

Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 196 (as introduced 2-13-01)
Sponsor: Senator William Van Regenmorter
Committee: Judiciary

Date Completed: 2-16-01

CONTENT

The bill would amend the Michigan Vehicle Code to provide that, in a prosecution for a drunk driving offense, either party could introduce the results of a preliminary chemical breath analysis in order to rebut testimony or argument that the defendant's breath alcohol content was different at the time of the offense than when a chemical test was administered. The bill also provides that a person's refusal to submit to a chemical test would be admissible to show that a test was offered as evidence of guilt or innocence. Currently, a person's refusal to submit to a chemical test is admissible only to show that a test was offered to the defendant, and the results of a preliminary chemical breath analysis may be introduced only to rebut testimony elicited on cross-examination. The bill would take effect on October 1, 2001.

Under the Code's implied consent provisions, in Section 625c, a person who operates a vehicle upon a public highway or other public place in the State is considered to have given consent to chemical tests of his or her blood, breath, or urine for the purpose of determining the amount of alcohol and/or presence of a controlled substance in his or her blood or urine, or the amount of alcohol in his or her breath, if the person is arrested for operating under the influence (OUI); operating while impaired (OWI); OUI or OWI causing death or a serious impairment of a body function; committing one of those violations with a passenger under 16; driving with any bodily alcohol content (if the driver is under 21); driving a commercial vehicle with an unlawful bodily alcohol content; refusing to submit to a preliminary chemical breath analysis (if the person is driving a commercial vehicle); or felonious driving, negligent homicide, manslaughter, or murder resulting from the operation of a motor vehicle while under the influence or with an unlawful bodily alcohol content.

The Code contains various provisions that apply with respect to chemical tests and analysis of a person's blood, urine, or breath (other than a preliminary chemical breath analysis). A chemical test must be administered at the request of a peace officer having reasonable grounds to believe a person committed a crime described in Section 625c. If a person is arrested for a crime described in Section 625c, he or she must be informed that the test results are admissible in a judicial proceeding and will be considered with other admissible evidence in determining the defendant's innocence or guilt.

A person's refusal to submit to a chemical test, however, is admissible in a criminal prosecution for a crime described in Section 625c only to show that a test was offered to the defendant. A person's refusal may not be admitted as evidence in determining the defendant's innocence or guilt. The bill provides, instead, that a person's refusal to submit to a chemical test would be admissible in a criminal prosecution for a crime described in Section 625c to show that a test was offered as evidence in determining the defendant's innocence or guilt. As currently required, the jury would have to be instructed accordingly.

The Code also allows a peace officer to require a person to submit to a preliminary chemical breath analysis if the officer has reasonable cause to believe that a person was operating a vehicle upon a public highway or other public place and the person's ability to operate may have been affected by the consumption of liquor; that a person was operating a commercial motor vehicle while his or her blood, breath, or urine contained any measurable amount of alcohol or while the person had any detectable presence of intoxicating liquor; or that a person under 21 was operating a vehicle while he or she had any bodily alcohol content. The results of a preliminary chemical breath test may be admitted in a criminal prosecution for a

crime described in Section 625c or in an administrative hearing for one or both of the following purposes:

- As evidence of the defendant's breath alcohol content, if offered by the defendant to rebut testimony elicited on cross-examination of a defense witness that the defendant's breath alcohol content was higher at the time of the charged offense than when a chemical test (other than a preliminary breath test) was administered.
- As evidence of the defendant's breath alcohol content, if offered by the prosecution to rebut testimony elicited on cross-examination of a prosecution witness that the defendant's breath alcohol content was lower at the time of the charged offense than when a chemical test (other than a preliminary breath test) was administered.

The bill provides, instead, that the results of a preliminary chemical breath analysis would be admissible as evidence of the defendant's breath alcohol content if offered by either party to rebut testimony or argument that the defendant's breath alcohol content was different at the time of the charged offense than when a chemical test (other than a preliminary breath test) was administered.

(As currently provided, the results of a preliminary chemical breath analysis also could be introduced to assist the court or hearing officer in determining a challenge to the validity of an arrest.)

MCL 257.625a

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on State and local government.

There are no data available to indicate whether convictions for drunk driving would increase if the refusal to submit to a chemical test were admissible in court as evidence of guilt or innocence. For felony drunk driving, the State government incurs the costs of incarceration for minimum sentences greater than 18 months, probation costs, and jail stays qualifying for reimbursement through the County Jail Reimbursement Program, while lesser drunk driving crimes are misdemeanor offenses or ordinance violations for which local government incurs the cost of incarceration or receives the fine revenue.

The bill would have no fiscal impact on the Department of State, except to the extent that the bill could affect the number of license revocations.

Fiscal Analyst: K. Firestone
J. Runnels

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.