

HOUSE BILL No. 6133

May 28, 2002, Introduced by Rep. Switalski and referred to the Committee on Criminal Justice.

A bill to amend 1949 PA 300, entitled "Michigan vehicle code," by amending section 625a (MCL 257.625a), as amended by 1998 PA 351.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 625a. (1) A peace officer may arrest a person without
2 a warrant under either of the following circumstances:

3 (a) The peace officer has reasonable cause to believe the
4 person was, at the time of an accident in this state, the opera-
5 tor of a vehicle involved in the accident and was operating the
6 vehicle in violation of section 625 or a local ordinance substan-
7 tially corresponding to section 625.

8 (b) The person is found in the driver's seat of a vehicle
9 parked or stopped on a highway or street within this state if any
10 part of the vehicle intrudes into the roadway and the peace

1 officer has reasonable cause to believe the person was operating
2 the vehicle in violation of section 625 or a local ordinance sub-
3 stantially corresponding to section 625.

4 (2) A peace officer who has reasonable cause to believe that
5 a person was operating a vehicle upon a public highway or other
6 place open to the public or generally accessible to motor vehi-
7 cles, including an area designated for the parking of vehicles,
8 within this state and that the person by the consumption of
9 intoxicating liquor may have affected his or her ability to oper-
10 ate a vehicle, or reasonable cause to believe that a person was
11 operating a commercial motor vehicle within the state while the
12 person's blood, breath, or urine contained any measurable amount
13 of alcohol or while the person had any detectable presence of
14 intoxicating liquor, or reasonable cause to believe that a person
15 who is less than 21 years of age was operating a vehicle upon a
16 public highway or other place open to the public or generally
17 accessible to motor vehicles, including an area designated for
18 the parking of vehicles, within this state while the person had
19 any bodily alcohol content as that term is defined in section
20 625(6), may require the person to submit to a preliminary chemi-
21 cal breath analysis. The following provisions apply with respect
22 to a preliminary chemical breath analysis administered under this
23 subsection:

24 (a) A peace officer may arrest a person based in whole or in
25 part upon the results of a preliminary chemical breath analysis.

26 (b) The results of a preliminary chemical breath analysis
27 are admissible in a criminal prosecution for a crime enumerated

1 in section 625c(1) or in an administrative hearing for 1 or more
2 of the following purposes:

3 (i) To assist the court or hearing officer in determining a
4 challenge to the validity of an arrest. This subparagraph does
5 not limit the introduction of other competent evidence offered to
6 establish the validity of an arrest.

7 (ii) As evidence of the defendant's breath alcohol content,
8 if offered by the defendant to rebut testimony elicited on
9 cross-examination of a defense witness that the defendant's
10 breath alcohol content was higher at the time of the charged
11 offense than when a chemical test was administered under subsec-
12 tion (6).

13 (iii) As evidence of the defendant's breath alcohol content,
14 if offered by the prosecution to rebut testimony elicited on
15 cross-examination of a prosecution witness that the defendant's
16 breath alcohol content was lower at the time of the charged
17 offense than when a chemical test was administered under subsec-
18 tion (6).

19 (c) A person who submits to a preliminary chemical breath
20 analysis remains subject to the requirements of sections 625c,
21 625d, 625e, and 625f for purposes of chemical tests described in
22 those sections.

23 (d) Except as provided in subsection (5), a person who
24 refuses to submit to a preliminary chemical breath analysis upon
25 a lawful request by a peace officer is responsible for a civil
26 infraction.

1 (3) A peace officer shall use the results of a preliminary
2 chemical breath analysis conducted pursuant to this section to
3 determine whether to order a person out-of-service under
4 section 319d. A peace officer shall order out-of-service as
5 required under section 319d a person who was operating a commer-
6 cial motor vehicle and who refuses to submit to a preliminary
7 chemical breath analysis as provided in this section. This sec-
8 tion does not limit use of other competent evidence by the peace
9 officer to determine whether to order a person out-of-service
10 under section 319d.

