



HOUSE BILL No. 4999

September 12, 1995, Introduced by Rep. Fitzgerald and referred to the Committee on Judiciary and Civil Rights.

A bill to amend sections 303, 625, 625a, 625c, 625g, and 625m of Act No. 300 of the Public Acts of 1949, entitled as amended

"Michigan vehicle code,"

sections 303 and 625 as amended by Act No. 449 of the Public Acts of 1994 and sections 625a, 625c, 625g, and 625m as amended by Act No. 450 of the Public Acts of 1994, being sections 257.303, 257.625, 257.625a, 257.625c, 257.625g, and 257.625m of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 303, 625, 625a, 625c, 625g, and 625m of
2 Act No. 300 of the Public Acts of 1949, sections 303 and 625 as
3 amended by Act No. 449 of the Public Acts of 1994 and sections
4 625a, 625c, 625g, and 625m as amended by Act No. 450 of the
5 Public Acts of 1994, being sections 257.303, 257.625, 257.625a,

1 257.625c, 257.625g, and 257.625m of the Michigan Compiled Laws,
2 are amended to read as follows:

3 Sec. 303. (1) The secretary of state shall not issue a
4 license under this act to any of the following:

5 (a) A person, as an operator, who is less than 18 years of
6 age, except the secretary of state may issue a license to a
7 person who is not less than 16 years of age and who has satisfac-
8 torily passed a driver education course and examination given by
9 a public school or nonpublic school of this or another state
10 offering a course approved by the department of education, or an
11 equivalent course and examination as prescribed in section 811.
12 The secretary of state may issue a restricted license to a person
13 not less than 14 years of age as provided in this act. This sub-
14 division does not apply to a person who has held a valid driver's
15 license issued by another state, territory, or possession of the
16 United States or another sovereignty for at least 1 year immedi-
17 ately before application for a driver's license under this act.

18 (b) A person, as a chauffeur, who is less than 18 years of
19 age, except the secretary of state may issue a license to a
20 person who is not less than 16 years of age and who has satisfac-
21 torily passed a driver education course and examination given by
22 a public school or nonpublic school of this or another state
23 offering a course approved by the department of education, or an
24 equivalent course and examination as prescribed in section 811.

25 (c) A person whose license has been suspended during the
26 period for which the license was suspended.

1 (d) A person who has been convicted of or received a probate
2 court disposition for section 625(4) or (5).

3 (e) A person who has been convicted of or received a probate
4 court disposition for negligent homicide, manslaughter, or murder
5 resulting from the operation of a motor vehicle.

6 (f) A person who is ~~an~~ A habitual violator of the criminal
7 laws relating to operating a vehicle while impaired by or under
8 the influence of intoxicating liquor or a controlled substance or
9 a combination of intoxicating liquor and a controlled substance,
10 or with an alcohol content of ~~0.10~~ 0.08 grams or more per 100
11 milliliters of blood, per 210 liters of breath, or per 67 milli-
12 liters of urine. Convictions of any of the following, whether
13 under a law of this state, a local ordinance substantially corre-
14 sponding to a law of this state, or a law of another state sub-
15 stantially corresponding to a law of this state, are prima facie
16 evidence that the person is ~~an~~ A habitual violator as described
17 in this subdivision:

18 (i) Any combination of 2 convictions within 7 years for 1 or
19 more of the following:

20 (A) A violation of section 625(1), (4), or (5).

21 (B) A violation of former section 625(1) or (2).

22 (ii) Any combination of 3 convictions within 10 years for 1
23 or more of the following if any of the convictions resulted from
24 an arrest on or after January 1, 1992:

25 (A) A violation of section 625(1), (3), (4), or (5).

26 (B) A violation of former section 625(1) or (2) or former
27 section 625b.

1 (g) A person who in the opinion of the secretary of state is
2 afflicted with or suffering from a physical or mental disability
3 or disease preventing that person from exercising reasonable and
4 ordinary control over a motor vehicle while operating the motor
5 vehicle upon the highways.

6 (h) A person who is unable to understand highway warning or
7 direction signs in the English language.

8 (i) A person who is ~~an~~ A habitually reckless driver. Two
9 convictions within 7 years of reckless driving under this act or
10 any other law of this state relating to reckless driving or under
11 a local ordinance of this state or a law of another state that
12 defines the term "reckless driving" substantially similarly to
13 the law of this state are prima facie evidence that the person is
14 ~~an~~ A habitually reckless driver.

15 (j) A person who is ~~an~~ A habitual criminal. Two convic-
16 tions of a felony in which a motor vehicle was used in this or
17 another state are prima facie evidence that the person is ~~an~~ A
18 habitual criminal.

