

SENATE BILL No. 434

July 1, 2015, Introduced by Senators CASPERSON, JONES and NOFS 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 2015 PA 11,
and by adding sections 43b and 625p.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 43B. "PRELIMINARY ORAL FLUID ANALYSIS" MEANS THE ON-SITE
2 TAKING OF A PRELIMINARY ORAL FLUID TEST, PERFORMED BY A CERTIFIED
3 DRUG RECOGNITION EXPERT, AS THAT TERM IS DEFINED IN SECTION 625P,
4 FROM THE ORAL FLUID OF A PERSON FOR THE PURPOSE OF DETECTING THE
5 PRESENCE OF A CONTROLLED SUBSTANCE, AS THAT TERM IS DEFINED IN
6 SECTION 7104 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.7104.

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

9 (a) The peace officer has reasonable cause to believe the
10 person was, at the time of an accident in this state, the operator

1 of a vehicle involved in the accident and was operating the vehicle
2 in violation of section 625 or a local ordinance substantially
3 corresponding to section 625.

4 (b) The person is found in the driver's seat of a vehicle
5 parked or stopped on a highway or street within this state if any
6 part of the vehicle intrudes into the roadway and the peace officer
7 has reasonable cause to believe the person was operating the
8 vehicle in violation of section 625 or a local ordinance
9 substantially corresponding to section 625.

10 (2) A peace officer who has reasonable cause to believe that a
11 person was operating a vehicle upon a public highway or other place
12 open to the public or generally accessible to motor vehicles,
13 including an area designated for the parking of vehicles, within
14 this state and that the person by the consumption of alcoholic
15 liquor, a controlled substance, or other intoxicating substance or
16 a combination of them may have affected his or her ability to
17 operate a vehicle, or reasonable cause to believe that a person was
18 operating a commercial motor vehicle within the state while the
19 person's blood, breath, or urine contained any measurable amount of
20 alcohol, a controlled substance, or any other intoxicating
21 substance or while the person had any detectable presence of
22 alcoholic liquor, a controlled substance or any other intoxicating
23 substance, or any combination of them, or reasonable cause to
24 believe that a person who is less than 21 years of age was
25 operating a vehicle upon a public highway or other place open to
26 the public or generally accessible to motor vehicles, including an
27 area designated for the parking of vehicles, within this state

1 while the person had any bodily alcohol content as that term is
2 defined in section 625(6), may require the person to submit to a
3 preliminary chemical breath analysis. **A PEACE OFFICER WHO IS**
4 **CERTIFIED AS A DRUG RECOGNITION EXPERT, AS THAT TERM IS DEFINED IN**
5 **SECTION 625P, MAY REQUIRE THE PERSON TO SUBMIT TO A PRELIMINARY**
6 **ORAL FLUID ANALYSIS IN ADDITION TO A PRELIMINARY CHEMICAL BREATH**
7 **ANALYSIS.** The following provisions apply with respect to a
8 preliminary chemical breath analysis, **OR AN ORAL FLUID ANALYSIS**
9 **PERFORMED BY A DRUG RECOGNITION EXPERT AS THAT TERM IS DEFINED IN**
10 **SECTION 625P,** administered under this subsection:

11 (a) A peace officer may arrest a person based in whole or in
12 part upon the results of a preliminary chemical breath **ANALYSIS, OR**
13 **AN ORAL FLUID** analysis **PERFORMED BY A DRUG RECOGNITION EXPERT AS**
14 **THAT TERM IS DEFINED IN SECTION 625P.**

15 (b) The results of a preliminary chemical breath analysis, **OR**
16 **AN ORAL FLUID ANALYSIS PERFORMED BY A DRUG RECOGNITION EXPERT AS**
17 **THAT TERM IS DEFINED IN SECTION 625P,** are admissible in a criminal
18 prosecution for a crime enumerated in section 625c(1) or in an
19 administrative hearing for 1 or more of the following purposes:

20 (i) To assist the court or hearing officer in determining a
21 challenge to the validity of an arrest. This subparagraph does not
22 limit the introduction of other competent evidence offered to
23 establish the validity of an arrest.