11 (4) A person who was operating a commercial motor vehicle
12 and who is requested to submit to a preliminary chemical breath
13 analysis under this section shall be advised that refusing a
14 peace officer's request to take a test described in this section
15 is a misdemeanor punishable by imprisonment for not more than 93
16 days or a fine of not more than \$100.00, or both, and will result
17 in the issuance of a 24-hour out-of-service order.

18 (5) A person who was operating a commercial motor vehicle
19 and who refuses to submit to a preliminary chemical breath analy-
20 sis upon a peace officer's lawful request is guilty of a misde-
21 meanor punishable by imprisonment for not more than 93 days or a
22 fine of not more than \$100.00, or both.

23 (6) The following provisions apply with respect to chemical
24 tests and analysis of a person's blood, urine, or breath, other
25 than preliminary chemical breath analysis:

26 (a) The amount of alcohol or presence of a controlled
27 substance or both in a driver's blood or urine or the amount of

1 alcohol in a person's breath at the time alleged as shown by
2 chemical analysis of the person's blood, urine, or breath is
3 admissible into evidence in any civil or criminal proceeding.

4 (b) A person arrested for a crime described in
5 section 625c(1) shall be advised of all of the following:

6 (i) If he or she takes a chemical test of his or her blood,
7 urine, or breath administered at the request of a peace officer,
8 he or she has the right to demand that a person of his or her own
9 choosing administer 1 of the chemical tests.

10 (ii) The results of the test are admissible in a judicial
11 proceeding as provided under this act and will be considered with
12 other admissible evidence in determining the defendant's inno-
13 cence or guilt.

14 (iii) He or she is responsible for obtaining a chemical
15 analysis of a test sample obtained pursuant to his or her own
16 request.

17 (iv) If he or she refuses the request of a peace officer to
18 take a test described in subparagraph (i), a test shall not be
19 given without a court order, but the peace officer may seek to
20 obtain a court order.

21 (v) Refusing a peace officer's request to take a test
22 described in subparagraph (i) will result in the suspension of
23 his or her operator's or chauffeur's license and vehicle group
24 designation or operating privilege and in the addition of 6
25 points to his or her driver record.

26 (c) A sample or specimen of urine or breath shall be taken
27 and collected in a reasonable manner. Only a licensed physician,

1 or an individual operating under the delegation of a licensed
2 physician under section 16215 of the public health code, 1978
3 PA 368, MCL 333.16215, qualified to withdraw blood and acting in
4 a medical environment, OR A NURSE LICENSED UNDER PART 172 OF THE
5 PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.17201 TO 333.17437, AND
6 ACTING AT A POLICE FACILITY, may withdraw blood at a peace
7 officer's request to determine the amount of alcohol or presence
8 of a controlled substance or both in the person's blood, as pro-
9 vided in this subsection. Liability for a crime or civil damages
10 predicated on the act of withdrawing or analyzing blood and
11 related procedures does not attach to a licensed physician, ~~or~~
12 AN individual operating under the delegation of a licensed
13 physician, OR A NURSE who withdraws or analyzes blood or assists
14 in the withdrawal or analysis in accordance with this act unless
15 the withdrawal or analysis is performed in a negligent manner.

16 (d) A chemical test described in this subsection shall be
17 administered at the request of a peace officer having reasonable
18 grounds to believe the person has committed a crime described in
19 section 625c(1). A person who takes a chemical test administered
20 at a peace officer's request as provided in this section shall be
21 given a reasonable opportunity to have a person of his or her own
22 choosing administer 1 of the chemical tests described in this
23 subsection within a reasonable time after his or her detention.
24 The test results are admissible and shall be considered with
25 other admissible evidence in determining the defendant's inno-
26 cence or guilt. If the person charged is administered a chemical
27 test by a person of his or her own choosing, the person charged

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

3 (e) If, after an accident, the driver of a vehicle involved
4 in the accident is transported to a medical facility and a sample
5 of the driver's blood is withdrawn at that time for medical
6 treatment, the results of a chemical analysis of that sample are
7 admissible in any civil or criminal proceeding to show the amount
8 of alcohol or presence of a controlled substance or both 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 subdivision. A medical facility or person dis-
15 closing information in compliance with this subsection is not
16 civilly or criminally liable for making the disclosure.

