

HOUSE BILL No. 5169

September 25, 1991, Introduced by Rep. Barns and referred to the Committee on Judiciary.

A bill to amend section 625a of Act No. 300 of the Public Acts of 1949, entitled as amended

"Michigan vehicle code,"

as amended by Act No. 100 of the Public Acts of 1991, being section 257.625a of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 625a of Act No. 300 of the Public Acts
2 of 1949, as amended by Act No. 100 of the Public Acts of 1991,
3 being section 257.625a of the Michigan Compiled Laws, is amended
4 to read as follows:

5 Sec. 625a. (1) A peace officer, without a warrant, may
6 arrest a person when the peace officer has reasonable cause to
7 believe that the person was, at the time of an accident, the
8 operator of a vehicle involved in the accident in this state
9 while in violation of section 625(1), (3), (4), or (5) or a local

1 ordinance substantially corresponding to section 625(1) or (3).
2 IF THE PERSON IS TRANSPORTED TO A MEDICAL FACILITY AFTER THE
3 ACCIDENT, THE PEACE OFFICER MAY ARREST THE PERSON AT THE MEDICAL
4 FACILITY PURSUANT TO SECTION 2A OF CHAPTER IV OF THE CODE OF
5 CRIMINAL PROCEDURE, ACT NO. 175 OF THE PUBLIC ACTS OF 1927, BEING
6 SECTION 764.2A OF THE MICHIGAN COMPILED LAWS, OR AS OTHERWISE
7 PROVIDED BY LAW.

8 (2) A peace officer who has reasonable cause to believe that
9 a person was operating a vehicle upon a public highway or other
10 place open to the public or generally accessible to motor vehi-
11 cles, including an area designated for the parking of vehicles,
12 in this state, and that the person by the consumption of intoxi-
13 cating liquor may have affected his or her ability to operate a
14 vehicle, or reasonable cause to believe that a person was operat-
15 ing a commercial motor vehicle within the state while the
16 person's blood contained any measurable amount of alcohol by
17 weight or while the person had any detectable presence of intoxi-
18 cating liquor, may require the person to submit to a preliminary
19 chemical breath analysis. The following provisions shall apply
20 with respect to a preliminary chemical breath analysis:

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

23 (b) The results of a preliminary chemical breath analysis
24 are admissible in a criminal prosecution for a crime enumerated
25 in section 625c(1) or in an administrative hearing solely to
26 assist the court or hearing officer in determining a challenge to
27 the validity of an arrest. This subdivision does not limit the

1 introduction of other competent evidence offered to establish the
2 validity of an arrest.

3 (c) A person who submits to a preliminary chemical breath
4 analysis shall remain subject to the requirements of sections
5 625c, 625d, 625e, and 625f for the purposes of chemical tests
6 described in those sections.

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

11 (3) The results of a preliminary chemical breath analysis
12 conducted pursuant to this section shall be used by a police
13 officer to determine whether a person shall be ordered
14 out-of-service under section 319d. A police officer shall order
15 out-of-service as required under section 319d a person who was
16 operating a commercial motor vehicle and who refuses to submit to
17 a preliminary chemical breath analysis as provided in this
18 section. This section does not limit use of other competent evi-
19 dence by the police officer to determine whether a person shall
20 be ordered out-of-service under section 319d.

21 (4) A person who was operating a commercial motor vehicle
22 and who is requested to submit to a preliminary chemical breath
23 analysis under this section shall be advised that refusal of the
24 request of a police officer to take a test described in this sec-
25 tion is a misdemeanor, punishable by imprisonment for not more
26 than 90 days, or a fine of not more than \$100.00, or both, and
27 shall result in the issuance of a 24-hour out-of-service order.

1 (5) A person who was operating a commercial motor vehicle
2 and who refuses to submit to a preliminary chemical breath analy-
3 sis upon a lawful request by a police officer is guilty of a mis-
4 demeanor, punishable by imprisonment for not more than 90 days,
5 or a fine of not more than \$100.00, or both.

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

9 (a) The amount of alcohol or presence of a controlled sub-
10 stance or both in a driver's blood at the time alleged as shown
11 by chemical analysis of the person's blood, urine, or breath is
12 admissible into evidence in any civil or criminal proceeding.

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

15 (i) That if he or she takes a chemical test of his or her
16 blood, urine, or breath administered at the request of a peace
17 officer, he or she has the right to demand that a person of his
18 or her own choosing administer 1 of the chemical tests; that the
19 results of the test are admissible in a judicial proceeding as
20 provided under this act and shall be considered with other compe-
21 tent evidence in determining the innocence or guilt of the
22 defendant; and that he or she is responsible for obtaining a
23 chemical analysis of a test sample obtained pursuant to his or
24 her own request.

25 (ii) That if he or she refuses the request of a peace offi-
26 cer to take a test described in subparagraph (i), a test shall

1 not be given without a court order, but the peace officer may
2 seek to obtain such a court order.

3 (iii) That his or her refusal of the request of a peace
4 officer to take a test described in subparagraph (i) shall result
5 in the suspension of his or her operator's or chauffeur's license
6 and vehicle group designation or operating privilege, and in the
7 addition of 6 points to his or her driver record.

8 (c) A sample or specimen of urine or breath shall be taken
9 and collected in a reasonable manner. Only a licensed physician,
10 or a licensed nurse or medical technician under the direction of
11 a licensed physician and qualified to withdraw blood acting in a
12 medical environment, at the request of a peace officer, may with-
13 draw blood for the purpose of determining the amount of alcohol
14 or presence of a controlled substance or both in the person's
15 blood, as provided in this subsection. Liability for a crime or
16 civil damages predicated on the act of withdrawing or analyzing
17 blood and related procedures shall not attach to a qualified
18 person who withdraws or analyzes blood or assists in the with-
19 drawal or analysis in accordance with this act unless the with-
20 drawal or analysis is performed in a negligent manner.