24 (ii) As evidence of the defendant's breath alcohol content **OR**
25 **THE PRESENCE OR NONPRESENCE OF A CONTROLLED SUBSTANCE IN THE**
26 **DEFENDANT'S ORAL FLUID,** if offered by the defendant to rebut
27 testimony elicited on cross-examination of a defense witness that

1 the defendant's breath alcohol content was higher at the time of
2 the charged offense than when a chemical test was administered
3 under subsection (6), **OR THAT THE DEFENDANT'S ORAL FLUID ANALYSIS**
4 **SHOWED THE PRESENCE OF A CONTROLLED SUBSTANCE THAT WAS NOT FOUND TO**
5 **BE PRESENT WHEN A CHEMICAL TEST WAS ADMINISTERED UNDER SUBSECTION**
6 **(6) .**

7 (iii) As evidence of the defendant's breath alcohol content **OR**
8 **THE PRESENCE OR NONPRESENCE OF A CONTROLLED SUBSTANCE IN THE**
9 **DEFENDANT'S ORAL FLUID**, if offered by the prosecution to rebut
10 testimony elicited on cross-examination of a prosecution witness
11 that the defendant's breath alcohol content was lower at the time
12 of the charged offense than when a chemical test was administered
13 under subsection (6), **OR THAT THE DEFENDANT'S ORAL FLUID ANALYSIS**
14 **SHOWED NO PRESENCE OF A CONTROLLED SUBSTANCE THAT WAS FOUND TO BE**
15 **PRESENT WHEN A CHEMICAL TEST WAS ADMINISTERED UNDER SUBSECTION (6) .**

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

20 (d) Except as provided in subsection (5), a person who refuses
21 to submit to a preliminary chemical breath **OR ORAL FLUID** analysis
22 upon 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 **OR ORAL FLUID** analysis conducted under this section
26 to determine whether to order a person out-of-service under section
27 319d. A peace officer shall order out-of-service as required under

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

7 (4) A person who was operating a commercial motor vehicle and
8 who is requested to submit to a preliminary chemical breath **OR ORAL**
9 **FLUID** analysis under this section shall be advised that refusing a
10 peace officer's request to take a test described in this section is
11 a misdemeanor punishable by imprisonment for not more than 93 days
12 or a fine of not more than \$100.00, or both, and will result in the
13 issuance of a 24-hour out-of-service order.

14 (5) A person who was operating a commercial motor vehicle and
15 who refuses to submit to a preliminary chemical breath **OR ORAL**
16 **FLUID** analysis upon a peace officer's lawful request is guilty of a
17 misdemeanor punishable by imprisonment for not more than 93 days or
18 a 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 a preliminary chemical breath **OR ORAL FLUID** analysis:

22 (a) The amount of alcohol or presence of a controlled
23 substance or other intoxicating substance in a driver's blood or
24 urine or the amount of alcohol in a person's breath at the time
25 alleged as shown by chemical analysis of the person's blood, urine,
26 or breath is admissible into evidence in any civil or criminal
27 proceeding and is presumed to be the same as at the time the person

1 operated the vehicle.

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

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

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

12 (iii) He or she is responsible for obtaining a chemical
13 analysis of a test sample obtained at his or her own 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 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 his
20 or her operator's or chauffeur's license and vehicle group
21 designation or operating privilege and in the addition of 6 points
22 to his or her driver record.

23 (c) A sample or specimen of urine or breath shall be taken and
24 collected in a reasonable manner. Only a licensed physician, or an
25 individual operating under the delegation of a licensed physician
26 under section 16215 of the public health code, 1978 PA 368, MCL
27 333.16215, qualified to withdraw blood and acting in a medical

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

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

24 (e) If, after an accident, the driver of a vehicle involved in
25 the accident is transported to a medical facility and a sample of
26 the driver's blood is withdrawn at that time for medical treatment,
27 the results of a chemical analysis of that sample are admissible in

1 any civil or criminal proceeding to show the amount of alcohol or
2 presence of a controlled substance or other intoxicating substance
3 in the person's blood at the time alleged, regardless of whether
4 the person had been offered or had refused a chemical test. The
5 medical facility or person performing the chemical analysis shall
6 disclose the results of the analysis to a prosecuting attorney who
7 requests the results for use in a criminal prosecution as provided
8 in this subdivision. A medical facility or person disclosing
9 information in compliance with this subsection is not civilly or
10 criminally liable for making the disclosure.

