

HOUSE BILL No. 5951

June 18, 1998, Introduced by Rep. Mans and referred to the Committee on Judiciary.

A bill to amend 1949 PA 300, entitled "Michigan vehicle code," by amending sections 8a, 44a, 303, 625, 625a, 625c, 625g, and 625m (MCL 257.8a, 257.44a, 257.303, 257.625, 257.625a, 257.625c, 257.625g, and 257.625m), section 8a as amended by 1994 PA 449, section 44a as added by 1993 PA 359, section 303 as amended by 1996 PA 587, sections 625, 625a, and 625m as amended by 1996 PA 491, and sections 625c and 625g as amended by 1994 PA 450, and by adding section 23b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 8a. "Conviction" means a final conviction, the payment
2 of a fine, a plea of guilty or nolo contendere if accepted by the
3 court, or a finding of guilt for a criminal law violation or a
4 juvenile adjudication, ~~or~~ probate court disposition, OR
5 JUVENILE DISPOSITION for a violation that if committed by an

1 adult would be a crime, regardless of whether the penalty is
2 rebated or suspended.

3 SEC. 23B. "JUVENILE DISPOSITION" MEANS THE ENTRY OF AN
4 ORDER OF DISPOSITION FOR A JUVENILE FOUND TO BE WITHIN THE
5 COURT'S JURISDICTION UNDER CHAPTER XIIIA OF 1939 PA 288, MCL
6 712A.1 TO 712A.32.

7 Sec. 44a. "Probate court disposition" means the entry of ~~a~~
8 ~~probate court~~ AN order of disposition for a ~~child~~ JUVENILE
9 found to be within the ~~provisions of~~ COURT'S JURISDICTION UNDER
10 chapter XIIIA of ~~Act No. 288 of the Public Acts of 1939, being~~
11 ~~sections 712A.1 to 712A.28 of the Michigan Compiled Laws 1939 PA~~
12 288, MCL 712A.1 TO 712A.32.

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

15 (a) A person, as an operator, who is less than 18 years of
16 age, except as otherwise provided in this act.

17 (b) A person, as a chauffeur, who is less than 18 years of
18 age, except as otherwise provided in this act.

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

21 (d) A person who has been convicted of or received a
22 ~~probate court~~ JUVENILE disposition for a violation of section
23 625(4) or (5).

24 (e) A person who has been convicted of or received a
25 ~~probate court~~ JUVENILE disposition for negligent homicide, man-
26 slaughter, or murder resulting from the operation of a motor
27 vehicle.

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

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

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

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

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

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

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

23 (g) A person who in the opinion of the secretary of state is
24 afflicted with or suffering from a physical or mental disability
25 or disease preventing that person from exercising reasonable and
26 ordinary control over a motor vehicle while operating the motor
27 vehicle upon the highways.

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

3 (i) A person who is an habitually reckless driver. Two con-
4 victions within 7 years of reckless driving under this act or any
5 other law of this state relating to reckless driving or under a
6 local ordinance of this state or a law of another state that
7 defines the term "reckless driving" substantially similarly to
8 the law of this state are prima facie evidence that the person is
9 an habitually reckless driver.

10 (j) A person who is an habitual criminal. Two convictions
11 of a felony in which a motor vehicle was used in this or another
12 state are prima facie evidence that the person is an habitual
13 criminal.

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

19 (l) A person who has been convicted of, has received a
20 ~~probate court~~ JUVENILE disposition for, or has been determined
21 responsible for 2 or more moving violations under a law of this
22 state, a local ordinance substantially corresponding to a law of
23 this state, or a law of another state substantially corresponding
24 to a law of this state within the preceding 3 years, if the vio-
25 lations occurred before issuance of an original license to the
26 person in this or another state.

1 (m) A nonresident including a foreign exchange student.

2 (n) A person not licensed under this act who has been
3 convicted of, has received a ~~probate court~~ JUVENILE disposition
4 for, or has been determined responsible for a crime or civil
5 infraction described in section 319, 324, or 904. A person shall
6 be denied a license under this subdivision for the length of time
7 corresponding to the period of the licensing sanction that would
8 have been imposed under section 319, 324, or 904 if the person
9 had been licensed at the time of the violation.

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

17 (p) A person not licensed under this act who is determined
18 to have violated section 33b(1) of ~~the Michigan liquor control~~
19 ~~act, Act No. 8 of the Public Acts of the Extra Session of 1933,~~
20 ~~being section 436.33b of the Michigan Compiled Laws~~ FORMER 1933
21 (EX SESS) PA 8, SECTION 703(1) OF THE MICHIGAN LIQUOR CONTROL
22 CODE OF 1998, 1998 PA 58, MCL 436.1703, or section 624a or 624b
23 OF THIS ACT. The person shall be denied a license under this
24 subdivision for a period of time that corresponds to the period
25 of the licensing sanction that would have been imposed under
26 those sections had the person been licensed at the time of the
27 violation.

