

# HOUSE BILL No. 4318

February 15, 1991, Introduced by Reps. Dolan, Kosteva, Bouchard, Fitzgerald, Strand, London, Dalman, Walberg, Martin, Brown and Middleton 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~~ OF ALL OF THE  
16 FOLLOWING:

17 (A) THAT if the person refuses the request of a peace offi-  
18 cer to take a test described in this section, a test shall not be  
19 given without a court order. ~~The person charged shall also be~~  
20 ~~advised that~~

21 (B) THAT the person's refusal of the request of a peace  
22 officer to take a test described in this section shall result in  
23 BOTH OF the FOLLOWING: ~~suspension~~

24 (i) SUSPENSION of his or her operator's or chauffeur's  
25 license or operating privilege. ~~, and in the~~

26 (ii) THE addition of 6 points to his or her driver record.

1 (C) THAT THE PERSON'S REFUSAL TO TAKE THE TEST DESCRIBED IN  
2 THIS SECTION IS ADMISSIBLE INTO EVIDENCE IN A CRIMINAL  
3 PROSECUTION DESCRIBED IN SUBSECTION (1) FOR THE PURPOSE OF SHOW-  
4 ING THAT THE TEST WAS OFFERED.

5 (7) This section shall not be construed as limiting the  
6 introduction of any other competent evidence bearing upon the  
7 question of whether or not the person was impaired by or under  
8 the influence of intoxicating liquor or a controlled substance,  
9 or a combination of intoxicating liquor and a controlled sub-  
10 stance, or whether the person had a blood alcohol content of  
11 0.10% or more by weight of alcohol.

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

16 "Evidence was admitted in this case which, if believed by  
17 the jury, could prove that the defendant had exercised his or her  
18 right to refuse a chemical test. You are instructed that such a  
19 refusal is within the statutory rights of the defendant and is  
20 not evidence of his OR HER guilt. YOU ARE TO CONSIDER THIS EVI-  
21 DENCE FOR THE LIMITED PURPOSE OF DETERMINING WHETHER OR NOT A  
22 CHEMICAL TEST WAS OFFERED. You are not to consider such a refusal  
23 in determining the guilt or innocence of the defendant."

24 (9) If after an accident the driver of a vehicle involved in  
25 the accident is transported to a medical facility and a sample of  
26 the driver's blood is withdrawn at that time for the purpose of  
27 medical treatment, the results of a chemical analysis of that

1 sample shall be admissible in a criminal prosecution for a crime  
2 described in subsection (1) to show the amount of alcohol or  
3 presence of a controlled substance or both in the person's blood  
4 at the time alleged, regardless of whether the person had been  
5 offered or had refused a chemical test. The medical facility or  
6 person performing the chemical analysis shall disclose the  
7 results of the analysis to a prosecuting attorney who requests  
8 the results for use in a criminal prosecution as provided in this  
9 subsection. A medical facility or person disclosing information  
10 in compliance with this subsection shall not be civilly or crimi-  
11 nally liable for making the disclosure.

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

17       (11) EVIDENCE THAT A PERSON REFUSED THE REQUEST OF A PEACE  
18 OFFICER TO TAKE A TEST AS DESCRIBED IN THIS SECTION IS ADMISSIBLE  
19 INTO EVIDENCE IN A CRIMINAL PROSECUTION DESCRIBED IN  
20 SUBSECTION (1) FOR THE PURPOSE OF SHOWING THAT THE TEST WAS  
21 OFFERED.