

# SENATE BILL No. 196

February 13, 2001, Introduced by Senator VAN REGENMORTER and referred to the Committee on Judiciary.

A bill to amend 1949 PA 300, entitled  
"Michigan vehicle code,"  
by amending section 625a (MCL 257.625a), as amended by 1998 PA  
351.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 625a. (1) A peace officer may arrest a person without  
2 a warrant under either of the following circumstances:

3       (a) The peace officer has reasonable cause to believe the  
4 person was, at the time of an accident in this state, the opera-  
5 tor of a vehicle involved in the accident and was operating the  
6 vehicle in violation of section 625 or a local ordinance substan-  
7 tially corresponding to section 625.

8       (b) The person is found in the driver's seat of a vehicle  
9 parked or stopped on a highway or street within this state if any  
10 part of the vehicle intrudes into the roadway and the peace

1 officer has reasonable cause to believe the person was operating  
2 the vehicle in violation of section 625 or a local ordinance sub-  
3 stantially corresponding to section 625.

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

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

26       (b) The results of a preliminary chemical breath analysis  
27 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~~ ADMISSIBLE evi-  
6 dence offered to establish the validity of an arrest.

7 (ii) As evidence of the defendant's breath alcohol content  
8 ~~—, if offered by the defendant to rebut testimony elicited on~~  
9 ~~cross-examination of a defense witness that the defendant's~~  
10 ~~breath alcohol content was higher~~ EITHER PARTY TO REBUT TESTI-  
11 MONY OR ARGUMENT THAT THE DEFENDANT'S BREATH ALCOHOL CONTENT WAS  
12 DIFFERENT at the time of the charged offense than when a chemical  
13 test was administered under subsection (6).

14 ~~—(iii) As evidence of the defendant's breath alcohol con-~~  
15 ~~tent, if offered by the prosecution to rebut testimony elicited~~  
16 ~~on cross-examination of a prosecution witness that the~~  
17 ~~defendant's breath alcohol content was lower at the time of the~~  
18 ~~charged offense than when a chemical test was administered under~~  
19 ~~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 93  
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 93 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 admissible evidence in determining the defendant's inno-  
13 cence 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 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, 1978 PA  
3 368, MCL 333.16215, qualified to withdraw blood and acting in a  
4 medical environment, may withdraw blood at a peace officer's  
5 request to determine the amount of alcohol or presence of a con-  
6 trolled substance or both in the person's blood, as provided in  
7 this subsection. Liability for a crime or civil damages predi-  
8 cated on the act of withdrawing or analyzing blood and related  
9 procedures does not attach to a licensed physician or individual  
10 operating under the delegation of a licensed physician who with-  
11 draws or analyzes blood or assists in the withdrawal or analysis  
12 in accordance with this act unless the withdrawal or analysis is  
13 performed in a negligent manner.

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

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

15 (f) If, after an accident, the driver of a vehicle involved  
16 in the accident is deceased, a sample of the decedent's blood  
17 shall be withdrawn in a manner directed by the medical examiner  
18 to determine the amount of alcohol or the presence of a con-  
19 trolled substance, or both, in the decedent's blood. The medical  
20 examiner shall give the results of the chemical analysis of the  
21 sample to the law enforcement agency investigating the accident  
22 and that agency shall forward the results to the department of  
23 state police.

24 (g) The department of state police shall promulgate uniform  
25 rules in compliance with the administrative procedures act of  
26 1969, 1969 PA 306, MCL 24.201 to 24.328, for the administration  
27 of chemical tests for the purposes of this section. An

1 instrument used for a preliminary chemical breath analysis may be  
2 used for a chemical test described in this subsection if approved  
3 under rules promulgated by the department of state police.

4       (7) The provisions of subsection (6) relating to chemical  
5 testing do not limit the introduction of any other admissible  
6 evidence bearing upon the question of whether a person was  
7 impaired by, or under the influence of, intoxicating liquor or a  
8 controlled substance, or a combination of intoxicating liquor and  
9 a controlled substance, or whether the person had an alcohol con-  
10 tent of 0.10 grams or more per 100 milliliters of blood, per 210  
11 liters of breath, or per 67 milliliters of urine, or if the  
12 person is less than 21 years of age, whether the person had any  
13 bodily alcohol content within his or her body. ~~As used in this~~  
14 ~~section, "any bodily alcohol content" means either of the~~  
15 ~~following:~~

16       ~~(a) An alcohol content of not less than 0.02 grams or more~~  
17 ~~than 0.07 grams per 100 milliliters of blood, per 210 liters of~~  
18 ~~breath, or per 67 milliliters of urine.~~

19       ~~(b) Any presence of alcohol within a person's body resulting~~  
20 ~~from the consumption of intoxicating liquor, other than consump-~~  
21 ~~tion of intoxicating liquor as a part of a generally recognized~~  
22 ~~religious service or ceremony.~~

23       (8) If a chemical test described in subsection (6) is admin-  
24 istered, the test results shall be made available to the person  
25 charged or the person's attorney upon written request to the  
26 prosecution, with a copy of the request filed with the court.  
27 The prosecution shall furnish the results at least 2 days before



1 the day of the trial. The prosecution shall offer the test  
2 results as evidence in that trial. Failure to fully comply with  
3 the request bars the admission of the results into evidence by  
4 the prosecution.

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

10 (a) If there were at the time 0.07 grams or less of alcohol  
11 per 100 milliliters of the defendant's blood, per 210 liters of  
12 the defendant's breath, or per 67 milliliters of the defendant's  
13 urine, it is presumed that the defendant's ability to operate a  
14 motor vehicle was not impaired due to the consumption of intoxi-  
15 cating liquor and that the defendant was not under the influence  
16 of intoxicating liquor.

17 (b) If there were at the time more than 0.07 grams but less  
18 than 0.10 grams of alcohol per 100 milliliters of the defendant's  
19 blood, per 210 liters of the defendant's breath, or per 67 milli-  
20 liters of the defendant's urine, it is presumed that the  
21 defendant's ability to operate a vehicle was impaired ~~within the~~  
22 ~~provisions~~ IN VIOLATION of section 625(3) due to the consumption  
23 of intoxicating liquor.

24 (c) If there were at the time 0.10 grams or more of alcohol  
25 per 100 milliliters of the defendant's blood, per 210 liters of  
26 the breath, or per 67 milliliters of the defendant's urine, it is

1 presumed that the defendant was under the influence of  
2 intoxicating liquor.

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

9       (11) AS USED IN THIS SECTION, "ANY BODILY ALCOHOL CONTENT"  
10 MEANS THAT TERM AS DEFINED IN SECTION 625(6).

11       Enacting section 1. This amendatory act takes effect  
12 October 1, 2001.