

HOUSE BILL No. 4334

March 12, 2003, Introduced by Reps. Van Regenmorter, Nofs, Moolenaar and Gaffney 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
5 operator of a vehicle involved in the accident and was operating
6 the vehicle in violation of section 625 or a local ordinance
7 substantially 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
3 substantially 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
7 vehicles, including an area designated for the parking of
8 vehicles, within this state and that the person by the
9 consumption of intoxicating liquor may have affected his or her
10 ability to operate a vehicle, or reasonable cause to believe that
11 a person was operating a commercial motor vehicle within the
12 state while the person's blood, breath, or urine contained any
13 measurable amount of alcohol or while the person had any
14 detectable presence of intoxicating liquor, or reasonable cause
15 to believe that a person who is less than 21 years of age was
16 operating a vehicle upon a public highway or other place open to
17 the public or generally accessible to motor vehicles, including
18 an area designated for the parking of vehicles, within this state
19 while the person had any bodily alcohol content as that term is
20 defined in section 625(6), may require the person to submit to a
21 preliminary chemical breath analysis. The following provisions
22 apply with respect to a preliminary chemical breath analysis
23 administered under this 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 are
27 admissible in a criminal prosecution for a crime enumerated in

1 section 625c(1) or in an administrative hearing for 1 or more of
2 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~~ **admissible**
6 evidence offered to 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~~ **either party to rebut**
11 **testimony or argument that the defendant's breath alcohol content**
12 **was different** at the time of the charged offense than when a
13 chemical test was administered under subsection (6).

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

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

24 (d) Except as provided in subsection (5), a person who
25 refuses to submit to a preliminary chemical breath analysis upon
26 a lawful request by a peace officer is responsible for a civil
27 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
6 commercial motor vehicle and who refuses to submit to a
7 preliminary chemical breath analysis as provided in this
8 section. This section does not limit use of other competent
9 evidence by the peace officer to determine whether to order a
10 person out-of-service under section 319d.

11 (4) A person who was operating a commercial motor vehicle and
12 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 and
19 who refuses to submit to a preliminary chemical breath analysis
20 upon a peace officer's lawful request is guilty of a misdemeanor
21 punishable by imprisonment for not more than 93 days or a fine of
22 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
13 innocence 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, may withdraw blood at a peace officer's
5 request to determine the amount of alcohol or presence of a
6 controlled substance or both in the person's blood, as provided
7 in this subsection. Liability for a crime or civil damages
8 predicated on the act of withdrawing or analyzing blood and
9 related procedures does not attach to a licensed physician or
10 individual operating under the delegation of a licensed physician
11 who withdraws or analyzes blood or assists in the withdrawal or
12 analysis in accordance with this act unless the withdrawal or
13 analysis is performed in a negligent manner.

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

1 (e) If, after an accident, the driver of a vehicle involved
2 in the accident is transported to a medical facility and a sample
3 of the driver's blood is withdrawn at that time for medical
4 treatment, the results of a chemical analysis of that sample are
5 admissible in any civil or criminal proceeding to show the amount
6 of alcohol or presence of a controlled substance or both in the
7 person's blood at the time alleged, regardless of whether the
8 person had been offered or had refused a chemical test. The
9 medical facility or person performing the chemical analysis shall
10 disclose the results of the analysis to a prosecuting attorney
11 who requests the results for use in a criminal prosecution as
12 provided in this subdivision. A medical facility or person
13 disclosing information in compliance with this subsection is not
14 civilly or criminally liable for making the disclosure.

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

24 (g) The department of state police shall promulgate uniform
25 rules in compliance with the administrative procedures act of
26 1969, 1969 PA 306, MCL 24.201 to 24.328, for the administration
27 of chemical tests for the purposes of this section. An

1 instrument used for a preliminary chemical breath analysis may be
2 used for a chemical test described in this subsection if approved
3 under rules promulgated by the department of state police.

4 (7) The provisions of subsection (6) relating to chemical
5 testing do not limit the introduction of any other admissible
6 evidence bearing upon the question of whether a person was
7 impaired by, or under the influence of, intoxicating liquor or a
8 controlled substance, or a combination of intoxicating liquor and
9 a controlled substance, or whether the person had an alcohol
10 content of 0.10 grams or more per 100 milliliters of blood, per
11 210 liters of breath, or per 67 milliliters of urine, or if the
12 person is less than 21 years of age, whether the person had any
13 bodily alcohol content within his or her body. As used in this
14 section, "any bodily alcohol content" means ~~either of the~~
15 ~~following:~~ **that term as defined in section 625(6).**

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

19 ~~— (b) Any presence of alcohol within a person's body resulting~~
20 ~~from the consumption of intoxicating liquor, other than~~
21 ~~consumption of intoxicating liquor as a part of a generally~~
22 ~~recognized religious service or ceremony.~~

23 (8) If a chemical test described in subsection (6) is
24 administered, the test results shall be made available to the
25 person charged or the person's attorney upon written request to
26 the prosecution, with a copy of the request filed with the
27 court. The prosecution shall furnish the results at least 2 days

1 before the day of the trial. The prosecution shall offer the
2 test results as evidence in that trial. Failure to fully comply
3 with the request bars the admission of the results into evidence
4 by the prosecution.

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

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

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

24 (c) If there were at the time 0.10 grams or more of alcohol
25 per 100 milliliters of the defendant's blood, per 210 liters of
26 the breath, or per 67 milliliters of the defendant's urine, it is
27 presumed that the defendant was under the influence of

1 intoxicating liquor.

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