17 (f) If, after an accident, the driver of a vehicle involved
18 in the accident is deceased, a sample of the decedent's blood
19 shall be withdrawn in a manner directed by the medical examiner
20 to determine the amount of alcohol or the presence of a con-
21 trolled substance, or both, in the decedent's blood. The medical
22 examiner shall give the results of the chemical analysis of the
23 sample to the law enforcement agency investigating the accident
24 and that agency shall forward the results to the department of
25 state police.

26 (g) The department of state police shall promulgate uniform
27 rules in compliance with the administrative procedures act of

1 1969, 1969 PA 306, MCL 24.201 to 24.328, for the administration
2 of chemical tests for the purposes of this section. An instru-
3 ment used for a preliminary chemical breath analysis may be used
4 for a chemical test described in this subsection if approved
5 under rules promulgated by the department of state police.

6 (7) The provisions of subsection (6) relating to chemical
7 testing do not limit the introduction of any other admissible
8 evidence bearing upon the question of whether a person was
9 impaired by, or under the influence of, intoxicating liquor or a
10 controlled substance, or a combination of intoxicating liquor and
11 a controlled substance, or whether the person had an alcohol con-
12 tent of 0.10 grams or more per 100 milliliters of blood, per 210
13 liters of breath, or per 67 milliliters of urine, or if the
14 person is less than 21 years of age, whether the person had any
15 bodily alcohol content within his or her body. As used in this
16 section, "any bodily alcohol content" means either of the
17 following:

18 (a) An alcohol content of not less than 0.02 grams or more
19 than 0.07 grams per 100 milliliters of blood, per 210 liters of
20 breath, or per 67 milliliters of urine.

21 (b) Any presence of alcohol within a person's body resulting
22 from the consumption of intoxicating liquor, other than consump-
23 tion of intoxicating liquor as a part of a generally recognized
24 religious service or ceremony.

25 (8) If a chemical test described in subsection (6) is admin-
26 istered, the test results shall be made available to the person
27 charged or the person's attorney upon written request to the

1 prosecution, with a copy of the request filed with the court.
2 The prosecution shall furnish the results at least 2 days before
3 the day of the trial. The prosecution shall offer the test
4 results as evidence in that trial. Failure to fully comply with
5 the request bars the admission of the results into evidence by
6 the prosecution.

7 (9) Except in a prosecution relating solely to a violation
8 of section 625(1)(b) or (6), the amount of alcohol in the
9 driver's blood, breath, or urine at the time alleged as shown by
10 chemical analysis of the person's blood, breath, or urine gives
11 rise to the following presumptions:

12 (a) If there were at the time 0.07 grams or less of alcohol
13 per 100 milliliters of the defendant's blood, per 210 liters of
14 the defendant's breath, or per 67 milliliters of the defendant's
15 urine, it is presumed that the defendant's ability to operate a
16 motor vehicle was not impaired due to the consumption of intoxi-
17 cating liquor and that the defendant was not under the influence
18 of intoxicating liquor.

19 (b) If there were at the time more than 0.07 grams but less
20 than 0.10 grams of alcohol per 100 milliliters of the defendant's
21 blood, per 210 liters of the defendant's breath, or per 67 milli-
22 liters of the defendant's urine, it is presumed that the
23 defendant's ability to operate a vehicle was impaired within the
24 provisions of section 625(3) due to the consumption of intoxicat-
25 ing liquor.

26 (c) If there were at the time 0.10 grams or more of alcohol
27 per 100 milliliters of the defendant's blood, per 210 liters of

1 the breath, or per 67 milliliters of the defendant's urine, it is
2 presumed that the defendant was under the influence of intoxicat-
3 ing liquor.

4 (10) A person's refusal to submit to a chemical test as pro-
5 vided in subsection (6) is admissible in a criminal prosecution
6 for a crime described in section 625c(1) only to show that a test
7 was offered to the defendant, but not as evidence in determining
8 the defendant's innocence or guilt. The jury shall be instructed
9 accordingly.