

Act No. 229  
Public Acts of 1993  
Approved by the Governor  
November 04, 1993  
Filed with the Secretary of State  
November 05, 1993

**STATE OF MICHIGAN  
87TH LEGISLATURE  
REGULAR SESSION OF 1993**

Introduced by Senator Pridnia

# **ENROLLED SENATE BILL No. 66**

AN ACT to amend section 625a of Act No. 300 of the Public Acts of 1949, entitled as amended "An act to provide for the registration, titling, sale, transfer, and regulation of certain vehicles operated upon the public highways of this state or any other place open to the general public or generally accessible to motor vehicles and distressed vehicles; to provide for the licensing of dealers; to provide for the examination, licensing, and control of operators and chauffeurs; to provide for the giving of proof of financial responsibility and security by owners and operators of vehicles; to provide for the imposition, levy, and collection of specific taxes on vehicles, and the levy and collection of sales and use taxes, license fees, and permit fees; to provide for the regulation and use of streets and highways; to create certain funds; to provide penalties and sanctions for a violation of this act; to provide for civil liability of owners and operators of vehicles and service of process on residents and nonresidents; to provide for the levy of certain assessments; to provide for the enforcement of this act; to provide for the creation of and to prescribe the powers and duties of certain state and local agencies; to repeal all other acts or parts of acts inconsistent with this act or contrary to this act; and to repeal certain parts of this act on a specific date," as amended by Act No. 100 of the Public Acts of 1991, being section 257.625a of the Michigan Compiled Laws.

*The People of the State of Michigan enact:*

Section 1. Section 625a of Act No. 300 of the Public Acts of 1949, as amended by Act No. 100 of the Public Acts of 1991, being section 257.625a of the Michigan Compiled Laws, is amended to read as follows:

Sec. 625a. (1) A peace officer, without a warrant, may arrest a person when the peace officer has reasonable cause to believe that the person was, at the time of an accident, the operator of a vehicle involved in the accident in this state while in violation of section 625(1), (3), (4), or (5) or a local ordinance substantially corresponding to section 625(1) or (3).

(2) A peace officer who has reasonable cause to believe that a person was operating a vehicle upon a public highway or other place open to the public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, in this state, and that the person by the consumption of intoxicating liquor may have affected his or her ability to operate a vehicle, or reasonable cause to believe that a person was operating a commercial motor vehicle within the state while the person's blood contained any measurable amount of alcohol by weight or while the person had any detectable presence of intoxicating liquor, may require the person to submit to a preliminary chemical breath analysis. The following provisions apply with respect to a preliminary chemical breath analysis:

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

(b) The results of a preliminary chemical breath analysis are admissible in a criminal prosecution for a crime enumerated in section 625c(1) or in an administrative hearing solely to assist the court or hearing officer in determining

a challenge to the validity of an arrest. This subdivision does not limit the introduction of other competent evidence offered to establish the validity of an arrest.

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

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

(3) The results of a preliminary chemical breath analysis conducted pursuant to this section shall be used by a police officer to determine whether a person shall be ordered out-of-service under section 319d. A police officer shall order out-of-service as required under section 319d a person who was operating a commercial motor vehicle and who refuses to submit to a preliminary chemical breath analysis as provided in this section. This section does not limit use of other competent evidence by the police officer to determine whether a person shall be ordered out-of-service under section 319d.

(4) A person who was operating a commercial motor vehicle and who is requested to submit to a preliminary chemical breath analysis under this section shall be advised that refusal of the request of a police officer to take a test described in this section is a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not more than \$100.00, or both, and will result in the issuance of a 24-hour out-of-service order.

(5) A person who was operating a commercial motor vehicle and who refuses to submit to a preliminary chemical breath analysis upon a lawful request by a police officer is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not more than \$100.00, or both.

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

(a) The amount of alcohol or presence of a controlled substance or both in a driver's blood at the time alleged as shown by chemical analysis of the person's blood, urine, or breath is admissible into evidence in any civil or criminal proceeding.

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

(i) That if he or she takes a chemical test of his or her blood, urine, or breath administered at the request of a peace officer, he or she has the right to demand that a person of his or her own choosing administer 1 of the chemical tests; that the results of the test are admissible in a judicial proceeding as provided under this act and will be considered with other competent evidence in determining the innocence or guilt of the defendant; and that he or she is responsible for obtaining a chemical analysis of a test sample obtained pursuant to his or her own request.

(ii) That if he or she refuses the request of a peace officer to take a test described in subparagraph (i), a test shall not be given without a court order, but the peace officer may seek to obtain such a court order.

(iii) That his or her refusal of the request of a peace officer to take a test described in subparagraph (i) will result in the suspension of his or her operator's or chauffeur's license and vehicle group designation or operating privilege, and in the addition of 6 points to his or her driver record.

(c) A sample or specimen of urine or breath shall be taken and collected in a reasonable manner. Only a licensed physician, or an individual operating under the delegation of a licensed physician under section 16215 of the Public Health Code, Act No. 368 of the Public Acts of 1978, being section 333.16215 of the Michigan Compiled Laws, and qualified to withdraw blood acting in a medical environment, at the request of a peace officer, may withdraw blood for the purpose of determining the amount of alcohol or presence of a controlled substance or both in the person's blood, as provided in this subsection. Liability for a crime or civil damages predicated on the act of withdrawing or analyzing blood and related procedures does not attach to a licensed physician or individual operating under the delegation of a licensed physician who withdraws or analyzes blood or assists in the withdrawal or analysis in accordance with this act unless the withdrawal or analysis is performed in a negligent manner.

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

(e) If, after an accident, the driver of a vehicle involved in the accident is transported to a medical facility and a sample of the driver's blood is withdrawn at that time for the purpose of medical treatment, the results of a chemical analysis of that sample are admissible in any civil or criminal proceeding to show the amount of alcohol or presence of a controlled substance or both in the person's blood at the time alleged, regardless of whether the person had been offered or had refused a chemical test. The medical facility or person performing the chemical analysis shall disclose the results of the analysis to a prosecuting attorney who requests the results for use in a criminal prosecution as provided

in this subdivision. A medical facility or person disclosing information in compliance with this subsection is not civilly or criminally liable for making the disclosure.

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

(g) The department of state police shall promulgate uniform rules under the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, for the administration of chemical tests for the purposes of this section.

(7) The provisions of subsection (6) relating to chemical testing do not limit the introduction of any other competent evidence bearing upon the question of whether or not a person was impaired by, or under the influence of, intoxicating liquor or a controlled substance, or a combination of intoxicating liquor and a controlled substance, or whether the person had a blood alcohol content of 0.10% or more by weight of alcohol.

(8) If a chemical test described in subsection (6) is administered, the results of the test shall be made available to the person charged or the person's attorney upon written request to the prosecution, with a copy of the request filed with the court. The prosecution shall furnish the results at least 2 days before the day of the trial. The results of the test shall be offered as evidence by the prosecution in that trial. Failure to fully comply with the request bars the admission of the results into evidence by the prosecution.

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

(a) If there was at the time 0.07% or less by weight of alcohol in the defendant's blood, it is presumed that the defendant's ability to operate a motor vehicle was not impaired due to the consumption of intoxicating liquor, and that the defendant was not under the influence of intoxicating liquor.

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

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

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

This act is ordered to take immediate effect.

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Secretary of the Senate.

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Co-Clerk of the House of Representatives.

Approved -----

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Governor.