19 (k) A person who is unable to pass a knowledge, skill, or
20 ability test administered by the secretary of state in connection
21 with the issuance of an original operator's or chauffeur's
22 license, original motorcycle indorsement, or an original or
23 renewal of a vehicle group designation or vehicle indorsement.

24 (l) A person who has been convicted of, has received a pro-
25 bate court disposition for, or has been determined responsible
26 for 2 or more moving violations under a law of this state, a
27 local ordinance substantially corresponding to a law of this

1 state, or a law of another state substantially corresponding to a
2 law of this state, within the preceding 3 years, if the viola-
3 tions occurred before issuance of an original license to the
4 person in this or another state.

5 (m) A nonresident.

6 (n) A person not licensed under this act who has been con-
7 victed of, has received a probate court disposition for, or has
8 been determined responsible for a crime or civil infraction
9 described in section 319, 324, or 904. A person shall be denied
10 a license under this subdivision for the length of time corre-
11 sponding to the period of the licensing sanction that would have
12 been imposed under section 319, 324, or 904 if the person had
13 been licensed at the time of the violation.

14 (o) A person not licensed under this act who has been con-
15 victed of or received a probate court disposition for committing
16 a crime described in section 319e. A person shall be denied a
17 license under this subdivision for the length of time that corre-
18 sponds to the period of the licensing sanction that would have
19 been imposed under section 319e if the person had been licensed
20 at the time of the violation.

21 (p) A person not licensed under this act who is determined
22 to have violated section 33b(1) of the Michigan Liquor Control
23 Act, Act No. 8 of the Public Acts of the Extra Session of 1933,
24 being section 436.33b of the Michigan Compiled Laws. ~~7, or sec-~~
25 ~~tion 624b.~~ The person shall be denied a license under this sub-
26 division for a period of time that corresponds to the period of
27 the licensing sanction that would have been imposed under those

1 sections had the person been licensed at the time of the
2 violation.

3 (2) Upon receipt of the appropriate records of conviction,
4 the secretary of state shall revoke the operator's or chauffeur's
5 license of a person having any of the following, whether under a
6 law of this state, a local ordinance substantially corresponding
7 to a law of this state, or a law of another state substantially
8 corresponding to a law of this state:

9 (a) Two convictions of reckless driving in violation of sec-
10 tion 626 within 7 years.

11 (b) Two convictions of a felony in which a motor vehicle was
12 used within 7 years.

13 (c) Any combination of 2 convictions within 7 years for any
14 of the following:

15 (i) A violation of section 625(1).

16 (ii) A violation of former section 625(1) or (2).

17 (iii) A violation of section 625(4) or (5).

18 (iv) Negligent homicide, manslaughter, or murder resulting
19 from the operation of a motor vehicle.

20 (d) One conviction under section 625(4) or (5).

21 (e) One conviction of negligent homicide, manslaughter, or
22 murder resulting from the operation of a motor vehicle.

23 (f) Any combination of 3 convictions within 10 years for any
24 of the following if any of the convictions resulted from an
25 arrest on or after January 1, 1992:

26 (i) A violation of section 625(1), (3), (4), or (5).

1 (ii) A violation of former section 625(1) or (2) or former
2 section 625b.

3 (iii) Negligent homicide, manslaughter, or murder resulting
4 from the operation of a motor vehicle.

5 (3) The secretary of state shall revoke a license under sub-
6 section (2) notwithstanding a court order issued under section
7 625, section 625b, former section 625(1) or (2), or former sec-
8 tion 625b or a local ordinance substantially corresponding to
9 section 625, section 625b, former section 625(1) or (2), or
10 former section 625b.

11 (4) The secretary of state shall not issue a license under
12 this act to a person whose license has been revoked under this
13 act or denied under subsection (1)(d), (e), (f), (i), or (j)
14 until both of the following occur:

15 (a) The later of the following:

16 (i) The expiration of not less than 1 year after the license
17 was revoked or denied.

18 (ii) The expiration of not less than 5 years after the date
19 of a subsequent revocation or denial occurring within 7 years
20 after the date of any prior revocation or denial.

21 (b) The person meets the requirements of the department.

22 (5) Multiple convictions or civil infraction determinations
23 resulting from the same incident shall be treated as a single
24 violation for purposes of denial or revocation of a license under
25 this section.

26 (6) As used in this section, "felony in which a motor
27 vehicle was used" means a felony during the commission of which

1 the person operated a motor vehicle and while operating the
2 vehicle presented real or potential harm to persons or property
3 and 1 or more of the following circumstances existed:

4 (a) The vehicle was used as an instrument of the felony.

5 (b) The vehicle was used to transport a victim of the
6 felony.

7 (c) The vehicle was used to flee the scene of the felony.

