

HOUSE BILL No. 6116

September 23, 1992, Introduced by Rep. Nye and referred to the Committee on Judiciary.

A bill to amend sections 625b, 625d, and 625g of Act No. 300 of the Public Acts of 1949, entitled as amended "Michigan vehicle code,"

section 625b as amended by Act No. 100 of the Public Acts of 1991 and sections 625d and 625g as amended by Act No. 95 of the Public Acts of 1991, being sections 257.625b, 257.625d, and 257.625g of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 625b, 625d, and 625g of Act No. 300 of
2 the Public Acts of 1949, section 625b as amended by Act No. 100
3 of the Public Acts of 1991 and sections 625d and 625g as amended
4 by Act No. 95 of the Public Acts of 1991, being sections
5 257.625b, 257.625d, and 257.625g of the Michigan Compiled Laws,
6 are amended to read as follows:

1 Sec. 625b. (1) A person arrested for a misdemeanor
2 violation of section 625(1) or (3), or section 625m, or a local
3 ordinance substantially corresponding to section 625(1) or (3),
4 or section 625m, shall be arraigned on the citation, complaint,
5 or warrant not more than 14 days after the date of arrest or, if
6 an arrest warrant is reissued, not more than 14 days after the
7 reissued arrest warrant is served.

8 (2) The court shall schedule a pretrial conference between
9 the prosecuting attorney, the defendant, and the defendant's
10 attorney in each case in which the defendant is charged with a
11 misdemeanor violation of section 625(1) or (3), or section 625m,
12 or a local ordinance substantially corresponding to section
13 625(1) or (3), or section 625m. The pretrial conference shall be
14 held not more than 35 days after the date of the person's arrest
15 for the violation or, if an arrest warrant is reissued, not more
16 than 35 days after the date the reissued arrest warrant is
17 served, unless the court has only 1 judge who sits in more than 1
18 location in that district, in which case the pretrial conference
19 shall be held not more than 42 days after the date of the
20 person's arrest for the violation or, if an arrest warrant is
21 reissued, not more than 42 days after the date the reissued
22 arrest warrant is served. The court shall order the defendant to
23 attend the pretrial conference and may accept a plea by the
24 defendant at the conclusion of the pretrial conference. The
25 court may adjourn the pretrial conference upon the motion of a
26 party for good cause shown. Not more than 1 adjournment shall be
27 granted to a party, and the length of an adjournment shall not

1 exceed 14 days. The court shall, except for delay attributable
2 to the unavailability of the defendant, a witness, or material
3 evidence, or due to an interlocutory appeal or exceptional cir-
4 cumstances, but not a delay caused by docket congestion, finally
5 adjudicate, by a plea of guilty or nolo contendere, or the entry
6 of a verdict, or by other final disposition, a case in which the
7 defendant is charged with a misdemeanor violation of
8 section 625(1) or (3), or section 625m, or a local ordinance sub-
9 stantially corresponding to section 625(1) or (3), or
10 section 625m, within 77 days after the person is arrested for the
11 violation or, if an arrest warrant is reissued, not more than 77
12 days after the date the reissued arrest warrant is served.

13 (3) Before accepting a plea of guilty or nolo contendere
14 under section 625, or a local ordinance substantially correspond-
15 ing to section 625(1), (2), or (3), the court shall advise the
16 accused of the maximum possible term of imprisonment and the max-
17 imum possible fine that may be imposed for the violation, and
18 shall advise the defendant that the maximum possible license
19 sanctions that may be imposed will be based upon the master driv-
20 ing record maintained by the secretary of state pursuant to
21 section 204a.

22 (4) Before imposing sentence, other than court-ordered
23 license sanctions, for a violation of section 625(1), (3), (4),
24 or (5) or a local ordinance substantially corresponding to sec-
25 tion 625(1) or (3), the court shall order the person to undergo
26 screening and assessment by a person or agency designated by the
27 office of substance abuse services, to determine whether the

1 person is likely to benefit from rehabilitative services,
2 including alcohol or drug education and alcohol or drug treatment
3 programs. As part of the sentence, the court may order the
4 person to participate in and successfully complete 1 or more
5 appropriate rehabilitative programs. The person shall pay for
6 the costs of the screening, assessment, and rehabilitative
7 services.

