

HOUSE BILL No. 4446

March 13, 2007, Introduced by Rep. Stakoe 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 **THAT** 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
10 part of the vehicle intrudes into the roadway and the peace officer

1 has reasonable cause to believe **THAT** the person was operating the
2 vehicle in violation of section 625 or a local ordinance
3 substantially corresponding to section 625.

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

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

25 (b) The results of a preliminary chemical breath analysis are
26 admissible in a criminal prosecution for a crime enumerated in
27 section 625c(1) or in an administrative hearing for 1 or more of

1 the following purposes:

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

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

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

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

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

23 (3) A peace officer shall use the results of a preliminary
24 chemical breath analysis conducted pursuant to this section to
25 determine whether to order a person out-of-service under section
26 319d. A peace officer shall order out-of-service as required under
27 section 319d a person who was operating a commercial motor vehicle

1 and who refuses to submit to a preliminary chemical breath analysis
2 as provided in this section. This section does not limit use of
3 other competent evidence by the peace officer to determine whether
4 to order a person out-of-service under section 319d.

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

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

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

20 (a) The amount of alcohol or presence of a controlled
21 substance or both in a driver's blood or urine or the amount of
22 alcohol in a person's breath at the time alleged as shown by
23 chemical analysis of the person's blood, urine, or breath is
24 admissible into evidence in any civil or criminal proceeding and is
25 presumed to be the same as at the time the person operated the
26 vehicle.

27 (b) A person arrested for a crime described in section 625c(1)

1 shall be advised of all of the following:

2 (i) If he or she takes a chemical test of his or her blood,
3 urine, or breath administered at the request of a peace officer, he
4 or she has the right to demand that **A SAMPLE OF HIS OR HER BLOOD OR**
5 **URINE BE TAKEN AND PRESERVED FOR LATER TESTING BY** a person of his
6 or her own choosing. ~~administer 1 of the chemical tests. THE SAMPLE~~
7 **MAY BE TAKEN AT THE LAW ENFORCEMENT AGENCY OR AT THE NEAREST OPEN**
8 **MEDICAL FACILITY. HOWEVER, THE PERSON SHALL NOTIFY THE PEACE**
9 **OFFICER THAT HE OR SHE IS EXERCISING HIS OR HER RIGHT UNDER THIS**
10 **SUBPARAGRAPH NOT MORE THAN 15 MINUTES AFTER TAKING THE INITIAL**
11 **CHEMICAL TEST TO ALLOW THE LAW ENFORCEMENT AGENCY MAKING THE ARREST**
12 **TO TAKE THE ADDITIONAL SAMPLE OR TO TRANSPORT HIM OR HER TO THE**
13 **NEAREST OPEN MEDICAL FACILITY FOR THAT PURPOSE, OR THE RIGHT TO THE**
14 **ADDITIONAL SAMPLE DESCRIBED UNDER THIS SUBPARAGRAPH AND SUBDIVISION**
15 **(D) IS WAIVED.**

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

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

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

26 (v) Refusing a peace officer's request to take a test
27 described in subparagraph (i) will result in the suspension of his

1 or her operator's or chauffeur's license and vehicle group
2 designation or operating privilege and in the addition of 6 points
3 to his or her driver record.

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

19 (d) A chemical test described in this subsection shall be
20 administered at the request of a peace officer having reasonable
21 grounds to believe the person has committed a crime described in
22 section 625c(1). A person who takes a chemical test administered at
23 a peace officer's request as provided in this section shall be
24 given a reasonable opportunity to have **A SAMPLE OF HIS OR HER BLOOD**
25 **OR URINE BE TAKEN AND PRESERVED FOR LATER TESTING BY** a person of
26 his or her own choosing ~~administer 1 of the chemical tests~~
27 ~~described in this subsection~~ within a reasonable time after his or

1 her detention. IF, NOT MORE THAN 15 MINUTES AFTER THE INITIAL
2 CHEMICAL TEST IS ADMINISTERED AS DESCRIBED IN THIS SUBSECTION, THE
3 PERSON NOTIFIES THE PEACE OFFICER THAT HE OR SHE WISHES TO HAVE A
4 SAMPLE TAKEN AND PRESERVED UNDER THIS SUBDIVISION, THE LAW
5 ENFORCEMENT AGENCY SHALL TAKE THE ADDITIONAL SAMPLE OR TRANSPORT
6 THE PERSON TO THE NEAREST OPEN MEDICAL FACILITY FOR THAT PURPOSE. A
7 DEMAND FOR AN ADDITIONAL SAMPLE TO BE TAKEN UNDER THIS SUBDIVISION
8 IS WAIVED IF IT IS NOT DEMANDED WITHIN 15 MINUTES AFTER THE INITIAL
9 CHEMICAL TEST IS ADMINISTERED. The test results are admissible and
10 shall be considered with other admissible evidence in determining
11 the defendant's innocence or guilt. If the person charged is
12 administered a chemical test by a person of his or her own
13 choosing, the person charged is responsible for obtaining a
14 chemical analysis of the test sample.

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

1 the disclosure.

2 (f) If, after an accident, the driver of a vehicle involved in
3 the accident is deceased, a sample of the decedent's blood shall be
4 withdrawn in a manner directed by the medical examiner to determine
5 the amount of alcohol or the presence of a controlled substance, or
6 both, in the decedent's blood. The medical examiner shall give the
7 results of the chemical analysis of the sample to the law
8 enforcement agency investigating the accident and that agency shall
9 forward the results to the department of state police.

10 (g) The department of state police shall promulgate uniform
11 rules in compliance with the administrative procedures act of 1969,
12 1969 PA 306, MCL 24.201 to 24.328, for the administration of
13 chemical tests for the purposes of this section. An instrument used
14 for a preliminary chemical breath analysis may be used for a
15 chemical test described in this subsection if approved under rules
16 promulgated by the department of state police.

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

20 (a) Whether the person was impaired by, or under the influence
21 of, alcoholic liquor, a controlled substance, or a combination of
22 alcoholic liquor and a controlled substance.

23 (b) Whether the person had an alcohol content of 0.08 grams or
24 more per 100 milliliters of blood, per 210 liters of breath, or per
25 67 milliliters of urine or, beginning October 1, 2013, the person
26 had an alcohol content of 0.10 grams or more per 100 milliliters of
27 blood, per 210 liters of breath, or per 67 milliliters of urine.

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

5 (i) An alcohol content of 0.02 grams or more but less than 0.08
6 grams per 100 milliliters of blood, per 210 liters of breath, or
7 per 67 milliliters of urine or, beginning October 1, 2013, the
8 person had an alcohol content of 0.02 grams or more but less than
9 0.10 grams or more per 100 milliliters of blood, per 210 liters of
10 breath, or per 67 milliliters of urine.

11 (ii) Any presence of alcohol within a person's body resulting
12 from the consumption of alcoholic liquor, other than the
13 consumption of alcoholic liquor as a part of a generally recognized
14 religious service or ceremony.

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

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

1 accordingly.