shall be taken  
13 and collected in a reasonable manner. Only a licensed physician,  
14 or a licensed nurse or medical technician under the direction of  
15 a licensed physician and qualified to withdraw blood acting in a  
16 medical environment, at the request of a peace officer, may with-  
17 draw blood for the purpose of determining the amount of alcohol  
18 or presence of a controlled substance or both in the person's  
19 blood, as provided in this act. Liability for a crime or civil  
20 damages predicated on the act of withdrawing blood and related  
21 procedures shall not attach to a qualified person who withdraws  
22 blood or assists in the withdrawal in accordance with this act  
23 unless the withdrawal is performed in a negligent manner.

24 (5) The tests shall be administered at the request of a  
25 peace officer having reasonable grounds to believe the person has  
26 committed a crime described in subsection (1). A person who  
27 takes a chemical test administered at the request of a peace

1 officer, as provided in this section, shall be given a reasonable  
2 opportunity to have a person of his or her own choosing adminis-  
3 ter 1 of the chemical tests described in this section within a  
4 reasonable time after his or her detention, and the results of  
5 the test shall be admissible and shall be considered with other  
6 competent evidence in determining the innocence or guilt of the  
7 defendant. If the person charged is administered a chemical test  
8 by a person of his or her own choosing, the person charged shall  
9 be responsible for obtaining a chemical analysis of the test  
10 sample. The person charged shall be informed that he or she has  
11 the right to demand that a person of his or her choosing adminis-  
12 ter 1 of the tests provided for in subsection (1), that the  
13 results of the test shall be admissible and shall be considered  
14 with other competent evidence in determining the innocence or  
15 guilt of the defendant, and that the person charged shall be  
16 responsible for obtaining a chemical analysis of the test  
17 sample.

18 (6) The person charged shall be advised that if the person  
19 refuses the request of a peace officer to take a test described  
20 in this section, a test shall not be given without a court  
21 order. The person charged shall also be advised that the  
22 person's refusal of the request of a peace officer to take a test  
23 described in this section shall result in the suspension of his  
24 or her operator's or chauffeur's license or operating privilege,  
25 and in the addition of 6 points to his or her driver record.

26 (7) This section shall not be construed as limiting the  
27 introduction of any other competent evidence bearing upon the

1 question of whether or not the person was impaired by or under  
2 the influence of intoxicating liquor or a controlled substance,  
3 or a combination of intoxicating liquor and a controlled sub-  
4 stance, or whether the person had a blood alcohol content of  
5 0.10% or more by weight of alcohol.

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

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

16 (9) If after an accident the driver of a vehicle involved in  
17 the accident is transported to a medical facility and a sample of  
18 the driver's blood is withdrawn at that time for the purpose of  
19 medical treatment, the results of a chemical analysis of that  
20 sample shall be admissible in a criminal prosecution for a crime  
21 described in subsection (1) to show the amount of alcohol or  
22 presence of a controlled substance or both in the person's blood  
23 at the time alleged, regardless of whether the person had been  
24 offered or had refused a chemical test. The medical facility or  
25 person performing the chemical analysis shall disclose the  
26 results of the analysis to a prosecuting attorney who requests  
27 the results for use in a criminal prosecution as provided in this

1 subsection. A medical facility or person disclosing information  
2 in compliance with this subsection shall not be civilly or crimi-  
3 nally liable for making the disclosure.

4 (10) If after a highway accident the driver of a vehicle  
5 involved in the accident is deceased, a sample of the decedent's  
6 blood shall be withdrawn in a manner directed by the medical  
7 examiner for the purpose of determining blood alcohol content or  
8 presence of a controlled substance or both.

9 Sec. 625c. (1) A person who operates a vehicle upon a  
10 public highway or other place open to the general public, includ-  
11 ing an area designated for the parking of vehicles, in the state  
12 is considered to have given consent to chemical tests of his or  
13 her blood, breath, or urine for the purpose of determining the  
14 amount of alcohol or presence of a controlled substance or both  
15 in his or her blood if 1 OR MORE OF THE FOLLOWING CIRCUMSTANCES  
16 OCCUR:

17 (a) The person is arrested for a violation of section 625(1)  
18 or (2) or 625b, or a local ordinance substantially corresponding  
19 to section 625(1) or (2) or 625b.

20 (b) The person is arrested for felonious driving, negligent  
21 homicide, ~~or~~ manslaughter, OR OTHER OFFENSE WHICH RESULTS IN A  
22 SERIOUS OR AGGRAVATED INJURY TO A PERSON OR THE DEATH OF A  
23 PERSON, resulting from the operation of a motor vehicle, and the  
24 peace officer had reasonable grounds to believe that the person  
25 was operating the vehicle while impaired by or under the influ-  
26 ence of intoxicating liquor or a controlled substance or a  
27 combination of intoxicating liquor and a controlled substance, or

1 while having a blood alcohol content of 0.10% or more by weight  
2 of alcohol.

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 tests shall be administered as provided in section  
8 625a.