8 (d) The vehicle was necessary for the commission of the
9 felony.

10 Sec. 625. (1) A person, whether licensed or not, shall not
11 operate a vehicle upon a highway or other place open to the gen-
12 eral public or generally accessible to motor vehicles, including
13 an area designated for the parking of vehicles, within this state
14 if either of the following applies:

15 (a) The person is under the influence of intoxicating liquor
16 or a controlled substance, or a combination of intoxicating
17 liquor and a controlled substance.

18 (b) The person has an alcohol content of ~~0.10~~ 0.08 grams
19 or more per 100 milliliters of blood, per 210 liters of breath,
20 or per 67 milliliters of urine.

21 (2) The owner of a vehicle or a person in charge or in con-
22 trol of a vehicle shall not authorize or knowingly permit the
23 vehicle to be operated upon a highway or other place open to the
24 general public or generally accessible to motor vehicles, includ-
25 ing an area designated for the parking of motor vehicles, within
26 this state by a person who is under the influence of intoxicating
27 liquor or a controlled substance, or a combination of

1 intoxicating liquor and a controlled substance, or who has an
2 alcohol content of ~~0.10~~ 0.08 grams or more per 100 milliliters
3 of blood, per 210 liters of breath, or per 67 milliliters of
4 urine.

5 (3) A person, whether licensed or not, shall not operate a
6 vehicle upon a highway or other place open to the general public
7 or generally accessible to motor vehicles, including an area des-
8 ignated for the parking of vehicles within this state when, due
9 to the consumption of an intoxicating liquor, a controlled sub-
10 stance, or a combination of an intoxicating liquor and a con-
11 trolled substance, the person's ability to operate the vehicle is
12 visibly impaired. If a person is charged with violating subsec-
13 tion (1), a finding of guilty under this subsection may be
14 rendered.

15 (4) A person, whether licensed or not, who operates a motor
16 vehicle upon a highway or other place open to the general public
17 or generally accessible to motor vehicles, including an area des-
18 ignated for the parking of vehicles, within this state, in viola-
19 tion of subsection (1) or (3), and by the operation of that motor
20 vehicle causes the death of another person is guilty of a felony
21 punishable by imprisonment for not more than 15 years or a fine
22 of not less than \$2,500.00 or more than \$10,000.00, or both.

23 (5) A person, whether licensed or not, who operates a motor
24 vehicle upon a highway or other place open to the general public
25 or generally accessible to motor vehicles, including an area des-
26 ignated for the parking of vehicles, within this state, in
27 violation of subsection (1) or (3) and by the operation of that

1 motor vehicle causes a serious impairment of a body function of
2 another person is guilty of a felony punishable by imprisonment
3 for not more than 5 years or a fine of not less than \$1,000.00 or
4 more than \$5,000.00, or both. As used in this subsection,
5 "serious impairment of a body function" includes, but is not
6 limited to, 1 or more of the following:

- 7 (a) Loss of a limb or use of a limb.
- 8 (b) Loss of a hand, foot, finger, or thumb or use of a hand,
9 foot, finger, or thumb.
- 10 (c) Loss of an eye or ear or use of an eye or ear.
- 11 (d) Loss or substantial impairment of a bodily function.
- 12 (e) Serious visible disfigurement.
- 13 (f) A comatose state that lasts for more than 3 days.
- 14 (g) Measurable brain damage or mental impairment.
- 15 (h) A skull fracture or other serious bone fracture.
- 16 (i) Subdural hemorrhage or subdural hematoma.
- 17 (6) A person who is less than 21 years of age, whether
18 licensed or not, shall not operate a vehicle upon a highway or
19 other place open to the general public or generally accessible to
20 motor vehicles, including an area designated for the parking of
21 vehicles, within this state if the person has any bodily alcohol
22 content. As used in this subsection, "any bodily alcohol
23 content" means either of the following:
 - 24 (a) An alcohol content of not less than 0.02 grams or more
25 than ~~0.07~~ 0.05 grams per 100 milliliters of blood, per 210
26 liters of breath, or per 67 milliliters of urine.

1 (b) Any presence of alcohol within a person's body resulting
2 from the consumption of intoxicating liquor, other than
3 consumption of intoxicating liquor as a part of a generally rec-
4 ognized religious service or ceremony.

5 (7) If a person is convicted of violating subsection (1),
6 all of the following apply:

7 (a) Except as otherwise provided in subdivisions (b) and
8 (d), the person is guilty of a misdemeanor punishable by 1 or
9 more of the following:

10 (i) Community service for not more than 45 days.

11 (ii) Imprisonment for not more than 90 days.

12 (iii) A fine of not less than \$100.00 or more than \$500.00.

