

SENATE BILL No. 153

February 24, 2015, Introduced by Senators SCHMIDT, MARLEAU, PROOS, NOFS and HANSEN 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), 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
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, a controlled substance, or other intoxicating substance or
11 a combination of them may have affected his or her ability to
12 operate 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 of
15 alcohol, a controlled substance, or any other intoxicating
16 substance or while the person had any detectable presence of
17 alcoholic liquor, a controlled substance or any other intoxicating
18 substance, or any combination of them, or reasonable cause to
19 believe that a person who is less than 21 years of age was
20 operating a vehicle upon a public highway or other place open to
21 the public or generally accessible to motor vehicles, including an
22 area designated for the parking of vehicles, within this state
23 while the person had any bodily alcohol content as that term is
24 defined in section 625(6), may require the person to submit to a
25 preliminary roadside analysis. The following provisions apply with
26 respect to a preliminary roadside analysis administered under this
27 subsection:

1 (a) A peace officer may arrest a person based in whole or in
2 part upon the results of a preliminary roadside analysis.

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

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

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

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

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

25 (d) Except as provided in subsection (5), a person who refuses
26 to submit to a preliminary roadside analysis upon a lawful request
27 by a peace officer is responsible for a civil infraction.

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

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

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

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

25 (a) The amount of alcohol or presence of a controlled
26 substance or other intoxicating substance in a driver's blood or
27 urine or the amount of alcohol in a person's breath at the time

1 alleged as shown by chemical analysis of the person's blood, urine,
2 or breath is admissible into evidence in any civil or criminal
3 proceeding and is presumed to be the same as at the time the person
4 operated the vehicle.

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

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

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

15 (iii) He or she is responsible for obtaining a chemical analysis
16 of a test sample obtained at his or her own 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 given
19 without a court order, but the peace officer may seek to obtain a
20 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 his
23 or her operator's or chauffeur's license and vehicle group
24 designation or operating privilege and in the addition of 6 points
25 to his or her driver record.

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

1 individual operating under the delegation of a licensed physician
2 under section 16215 of the public health code, 1978 PA 368, MCL
3 333.16215, qualified to withdraw blood and acting in a medical
4 environment, may withdraw blood at a peace officer's request to
5 determine the amount of alcohol or presence of a controlled
6 substance or other intoxicating substance in the person's blood, as
7 provided in this subsection. Liability for a crime or civil damages
8 predicated 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
11 withdraws or analyzes blood or assists in the withdrawal or
12 analysis in accordance with this act unless the withdrawal or
13 analysis is 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 at
18 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. The
22 test results are admissible and shall be considered with other
23 admissible evidence in determining the defendant's innocence or
24 guilt. If the person charged is administered a chemical test by a
25 person of his or her own choosing, the person charged is
26 responsible for obtaining a chemical analysis of the test sample.

27 (e) If, after an accident, the driver of a vehicle involved in

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

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

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

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

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

8 (a) Whether the person was impaired by, or under the influence
9 of, alcoholic liquor, a controlled substance or other intoxicating
10 substance, or a combination of alcoholic liquor, a controlled
11 substance, or other intoxicating substance.

12 (b) Whether the person had an alcohol content of 0.08 grams or
13 more per 100 milliliters of blood, per 210 liters of breath, or per
14 67 milliliters of urine or, beginning October 1, 2018, the person
15 had an alcohol content of 0.10 grams or more per 100 milliliters of
16 blood, per 210 liters of breath, or per 67 milliliters of urine.

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

21 (i) An alcohol content of 0.02 grams or more but less than 0.08
22 grams per 100 milliliters of blood, per 210 liters of breath, or
23 per 67 milliliters of urine or, beginning October 1, 2018, the
24 person had an alcohol content of 0.02 grams or more but less than
25 0.10 grams or more per 100 milliliters of blood, per 210 liters of
26 breath, or per 67 milliliters of urine.

27 (ii) Any presence of alcohol within a person's body resulting

1 from the consumption of alcoholic liquor, other than the
2 consumption of alcoholic liquor as a part of a generally recognized
3 religious service or ceremony.

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

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

18 (10) As used in this section:

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

21 (b) "Intoxicating substance" means that term as defined in
22 section 625.

23 Sec. 625c. (1) A person who operates a vehicle upon a public
24 highway or other place open to the general public or generally
25 accessible to motor vehicles, including an area designated for the
26 parking of vehicles, within this state is considered to have given
27 consent to chemical tests of his or her blood, breath, or urine for

1 the purpose of determining the amount of alcohol or presence of a
2 controlled substance or other intoxicating substance, or any
3 combination of them, in his or her blood or urine or the amount of
4 alcohol in his or her breath in all of the following circumstances:

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

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

14 **(C) IF THE PEACE OFFICER HAS REASONABLE CAUSE TO BELIEVE THAT**
15 **THE PERSON WAS THE OPERATOR OF A VEHICLE THAT CAUSED AN ACCIDENT**
16 **RESULTING IN DEATH OR GREAT BODILY HARM.**

17 (2) A person who is afflicted with hemophilia, diabetes, or a
18 condition requiring the use of an anticoagulant under the direction
19 of a physician is not considered to have given consent to the
20 withdrawal of blood.

21 (3) The tests shall be administered as provided in section
22 625a(6).

23 (4) As used in this section:

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

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