

SENATE BILL No. 80

February 1, 2017, Introduced by Senators SCHMIDT, NOFS, MARLEAU, JONES,
HANSEN and PROOS and referred to the Committee on Judiciary.

A bill to amend 1949 PA 300, entitled
"Michigan vehicle code,"
by amending sections 625a and 625c (MCL 257.625a and 257.625c),
section 625a as amended by 2015 PA 11 and section 625c as amended
by 2014 PA 315.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 625a. (1) A peace officer may arrest a person without a
2 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 operator
5 of a vehicle involved in the accident and was operating the vehicle
6 in violation of section 625 or a local ordinance substantially

1 corresponding to section 625.

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

8 (2) A peace officer who has reasonable cause to believe that a
9 person was operating a vehicle upon a public highway or other place
10 open to the public or generally accessible to motor vehicles,
11 including an area designated for the parking of vehicles, within
12 this state and that the person by the consumption of alcoholic
13 liquor, a controlled substance, or other intoxicating substance or
14 a combination of them may have affected his or her ability to
15 operate a vehicle, or reasonable cause to believe that a person was
16 operating a commercial motor vehicle within the state while the
17 person's blood, breath, or urine contained any measurable amount of
18 alcohol, a controlled substance, or any other intoxicating
19 substance or while the person had any detectable presence of
20 alcoholic liquor, a controlled substance or any other intoxicating
21 substance, or any combination of them, or reasonable cause to
22 believe that a person who is less than 21 years of age was
23 operating a vehicle upon a public highway or other place open to
24 the public or generally accessible to motor vehicles, including an
25 area designated for the parking of vehicles, within this state
26 while the person had any bodily alcohol content as that term is
27 defined in section 625(6), may require the person to submit to a

1 preliminary chemical breath analysis. The following provisions
2 apply with respect to a preliminary chemical breath analysis
3 administered under this subsection:

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

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

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

14 (ii) As evidence of the defendant's breath alcohol content, if
15 offered by the defendant to rebut testimony elicited on cross-
16 examination of a defense witness that the defendant's breath
17 alcohol content was higher at the time of the charged offense than
18 when a chemical test was administered under subsection (6).

19 (iii) As evidence of the defendant's breath alcohol content,
20 if offered by the prosecution to rebut testimony elicited on cross-
21 examination of a prosecution witness that the defendant's breath
22 alcohol content was lower at the time of the charged offense than
23 when a chemical test was administered under subsection (6).

24 (c) A person who submits to a preliminary chemical breath
25 analysis remains subject to the requirements of sections 625c,
26 625d, 625e, and 625f for purposes of chemical tests described in
27 those sections.

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

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

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

20 (5) A person who was operating a commercial motor vehicle and
21 who refuses to submit to a preliminary chemical breath analysis
22 upon a peace officer's lawful request is guilty of a misdemeanor
23 punishable by imprisonment for not more than 93 days or a fine of
24 not more than \$100.00, or both.

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

1 (a) The amount of alcohol or presence of a controlled
2 substance or other intoxicating substance in a driver's blood or
3 urine or the amount of alcohol in a person's breath at the time
4 alleged as shown by chemical analysis of the person's blood, urine,
5 or breath is admissible into evidence in any civil or criminal
6 proceeding and is presumed to be the same as at the time the person
7 operated the vehicle.

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

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

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

18 (iii) He or she is responsible for obtaining a chemical
19 analysis of a test sample obtained at his or her own request.

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

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

1 to his or her driver record.

2 (c) A sample or specimen of urine or breath shall be taken and
3 collected in a reasonable manner. Only a licensed physician, or an
4 individual operating under the delegation of a licensed physician
5 under section 16215 of the public health code, 1978 PA 368, MCL
6 333.16215, qualified to withdraw blood and acting in a medical
7 environment, may withdraw blood at a peace officer's request to
8 determine the amount of alcohol or presence of a controlled
9 substance or other intoxicating substance in the person's blood, as
10 provided in this subsection. Liability for a crime or civil damages
11 predicated on the act of withdrawing or analyzing blood and related
12 procedures does not attach to a licensed physician or individual
13 operating under the delegation of a licensed physician who
14 withdraws or analyzes blood or assists in the withdrawal or
15 analysis in accordance with this act unless the withdrawal or
16 analysis is performed in a negligent manner.

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

1 person of his or her own choosing, the person charged is
2 responsible for obtaining a chemical analysis of the test sample.

3 (e) If, after an accident, the driver of a vehicle involved in
4 the accident is transported to a medical facility and a sample of
5 the driver's blood is withdrawn **OR THE DRIVER'S URINE IS OBTAINED**
6 at that time for medical treatment, the results of a chemical
7 analysis of ~~that sample~~ **EITHER OR BOTH OF THOSE SAMPLES** are
8 admissible in any civil or criminal proceeding to show the amount
9 of alcohol or presence of a controlled substance or other
10 intoxicating substance in the person's blood **OR URINE** at the time
11 alleged, regardless of whether the person had been offered or had
12 refused a chemical test. The medical facility or person performing
13 the chemical analysis shall disclose the results of the analysis to
14 a prosecuting attorney who requests the results for use in a
15 criminal prosecution as provided in this subdivision. A medical
16 facility or person disclosing information in compliance with this
17 subsection is not civilly or criminally liable for making the
18 disclosure.