11 (f) If, after an accident, the driver of a vehicle involved in
12 the accident is deceased, a sample of the decedent's blood shall be
13 withdrawn in a manner directed by the medical examiner to determine
14 the amount of alcohol or the presence of a controlled substance or
15 other intoxicating substance, or any combination of them, in the
16 decedent's blood. The medical examiner shall give the results of
17 the chemical analysis of the sample to the law enforcement agency
18 investigating the accident and that agency shall forward the
19 results to the department of state police.

20 (g) The department of state police shall promulgate uniform
21 rules in compliance with the administrative procedures act of 1969,
22 1969 PA 306, MCL 24.201 to 24.328, for the administration of
23 chemical tests for the purposes of this section. An instrument used
24 for a preliminary chemical breath analysis may be used for a
25 chemical test described in this subsection if approved under rules
26 promulgated by the department of state police.

27 (7) The provisions of subsection (6) relating to chemical

1 testing do not limit the introduction of any other admissible
2 evidence bearing upon any of the following questions:

3 (a) Whether the person was impaired by, or under the influence
4 of, alcoholic liquor, a controlled substance or other intoxicating
5 substance, or a combination of alcoholic liquor, a controlled
6 substance, or other intoxicating substance.

7 (b) Whether the person had an alcohol content of 0.08 grams or
8 more per 100 milliliters of blood, per 210 liters of breath, or per
9 67 milliliters of urine or, beginning October 1, 2018, the person
10 had an alcohol content of 0.10 grams or more per 100 milliliters of
11 blood, per 210 liters of breath, or per 67 milliliters of urine.

12 (c) If the person is less than 21 years of age, whether the
13 person had any bodily alcohol content within his or her body. As
14 used in this subdivision, "any bodily alcohol content" means either
15 of the following:

16 (i) An alcohol content of 0.02 grams or more but less than
17 0.08 grams per 100 milliliters of blood, per 210 liters of breath,
18 or per 67 milliliters of urine or, beginning October 1, 2018, the
19 person had an alcohol content of 0.02 grams or more but less than
20 0.10 grams or more per 100 milliliters of blood, per 210 liters of
21 breath, or per 67 milliliters of urine.

22 (ii) Any presence of alcohol within a person's body resulting
23 from the consumption of alcoholic liquor, other than the
24 consumption of alcoholic liquor as a part of a generally recognized
25 religious service or ceremony.

26 (8) If a chemical test described in subsection (6) is
27 administered, the test results shall be made available to the

1 person charged or the person's attorney upon written request to the
2 prosecution, with a copy of the request filed with the court. The
3 prosecution shall furnish the results at least 2 days before the
4 day of the trial. The prosecution shall offer the test results as
5 evidence in that trial. Failure to fully comply with the request
6 bars the admission of the results into evidence by the prosecution.

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

13 (10) As used in this section:

14 (a) "Controlled substance" means that term as defined in
15 section 7104 of the public health code, 1978 PA 368, MCL 333.7104.

16 (b) "Intoxicating substance" means that term as defined in
17 section 625.

18 **SEC. 625P. (1) THE DEPARTMENT OF STATE POLICE MAY ESTABLISH A**
19 **PILOT PROGRAM IN 3 COUNTIES IN THIS STATE FOR ROADSIDE DRUG TESTING**
20 **TO DETERMINE WHETHER AN INDIVIDUAL IS OPERATING A VEHICLE WHILE**
21 **UNDER THE INFLUENCE OF A CONTROLLED SUBSTANCE IN VIOLATION OF**
22 **SECTION 625.**

23 (2) A PILOT PROGRAM ESTABLISHED UNDER THIS SECTION SHALL BE
24 FOR A PERIOD OF 1 CALENDAR YEAR. THE FUNDING OF A PILOT PROGRAM
25 ESTABLISHED UNDER THIS SECTION IS SUBJECT TO APPROPRIATION.