8 (5) Immediately upon acceptance by the court of a plea of
9 guilty or nolo contendere or upon entry of a verdict of guilty
10 for a violation of section 625(1), (3), (4), or (5) or a local
11 ordinance substantially corresponding to section 625(1) or (3),
12 whether or not the person is eligible to be sentenced as a multi-
13 ple offender, the court shall consider all prior convictions cur-
14 rently entered upon the Michigan driving record of the person,
15 except those convictions which, upon motion by the defendant, are
16 determined by the court to be constitutionally invalid, and shall
17 impose the following licensing sanctions:

18 (a) For a conviction under section 625(4) or (5), the court
19 shall order the secretary of state to revoke the operator's or
20 chauffeur's license of the person and shall not order the secre-
21 tary of state to issue a restricted license to the person.

22 (b) For a conviction under section 625(1) or a local ordi-
23 nance substantially corresponding to section 625(1):

24 (i) If the court finds that the person has no prior convic-
25 tions within 7 years for a violation of section 625(1), (3), (4),
26 or (5), or former section 625(1) or (2), or former section 625b,
27 a local ordinance substantially corresponding to section 625(1)

1 or (3), or former section 625(1) or (2) or former section 625b,
2 or a law of another state substantially corresponding to section
3 625(1), (3), (4), or (5), or former section 625(1) or (2), or
4 former section 625b, the court shall order the secretary of state
5 to suspend the operator's or chauffeur's license of the person
6 for a period of not less than 6 months or more than 2 years. The
7 court may order the secretary of state to issue to the person a
8 restricted license during all or a specified portion of the
9 period of suspension, except that a restricted license shall not
10 be issued during the first 30 days of the period of suspension.

11 (ii) If the court finds that the person has 1 prior convic-
12 tion within 7 years for a violation of section 625(3) or former
13 section 625b, a local ordinance substantially corresponding to
14 section 625(3) or former section 625b, or a law of another state
15 substantially corresponding to section 625(3) or former
16 section 625b, the court shall order the secretary of state to
17 suspend the operator's or chauffeur's license of the person for a
18 period of not less than 6 months or more than 2 years. The court
19 may order the secretary of state to issue to the person a
20 restricted license during all or any portion of the period of
21 suspension, except that a restricted license shall not be issued
22 during the first 60 days of the period of suspension.

23 (iii) If the court finds that the person has 1 or more prior
24 convictions within 7 years for a violation of section 625(1),
25 (4), or (5), or former section 625(1) or (2), a local ordinance
26 substantially corresponding to section 625(1) or former section
27 625(1) or (2), or a law of another state substantially

1 corresponding to section 625(1), (4), or (5), or former section
2 625(1) or (2), or that the person has 2 or more prior convictions
3 within 10 years for a violation of section 625(1), (3), (4), or
4 (5), or former section 625(1) or (2), or former section 625b, a
5 local ordinance substantially corresponding to section 625(1) or
6 (3), or former section 625(1) or (2), or former section 625b, or
7 a law of another state substantially corresponding to section
8 625(1), (3), (4), or (5), or former section 625(1) or (2), or
9 former section 625b, the court shall order the secretary of state
10 to revoke the operator's or chauffeur's license of the person and
11 shall not order the secretary of state to issue a restricted
12 license to the person.

13 (c) For a conviction under section 625(3) or a local ordi-
14 nance substantially corresponding to section 625(3):

15 (i) If the court finds that the convicted person has no
16 prior conviction within 7 years for a violation of section
17 625(1), (3), (4), or (5), or former section 625(1) or (2), or
18 former section 625b, a local ordinance substantially correspond-
19 ing to section 625(1) or (3), or former section 625(1) or (2), or
20 former section 625b, or a law of another state substantially cor-
21 responding to section 625(1), (3), (4), or (5), or former section
22 625(1) or (2), or former section 625b, the court shall order the
23 secretary of state to suspend the operator's or chauffeur's
24 license of the person for a period of not less than 90 days or
25 more than 1 year. The court may order the secretary of state to
26 issue to the person a restricted license during all or a
27 specified portion of the period of suspension.

1 (ii) If the court finds that the person has 1 prior
2 conviction within 7 years for a violation of section 625(1), (3),
3 (4), or (5), or former section 625(1) or (2), or former section
4 625b, a local ordinance substantially corresponding to section
5 625(1) or (3), or former section 625(1) or (2), or former section
6 625b, or a law of another state substantially corresponding to
7 section 625(1), (3), (4), or (5), or former section 625(1) or
8 (2), or FORMER section 625b, the court shall order the secretary
9 of state to suspend the operator's or chauffeur's license of the
10 person for a period of not less than 6 months or more than 2
11 years. The court may order the secretary of state to issue to
12 the person a restricted license during all or any portion of the
13 suspension period, except that a restricted license shall not be
14 issued during the first 60 days of the period of suspension.