13 (b) If the violation occurs within 7 years of a prior con-
14 viction, the person shall be sentenced to pay a fine of not less
15 than \$200.00 or more than \$1,000.00 and either of the following:

16 (i) Community service for not less than 10 days or more than
17 90 days and may be imprisoned for not more than 1 year.

18 (ii) Imprisonment for not less than 48 consecutive hours or
19 more than 1 year and may be sentenced to community service for
20 not more than 90 days.

21 (c) A term of imprisonment imposed under subdivision (b)(ii)
22 shall not be suspended.

23 (d) If the violation occurs within 10 years of 2 or more
24 prior convictions, the person is guilty of a felony and shall be
25 sentenced to imprisonment for not less than 1 year or more than 5
26 years or a fine of not less than \$500.00 or more than \$5,000.00,

1 or both. A term of imprisonment imposed under this subdivision
2 shall not be suspended.

3 (e) As used in this subsection, "prior conviction" means a
4 conviction for a violation or attempted violation of subsection
5 (1), (4), or (5) or former section 625(1) or (2), a local ordi-
6 nance substantially corresponding to subsection (1) or former
7 section 625(1) or (2), or a law of another state substantially
8 corresponding to subsection (1), (4), or (5) or former section
9 625(1) or (2).

10 (8) A person who is convicted of violating subsection (2) is
11 guilty of a misdemeanor punishable by imprisonment for not more
12 than 90 days or a fine of not less than \$100.00 or more than
13 \$500.00, or both.

14 (9) If a person is convicted of violating subsection (3),
15 all of the following apply:

16 (a) Except as otherwise provided in subdivisions (b) and
17 (c), the person is guilty of a misdemeanor punishable by 1 or
18 more of the following:

19 (i) Community service for not more than 45 days.

20 (ii) Imprisonment for not more than 90 days.

21 (iii) A fine of not more than \$300.00.

22 (b) If the violation occurs within 7 years of 1 prior con-
23 viction, the person shall be sentenced to pay a fine of not less
24 than \$200.00 or more than \$1,000.00, and either of the
25 following:

1 (i) Community service for not less than 10 days or more than
2 90 days and may be sentenced to imprisonment for not more than 1
3 year.

4 (ii) Imprisonment for not more than 1 year and may be sen-
5 tenced to community service for not more than 90 days.

6 (c) If the violation occurs within 10 years of 2 or more
7 prior convictions, the person shall be sentenced to pay a fine of
8 not less than \$200.00 or more than \$1,000.00, and either of the
9 following:

10 (i) Community service for not less than 10 days or more than
11 90 days and may be sentenced to imprisonment for not more than 1
12 year.

13 (ii) Imprisonment for not more than 1 year and may be sen-
14 tenced to community service for not more than 90 days.

15 (d) As used in this subsection, "prior conviction" means a
16 conviction for a violation or attempted violation of subsection
17 (1), (3), (4), or (5), former section 625(1) or (2), or former
18 section 625b, a local ordinance substantially corresponding to
19 subsection (1) or (3), former section 625(1) or (2), or former
20 section 625b, or a law of another state substantially correspond-
21 ing to subsection (1), (3), (4), or (5), former section 625(1) or
22 (2), or former section 625b.

23 (10) If a person is convicted of violating subsection (6),
24 the following shall apply:

25 (a) Except as otherwise provided in subdivision (b), the
26 person is guilty of a misdemeanor punishable by 1 or both of the
27 following:

1 (i) Community service for not more than 45 days.

2 (ii) A fine of not more than \$250.00.

3 (b) If the violation occurs within 7 years of 1 or more
4 prior convictions, the person may be sentenced to 1 or both of
5 the following:

6 (i) Community service for not more than 60 days.

7 (ii) A fine of not more than \$500.00.

8 (c) As used in this subsection, "prior conviction" means a
9 conviction for a violation or attempted violation of subsection
10 (1), (3), (4), (5), or (6), former section 625(1) or (2), or
11 former section 625b, a local ordinance substantially correspond-
12 ing to subsection (1), (3), or (6), former section 625(1) or (2),
13 or former section 625b, or a law of another state substantially
14 corresponding to subsection (1), (3), (4), (5), or (6), former
15 section 625(1) or (2), or former section 625b.

16 (11) In addition to imposing the sanctions prescribed under
17 subsection (4), (5), (7), (9), or (10), the court may order the
18 person to pay the costs of the prosecution, pursuant to the code
19 of criminal procedure, Act No. 175 of the Public Acts of 1927,
20 being sections 760.1 to 776.21 of the Michigan Compiled Laws.

21 (12) The court shall impose license sanctions pursuant to
22 section 625b.

