



# SENATE BILL No. 66

January 13, 1993, Introduced by Senator PRIDNIA and referred to the Committee on Health Policy.

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. 100 of the Public Acts of 1991, 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. 100 of the Public Acts of 1991,  
3 being section 257.625a of the Michigan Compiled Laws, is amended  
4 to read as follows:

5 Sec. 625a. (1) A peace officer, without a warrant, may  
6 arrest a person when the peace officer has reasonable cause to  
7 believe that the person was, at the time of an accident, the  
8 operator of a vehicle involved in the accident in this state

1 while in violation of section 625(1), (3), (4), or (5) or a local  
2 ordinance substantially corresponding to section 625(1) or (3).

3 (2) A peace officer who has reasonable cause to believe that  
4 a person was operating a vehicle upon a public highway or other  
5 place open to the public or generally accessible to motor vehi-  
6 cles, including an area designated for the parking of vehicles,  
7 in this state, and that the person by the consumption of intoxi-  
8 cating liquor may have affected his or her ability to operate a  
9 vehicle, or reasonable cause to believe that a person was operat-  
10 ing a commercial motor vehicle within the state while the  
11 person's blood contained any measurable amount of alcohol by  
12 weight or while the person had any detectable presence of intoxi-  
13 cating liquor, may require the person to submit to a preliminary  
14 chemical breath analysis. The following provisions ~~shall~~ apply  
15 with respect to a preliminary chemical breath analysis:

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

18 (b) The results of a preliminary chemical breath analysis  
19 are admissible in a criminal prosecution for a crime enumerated  
20 in section 625c(1) or in an administrative hearing solely to  
21 assist the court or hearing officer in determining a challenge to  
22 the validity of an arrest. This subdivision does not limit the  
23 introduction of other competent evidence offered to establish the  
24 validity of an arrest.

25 (c) A person who submits to a preliminary chemical breath  
26 analysis ~~shall remain~~ REMAINS subject to the requirements of

1 sections 625c, 625d, 625e, and 625f for the purposes of chemical  
2 tests described in those sections.

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

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

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

25 (5) A person who was operating a commercial motor vehicle  
26 and who refuses to submit to a preliminary chemical breath  
27 analysis upon a lawful request by a police officer is guilty of a

1 misdemeanor, punishable by imprisonment for not more than 90  
2 days, or a fine of not more than \$100.00, or both.

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

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

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

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

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

26 (iii) That his or her refusal of the request of a peace  
27 officer to take a test described in subparagraph (i) ~~shall~~ WILL

1 result in the suspension of his or her operator's or chauffeur's  
2 license and vehicle group designation or operating privilege, and  
3 in the addition of 6 points to his or her driver record.

4 (c) A sample or specimen of urine or breath shall be taken  
5 and collected in a reasonable manner. Only a licensed physician,  
6 or ~~a licensed nurse or medical technician~~ AN INDIVIDUAL  
7 OPERATING under the ~~direction~~ DELEGATION of a licensed physi-  
8 cian UNDER SECTION 16215 OF THE PUBLIC HEALTH CODE, ACT NO. 368  
9 OF THE PUBLIC ACTS OF 1978, BEING SECTION 333.16215 OF THE  
10 MICHIGAN COMPILED LAWS, and qualified to withdraw blood acting in  
11 a medical environment, at the request of a peace officer, may  
12 withdraw blood for the purpose of determining the amount of alco-  
13 hol or presence of a controlled substance or both in the person's  
14 blood, as provided in this subsection. Liability for a crime or  
15 civil damages predicated on the act of withdrawing or analyzing  
16 blood and related procedures ~~shall~~ DOES not attach to a  
17 ~~qualified person~~ LICENSED PHYSICIAN OR INDIVIDUAL OPERATING  
18 UNDER THE DELEGATION OF A LICENSED PHYSICIAN who withdraws or  
19 analyzes blood or assists in the withdrawal or analysis in  
20 accordance with this act unless the withdrawal or analysis is  
21 performed in a negligent manner.

22 (d) A chemical test described in this subsection shall be  
23 administered at the request of a peace officer having reasonable  
24 grounds to believe the person has committed a crime described in  
25 section 625c(1). A person who takes a chemical test administered  
26 at the request of a peace officer, as provided in this section,  
27 shall be given a reasonable opportunity to have a person of his

1 or her own choosing administer 1 of the chemical tests described  
2 in this subsection within a reasonable time after his or her  
3 detention, and the results of the test ~~shall be~~ ARE admissible  
4 and shall be considered with other competent evidence in deter-  
5 mining the innocence or guilt of the defendant. If the person  
6 charged is administered a chemical test by a person of his or her  
7 own choosing, the person charged ~~shall be~~ IS responsible for  
8 obtaining a chemical analysis of the test sample.

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

24 (f) If, after an accident, the driver of a vehicle involved  
25 in the accident is deceased, a sample of the decedent's blood  
26 shall be withdrawn in a manner directed by the medical examiner  
27 for the purpose of determining the amount of alcohol or the

1 presence of a controlled substance, or both, in the decedent's  
2 blood. The medical examiner shall give the results of the chemi-  
3 cal analysis of the sample to the law enforcement agency investi-  
4 gating the accident, and that agency shall forward the results to  
5 the department of state police.

6 (g) The department of state police shall promulgate uniform  
7 rules UNDER THE ADMINISTRATIVE PROCEDURES ACT OF 1969, ACT  
8 NO. 306 OF THE PUBLIC ACTS OF 1969, BEING SECTIONS 24.201 TO  
9 24.328 OF THE MICHIGAN COMPILED LAWS, for the administration of  
10 chemical tests for the purposes of this section.

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

18 (8) If a chemical test described in subsection (6) is admin-  
19 istered, the results of the test shall be made available to the  
20 person charged or the person's attorney upon written request to  
21 the prosecution, with a copy of the request filed with the  
22 court. The prosecution shall furnish the results at least 2 days  
23 before the day of the trial. The results of the test shall be  
24 offered as evidence by the prosecution in that trial. Failure to  
25 fully comply with the request ~~shall bar~~ BARS the admission of  
26 the results into evidence by the prosecution.

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

6 (a) If there was at the time 0.07% or less by weight of  
7 alcohol in the defendant's blood, it ~~shall be~~ IS presumed that  
8 the defendant's ability to operate a motor vehicle was not  
9 impaired due to the consumption of intoxicating liquor, and that  
10 the defendant was not under the influence of intoxicating  
11 liquor.

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

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

20 (10) A person's refusal to submit to a chemical test as pro-  
21 vided in subsection (6) ~~shall be~~ IS admissible in a criminal  
22 prosecution for a crime described in section 625c(1) only for the  
23 purpose of showing that a test was offered to the defendant, but  
24 not as evidence in determining innocence or guilt of the  
25 defendant. The jury shall be instructed accordingly.