15 (iii) If the court finds that the person has 2 or more prior
16 convictions within 10 years for a violation of section 625(1),
17 (3), (4), or (5), or former section 625(1) or (2), or former sec-
18 tion 625b, a local ordinance substantially corresponding to sec-
19 tion 625(1) or (3), or former section 625(1) or (2), or former
20 section 625b, or a law of another state substantially correspond-
21 ing to section 625(1), (3), (4), or (5), or former section 625(1)
22 or (2), or former section 625b, the court shall order the secre-
23 tary of state to revoke the operator's or chauffeur's license of
24 the person and shall not order the secretary of state to issue a
25 restricted license to the person.

1 (6) A restricted license issued pursuant to an order under
2 subsection (5) shall permit the person to whom it is issued to do
3 1 or more of the following:

4 (a) Drive to and from the person's residence and work
5 location.

6 (b) Drive in the course of the person's employment or
7 occupation.

8 (c) Drive to and from the person's residence and an alcohol
9 or drug education or treatment program as ordered by the court.

10 (d) Drive to and from the person's residence and the court
11 probation department, or a court-ordered community service pro-
12 gram, or both.

13 (e) Drive to and from the person's residence and an educa-
14 tional institution at which the person is enrolled as a student.

15 (7) The court may order that the restricted license issued
16 pursuant to subsection (5) include the requirement that the
17 person shall not operate a motor vehicle unless the vehicle is
18 equipped with a functioning ignition interlock device. The
19 device shall be set to render the motor vehicle inoperable if the
20 device detects a blood alcohol content of 0.02% or more by weight
21 of alcohol in the person who offers a breath sample. The court
22 may order installation of an ignition interlock device on any
23 motor vehicle that the person owns or operates, the costs of
24 which shall be borne by the person whose license is restricted.

25 (8) The court shall not order the secretary of state under
26 subsection (5) to issue a restricted license that would permit a

1 person to operate a truck or truck tractor, including a trailer,
2 that hauls hazardous materials.

3 (9) The court shall not order the secretary of state to
4 issue a restricted license unless the person states under oath,
5 and the court finds pursuant to testimony taken in open court or
6 pursuant to statements contained in a sworn affidavit on a form
7 prescribed by the state court administrator, that the person is
8 unable to take public transportation to and from his or her work
9 location, place of alcohol or drug education treatment,
10 court-ordered community service program, or educational institu-
11 tion, and does not have any family members or other individuals
12 able to provide transportation.

13 (10) The court order issued under subsection (5) and the
14 restricted license shall indicate the permitted destination of
15 the person, the approved route or routes if specified by the
16 court, and permitted times of travel.

17 (11) As used in this section, "work location" means, as
18 applicable, either the specific place or places of employment, or
19 the territory or territories regularly visited by the person in
20 pursuance of the person's occupation, or both.

21 (12) Immediately upon acceptance by the court of a plea of
22 guilty or nolo contendere or upon entry of a verdict of guilty
23 for a violation of section 625(1), (3), (4), or (5), or a local
24 ordinance substantially corresponding to section 625(1) or (3),
25 the person shall surrender to the court his or her operator's or
26 chauffeur's license or permit. The court shall immediately
27 destroy the license or permit and forward an abstract of

1 conviction with court-ordered license sanctions to the secretary
2 of state. Upon receipt of, and pursuant to, the abstract of con-
3 viction with court-ordered license sanctions, the secretary of
4 state shall suspend or revoke the person's license and, if
5 ordered by the court and the person is otherwise eligible for a
6 license, issue to the person a restricted license stating the
7 limited driving privileges indicated on the abstract. If the
8 judgment and sentence is appealed to circuit court, the court
9 may, ex parte, order the secretary of state to stay the suspen-
10 sion, revocation, or restricted license issued pursuant to this
11 section pending the outcome of the appeal.