1 (q) A person who has been convicted of a violation of
2 section 602a(4) or (5) OF THIS ACT or a violation of section
3 479a(4) or (5) of the Michigan penal code, ~~Act No. 328 of the~~
4 ~~Public Acts of 1931, being section 750.479a of the Michigan~~
5 ~~Compiled Laws~~ 1931 PA 328, MCL 750.479A.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (g) A violation of section 602a(4) or (5) of this act or
10 section 479a(4) or (5) of the Michigan penal code, ~~Act No. 328~~
11 ~~of the Public Acts of 1931, being section 750.479a of the~~
12 ~~Michigan Compiled Laws~~ 1931 PA 328, MCL 750.479A.

13 (3) The secretary of state shall revoke a license under sub-
14 section (2) notwithstanding a court order issued under section
15 625, section 625b, former section 625(1) or (2), or former sec-
16 tion 625b or a local ordinance substantially corresponding to
17 section 625, section 625b, former section 625(1) or (2), or
18 former section 625b.

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

23 (a) The later of the following:

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

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

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

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

9 (6) As used in this section, "felony in which a motor vehi-
10 cle was used" means a felony during the commission of which the
11 person operated a motor vehicle and while operating the vehicle
12 presented real or potential harm to persons or property and 1 or
13 more of the following circumstances existed:

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

15 (b) The vehicle was used to transport a victim of the
16 felony.

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

18 (d) The vehicle was necessary for the commission of the
19 felony.

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

25 (a) The person is under the influence of intoxicating
26 liquor, a controlled substance, or a combination of intoxicating
27 liquor and a controlled substance.

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

4 (2) The owner of a vehicle or a person in charge or in con-
5 trol of a vehicle shall not authorize or knowingly permit the
6 vehicle to be operated upon a highway or other place open to the
7 general public or generally accessible to motor vehicles, includ-
8 ing an area designated for the parking of motor vehicles, within
9 this state by a person who is under the influence of intoxicating
10 liquor, a controlled substance, or a combination of intoxicating
11 liquor and a controlled substance or who has an alcohol content
12 of ~~0.10~~ 0.08 grams or more per 100 milliliters of blood, per
13 210 liters of breath, or per 67 milliliters of urine.

14 (3) A person, whether licensed or not, shall not operate a
15 vehicle upon a highway or other place open to the general public
16 or generally accessible to motor vehicles, including an area des-
17 igned for the parking of vehicles, within this state when, due
18 to the consumption of ~~an~~ intoxicating liquor, a controlled sub-
19 stance, or a combination of ~~an~~ intoxicating liquor and a con-
20 trolled substance, the person's ability to operate the vehicle is
21 visibly impaired. If a person is charged with violating subsec-
22 tion (1), a finding of guilty under this subsection may be
23 rendered.

24 (4) A person, whether licensed or not, who operates a motor
25 vehicle in violation of subsection (1) or (3) and by the opera-
26 tion of that motor vehicle causes the death of another person is
27 guilty of a felony punishable by imprisonment for not more than

1 15 years or a fine of not less than \$2,500.00 or more than
2 \$10,000.00, or both. The judgment of sentence may impose the
3 sanction permitted under section 625n.

4 (5) A person, whether licensed or not, who operates a motor
5 vehicle in violation of subsection (1) or (3) and by the opera-
6 tion of that motor vehicle causes a serious impairment of a body
7 function of another person is guilty of a felony punishable by
8 imprisonment for not more than 5 years or a fine of not less than
9 \$1,000.00 or more than \$5,000.00, or both. The judgment of sen-
10 tence may impose the sanction permitted under section 625n. As
11 used in this subsection, "serious impairment of a body function"
12 includes, but is not limited to, 1 or more of the following:

- 13 (a) Loss of a limb or use of a limb.
14 (b) Loss of a hand, foot, finger, or thumb or use of a hand,
15 foot, finger, or thumb.
16 (c) Loss of an eye or ear or use of an eye or ear.
17 (d) Loss or substantial impairment of a bodily function.
18 (e) Serious visible disfigurement.
19 (f) A comatose state that lasts for more than 3 days.
20 (g) Measurable brain damage or mental impairment.
21 (h) A skull fracture or other serious bone fracture.
22 (i) Subdural hemorrhage or subdural hematoma.

