

SENATE BILL NO. 705

January 08, 2020, Introduced by Senator LUCIDO and referred to the Committee on Judiciary and Public Safety.

A bill to amend 1949 PA 300, entitled "Michigan vehicle code," by amending sections 625a and 625t (MCL 257.625a and 257.625t), section 625a as amended by 2017 PA 153 and section 625t as added by 2016 PA 243.

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

1 person was, at the time of an accident in this state, the operator
2 of a vehicle involved in the accident and was operating the vehicle
3 in violation of section 625 or a local ordinance substantially
4 corresponding to section 625.

5 (b) The person is found in the driver's seat of a vehicle
6 parked or stopped on a highway or street within this state if any
7 part of the vehicle intrudes into the roadway and the peace officer
8 has reasonable cause to believe the person was operating the
9 vehicle in violation of section 625 or a local ordinance
10 substantially corresponding to section 625.

11 (2) A peace officer who has reasonable cause to believe that a
12 person was operating a vehicle upon a public highway or other place
13 open to the public or generally accessible to motor vehicles,
14 including an area designated for the parking of vehicles, within
15 this state and that the person by the consumption of alcoholic
16 liquor, a controlled substance, or other intoxicating substance or
17 a combination of them may have affected his or her ability to
18 operate a vehicle, or reasonable cause to believe that a person was
19 operating a commercial motor vehicle within the state while the
20 person's blood, breath, or urine contained any measurable amount of
21 alcohol, a controlled substance, or any other intoxicating
22 substance or while the person had any detectable presence of
23 alcoholic liquor, a controlled substance or any other intoxicating
24 substance, or any combination of them, or reasonable cause to
25 believe that a person who is less than 21 years of age was
26 operating a vehicle upon a public highway or other place open to
27 the public or generally accessible to motor vehicles, including an
28 area designated for the parking of vehicles, within this state
29 while the person had any bodily alcohol content as that term is

1 defined in section 625(6), may require the person to submit to a
2 preliminary chemical breath analysis. The following provisions
3 apply to a preliminary chemical breath analysis administered under
4 this subsection:

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

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

11 (i) To assist the court or hearing officer in determining a
12 challenge to the validity of an arrest. This subparagraph does not
13 limit the introduction of other competent evidence offered to
14 establish the validity of an arrest.

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

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

25 (c) A person who submits to a preliminary chemical breath
26 analysis remains subject to the requirements of sections 625c,
27 625d, 625e, and 625f for purposes of chemical tests described in
28 those sections.

29 (d) Except as provided in subsection (5), a person who refuses

1 to submit to a preliminary chemical breath analysis upon a lawful
2 request by a peace officer is responsible for a civil infraction.

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

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

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

24 (6) The following provisions apply to chemical tests and
25 analysis of a person's blood, urine, or breath, other than a
26 preliminary chemical breath analysis:

27 (a) The amount of alcohol or presence of a controlled
28 substance or other intoxicating substance in a driver's blood or
29 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 must 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 must 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 must be taken and
27 collected in a reasonable manner. Only a licensed physician, or an
28 individual operating under the delegation of a licensed physician
29 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 other intoxicating substance in the person's blood, as
5 provided in this subsection. Liability for a crime or civil damages
6 predicated on the act of withdrawing or analyzing blood and related
7 procedures does not attach to a licensed physician or individual
8 operating under the delegation of a licensed physician who
9 withdraws or analyzes blood or assists in the withdrawal or
10 analysis in accordance with this act unless the withdrawal or
11 analysis is performed in a negligent manner.

12 (d) A chemical test described in this subsection must 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 must be given
17 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 must 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,
28 the results of a chemical analysis of that sample are admissible in
29 any civil or criminal proceeding to show the amount of alcohol or

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

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

19 (g) The department of state police shall promulgate uniform
20 rules in compliance with the administrative procedures act of 1969,
21 1969 PA 306, MCL 24.201 to 24.328, for the administration of
22 chemical tests for the purposes of this section. An instrument used
23 for a preliminary chemical breath analysis may be used for a
24 chemical test described in this subsection if approved under rules
25 promulgated by the department of state police.

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

29 (a) Whether the person was impaired by, or under the influence

1 of, alcoholic liquor, a controlled substance or other intoxicating
2 substance, or a combination of alcoholic liquor, a controlled
3 substance, or other intoxicating substance.

