

HOUSE BILL No. 4630

April 19, 2005, Introduced by Reps. David Law, Van Regenmorter, Gosselin, Jones, Ward, Marleau, Kahn, Hildenbrand, Elsenheimer, Taub, Schuitmaker, Hune, Nitz 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 2003 PA 61.

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
7 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

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

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

1 section 625c(1) or in an administrative hearing for 1 or more of
2 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 not
5 limit the introduction of other ~~competent~~ **ADMISSIBLE** evidence
6 offered to establish the validity of an arrest.

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

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

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

23 (d) Except as provided in subsection (5), a person who refuses
24 to submit to a preliminary chemical breath analysis upon a lawful
25 request by a peace officer is responsible for a civil 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 section
2 319d. A peace officer shall order out-of-service as required under
3 section 319d a person who was operating a commercial motor vehicle
4 and who refuses to submit to a preliminary chemical breath analysis
5 as provided in this section. This section does not limit use of
6 other competent evidence by the peace officer to determine whether
7 to order a person out-of-service under section 319d.

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

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

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

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

1 presumed to be the same as at the time the person operated the
2 vehicle.

3 (b) A person arrested for a crime described in section 625c(1)
4 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, he
7 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 admissible evidence in determining the defendant's innocence
12 or guilt.

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

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

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

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

1 333.16215, qualified to withdraw blood and acting in a medical
2 environment, may withdraw blood at a peace officer's request to
3 determine the amount of alcohol or presence of a controlled
4 substance or both in the person's blood, as provided in this
5 subsection. Liability for a crime or civil damages predicated on
6 the act of withdrawing or analyzing blood and related procedures
7 does not attach to a licensed physician or individual operating
8 under the delegation of a licensed physician who withdraws or
9 analyzes blood or assists in the withdrawal or analysis in
10 accordance with this act unless the withdrawal or analysis is
11 performed in a negligent manner.

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

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

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

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

6 (b) Whether the person had an alcohol content of 0.08 grams or
7 more per 100 milliliters of blood, per 210 liters of breath, or per
8 67 milliliters of urine or, beginning October 1, 2013, the person
9 had an alcohol content of 0.10 grams or more per 100 milliliters of
10 blood, per 210 liters of breath, or per 67 milliliters of urine.

11 (c) If the person is less than 21 years of age, whether the
12 person had any bodily alcohol content within his or her body. As
13 used in this subdivision, "any bodily alcohol content" means ~~either~~
14 ~~of the following:~~ **THAT TERM AS DEFINED IN SECTION 625(6).**

15 ~~—— (i) An alcohol content of 0.02 grams or more but less than 0.08~~
16 ~~grams per 100 milliliters of blood, per 210 liters of breath, or~~
17 ~~per 67 milliliters of urine or, beginning October 1, 2013, the~~
18 ~~person had an alcohol content of 0.02 grams or more but less than~~
19 ~~0.10 grams or more per 100 milliliters of blood, per 210 liters of~~
20 ~~breath, or per 67 milliliters of urine.~~

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

25 (8) If a chemical test described in subsection (6) is
26 administered, the test results shall be made available to the
27 person charged or the person's attorney upon written request to the

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

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