

HOUSE BILL No. 5430

December 9, 1997, Introduced by Reps. McBryde, Galloway, DeHart, Oxender, Horton, Voorhees, Jellema, Jelinek, Goschka, Richner, Raczkowski, Middleton, Brackenridge, Gernaat, Mans and Bodem 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 1996 PA
491.

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(1), (3), or (6) or a local
7 ordinance substantially corresponding to section 625(1), (3), or
8 (6).

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

1 part of the vehicle intrudes into the roadway and the peace
2 officer has reasonable cause to believe the person was operating
3 the vehicle in violation of section 625(1), (3), or (6) or a
4 local ordinance substantially corresponding to section 625(1),
5 (3), or (6).

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

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

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

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

9 (ii) As evidence of the defendant's breath alcohol content.
10 ~~, if offered by the defendant.~~

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

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

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

26 (3) A peace officer shall use the results of a preliminary
27 chemical breath analysis conducted pursuant to this section to

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

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

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

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

24 (a) The amount of alcohol or presence of a controlled sub-
25 stance or both in a driver's blood or urine or the amount of
26 alcohol in a person's breath at the time alleged as shown by

1 chemical analysis of the person's blood, urine, or breath is
2 admissible into evidence in any civil or criminal proceeding.

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

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

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

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

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

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

25 (c) A sample or specimen of urine or breath shall be taken
26 and collected in a reasonable manner. Only a licensed physician,
27 or an individual operating under the delegation of a licensed

1 physician under section 16215 of the public health code, ~~Act~~
2 ~~No. 368 of the Public Acts of 1978, being section 333.16215 of~~
3 ~~the Michigan Compiled Laws~~ 1978 PA 368, MCL 333.16215, qualified
4 to withdraw blood and acting in a medical environment, may with-
5 draw blood at a peace officer's request to determine the amount
6 of alcohol or presence of a controlled substance or both in the
7 person's blood, as provided in this subsection. Liability for a
8 crime or civil damages predicated on the act of withdrawing or
9 analyzing blood and related procedures does not attach to a
10 licensed physician or individual operating under the delegation
11 of a licensed physician who withdraws or analyzes blood or
12 assists in the withdrawal or analysis in accordance with this act
13 unless the withdrawal or analysis is performed in a negligent
14 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). A person who takes a chemical test administered
19 at a peace officer's request as provided in this section shall be
20 given a reasonable opportunity to have a person of his or her own
21 choosing administer 1 of the chemical tests described in this
22 subsection within a reasonable time after his or her detention.
23 The test results are admissible and shall be considered with
24 other competent evidence in determining the defendant's innocence
25 or guilt. If the person charged is administered a chemical test
26 by a person of his or her own choosing, the person charged is

1 responsible for obtaining a chemical analysis of the test
2 sample.

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

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

26 (g) The department of state police shall promulgate uniform
27 rules pursuant to the administrative procedures act of 1969, ~~Act~~

~~1 No. 306 of the Public Acts of 1969, being sections 24.201 to~~
~~2 24.328 of the Michigan Compiled Laws 1969 PA 306, MCL 24.201 TO~~
3 24.328, for the administration of chemical tests for the purposes
4 of this section. An instrument used for a preliminary chemical
5 breath analysis may be used for a chemical test described in this
6 subsection if approved under rules promulgated by the department
7 of state police.

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

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

23 (b) Any presence of alcohol within a person's body resulting
24 from the consumption of intoxicating liquor, other than consump-
25 tion of intoxicating liquor as a part of a generally recognized
26 religious service or ceremony.

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

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

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

22 (b) If there were at the time more than 0.07 grams but less
23 than 0.10 grams of alcohol per 100 milliliters of the defendant's
24 blood, per 210 liters of the defendant's breath, or per 67 milli-
25 liters of the defendant's urine, it is presumed that the
26 defendant's ability to operate a vehicle was impaired within the

1 provisions of section 625(3) due to the consumption of
2 intoxicating liquor.

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

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