

HOUSE BILL No. 5385

March 4, 2014, Introduced by Reps. Lauwers, Cotter, Graves, Kurtz, Lori, Daley, Victory, Callton, Johnson, LaFontaine, Rutledge, Clemente, LaVoy, Schor, Muxlow and Rendon and referred to the Committee on Judiciary.

A bill to amend 1949 PA 300, entitled "Michigan vehicle code," by amending sections 625a, 625c, 625d, and 625g (MCL 257.625a, 257.625c, 257.625d, and 257.625g), sections 625a and 625g as amended by 2013 PA 23, section 625c as amended by 2008 PA 463, and section 625d as amended by 1994 PA 211, and by adding sections 20e and 43a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 20E. "IMMUNOCHEMICAL ASSAY" MEANS A SCIENTIFIC TECHNIQUE
2 THAT USES SPECIFIC BINDING BETWEEN ANTIGEN AND ITS HOMOLOGOUS
3 ANTIBODY TO IDENTIFY AND QUANTIFY A SUBSTANCE IN A SAMPLE.

4 SEC. 43A. "PRELIMINARY CHEMICAL ANALYSIS" MEANS THE ON-SITE
5 TAKING AND ANALYSIS BY IMMUNOCHEMICAL ASSAY OF THE BREATH OR SALIVA
6 OF A PERSON FOR THE PURPOSE OF DETECTING THE PRESENCE OF ANY OF THE

1 FOLLOWING WITHIN THE PERSON'S BODY:

2 (A) ALCOHOLIC LIQUOR.

3 (B) A CONTROLLED SUBSTANCE.

4 (C) ANY OTHER INTOXICATING SUBSTANCE.

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

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

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

18 (2) A peace officer who has reasonable cause to believe that a
19 person was operating a vehicle upon a public highway or other place
20 open to the public or generally accessible to motor vehicles,
21 including an area designated for the parking of vehicles, within
22 this state and that the person by the consumption of alcoholic
23 liquor may have affected his or her ability to operate a vehicle,
24 or reasonable cause to believe that a person was operating a
25 commercial motor vehicle within the state while the person's blood,
26 breath, **SALIVA**, or urine contained any measurable amount of alcohol
27 **OR A CONTROLLED SUBSTANCE** or while the person had any detectable

1 presence of alcoholic liquor **OR A CONTROLLED SUBSTANCE**, or
2 reasonable cause to believe that a person who is less than 21 years
3 of age was operating a vehicle upon a public highway or other place
4 open to the public or generally accessible to motor vehicles,
5 including an area designated for the parking of vehicles, within
6 this state while the person had any bodily alcohol content as that
7 term is defined in section 625(6), may require the person to submit
8 to a preliminary chemical ~~breath~~-analysis. The following provisions
9 apply with respect to a preliminary chemical ~~breath~~-analysis
10 administered under this subsection:

11 (a) A peace officer may arrest a person based in whole or in
12 part upon the results of a preliminary chemical ~~breath~~-analysis.

13 (b) The results of a preliminary chemical ~~breath~~-analysis are
14 admissible in a criminal prosecution for a crime enumerated in
15 section 625c(1) or in an administrative hearing for 1 or more of
16 the following purposes:

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

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

26 (iii) As evidence of the defendant's breath alcohol content, if
27 offered by the prosecution to rebut testimony elicited on cross-

1 examination of a prosecution witness that the defendant's breath
2 alcohol content was lower at the time of the charged offense than
3 when a chemical test was administered under subsection (6).

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

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

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

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

27 (5) A person who was operating a commercial motor vehicle and

1 who refuses to submit to a preliminary chemical ~~breath~~-analysis
2 upon a peace officer's lawful request is guilty of a misdemeanor
3 punishable by imprisonment for not more than 93 days or a fine of
4 not more than \$100.00, or both.

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

8 (a) The amount of alcohol or presence of a controlled
9 substance or both in a driver's blood or urine or the amount of
10 alcohol in a person's breath at the time alleged as shown by
11 chemical analysis of the person's blood, urine, **SALIVA**, or breath
12 is admissible into evidence in any civil or criminal proceeding and
13 is presumed to be the same as at the time the person operated the
14 vehicle.