23 (6) A person who is less than 21 years of age, whether
24 licensed or not, shall not operate a vehicle upon a highway or
25 other place open to the general public or generally accessible to
26 motor vehicles, including an area designated for the parking of
27 vehicles, within this state if the person has any bodily alcohol

1 content. As used in this subsection, "any bodily alcohol
2 content" means either of the following:

3 (a) An alcohol content of not less than 0.02 grams or more
4 than ~~0.07~~ 0.06 grams per 100 milliliters of blood, per 210
5 liters of breath, or per 67 milliliters of urine.

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

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

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

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

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

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

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

21 (i) Community service for not less than 10 days or more than
22 90 days and may be imprisoned for not more than 1 year.

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

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

1 (d) If the violation occurs within 10 years of 2 or more
2 prior convictions, the person is guilty of a felony and shall be
3 sentenced to pay a fine of not less than \$500.00 or more than
4 \$5,000.00 and to either of the following:

5 (i) Imprisonment under the jurisdiction of the department of
6 corrections for not less than 1 year or more than 5 years.

7 (ii) Probation with imprisonment in the county jail for not
8 less than 30 days or more than 1 year. Not less than 48 hours of
9 the imprisonment imposed under this subparagraph shall be served
10 consecutively.

11 (e) The term of imprisonment imposed under subdivision (d)
12 shall not be suspended.

13 (f) The judgment of sentence under this subsection may
14 impose the sanction permitted under section 625n.

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

22 (8) A person who is convicted of violating subsection (2) is
23 guilty of a misdemeanor punishable by imprisonment for not more
24 than 90 days or a fine of not less than \$100.00 or more than
25 \$500.00, or both.

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

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

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

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

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

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

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

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

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

20 (i) Community service for not less than 10 days or more than
21 90 days and may be sentenced to imprisonment for not more than 1
22 year.

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

25 (d) The judgment of sentence under subdivision (b) or (c)
26 may impose the sanction permitted under section 625n.

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

9 (10) If a person is convicted of violating subsection (6),
10 all of the following apply:

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

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

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

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

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

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

21 (c) As used in this subsection, "prior conviction" means a
22 conviction for a violation or attempted violation of subsection
23 (1), (3), (4), (5), or (6), former section 625(1) or (2), or
24 former section 625b, a local ordinance substantially correspond-
25 ing to subsection (1), (3), or (6), former section 625(1) or (2),
26 or former section 625b, or a law of another state substantially

1 corresponding to subsection (1), (3), (4), (5), or (6), former
2 section 625(1) or (2), or former section 625b.

3 (11) In addition to imposing the sanctions prescribed under
4 subsection (4), (5), (7), (9), or (10), the court may order the
5 person to pay the costs of the prosecution under the code of
6 criminal procedure, ~~Act No. 175 of the Public Acts of 1927,~~
7 ~~being sections 760.1 to 776.22 of the Michigan Compiled Laws~~
8 1927 PA 175, MCL 760.1 TO 776.22.

9 (12) The court shall impose licensing sanctions pursuant to
10 section 625b.

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

16 (14) If the prosecuting attorney intends to seek an enhanced
17 sentence under subsection (7)(b) or (d), subsection (9)(b) or
18 (c), or subsection (10)(b) based upon the defendant having 1 or
19 more prior convictions, the prosecuting attorney shall include on
20 the complaint and information, or an amended complaint and infor-
21 mation, filed in district court, circuit court, recorder's court,
22 municipal court, or probate court a statement listing the
23 defendant's prior convictions.

24 (15) If a person is charged with a violation of subsection
25 (1) or (3), the court shall not permit the defendant to enter a
26 plea of guilty or nolo contendere to a charge of violating
27 subsection (6) in exchange for dismissal of the original charge.

1 This subsection does not prohibit the court from dismissing the
2 charge upon the prosecuting attorney's motion.

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

5 (a) An abstract of conviction.

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

7 (c) An admission by the defendant.

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

12 (18) When assessing points and taking licensing action under
13 this act, the secretary of state and the court shall treat a con-
14 viction of an attempted violation of subsection (1), (3), (4),
15 (5), or (6) or a local ordinance substantially corresponding to
16 subsection (1), (3), or (6) or a law of another state substan-
17 tially corresponding to subsection (1), (3), (4), (5), or (6) the
18 same as if the offense had been completed.