12 (13) In addition to any other suspension or revocation
13 ordered under this section and as part of the sentence imposed
14 upon a person who violates section 625(1), (3), (4), or (5) or a
15 local ordinance substantially corresponding to section 625(1) or
16 (3) while operating a commercial motor vehicle, the court shall
17 order the secretary of state to suspend the vehicle group desig-
18 nations on the person's operator's or chauffeur's license in
19 accordance with section 319b(1)(c), except that if the vehicle
20 was transporting hazardous material required to have a placard
21 pursuant to 49 C.F.R. parts 100 to 199, the court shall order the
22 secretary of state to suspend the vehicle group designations on
23 the person's operator's or chauffeur's license in accordance with
24 section 319b(1)(d). The court shall not order the secretary of
25 state to issue a restricted license that would permit the person
26 to operate a commercial motor vehicle.

1 (14) In addition to any other suspension or revocation
2 ordered under this section and as part of the sentence imposed
3 upon a person who is convicted of a violation of section 625(1),
4 (3), (4), or (5) or a local ordinance substantially corresponding
5 to section 625(1) or (3) while operating a commercial motor vehi-
6 cle within 10 years of a prior conviction, the court shall order
7 the secretary of state to revoke the vehicle group designations
8 on the person's operator's or chauffeur's license in accordance
9 with section 319b(1)(e). The court shall not order the secretary
10 of state to issue a restricted license that would permit the
11 person to operate a commercial motor vehicle. As used in this
12 section, "prior conviction" means a conviction under
13 subsection 625(1), (3), (4), or (5), or former section 625(1) or
14 (2), or former section 625b, a local ordinance substantially cor-
15 responding to section 625(1) or (3) or former section 625(1) or
16 (2), or former section 625b, or a law of another state substan-
17 tially corresponding to section 625(1), (3), (4), or (5), or
18 former section 625(1) or (2), or former section 625b involving
19 the operation of a commercial motor vehicle, or a conviction
20 under section 625m, a local ordinance substantially corresponding
21 to section 625m, or a law of another state substantially corre-
22 sponding to section 625m.

23 Sec. 625d. (1) If a person refuses the request of a peace
24 officer to submit to a chemical test offered pursuant to section
25 ~~625a(3)~~ 625A(6), a test shall not be given without a court
26 order, but the officer may seek to obtain the court order.

1 (2) A written report shall immediately be forwarded to the
2 secretary of state by the peace officer. The report shall state
3 that the officer had reasonable grounds to believe that the
4 person had committed a crime described in section 625c(1), and
5 that the person had refused to submit to the test upon the
6 request of the peace officer and had been advised of the conse-
7 quences of the refusal. The form of the report shall be pre-
8 scribed and furnished by the secretary of state.

9 Sec. 625g. (1) If a person refuses a chemical test offered
10 pursuant to section ~~625a(3)~~ 625A(6), or submits to the chemical
11 test and the test reveals a blood alcohol content of 0.10% or
12 more by weight of alcohol, the peace officer who requested the
13 person to submit to the test shall do all of the following:

14 (a) On behalf of the secretary of state, immediately confis-
15 cate the person's license or permit to operate a motor vehicle,
16 and, if the person is otherwise eligible for a license or permit,
17 issue a temporary license or permit to the person that is valid
18 until the criminal charges against the person are dismissed, or
19 until the person pleads guilty or nolo contendere to, or is found
20 guilty of, those charges. The temporary license or permit shall
21 be on a form provided by the secretary of state.

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

24 (i) Forward a copy of the written report of the person's
25 refusal to submit to a chemical test to the secretary of state.

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

4 (iii) Except as provided in subsection (2), destroy the
5 person's driver's license or permit.

6 (2) If a person submits to a chemical test offered pursuant
7 to section ~~625a(3)~~ 625A(6) that requires the withdrawal of
8 blood and a report of the results of that chemical test is not
9 immediately available, the peace officer who requested the person
10 to submit to the test shall comply with subsection (1)(a) pending
11 receipt of the test report. If, upon receipt, the report reveals
12 a blood alcohol content of 0.10% or more by weight of alcohol,
13 the peace officer who requested the person to submit to the test
14 shall immediately comply with subsection (1)(b). If, upon
15 receipt, the report reveals a blood alcohol content of less than
16 0.10% by weight of alcohol, the peace officer who requested the
17 person to submit to the test shall immediately notify the person
18 of the test results, and immediately return the person's license
19 or permit by first-class mail to the address given at the time of
20 arrest.

21 Section 2. This amendatory act shall take effect January 1,
22 1993.