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

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

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

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

27 (iv) If he or she refuses the request of a peace officer to

1 take a test described in subparagraph (i), a test shall not be given
2 without a court order, but the peace officer may seek to obtain a
3 court order.

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

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

24 (d) A chemical test described in this subsection shall be
25 administered at the request of a peace officer having reasonable
26 grounds to believe the person has committed a crime described in
27 section 625c(1). A person who takes a chemical test administered at

1 a peace officer's request as provided in this section shall be
2 given a reasonable opportunity to have a person of his or her own
3 choosing administer 1 of the chemical tests described in this
4 subsection within a reasonable time after his or her detention. The
5 test results are admissible and shall be considered with other
6 admissible evidence in determining the defendant's innocence or
7 guilt. If the person charged is administered a chemical test by a
8 person of his or her own choosing, the person charged is
9 responsible for obtaining a chemical analysis of the test sample.

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

24 (f) If, after an accident, the driver of a vehicle involved in
25 the accident is deceased, a sample of the decedent's blood shall be
26 withdrawn in a manner directed by the medical examiner to determine
27 the amount of alcohol or the presence of a controlled substance, or

1 both, in the decedent's blood. The medical examiner shall give the
2 results of the chemical analysis of the sample to the law
3 enforcement agency investigating the accident and that agency shall
4 forward the results to the department of state police.

5 (g) The department of state police shall promulgate uniform
6 rules in compliance with the administrative procedures act of 1969,
7 1969 PA 306, MCL 24.201 to 24.328, for the administration of
8 chemical tests for the purposes of this section. An instrument used
9 for a preliminary chemical ~~breath~~-analysis may be used for a
10 chemical test described in this subsection if approved under rules
11 promulgated by the department of state police.

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

15 (a) Whether the person was impaired by, or under the influence
16 of, alcoholic liquor, a controlled substance, or a combination of
17 alcoholic liquor and a controlled substance.

18 (b) Whether the person had an alcohol content of 0.08 grams or
19 more per 100 milliliters of blood, per 210 liters of breath, or per
20 67 milliliters of urine or, beginning October 1, 2018, the person
21 had an alcohol content of 0.10 grams or more per 100 milliliters of
22 blood, per 210 liters of breath, or per 67 milliliters of urine.

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

27 (i) An alcohol content of 0.02 grams or more but less than 0.08

1 grams per 100 milliliters of blood, per 210 liters of breath, or
2 per 67 milliliters of urine or, beginning October 1, 2018, the
3 person had an alcohol content of 0.02 grams or more but less than
4 0.10 grams or more per 100 milliliters of blood, per 210 liters of
5 breath, or per 67 milliliters of urine.

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

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

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

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

1 consent to chemical tests of his or her blood, breath, **SALIVA**, or
2 urine for the purpose of determining the amount of alcohol or
3 presence of a controlled substance or both in his or her blood,
4 **SALIVA**, or urine or the amount of alcohol in his or her breath in
5 all of the following circumstances:

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

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

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

19 (3) The tests shall be administered as provided in section
20 625a(6).

21 Sec. 625d. (1) If a person refuses the request of a peace
22 officer to submit to a chemical test offered ~~pursuant to~~ **UNDER**
23 section 625a(6), a test shall not be given without a court order,
24 but the officer may seek to obtain the court order.

25 (2) A written report shall immediately be forwarded to the
26 secretary of state by the peace officer. The report shall state
27 that the officer had reasonable grounds to believe that the person

1 had committed a crime described in section 625c(1), and that the
2 person had refused to submit to the test upon the request of the
3 peace officer and had been advised of the consequences of the
4 refusal. The form of the report shall be prescribed and furnished
5 by the secretary of state.