19 (19) Except as otherwise provided in subsection (21), if a
20 person is charged with operating a vehicle while under the influ-
21 ence of a controlled substance or a combination of intoxicating
22 liquor and a controlled substance in violation of subsection (1)
23 or a local ordinance substantially corresponding to
24 subsection (1), the court shall require the jury to return a spe-
25 cial verdict in the form of a written finding or, if the court
26 convicts the person without a jury or accepts a plea of guilty or
27 nolo contendere, the court shall make a finding as to whether the

1 person was under the influence of a controlled substance or a
2 combination of intoxicating liquor and a controlled substance at
3 the time of the violation.

4 (20) Except as otherwise provided in subsection (21), if a
5 person is charged with operating a vehicle while his or her abil-
6 ity to operate the vehicle was visibly impaired due to his or her
7 consumption of a controlled substance or a combination of intoxi-
8 cating liquor and a controlled substance in violation of
9 subsection (3) or a local ordinance substantially corresponding
10 to subsection (3), the court shall require the jury to return a
11 special verdict in the form of a written finding or, if the court
12 convicts the person without a jury or accepts a plea of guilty or
13 nolo contendere, the court shall make a finding as to whether,
14 due to the consumption of a controlled substance or a combination
15 of intoxicating liquor and a controlled substance, the person's
16 ability to operate a motor vehicle was visibly impaired at the
17 time of the violation.

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

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

24 (b) Whether the defendant was visibly impaired due to his or
25 her consumption of a controlled substance or a combination of
26 intoxicating liquor and a controlled substance at the time of the
27 violation.

1 (22) If a jury or court ~~makes a finding~~ FINDS under
2 subsection (19), (20), or (21) that the defendant operated a
3 motor vehicle under the influence of or while impaired due to the
4 consumption of a controlled substance or a combination of a con-
5 trolled substance and an intoxicating liquor, the court shall do
6 both of the following:

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

8 (b) On a form or forms prescribed by the state court admin-
9 istrator, forward to the department of state police a record that
10 specifies the penalties imposed by the court, including any term
11 of imprisonment, any licensing sanction imposed under
12 section 625b, and any sanction imposed under section 625n.

13 (23) Except as otherwise provided by law, a record described
14 in subsection (22)(b) is a public record and the department of
15 state police shall retain the information contained on that
16 record for not less than 7 years.

17 (24) In a prosecution for a violation of subsection (6), the
18 defendant bears the burden of proving that the consumption of
19 intoxicating liquor was a part of a generally recognized reli-
20 gious service or ceremony by a preponderance of the evidence.

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

23 (a) The peace officer has reasonable cause to believe the
24 person was, at the time of an accident in this state, the opera-
25 tor of a vehicle involved in the accident and was operating the
26 vehicle in violation of section 625(1), (3), or (6) or a local

1 ordinance substantially corresponding to section 625(1), (3), or
2 (6).

3 (b) The person is found in the driver's seat of a vehicle
4 parked or stopped on a highway or street within this state if any
5 part of the vehicle intrudes into the roadway and the peace offi-
6 cer has reasonable cause to believe the person was operating the
7 vehicle in violation of section 625(1), (3), or (6) or a local
8 ordinance substantially corresponding to section 625(1), (3), or
9 (6).

10 (2) A peace officer who has reasonable cause to believe that
11 a person was operating a vehicle upon a public highway or other
12 place open to the public or generally accessible to motor vehi-
13 cles, including an area designated for the parking of vehicles,
14 within this state and that the person by the consumption of
15 intoxicating liquor may have affected his or her ability to oper-
16 ate a vehicle, or reasonable cause to believe that a person was
17 operating a commercial motor vehicle within the state while the
18 person's blood, breath, or urine contained any measurable amount
19 of alcohol or while the person had any detectable presence of
20 intoxicating liquor, or reasonable cause to believe that a person
21 who is less than 21 years of age was operating a vehicle upon a
22 public highway or other place open to the public or generally
23 accessible to motor vehicles, including an area designated for
24 the parking of vehicles, within this state while the person had
25 any bodily alcohol content as that term is defined in section
26 625(6), may require the person to submit to a preliminary
27 chemical breath analysis. The following provisions apply with

1 respect to a preliminary chemical breath analysis administered
2 pursuant to this subsection:

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

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

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

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

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

22 (c) A person who submits to a preliminary chemical breath
23 analysis remains subject to the requirements of sections 625c,
24 625d, 625e, and 625f for purposes of chemical tests described in
25 those sections.

26 (d) Except as provided in subsection (5), a person who
27 refuses to submit to a preliminary chemical breath analysis upon

1 a lawful request by a peace officer is responsible for a civil
2 infraction.

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

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

20 (5) A person who was operating a commercial motor vehicle
21 and who refuses to submit to a preliminary chemical breath analy-
22 sis upon a peace officer's lawful request is guilty of a misde-
23 meanor punishable by imprisonment for not more than 90 days or a
24 fine of not more than \$100.00, or both.

