



HOUSE BILL No. 5468

December 7, 1995, Introduced by Reps. DeHart, Kelly, LaForge, Goschka, Pitoniak and Brater 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). IF THE PERSON IS TRANSPORTED TO A MEDICAL FACILITY
3 AFTER THE ACCIDENT, THE PEACE OFFICER MAY ARREST THE PERSON AT
4 THE MEDICAL FACILITY PURSUANT TO SECTION 2A OF CHAPTER IV OF THE
5 CODE OF CRIMINAL PROCEDURE, ACT NO. 175 OF THE PUBLIC ACTS OF
6 1927, BEING SECTION 764.2A OF THE MICHIGAN COMPILED LAWS, OR AS
7 OTHERWISE PROVIDED BY LAW.

8 (2) A peace officer who has reasonable cause to believe that
9 a person was operating a vehicle upon a public highway or other
10 place open to the public or generally accessible to motor vehi-
11 cles, including an area designated for the parking of vehicles,
12 within this state and that the person by the consumption of
13 intoxicating liquor may have affected his or her ability to oper-
14 ate a vehicle, or reasonable cause to believe that a person was
15 operating a commercial motor vehicle within the state while the
16 person's blood, breath, or urine contained any measurable amount
17 of alcohol or while the person had any detectable presence of
18 intoxicating liquor, or reasonable cause to believe that a person
19 who is less than 21 years of age was operating a vehicle upon a
20 public highway or other place open to the public or generally
21 accessible to motor vehicles, including an area designated for
22 the parking of vehicles, within this state, while the person had
23 any bodily alcohol content as that term is defined in section
24 625(6), may require the person to submit to a preliminary chemi-
25 cal breath analysis. The following provisions apply with respect
26 to a preliminary chemical breath analysis administered pursuant
27 to this subsection:

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

3 (b) The results of a preliminary chemical breath analysis
4 are admissible in a criminal prosecution for a crime enumerated
5 in section 625c(1) or in an administrative hearing for 1 or more
6 of the following purposes:

7 (i) To assist the court or hearing officer in determining a
8 challenge to the validity of an arrest. This subparagraph does
9 not limit the introduction of other competent evidence offered to
10 establish the validity of an arrest.

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

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

20 (c) A person who submits to a preliminary chemical breath
21 analysis remains subject to the requirements of sections 625c,
22 625d, 625e, and 625f for purposes of chemical tests described in
23 those sections.

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

1 (3) A peace officer shall use the results of a preliminary
2 chemical breath analysis conducted pursuant to this section to
3 determine whether to order a person out-of-service under
4 section 319d. A peace officer shall order out-of-service as
5 required under section 319d a person who was operating a commer-
6 cial motor vehicle and who refuses to submit to a preliminary
7 chemical breath analysis as provided in this section. This sec-
8 tion does not limit use of other competent evidence by the peace
9 officer to determine whether to order a person out-of-service
10 under section 319d.

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

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

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

26 (a) The amount of alcohol or presence of a controlled
27 substance or both in a driver's blood or urine or the amount of

1 alcohol in a person's breath at the time alleged as shown by
2 chemical analysis of the person's blood, urine, or breath is
3 admissible into evidence in any civil or criminal proceeding.

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

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

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

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

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

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

26 (c) A sample or specimen of urine or breath shall be taken
27 and collected in a reasonable manner. Only a licensed physician,

1 or an individual operating under the delegation of a licensed
2 physician under section 16215 of the Public health code, Act
3 No. 368 of the Public Acts of 1978, being section 333.16215 of
4 the Michigan Compiled Laws, qualified to withdraw blood and
5 acting in a medical environment, may withdraw blood at a peace
6 officer's request to determine the amount of alcohol or presence
7 of a controlled substance or both in the person's blood, as pro-
8 vided in this subsection. Liability for a crime or civil damages
9 predicated on the act of withdrawing or analyzing blood and
10 related procedures does not attach to a licensed physician or
11 individual operating under the delegation of a licensed physician
12 who withdraws or analyzes blood or assists in the withdrawal or
13 analysis in accordance with this act unless the withdrawal or
14 analysis is performed in a negligent manner.

15 (d) A chemical test described in this subsection shall be
16 administered at the request of a peace officer having reasonable
17 grounds to believe the person has committed a crime described in
18 section 625c(1). IF, AFTER AN ACCIDENT, THE DRIVER OF A VEHICLE
19 INVOLVED IN THE ACCIDENT IS TRANSPORTED TO A MEDICAL FACILITY,
20 THE CHEMICAL TEST MAY BE ADMINISTERED AT THE MEDICAL FACILITY
21 PURSUANT TO SECTION 2A OF CHAPTER IV OF ACT NO. 175 OF THE PUBLIC
22 ACTS OF 1927 OR AS OTHERWISE PROVIDED BY LAW. A person who takes
23 a chemical test administered at a peace officer's request as pro-
24 vided in this section shall be given a reasonable opportunity to
25 have a person of his or her own choosing administer 1 of the
26 chemical tests described in this subsection within a reasonable
27 time after his or her detention. The test results are admissible

1 and shall be considered with other competent evidence in
2 determining the defendant's innocence or guilt. If the person
3 charged is administered a chemical test by a person of his or her
4 own choosing, the person charged is responsible for obtaining a
5 chemical analysis of the test sample.

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

20 (f) If, after an accident, the driver of a vehicle involved
21 in the accident is deceased, a sample of the decedent's blood
22 shall be withdrawn in a manner directed by the medical examiner
23 to determine the amount of alcohol or the presence of a con-
24 trolled substance, or both, in the decedent's blood. The medical
25 examiner shall give the results of the chemical analysis of the
26 sample to the law enforcement agency investigating the accident

1 and that agency shall forward the results to the department of
2 state police.

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

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 a person was impaired
14 by, or under the influence of, intoxicating liquor or a con-
15 trolled substance, or a combination of intoxicating liquor and a
16 controlled substance, or whether the person had an alcohol con-
17 tent of 0.10 grams or more per 100 milliliters of blood, per 210
18 liters of breath, or per 67 milliliters of urine, or if the
19 person is less than 21 years of age, whether the person had any
20 bodily alcohol content within his or her body. As used in this
21 section, "any bodily alcohol content" means either of the
22 following:

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

26 (b) Any presence of alcohol within a person's body resulting
27 from the consumption of intoxicating liquor, other than

1 consumption of intoxicating liquor as a part of a generally
2 recognized religious service or ceremony.

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

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

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

24 (b) If there were at the time more than 0.07 grams but less
25 than 0.10 grams of alcohol per 100 milliliters of the defendant's
26 blood, per 210 liters of the defendant's breath, or per 67
27 milliliters of the defendant's urine, it is presumed that the

1 defendant's ability to operate a vehicle was impaired within the
2 provisions of section 625(3) due to the consumption of intoxicat-
3 ing liquor.

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

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

15 Section 2. This amendatory act shall not take effect unless
16 Senate Bill No. _____ or House Bill No. 5469 (request
17 no. 03664'95) of the 88th Legislature is enacted into law.