19 (f) If, after an accident, the driver of a vehicle involved in
20 the accident is deceased, a sample of the decedent's blood shall be
21 withdrawn in a manner directed by the ~~medical examiner~~ **LAW**
22 **ENFORCEMENT OFFICER** to determine the amount of alcohol or the
23 presence of a controlled substance or other intoxicating substance,
24 or any combination of them, 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 and
27 that agency shall forward the results to the department of state

1 police.

2 (g) The department of state police shall promulgate uniform
3 rules in compliance with the administrative procedures act of 1969,
4 1969 PA 306, MCL 24.201 to 24.328, for the administration of
5 chemical tests for the purposes of this section. An instrument used
6 for a preliminary chemical breath analysis may be used for a
7 chemical test described in this subsection if approved under rules
8 promulgated by the department of state police.

9 (7) The provisions of subsection (6) relating to chemical
10 testing do not limit the introduction of any other admissible
11 evidence bearing upon any of the following questions:

12 (a) Whether the person was impaired by, or under the influence
13 of, alcoholic liquor, a controlled substance or other intoxicating
14 substance, or a combination of alcoholic liquor, a controlled
15 substance, or other intoxicating substance.

16 (b) Whether the person had an alcohol content of 0.08 grams or
17 more per 100 milliliters of blood, per 210 liters of breath, or per
18 67 milliliters of urine or, beginning October 1, 2018, the person
19 had an alcohol content of 0.10 grams or more per 100 milliliters of
20 blood, per 210 liters of breath, or per 67 milliliters of urine.

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

25 (i) An alcohol content of 0.02 grams or more but less than
26 0.08 grams per 100 milliliters of blood, per 210 liters of breath,
27 or per 67 milliliters of urine or, beginning October 1, 2018, the

1 person had an alcohol content of 0.02 grams or more but less than
2 0.10 grams or more per 100 milliliters of blood, per 210 liters of
3 breath, or per 67 milliliters of urine.

4 (ii) Any presence of alcohol within a person's body resulting
5 from the consumption of alcoholic liquor, other than the
6 consumption of alcoholic liquor as a part of a generally recognized
7 religious service or ceremony.

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

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

22 (10) As used in this section:

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

25 (b) "Intoxicating substance" means that term as defined in
26 section 625.

27 Sec. 625c. (1) A person who operates a vehicle upon a public

1 highway or other place open to the general public or generally
2 accessible to motor vehicles, including an area designated for the
3 parking of vehicles, within this state is considered to have given
4 consent to chemical tests of his or her blood, breath, or urine for
5 the purpose of determining the amount of alcohol or presence of a
6 controlled substance or other intoxicating substance, or any
7 combination of them, in his or her blood or urine or the amount of
8 alcohol in his or her breath in all of the following circumstances:

9 (a) If the person is arrested for a violation of section
10 625(1), (3), (4), (5), (6), (7), or (8), section 625a(5), or
11 section 625m or a local ordinance substantially corresponding to
12 section 625(1), (3), (6), or (8), section 625a(5), or section 625m.

13 (b) If the person is arrested for a violation of section 601d,
14 section 626(3) or (4), or manslaughter, or murder resulting from
15 the operation of a motor vehicle, and the peace officer had
16 reasonable grounds to believe the person was operating the vehicle
17 in violation of section 625.

18 (C) IF THE PEACE OFFICER HAS REASONABLE CAUSE TO BELIEVE THAT
19 THE PERSON WAS THE OPERATOR OF A VEHICLE THAT CAUSED A FATAL
20 ACCIDENT. AS USED IN THIS SUBDIVISION, "FATAL ACCIDENT" MEANS AN
21 ACCIDENT THAT INVOLVES AT LEAST 1 VEHICLE AND THAT RESULTS IN 1 OF
22 THE FOLLOWING:

23 (i) DEATH.

24 (ii) SERIOUS BODILY INJURY THAT GIVES THE PEACE OFFICER REASON
25 TO BELIEVE THAT THE DEATH OF AT LEAST 1 PERSON IS IMMINENT.

26 (2) THE RESULTS OF A CHEMICAL TEST FOR WHICH A PERSON IS
27 CONSIDERED TO HAVE GIVEN CONSENT UNDER SUBSECTION (1) (C) ARE

1 ADMISSIBLE IN A CRIMINAL PROSECUTION FOR A CRIME DESCRIBED IN
2 SUBSECTION (1) IF THE COURT DETERMINES THAT REASONABLE CAUSE
3 EXISTS, INDEPENDENT OF THE TEST RESULT, TO BELIEVE THAT THE PERSON
4 WAS IMPAIRED BY OR UNDER THE INFLUENCE OF ALCOHOLIC LIQUOR, A
5 CONTROLLED SUBSTANCE OR OTHER INTOXICATING SUBSTANCE, OR A
6 COMBINATION OF ALCOHOLIC LIQUOR, A CONTROLLED SUBSTANCE, OR OTHER
7 INTOXICATING SUBSTANCE.

8 (3) ~~(2)~~—A person who is afflicted with hemophilia, diabetes,
9 or a condition requiring the use of an anticoagulant under the
10 direction of a physician is not considered to have given consent to
11 the withdrawal of blood.

12 (4) ~~(3)~~—The tests shall be administered as provided in section
13 625a(6).

14 (5) ~~(4)~~—As used in this section:

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

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

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