23 (13) A person sentenced to perform community service under
24 this section shall not receive compensation and shall reimburse
25 the state or appropriate local unit of government for the cost of
26 supervision incurred by the state or local unit of government as
27 a result of the person's activities in that service.

1 (14) If the prosecuting attorney intends to seek an enhanced
2 sentence under subsection (7)(b) or (d), subsection (9)(b) or
3 (c), or subsection (10)(b) based upon the defendant having 1 or
4 more prior convictions, the prosecuting attorney shall include on
5 the complaint and information, or an amended complaint and infor-
6 mation, filed in district court, circuit court, recorder's court,
7 municipal court, or probate court a statement listing the
8 defendant's prior convictions.

9 (15) If a person is charged with a violation of subsection
10 (1) or (3), the court shall not permit the defendant to enter a
11 plea of guilty or nolo contendere to a charge of violating
12 subsection (6) in exchange for dismissal of the original charge.
13 This subsection does not prohibit the court from dismissing the
14 charge upon the motion of the prosecuting attorney.

15 (16) A prior conviction shall be established at sentencing
16 by 1 or more of the following:

17 (a) An abstract of conviction.

18 (b) A copy of the defendant's driving record.

19 (c) An admission by the defendant.

20 (17) A person who is convicted of an attempted violation of
21 subsection (1), (3), (4), (5), or (6) or a local ordinance sub-
22 stantially corresponding to subsection (1), (3), or (6) shall be
23 punished as if the offense had been completed.

24 (18) When assessing points and taking licensing action under
25 this act, the secretary of state and the court shall treat a con-
26 viction of an attempted violation of subsection (1), (3), (4),
27 (5), or (6) or a local ordinance substantially corresponding to

1 subsection (1), (3), or (6) or a law of another state
2 substantially corresponding to subsection (1), (3), (4), (5), or
3 (6) the same as if the offense had been completed.

4 (19) Except as otherwise provided in subsection (21), if a
5 person is charged with operating a vehicle while under the influ-
6 ence of a controlled substance or a combination of intoxicating
7 liquor and a controlled substance in violation of subsection (1)
8 or a local ordinance substantially corresponding to
9 subsection (1), the court shall require the jury to return a spe-
10 cial verdict in the form of a written finding or, if the court
11 convicts the person without a jury or accepts a plea of guilty or
12 nolo contendere, the court shall make a finding as to whether the
13 person was under the influence of a controlled substance or a
14 combination of intoxicating liquor and a controlled substance at
15 the time of the violation.

16 (20) Except as otherwise provided in subsection (21), if a
17 person is charged with operating a vehicle while his or her abil-
18 ity to operate the vehicle was visibly impaired due to his or her
19 consumption of a controlled substance or a combination of intoxi-
20 cating liquor and a controlled substance in violation of
21 subsection (3) or a local ordinance substantially corresponding
22 to subsection (3), the court shall require the jury to return a
23 special verdict in the form of a written finding or, if the court
24 convicts the person without a jury or accepts a plea of guilty or
25 nolo contendere, the court shall make a finding as to whether,
26 due to the consumption of a controlled substance or a combination
27 of intoxicating liquor and a controlled substance, the person's

1 ability to operate a motor vehicle was visibly impaired at the
2 time of the violation.

3 (21) A special verdict described in subsections (19) and
4 (20) is not required if a jury is instructed to make a finding
5 solely as to either of the following:

6 (a) Whether the defendant was under the influence of a con-
7 trolled substance or of a combination of intoxicating liquor and
8 a controlled substance at the time of the violation.

9 (b) Whether the defendant was visibly impaired due to his or
10 her consumption of a controlled substance or a combination of
11 intoxicating liquor and a controlled substance at the time of the
12 violation.

13 (22) If a jury or court makes a finding under subsection
14 (19), (20), or (21) that the defendant operated a motor vehicle
15 under the influence of or while impaired due to the consumption
16 of a controlled substance, or combination of a controlled sub-
17 stance and an intoxicating liquor, the court shall do both of the
18 following:

19 (a) Report the finding to the secretary of state.

20 (b) Forward to the department of state police, on a form or
21 forms prescribed by the state court administrator, a record that
22 specifies the penalties imposed by the court, including any term
23 of imprisonment and any licensing sanction imposed under
24 section 625b.

25 (23) Except as otherwise provided by law, a record described
26 in subsection (22)(b) is a public record, and the department of

1 state police shall retain the information contained on that
2 record for a period of not less than 7 years.

3 (24) In a prosecution for a violation of subsection (6), the
4 defendant shall bear the burden of proving that the consumption
5 of intoxicating liquor was a part of a generally recognized reli-
6 gious service or ceremony by a preponderance of the evidence.

