

HOUSE BILL No. 4001

January 31, 1991, Introduced by Rep. Dolan and referred to the Committee on Judiciary.

A bill to amend section 625a 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 section 257.625a of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 625a of Act No. 300 of the Public Acts
2 of 1949, as amended by Act No. 310 of the Public Acts of 1982,
3 being section 257.625a of the Michigan Compiled Laws, is amended
4 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 manslaughter
5 resulting from the operation of a motor vehicle while the driver
6 is alleged to have been impaired by or under the influence of
7 intoxicating liquor or a controlled substance or a combination of
8 intoxicating liquor and a controlled substance, or to have had a
9 blood alcohol content of 0.10% or more by weight of alcohol.

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

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

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

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

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

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

21 (5) The tests shall be administered at the request of a
22 peace officer having reasonable grounds to believe the person has
23 committed a crime described in subsection (1). A person who
24 takes a chemical test administered at the request of a peace
25 officer, as provided in this section, shall be given a reasonable
26 opportunity to have a person of his or her own choosing
27 administer 1 of the chemical tests described in this section

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

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

23 (7) This section shall not be construed as limiting the
24 introduction of any other competent evidence bearing upon the
25 question of whether or not the person was impaired by or under
26 the influence of intoxicating liquor or a controlled substance,
27 or a combination of intoxicating liquor and a controlled

1 substance, or whether the person had a blood alcohol content of
2 0.10% or more by weight of alcohol.

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

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

13 (9) If after an accident the driver of a vehicle involved in
14 the accident is transported to a medical facility and a sample of
15 the driver's blood is withdrawn at that time for the purpose of
16 medical treatment, the results of a chemical analysis of that
17 sample shall be admissible in a criminal prosecution for a crime
18 described in subsection (1) to show the amount of alcohol or
19 presence of a controlled substance or both in the person's blood
20 at the time alleged, regardless of whether the person had been
21 offered or had refused a chemical test. The medical facility or
22 person performing the chemical analysis shall disclose the
23 results of the analysis to a prosecuting attorney who requests
24 the results for use in a criminal prosecution as provided in this
25 subsection. A medical facility or person disclosing information
26 in compliance with this subsection shall not be civilly or
27 criminally liable for making the disclosure.

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

6 (11) THE RESULTS OF A TEST ADMINISTERED TO DETERMINE THE
7 AMOUNT OF ALCOHOL OR PRESENCE OF A CONTROLLED SUBSTANCE, OR BOTH,
8 IN THE DRIVER'S BLOOD, IF THE TEST WAS ADMINISTERED WITHIN 3
9 HOURS OF ARREST, SHALL BE PRESUMED TO ACCURATELY REFLECT THE
10 AMOUNT OF ALCOHOL OR PRESENCE OF A CONTROLLED SUBSTANCE, OR BOTH,
11 IN THE DRIVER'S BLOOD AT THE TIME OF ARREST.