4 (b) Whether the person had an alcohol content of 0.08 grams or
5 more per 100 milliliters of blood, per 210 liters of breath, or per
6 67 milliliters of urine or, beginning October 1, 2021, the person
7 had an alcohol content of 0.10 grams or more per 100 milliliters of
8 blood, per 210 liters of breath, or per 67 milliliters of urine.

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

13 (i) An alcohol content of 0.02 grams or more but less than 0.08
14 grams per 100 milliliters of blood, per 210 liters of breath, or
15 per 67 milliliters of urine or, beginning October 1, 2021, the
16 person had an alcohol content of 0.02 grams or more but less than
17 0.10 grams or more per 100 milliliters of blood, per 210 liters of
18 breath, or per 67 milliliters of urine.

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

23 (8) If a chemical test described in subsection (6) is
24 administered, the test results must be made available to the person
25 charged or the person's attorney upon written request to the
26 prosecution, with a copy of the request filed with the court. The
27 prosecution shall furnish the results at least 2 days before the
28 day of the trial. The prosecution shall offer the test results as
29 evidence in that trial. Failure to fully comply with the request

1 bars the admission of the results into evidence by the prosecution.

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

8 (10) If at the time a person is arrested for a crime described
9 in section 625c(1) he or she is subjected to an analysis performed
10 by a certified drug recognition expert, the person must be advised
11 of the following:

12 (a) That he or she has the right to demand that a certified
13 drug recognition expert of his or her own choosing administer the
14 same kind of analysis.

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

19 (c) He or she is responsible for obtaining an analysis by a
20 certified drug recognition expert at his or her own request.

21 (11) ~~(10)~~—As used in this section:

22 (a) "Certified drug recognition expert" means that term as
23 defined in section 625t.

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

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

28 Sec. 625t. (1) The department of state police may establish a
29 pilot program in 5 counties in this state for roadside drug testing

1 to determine whether an individual is operating a vehicle while
2 under the influence of a controlled substance in violation of
3 section 625.

4 (2) A pilot program established under this section ~~shall~~**must**
5 be for a period of 1 calendar year. The funding of a pilot program
6 established under this section is subject to appropriation.

7 (3) Except as provided in subsection (8), the department of
8 state police shall select 5 counties in which to implement a pilot
9 program established under this section.

10 (4) A county is eligible to participate in the pilot program
11 if the county has a law enforcement agency within its boundary,
12 including, but not limited to, a state police post, a sheriff's
13 department, or a municipal police department, that employs not
14 fewer than 1 law enforcement officer who is a certified drug
15 recognition expert.

16 (5) The department of state police shall develop a written
17 policy for the implementation of the pilot program and the
18 administration of roadside drug testing.

19 (6) The department of state police may promulgate rules under
20 the administrative procedures act of 1969, 1969 PA 306, MCL 24.201
21 to 24.328, to implement a pilot program established under this
22 section.

23 (7) Not more than 90 days after the conclusion of a pilot
24 program established under this section, the department of state
25 police shall submit a report to the legislative committees of the
26 senate and house of representatives with primary responsibility for
27 judicial and criminal justice issues. The report ~~shall~~**must** cover
28 all of the following:

29 (a) How pilot program participant counties were selected.

1 (b) The different types of law enforcement agencies in the
2 pilot program participant counties that engaged in roadside drug
3 testing.

4 (c) Relevant statistical data, including, but not limited to,
5 the following:

6 (i) The number of traffic stops resulting in an arrest for
7 operating under the influence of a controlled substance in
8 violation of section 625 as a result of roadside drug testing by a
9 certified drug recognition expert.

10 (ii) The number and type of convictions resulting from an
11 arrest made based on the result of a roadside drug test by a
12 certified drug recognition expert.

13 (8) Upon the conclusion of a pilot program established under
14 this section, the department of state police may, subject to
15 appropriation, establish additional pilot programs in eligible
16 counties not included among the 5 counties initially selected under
17 subsection (3). The duration of a pilot program established under
18 this subsection ~~shall be~~ **is** for a period of 1 year.

19 (9) As used in this section **and section 625a:**

20 (a) "Certified drug recognition expert" means a law
21 enforcement officer **or other individual** trained to recognize
22 impairment in a driver under the influence of a controlled
23 substance rather than, or in addition to, alcohol.

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