7 Sec. 625a. (1) A peace officer may arrest a person without
8 a warrant when the peace officer has reasonable cause to believe
9 the person was, at the time of an accident in this state, the
10 operator of a vehicle involved in the accident and was operating
11 the vehicle in violation of section 625(1), (3), or (6) or a
12 local ordinance substantially corresponding to section 625(1),
13 (3), or (6).

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

1 the parking of vehicles, within this state, while the person had
2 any bodily alcohol content as that term is defined in section
3 625(6), may require the person to submit to a preliminary chemi-
4 cal breath analysis. The following provisions apply with respect
5 to a preliminary chemical breath analysis administered pursuant
6 to this subsection:

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

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

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

17 (ii) As evidence of the defendant's breath alcohol content,
18 if offered by the defendant.

19 (iii) As evidence of the defendant's breath alcohol content,
20 if offered by the prosecution to rebut testimony or other evi-
21 dence, including but not limited to testimony elicited on
22 cross-examination of a prosecution witness, that is offered or
23 elicited to prove that the defendant's breath alcohol content was
24 lower at the time of the charged offense than when a chemical
25 test was administered pursuant to subsection (6).

26 (c) A person who submits to a preliminary chemical breath
27 analysis remains subject to the requirements of sections 625c,

1 625d, 625e, and 625f for purposes of chemical tests described in
2 those sections.

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

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

17 (4) A person who was operating a commercial motor vehicle
18 and who is requested to submit to a preliminary chemical breath
19 analysis under this section shall be advised that refusing a
20 peace officer's request to take a test described in this section
21 is a misdemeanor punishable by imprisonment for not more than 90
22 days or a fine of not more than \$100.00, or both, and will result
23 in the issuance of a 24-hour out-of-service order.

24 (5) A person who was operating a commercial motor vehicle
25 and who refuses to submit to a preliminary chemical breath analy-
26 sis upon a peace officer's lawful request is guilty of a

1 misdemeanor punishable by imprisonment for not more than 90 days
2 or a fine of not more than \$100.00, or both.

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

6 (a) The amount of alcohol or presence of a controlled sub-
7 stance or both in a driver's blood or urine or the amount of
8 alcohol in a person's breath at the time alleged as shown by
9 chemical analysis of the person's blood, urine, or breath is
10 admissible into evidence in any civil or criminal proceeding.

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

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

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

21 (iii) He or she is responsible for obtaining a chemical
22 analysis of a test sample obtained pursuant to his or her own
23 request.

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

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

6 (c) A sample or specimen of urine or breath shall be taken
7 and collected in a reasonable manner. Only a licensed physician,
8 or an individual operating under the delegation of a licensed
9 physician under section 16215 of the Public health code, Act
10 No. 368 of the Public Acts of 1978, being section 333.16215 of
11 the Michigan Compiled Laws, qualified to withdraw blood and
12 acting in a medical environment, may withdraw blood at a peace
13 officer's request to determine the amount of alcohol or presence
14 of a controlled substance or both in the person's blood, as pro-
15 vided in this subsection. Liability for a crime or civil damages
16 predicated on the act of withdrawing or analyzing blood and
17 related procedures does not attach to a licensed physician or
18 individual operating under the delegation of a licensed physician
19 who withdraws or analyzes blood or assists in the withdrawal or
20 analysis in accordance with this act unless the withdrawal or
21 analysis is performed in a negligent manner.

22 (d) A chemical test described in this subsection shall be
23 administered at the request of a peace officer having reasonable
24 grounds to believe the person has committed a crime described in
25 section 625c(1). A person who takes a chemical test administered
26 at a peace officer's request as provided in this section shall be
27 given a reasonable opportunity to have a person of his or her own

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

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

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

1 medical examiner shall give the results of the chemical analysis
2 of the sample to the law enforcement agency investigating the
3 accident and that agency shall forward the results to the depart-
4 ment of state police.

5 (g) The department of state police shall promulgate uniform
6 rules under the administrative procedures act of 1969, Act
7 No. 306 of the Public Acts of 1969, being sections 24.201 to
8 24.328 of the Michigan Compiled Laws, for the administration of
9 chemical tests for the purposes of this section. An instrument
10 used for a preliminary chemical breath analysis may be used for a
11 chemical test described in this subsection if approved pursuant
12 to rules promulgated by the department of state police.

13 (7) The provisions of subsection (6) relating to chemical
14 testing do not limit the introduction of any other competent evi-
15 dence bearing upon the question of whether a person was impaired
16 by, or under the influence of, intoxicating liquor or a con-
17 trolled substance, or a combination of intoxicating liquor and a
18 controlled substance, or whether the person had an alcohol con-
19 tent of ~~0.10~~ 0.08 grams or more per 100 milliliters of blood,
20 per 210 liters of breath, or per 67 milliliters of urine, or if
21 the person is less than 21 years of age, whether the person had
22 any bodily alcohol content within his or her body. As used in
23 this section, "any bodily alcohol content" means either of the
24 following:

25 (a) An alcohol content of not less than 0.02 grams or more
26 than ~~0.07~~ 0.05 grams per 100 milliliters of blood, per 210
27 liters of breath, or per 67 milliliters of urine.

