



HOUSE BILL No. 4998

September 12, 1995, Introduced by Rep. Fitzgerald and referred to the Committee on Judiciary and Civil Rights.

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. 450 of the Public Acts of 1994, 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. 450 of the Public Acts of 1994,
3 being section 257.625a of the Michigan Compiled Laws, is amended
4 to read as follows:

5 Sec. 625a. (1) A peace officer may arrest a person without
6 a warrant when the peace officer has reasonable cause to believe
7 the person was, at the time of an accident in this state, the
8 operator of a vehicle involved in the accident and was operating
9 the vehicle in violation of section 625(1), (3), or (6) or a

1 local ordinance substantially corresponding to section 625(1),
2 (3), or (6).

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 within this state and that the person by the consumption of
8 intoxicating liquor may have affected his or her ability to oper-
9 ate a vehicle, or reasonable cause to believe that a person was
10 operating a commercial motor vehicle within the state while the
11 person's blood, breath, or urine contained any measurable amount
12 of alcohol or while the person had any detectable presence of
13 intoxicating liquor, or reasonable cause to believe that a person
14 who is less than 21 years of age was operating a vehicle upon a
15 public highway or other place open to the public or generally
16 accessible to motor vehicles, including an area designated for
17 the parking of vehicles, within this state, while the person had
18 any bodily alcohol content as that term is defined in section
19 625(6), may require the person to submit to a preliminary chemi-
20 cal breath analysis. The following provisions apply with respect
21 to a preliminary chemical breath analysis administered pursuant
22 to this subsection:

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

25 (b) The results of a preliminary chemical breath analysis
26 are admissible in a criminal prosecution for a crime enumerated

1 in section 625c(1) or in an administrative hearing for 1 or more
2 of 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 evidence offered to
6 establish the validity of an arrest.

7 (ii) As evidence of the defendant's breath alcohol content,
8 if offered by the defendant.

9 (iii) As evidence of the defendant's breath alcohol content,
10 if offered by the prosecution to rebut testimony or other evi-
11 dence, including but not limited to testimony elicited on
12 cross-examination of a prosecution witness, that is offered or
13 elicited to prove that the defendant's breath alcohol content was
14 lower at the time of the charged offense than when a chemical
15 test was administered pursuant to subsection (6).

16 (c) A person who submits to a preliminary chemical breath
17 analysis remains subject to the requirements of sections 625c,
18 625d, 625e, and 625f for purposes of chemical tests described in
19 those sections.

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

24 (3) A peace officer shall use the results of a preliminary
25 chemical breath analysis conducted pursuant to this section to
26 determine whether to order a person out-of-service under
27 section 319d. A peace officer shall order out-of-service as

1 required under section 319d a person who was operating a
2 commercial motor vehicle and who refuses to submit to a prelimi-
3 nary chemical breath analysis as provided in this section. This
4 section does not limit use of other competent evidence by the
5 peace officer to determine whether to order a person
6 out-of-service under section 319d.

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

14 (5) A person who was operating a commercial motor vehicle
15 and who refuses to submit to a preliminary chemical breath analy-
16 sis upon a peace officer's lawful request is guilty of a misde-
17 meanor punishable by imprisonment for not more than 90 days or a
18 fine of not more than \$100.00, or both.

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

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

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

3 (i) If he or she takes a chemical test of his or her blood,
4 urine, or breath administered at the request of a peace officer,
5 he or she has the right to demand that a person of his or her own
6 choosing administer 1 of the chemical tests.

7 (ii) The results of the test are admissible in a judicial
8 proceeding as provided under this act and will be considered with
9 other competent evidence in determining the defendant's innocence
10 or guilt.

11 (iii) He or she is responsible for obtaining a chemical
12 analysis of a test sample obtained pursuant to his or her own
13 request.

14 (iv) If he or she refuses the request of a peace officer to
15 take a test described in subparagraph (i), a test shall not be
16 given without a court order, but the peace officer may seek to
17 obtain such a court order.

18 (v) Refusing a peace officer's request to take a test
19 described in subparagraph (i) will result in the suspension of
20 his or her operator's or chauffeur's license and vehicle group
21 designation or operating privilege and in the addition of 6
22 points to his or her driver record.

23 (c) A sample or specimen of urine or breath shall be taken
24 and collected in a reasonable manner. Only a licensed physician,
25 or an individual operating under the delegation of a licensed
26 physician under section 16215 of the Public health code, Act
27 No. 368 of the Public Acts of 1978, being section 333.16215 of

1 the Michigan Compiled Laws, qualified to withdraw blood and
2 acting in a medical environment, may withdraw blood at a peace
3 officer's request to determine the amount of alcohol or presence
4 of a controlled substance or both in the person's blood, as pro-
5 vided in this subsection. Liability for a crime or civil damages
6 predicated on the act of withdrawing or analyzing blood and
7 related procedures does not attach to a licensed physician or
8 individual operating under the delegation of a licensed physician
9 who withdraws or analyzes blood or assists in the withdrawal or
10 analysis in accordance with this act unless the withdrawal or
11 analysis is performed in a negligent manner.