6 Sec. 625g. (1) If a person refuses a chemical test offered
7 under section 625a(6), or submits to the chemical test or **A**
8 **PRELIMINARY CHEMICAL TEST UNDER SECTION 625A(2)**, a chemical test is
9 performed under a court order and the test reveals an unlawful
10 alcohol content **OR THE PRESENCE OF A CONTROLLED SUBSTANCE**, the
11 peace officer who requested the person to submit to the test shall
12 do all of the following:

13 (a) On behalf of the secretary of state, immediately
14 confiscate the person's license or permit to operate a motor
15 vehicle and, if the person is otherwise eligible for a license or
16 permit, issue a temporary license or permit to the person. The
17 temporary license or permit shall be on a form provided by the
18 secretary of state.

19 (b) Except as provided in subsection (2), immediately do all
20 of the following:

21 (i) Forward a copy of the written report of the person's
22 refusal to submit to a chemical test required under section 625d to
23 the secretary of state.

24 (ii) Notify the secretary of state by means of the law
25 enforcement information network that a temporary license or permit
26 was issued to the person.

27 (iii) Destroy the person's driver's license or permit.

1 (2) If a person submits to a **PRELIMINARY CHEMICAL TEST OR**
2 chemical test offered under section ~~625a(6)~~ **625A(2) OR (6)** that
3 requires an analysis of blood or urine and a report of the results
4 of that chemical test is not immediately available, the peace
5 officer who requested the person to submit to the test shall comply
6 with subsection (1)(a) pending receipt of the test report. If the
7 report reveals an unlawful alcohol content **OR THE PRELIMINARY**
8 **CHEMICAL TEST REVEALS THE PRESENCE OF A CONTROLLED SUBSTANCE**, the
9 peace officer who requested the person to submit to the test shall
10 immediately comply with subsection (1)(b). If the report does not
11 reveal an unlawful alcohol content **OR THE PRESENCE OF A CONTROLLED**
12 **SUBSTANCE**, the peace officer who requested the person to submit to
13 the test shall immediately notify the person of the test results
14 and immediately return the person's license or permit by first-
15 class mail to the address given at the time of arrest.

16 (3) A temporary license or permit issued under this section is
17 valid for 1 of the following time periods:

18 (a) If the case is not prosecuted, for 90 days after issuance
19 or until the person's license or permit is suspended under section
20 625f, whichever occurs earlier. The prosecuting attorney shall
21 notify the secretary of state if a case referred to the prosecuting
22 attorney is not prosecuted. The arresting law enforcement agency
23 shall notify the secretary of state if a case is not referred to
24 the prosecuting attorney for prosecution.

25 (b) If the case is prosecuted, until the criminal charges
26 against the person are dismissed, the person is acquitted of those
27 charges, or the person's license or permit is suspended,

1 restricted, or revoked.

2 (4) As used in this section: ~~,"unlawful~~

3 (A) "PRESENCE OF A CONTROLLED SUBSTANCE" MEANS THE PRESENCE OF
4 ANY AMOUNT OF A CONTROLLED SUBSTANCE LISTED IN SCHEDULE 1 UNDER
5 SECTION 7212 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.7212,
6 OR A RULE PROMULGATED UNDER THAT SECTION, OR OF A CONTROLLED
7 SUBSTANCE DESCRIBED IN SECTION 7214 (A) (iv) OF THE PUBLIC HEALTH
8 CODE, 1978 PA 368, MCL 333.7214.

9 (B) "UNLAWFUL alcohol content" means any of the following, as
10 applicable:

11 (i) ~~(a)~~—If the person tested is less than 21 years of age, 0.02
12 grams or more of alcohol per 100 milliliters of blood, per 210
13 liters of breath, or per 67 milliliters of urine.

14 (ii) ~~(b)~~—If the person tested was operating a commercial motor
15 vehicle within this state, 0.04 grams or more of alcohol per 100
16 milliliters of blood, per 210 liters of breath, or per 67
17 milliliters of urine.

18 (iii) ~~(c)~~—If the person tested is not a person described in
19 subdivision ~~(a) or (b)~~, **SUBPARAGRAPH (i) OR (ii)**, 0.08 grams or more
20 of alcohol per 100 milliliters of blood, per 210 liters of breath,
21 or per 67 milliliters of urine, or, beginning October 1, 2018, 0.10
22 grams or more of alcohol per 100 milliliters of blood, per 210
23 liters of breath, or per 67 milliliters of urine.