1 (b) Any presence of alcohol within a person's body resulting
2 from the consumption of intoxicating liquor, other than consump-
3 tion of intoxicating liquor as a part of a generally recognized
4 religious service or ceremony.

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

14 (9) Except in a prosecution relating solely to a violation
15 of section 625(1)(b) or (6), the amount of alcohol in the
16 driver's blood, breath, or urine at the time alleged as shown by
17 chemical analysis of the person's blood, breath, or urine gives
18 rise to the following presumptions:

19 (a) If there were at the time ~~0.07~~ 0.05 grams or less of
20 alcohol per 100 milliliters of the defendant's blood, per 210
21 liters of the defendant's breath, or per 67 milliliters of the
22 defendant's urine, it is presumed that the defendant's ability to
23 operate a motor vehicle was not impaired due to the consumption
24 of intoxicating liquor, and that the defendant was not under the
25 influence of intoxicating liquor.

26 (b) If there were at the time more than ~~0.07~~ 0.05 grams
27 but less than ~~0.10~~ 0.08 grams of alcohol per 100 milliliters of

1 the defendant's blood, per 210 liters of the defendant's breath,
2 or per 67 milliliters of the defendant's urine, it is presumed
3 that the defendant's ability to operate a vehicle was impaired
4 within the provisions of section 625(3) due to the consumption of
5 intoxicating liquor.

6 (c) If there were at the time ~~0.10~~ 0.08 grams or more of
7 alcohol per 100 milliliters of the defendant's blood, per 210
8 liters of the breath, or per 67 milliliters of the defendant's
9 urine, it is presumed that the defendant was under the influence
10 of intoxicating liquor.

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

17 Sec. 625c. (1) A person who operates a vehicle upon a
18 public highway or other place open to the general public or gen-
19 erally accessible to motor vehicles, including an area designated
20 for the parking of vehicles, within this state is considered to
21 have given consent to chemical tests of his or her blood, breath,
22 or urine for the purpose of determining the amount of alcohol or
23 presence of a controlled substance or both in his or her blood or
24 urine or the amount of alcohol in his or her breath in all of the
25 following circumstances:

26 (a) If the person is arrested for a violation of section
27 625(1), (3), (4), (5), or (6), section 625a(5), or section 625m,

1 or a local ordinance substantially corresponding to section
2 625(1), (3), or (6), section 625a(5), or section 625m.

3 (b) If the person is arrested for felonious driving, negli-
4 gent homicide, manslaughter, or murder resulting from the opera-
5 tion of a motor vehicle, and the peace officer had reasonable
6 grounds to believe the person was operating the vehicle while
7 impaired by or under the influence of intoxicating liquor or a
8 controlled substance or a combination of intoxicating liquor and
9 a controlled substance, or while having an alcohol content of
10 ~~0.10~~ 0.08 grams or more per 100 milliliters of blood, per 210
11 liters of breath, or per 67 milliliters of urine, or if the
12 person is less than 21 years of age while having any bodily alco-
13 hol content. As used in this subdivision, "any bodily alcohol
14 content" means either of the following:

15 (i) An alcohol content of not less than 0.02 grams or more
16 than ~~0.07~~ 0.05 grams per 100 milliliters of blood, per 210
17 liters of breath, or per 67 milliliters of urine.

18 (ii) Any presence of alcohol within a person's body result-
19 ing from the consumption of intoxicating liquor, other than con-
20 sumption of intoxicating liquor as part of a generally recognized
21 religious service or ceremony.

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

26 (3) The tests shall be administered as provided in section
27 625a(6).

1 Sec. 625g. (1) If a person refuses a chemical test offered
2 pursuant to section 625a(6), or submits to the chemical test or
3 a chemical test is performed pursuant to a court order and the
4 test reveals an unlawful alcohol content, the peace officer who
5 requested the person to submit to the test shall do all of the
6 following:

7 (a) On behalf of the secretary of state, immediately confis-
8 cate the person's license or permit to operate a motor vehicle
9 and, if the person is otherwise eligible for a license or permit,
10 issue a temporary license or permit to the person. The temporary
11 license or permit shall be on a form provided by the secretary of
12 state.