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

26 (e) If, after an accident, the driver of a vehicle involved
27 in the accident is transported to a medical facility and a sample

1 of the driver's blood is withdrawn at that time for medical
2 treatment, the results of a chemical analysis of that sample are
3 admissible in any civil or criminal proceeding to show the amount
4 of alcohol or presence of a controlled substance or both in the
5 person's blood at the time alleged, regardless of whether the
6 person had been offered or had refused a chemical test. WITHIN
7 10 DAYS AFTER THE ACCIDENT, THE LAW ENFORCEMENT AGENCY THAT
8 RESPONDED TO OR IS INVESTIGATING THE ACCIDENT SHALL REQUEST THE
9 RESULTS OF THE CHEMICAL ANALYSIS FROM THE MEDICAL FACILITY OR
10 PERSON PERFORMING THE ANALYSIS. The medical facility or person
11 performing the chemical analysis shall disclose the results of
12 the analysis to THE REQUESTING LAW ENFORCEMENT AGENCY AND TO a
13 prosecuting attorney who requests the results for use in a crimi-
14 nal prosecution as provided in this subdivision. A LAW ENFORCE-
15 MENT AGENCY THAT REQUESTS AND OBTAINS CHEMICAL ANALYSIS RESULTS
16 UNDER THIS SUBSECTION SHALL IMMEDIATELY NOTIFY THE SECRETARY OF
17 STATE OF ANY RESULT THAT REVEALS 0.10 GRAMS OR MORE OF ALCOHOL
18 PER 100 MILLILITERS OF THE DEFENDANT'S BLOOD, PER 210 LITERS OF
19 THE BREATH, OR PER 67 MILLILITERS OF THE DEFENDANT'S URINE. A
20 medical facility or person disclosing information in compliance
21 with this subsection is not civilly or criminally liable for
22 making the disclosure.

23 (f) If, after an accident, the driver of a vehicle involved
24 in the accident is deceased, a sample of the decedent's blood
25 shall be withdrawn in a manner directed by the medical examiner
26 to determine the amount of alcohol or the presence of a
27 controlled substance, or both, in the decedent's blood. The

1 medical examiner shall give the results of the chemical analysis
2 of the sample to the law enforcement agency investigating the
3 accident and that agency shall forward the results to the depart-
4 ment of state police.

5 (g) The department of state police shall promulgate uniform
6 rules under the administrative procedures act of 1969, Act
7 No. 306 of the Public Acts of 1969, being sections 24.201 to
8 24.328 of the Michigan Compiled Laws, for the administration of
9 chemical tests for the purposes of this section. An instrument
10 used for a preliminary chemical breath analysis may be used for a
11 chemical test described in this subsection if approved pursuant
12 to rules promulgated by the department of state police.

13 (7) The provisions of subsection (6) relating to chemical
14 testing do not limit the introduction of any other competent evi-
15 dence bearing upon the question of whether a person was impaired
16 by, or under the influence of, intoxicating liquor or a con-
17 trolled substance, or a combination of intoxicating liquor and a
18 controlled substance, or whether the person had an alcohol con-
19 tent of 0.10 grams or more per 100 milliliters of blood, per 210
20 liters of breath, or per 67 milliliters of urine, or if the
21 person is less than 21 years of age, whether the person had any
22 bodily alcohol content within his or her body. As used in this
23 section, "any bodily alcohol content" means either of the
24 following:

25 (a) An alcohol content of not less than 0.02 grams or more
26 than 0.07 grams per 100 milliliters of blood, per 210 liters of
27 breath, or per 67 milliliters of urine.

1 (b) Any presence of alcohol within a person's body resulting
2 from the consumption of intoxicating liquor, other than consump-
3 tion of intoxicating liquor as a part of a generally recognized
4 religious service or ceremony.

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

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

19 (a) If there were at the time 0.07 grams or less of alcohol
20 per 100 milliliters of the defendant's blood, per 210 liters of
21 the defendant's breath, or per 67 milliliters of the defendant's
22 urine, it is presumed that the defendant's ability to operate a
23 motor vehicle was not impaired due to the consumption of intoxi-
24 cating liquor, and that the defendant was not under the influence
25 of intoxicating liquor.

26 (b) If there were at the time more than 0.07 grams but less
27 than 0.10 grams of alcohol per 100 milliliters of the defendant's

1 blood, per 210 liters of the defendant's breath, or per 67
2 milliliters of the defendant's urine, it is presumed that the
3 defendant's ability to operate a vehicle was impaired within the
4 provisions of section 625(3) due to the consumption of intoxicat-
5 ing liquor.

6 (c) If there were at the time 0.10 grams or more of alcohol
7 per 100 milliliters of the defendant's blood, per 210 liters of
8 the breath, or per 67 milliliters of the defendant's urine, it is
9 presumed that the defendant was under the influence of intoxicat-
10 ing liquor.

11 (10) A person's refusal to submit to a chemical test as pro-
12 vided in subsection (6) is admissible in a criminal prosecution
13 for a crime described in section 625c(1) only to show that a test
14 was offered to the defendant, but not as evidence in determining
15 the defendant's innocence or guilt. The jury shall be instructed
16 accordingly.