

SENATE BILL No. 207

March 12, 2015, Introduced by Senators JONES and SCHUITMAKER and referred to the Committee on Judiciary.

A bill to amend 1949 PA 300, entitled
"Michigan vehicle code,"
by amending sections 43a and 625a (MCL 257.43a and 257.625a),
section 43a as added and 625a as amended by 2014 PA 315.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 43a. "Preliminary ~~roadside~~ **CHEMICAL BREATH** analysis"
means the on-site taking of a preliminary breath test from the
breath of a person ~~or the performance and observation of a field~~
~~sobriety test~~ for the purpose of detecting the presence of any of
the following within the person's body:

- (a) Alcoholic liquor.
- (b) A controlled substance, as that term is defined in section 7104 of the public health code, 1978 PA 368, MCL 333.7104.
- (c) Any other intoxicating substance, as that term is defined in section 625.
- (d) Any combination of the substances listed in subdivisions (a) to (c).

Sec. 625a. (1) A peace officer may arrest a person without a warrant under either of the following circumstances:

(a) The peace officer has reasonable cause to believe the person was, at the time of an accident in this state, the operator of a vehicle involved in the accident and was operating the vehicle in violation of section 625 or a local ordinance substantially corresponding to section 625.

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

(2) A peace officer who has reasonable cause to believe that a person was operating a vehicle upon a public highway or other place open to the public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state and that the person by the consumption of alcoholic liquor, a controlled substance, or other intoxicating substance or a combination of them may have affected his or her ability to operate a vehicle, or reasonable cause to believe that a person was operating a commercial motor vehicle within the state while the person's blood, breath, or urine contained any measurable amount of alcohol, a controlled substance, or any other intoxicating substance or while the person had any detectable presence of alcoholic liquor, a controlled substance or any other intoxicating substance, or any combination of them, or reasonable cause to believe that a person who is less than 21 years of age was operating a vehicle upon a public highway or other place open to the public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state while the person had any bodily alcohol content as that term is defined in section 625(6), may require the person to submit to a preliminary ~~roadside~~ **CHEMICAL BREATH** analysis. The following

provisions apply with respect to a preliminary ~~roadside~~**CHEMICAL BREATH** analysis administered under this subsection:

(a) A peace officer may arrest a person based in whole or in part upon the results of a preliminary ~~roadside~~**CHEMICAL BREATH** analysis.

(b) The results of a preliminary ~~roadside~~**CHEMICAL BREATH** analysis are admissible in a criminal prosecution for a crime enumerated in section 625c(1) or in an administrative hearing for 1 or more of the following purposes:

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

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

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

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

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

(3) A peace officer shall use the results of a preliminary ~~roadside~~**CHEMICAL BREATH** analysis conducted under this section to determine whether to order a person out-of-service under section

319d. A peace officer shall order out-of-service as required under section 319d a person who was operating a commercial motor vehicle and who refuses to submit to a preliminary ~~roadside~~**CHEMICAL BREATH** analysis as provided in this section. This section does not limit use of other competent evidence by the peace officer to determine whether to order a person out-of-service under section 319d.

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

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

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

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

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

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

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

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

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

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

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

(d) A chemical test described in this subsection shall be administered at the request of a peace officer having reasonable grounds to believe the person has committed a crime described in

section 625c(1). A person who takes a chemical test administered at a peace officer's request as provided in this section shall be given a reasonable opportunity to have a person of his or her own choosing administer 1 of the chemical tests described in this subsection within a reasonable time after his or her detention. The test results are admissible and shall be considered with other admissible evidence in determining the defendant's innocence or guilt. If the person charged is administered a chemical test by a person of his or her own choosing, the person charged is responsible for obtaining a chemical analysis of the test sample.

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

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

(g) The department of state police shall promulgate uniform

rules in compliance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, for the administration of chemical tests for the purposes of this section. An instrument used for a preliminary ~~roadside~~ **CHEMICAL BREATH** analysis may be used for a chemical test described in this subsection if approved under rules promulgated by the department of state police.

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

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

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

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

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

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

(8) If a chemical test described in subsection (6) is administered, the test results shall be made available to the

person charged or the person's attorney upon written request to the prosecution, with a copy of the request filed with the court. The prosecution shall furnish the results at least 2 days before the day of the trial. The prosecution shall offer the test results as evidence in that trial. Failure to fully comply with the request bars the admission of the results into evidence by the prosecution.

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

(10) As used in this section:

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

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

Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.