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

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

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

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

22 (2) If a person submits to a chemical test offered pursuant
23 to section 625a(6) that requires an analysis of blood or urine
24 and a report of the results of that chemical test is not immedi-
25 ately available, the peace officer who requested the person to
26 submit to the test shall comply with subsection (1)(a) pending
27 receipt of the test report. If the report reveals an unlawful

1 alcohol content, the peace officer who requested the person to
2 submit to the test shall immediately comply with
3 subsection (1)(b). If the report does not reveal an unlawful
4 alcohol content, the peace officer who requested the person to
5 submit to the test shall immediately notify the person of the
6 test results and immediately return the person's license or
7 permit by first-class mail to the address given at the time of
8 arrest.

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

11 (a) If the case is not prosecuted, for 90 days after issu-
12 ance or until the person's license or permit is suspended pursu-
13 ant to section 625f, whichever occurs earlier. The prosecuting
14 attorney shall notify the secretary of state if a case referred
15 to the prosecuting attorney is not prosecuted. The arresting law
16 enforcement agency shall notify the secretary of state if a case
17 is not referred to the prosecuting attorney for prosecution.

18 (b) If the case is prosecuted, until the criminal charges
19 against the person are dismissed, the person pleads guilty or
20 nolo contendere to or is found guilty of or acquitted of those
21 charges, or the person's license or permit is suspended pursuant
22 to section 625f, whichever occurs earlier.

23 (4) As used in this section, "unlawful alcohol content"
24 means any of the following, as applicable:

25 (a) If the person tested is less than 21 years of age, 0.02
26 grams or more of alcohol per 100 milliliters of blood, per 210
27 liters of breath, or per 67 milliliters of urine.

1 (b) If the person tested was operating a commercial motor
2 vehicle within this state, 0.04 grams or more of alcohol per 100
3 milliliters of blood, per 210 liters of breath, or per 67 milli-
4 liters of urine.

5 (c) If the person tested is not a person described in
6 subdivision (a) or (b), ~~0.10~~ 0.08 grams or more of alcohol per
7 100 milliliters of blood, per 210 liters of breath, or per 67
8 milliliters of urine.

9 Sec. 625m. (1) A person, whether licensed or not, who has
10 an alcohol content of 0.04 grams or more but not more than ~~0.07~~
11 0.05 grams per 100 milliliters of blood, per 210 liters of
12 breath, or per 67 milliliters of urine shall not operate a com-
13 mercial motor vehicle within this state.

14 (2) A peace officer may arrest a person without a warrant if
15 the peace officer has reasonable cause to believe that the person
16 was, at the time of an accident, the driver of a commercial motor
17 vehicle involved in the accident and was operating the vehicle in
18 violation of this section or of a local ordinance substantially
19 corresponding to this section.

20 (3) A person who is convicted of a violation of this section
21 or a local ordinance substantially corresponding to this section
22 is guilty of a misdemeanor punishable by imprisonment for not
23 more than 90 days or a fine of not more than \$300.00, or both,
24 together with costs of the prosecution. As part of the sentence,
25 the court shall order the secretary of state to suspend the vehi-
26 cle group designations on the person's operator's or chauffeur's
27 license pursuant to section 319b(1)(c) or, if the vehicle was

1 carrying hazardous material required to have a placard pursuant
2 to 49 C.F.R. parts 100 to 199, in accordance with section
3 319b(1)(d). The court shall not order the secretary of state to
4 issue a restricted license that would permit the person to oper-
5 ate a commercial motor vehicle.

6 (4) A person who violates this section or a local ordinance
7 substantially corresponding to this section within 10 years of a
8 prior conviction may be sentenced to imprisonment for not more
9 than 1 year or a fine of not more than \$1,000.00, or both. As
10 part of the sentence, the court shall order the secretary of
11 state to revoke the vehicle group designations on the person's
12 operator's or chauffeur's license pursuant to section
13 319b(1)(e). The court shall not order the secretary of state to
14 issue a restricted license that would permit the person to oper-
15 ate a commercial motor vehicle. As used in this subsection,
16 "prior conviction" means a conviction for a violation of this
17 section, section 625(1), (3), (4), or (5), former section 625(1)
18 or (2), or former section 625b, a local ordinance substantially
19 corresponding to this section, section 625(1) or (3), former sec-
20 tion 625(1) or (2), or former section 625b, or a law of another
21 state substantially corresponding to this section, section
22 625(1), (3), (4), or (5), former section 625(1) or (2), or former
23 section 625b, while operating a commercial motor vehicle.

24 (5) When assessing points and taking license actions under
25 this act, the secretary of state and the court shall treat a con-
26 viction for an attempted violation of subsection (1), a local
27 ordinance substantially corresponding to subsection (1), or a law

1 of another state substantially corresponding to subsection (1)
2 the same as if the offense had been completed.