26 (3) THE DEPARTMENT OF STATE POLICE SHALL SELECT 3 COUNTIES IN
27 WHICH TO IMPLEMENT A PILOT PROGRAM ESTABLISHED UNDER THIS SECTION.

1 (4) A COUNTY IS ELIGIBLE TO PARTICIPATE IN THE PILOT PROGRAM
2 IF THE COUNTY HAS A LAW ENFORCEMENT AGENCY WITHIN ITS BOUNDARY,
3 INCLUDING, BUT NOT LIMITED TO, A STATE POLICE POST, A SHERIFF'S
4 DEPARTMENT, OR A MUNICIPAL POLICE DEPARTMENT, THAT EMPLOYS NOT
5 FEWER THAN 1 LAW ENFORCEMENT OFFICER WHO IS A CERTIFIED DRUG
6 RECOGNITION EXPERT.

7 (5) THE DEPARTMENT OF STATE POLICE SHALL DEVELOP A WRITTEN
8 POLICY FOR THE IMPLEMENTATION OF THE PILOT PROGRAM AND THE
9 ADMINISTRATION OF ROADSIDE DRUG TESTING.

10 (6) THE DEPARTMENT OF STATE POLICE MAY PROMULGATE RULES UNDER
11 THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201
12 TO 24.328, TO IMPLEMENT A PILOT PROGRAM ESTABLISHED UNDER THIS
13 SECTION.

14 (7) WITHIN 90 DAYS AFTER THE CONCLUSION OF A ROADSIDE DRUG
15 TESTING PILOT PROGRAM ESTABLISHED UNDER THIS SECTION, THE
16 DEPARTMENT OF STATE POLICE SHALL SUBMIT A REPORT TO THE LEGISLATIVE
17 COMMITTEES OF THE SENATE AND HOUSE OF REPRESENTATIVES WITH PRIMARY
18 RESPONSIBILITY FOR JUDICIAL AND CRIMINAL JUSTICE ISSUES. THE REPORT
19 SHALL COVER ALL OF THE FOLLOWING:

20 (A) HOW PILOT PROGRAM PARTICIPANT COUNTIES WERE SELECTED.

21 (B) THE DIFFERENT TYPES OF LAW ENFORCEMENT AGENCIES IN THE
22 PILOT PROGRAM PARTICIPANT COUNTIES THAT ENGAGED IN ROADSIDE DRUG
23 TESTING.

24 (C) RELEVANT STATISTICAL DATA, INCLUDING, BUT NOT LIMITED TO,
25 THE FOLLOWING:

26 (i) THE NUMBER OF TRAFFIC STOPS RESULTING IN AN ARREST FOR
27 OPERATING UNDER THE INFLUENCE OF A CONTROLLED SUBSTANCE IN

1 VIOLATION OF SECTION 625 AS A RESULT OF ROADSIDE DRUG TESTING BY A
2 CERTIFIED DRUG RECOGNITION EXPERT.

3 (ii) THE NUMBER AND TYPE OF CONVICTIONS RESULTING FROM AN
4 ARREST MADE BASED ON THE RESULT OF A ROADSIDE DRUG TEST BY A
5 CERTIFIED DRUG RECOGNITION EXPERT.

6 (8) AS USED IN THIS SECTION:

7 (A) "CERTIFIED DRUG RECOGNITION EXPERT" MEANS A LAW
8 ENFORCEMENT OFFICER TRAINED TO RECOGNIZE IMPAIRMENT IN A DRIVER
9 UNDER THE INFLUENCE OF A CONTROLLED SUBSTANCE RATHER THAN, OR IN
10 ADDITION TO, ALCOHOL.

11 (B) "CONTROLLED SUBSTANCE" MEANS THAT TERM AS DEFINED IN
12 SECTION 7104 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.7104.

13 Enacting section 1. This amendatory act takes effect 90 days
14 after the date it is enacted into law.