21 (d) A chemical test described in this subsection shall be
22 administered at the request of a peace officer having reasonable
23 grounds to believe the person has committed a crime described in
24 section 625c(1). IF, AFTER AN ACCIDENT, THE DRIVER OF A VEHICLE
25 INVOLVED IN THE ACCIDENT IS TRANSPORTED TO A MEDICAL FACILITY,
26 THE CHEMICAL TEST MAY BE ADMINISTERED AT THE MEDICAL FACILITY
27 PURSUANT TO SECTION 2A OF CHAPTER IV OF ACT NO. 175 OF THE PUBLIC

1 ACTS OF 1927 OR AS OTHERWISE PROVIDED BY LAW. A person who takes
2 a chemical test administered at the request of a peace officer,
3 as provided in this section, shall be given a reasonable opportu-
4 nity to have a person of his or her own choosing administer 1 of
5 the chemical tests described in this subsection within a reason-
6 able time after his or her detention, and the results of the test
7 shall be admissible and shall be considered with other competent
8 evidence in determining the innocence or guilt of the defendant.
9 If the person charged is administered a chemical test by a person
10 of his or her own choosing, the person charged shall be responsi-
11 ble for obtaining a chemical analysis of the test sample.

12 (e) If, after an accident, the driver of a vehicle involved
13 in the accident is transported to a medical facility and a sample
14 of the driver's blood is withdrawn at that time for the purpose
15 of medical treatment, the results of a chemical analysis of that
16 sample shall be admissible in any civil or criminal proceeding to
17 show the amount of alcohol or presence of a controlled substance
18 or both in the person's blood at the time alleged, regardless of
19 whether the person had been offered or had refused a chemical
20 test. The medical facility or person performing the chemical
21 analysis shall disclose the results of the analysis to a prose-
22 cuting attorney who requests the results for use in a criminal
23 prosecution as provided in this subdivision. A medical facility
24 or person disclosing information in compliance with this subsec-
25 tion shall not be civilly or criminally liable for making the
26 disclosure.

1 (f) If, after an accident, the driver of a vehicle involved
2 in the accident is deceased, a sample of the decedent's blood
3 shall be withdrawn in a manner directed by the medical examiner
4 for the purpose of determining the amount of alcohol or the pres-
5 ence of a controlled substance, or both, in the decedent's
6 blood. The medical examiner shall give the results of the chemi-
7 cal analysis of the sample to the law enforcement agency investi-
8 gating the accident, and that agency shall forward the results to
9 the department of state police.

10 (g) The department of state police shall promulgate uniform
11 rules for the administration of chemical tests for the purposes
12 of this section.

13 (7) The provisions of subsection (6) relating to chemical
14 testing do not limit the introduction of any other competent evi-
15 dence bearing upon the question of whether or not a person was
16 impaired by, or under the influence of, intoxicating liquor or a
17 controlled substance, or a combination of intoxicating liquor and
18 a controlled substance, or whether the person had a blood alcohol
19 content of 0.10% or more by weight of alcohol.

20 (8) If a chemical test described in subsection (6) is admin-
21 istered, the results of the test shall be made available to the
22 person charged or the person's attorney upon written request to
23 the prosecution, with a copy of the request filed with the
24 court. The prosecution shall furnish the results at least 2 days
25 before the day of the trial. The results of the test shall be
26 offered as evidence by the prosecution in that trial. Failure to

1 fully comply with the request shall bar the admission of the
2 results into evidence by the prosecution.

3 (9) Except in a prosecution relating solely to a violation
4 of section 625(1)(b), the amount of alcohol in the driver's blood
5 at the time alleged as shown by chemical analysis of the person's
6 blood, urine, or breath shall give rise to the following
7 presumptions:

8 (a) If there was at the time 0.07% or less by weight of
9 alcohol in the defendant's blood, it shall be presumed that the
10 defendant's ability to operate a motor vehicle was not impaired
11 due to the consumption of intoxicating liquor, and that the
12 defendant was not under the influence of intoxicating liquor.

13 (b) If there was at the time in excess of 0.07% but less
14 than 0.10% by weight of alcohol in the defendant's blood, it
15 shall be presumed that the defendant's ability to operate a vehi-
16 cle was impaired within the provisions of section 625(3) due to
17 the consumption of intoxicating liquor.

18 (c) If there was at the time 0.10% or more by weight of
19 alcohol in the defendant's blood, it shall be presumed that the
20 defendant was under the influence of intoxicating liquor.

21 (10) A person's refusal to submit to a chemical test as pro-
22 vided in subsection (6) shall be admissible in a criminal prose-
23 cution for a crime described in section 625c(1) only for the pur-
24 pose of showing that a test was offered to the defendant, but not
25 as evidence in determining innocence or guilt of the defendant.
26 The jury shall be instructed accordingly.

1 Section 2. This amendatory act shall not take effect unless
2 all of the following bills of the 86th Legislature are enacted
3 into law:

4 (a) Senate Bill No. ____ or House Bill No. 5167 (request
5 no. 04240'91).

6 (b) Senate Bill No. ____ or House Bill No. 5168 (request
7 no. 04240'91a).

8 Section 3. This amendatory act shall take effect January 1,
9 1993.