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

1 (a) The amount of alcohol or presence of a controlled
2 substance or both in a driver's blood or urine or the amount of
3 alcohol in a person's breath at the time alleged as shown by
4 chemical analysis of the person's blood, urine, or breath is
5 admissible into evidence in any civil or criminal proceeding.

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

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

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

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

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

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

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

18 (d) A chemical test described in this subsection shall be
19 administered at the request of a peace officer having reasonable
20 grounds to believe the person has committed a crime described in
21 section 625c(1). A person who takes a chemical test administered
22 at a peace officer's request as provided in this section shall be
23 given a reasonable opportunity to have a person of his or her own
24 choosing administer 1 of the chemical tests described in this
25 subsection within a reasonable time after his or her detention.
26 The test results are admissible and shall be considered with
27 other competent evidence in determining the defendant's innocence

1 or guilt. If the person charged is administered a chemical test
2 by a person of his or her own choosing, the person charged is
3 responsible for obtaining a chemical analysis of the test
4 sample.

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

19 (f) If, after an accident, the driver of a vehicle involved
20 in the accident is deceased, a sample of the decedent's blood
21 shall be withdrawn in a manner directed by the medical examiner
22 to determine the amount of alcohol or the presence of a con-
23 trolled substance, or both, in the decedent's blood. The medical
24 examiner shall give the results of the chemical analysis of the
25 sample to the law enforcement agency investigating the accident
26 and that agency shall forward the results to the department of
27 state police.

1 (g) The department of state police shall promulgate uniform
2 rules pursuant to the administrative procedures act of 1969, ~~Act~~
3 ~~No. 306 of the Public Acts of 1969, being sections 24.201 to~~
4 ~~24.328 of the Michigan Compiled Laws~~ 1969 PA 306, MCL 24.201 TO
5 24.328, for the administration of chemical tests for the purposes
6 of this section. An instrument used for a preliminary chemical
7 breath analysis may be used for a chemical test described in this
8 subsection if approved under rules promulgated by the department
9 of state police.

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

22 (a) An alcohol content of not less than 0.02 grams or more
23 than ~~0.07~~ 0.06 grams per 100 milliliters of blood, per 210
24 liters of breath, or per 67 milliliters of urine.

25 (b) Any presence of alcohol within a person's body resulting
26 from the consumption of intoxicating liquor, other than

1 consumption of intoxicating liquor as a part of a generally
2 recognized religious service or ceremony.

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

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

17 (a) If there were at the time ~~0.07~~ 0.06 grams or less of
18 alcohol per 100 milliliters of the defendant's blood, per 210
19 liters of the defendant's breath, or per 67 milliliters of the
20 defendant's urine, it is presumed that the defendant's ability to
21 operate a motor vehicle was not impaired due to the consumption
22 of intoxicating liquor and that the defendant was not under the
23 influence of intoxicating liquor.

24 (b) If there were at the time more than ~~0.07~~ 0.06 grams
25 but less than ~~0.10~~ 0.08 grams of alcohol per 100 milliliters of
26 the defendant's blood, per 210 liters of the defendant's breath,
27 or per 67 milliliters of the defendant's urine, it is presumed

1 that the defendant's ability to operate a vehicle was impaired
2 within the provisions of section 625(3) due to the consumption of
3 intoxicating liquor.

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

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

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

24 (a) If the person is arrested for a violation of section
25 625(1), (3), (4), (5), or (6), section 625a(5), or section 625m,
26 or a local ordinance substantially corresponding to section
27 625(1), (3), or (6), section 625a(5), or section 625m.

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

13 (i) An alcohol content of not less than 0.02 grams or more
14 than ~~0.07~~ 0.06 grams per 100 milliliters of blood, per 210
15 liters of breath, or per 67 milliliters of urine.

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

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

24 (3) The tests shall be administered as provided in section
25 625a(6).

26 Sec. 625g. (1) If a person refuses a chemical test offered
27 pursuant to section 625a(6), or submits to the chemical test or

1 a chemical test is performed pursuant to a court order and the
2 test reveals an unlawful alcohol content, the peace officer who
3 requested the person to submit to the test shall do all of the
4 following:

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

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

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

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

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

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

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

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

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

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

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

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

26 (b) If the person tested was operating a commercial motor
27 vehicle within this state, 0.04 grams or more of alcohol per 100

1 milliliters of blood, per 210 liters of breath, or per 67
2 milliliters of urine.

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

7 Sec. 625m. (1) A person, whether licensed or not, who has
8 an alcohol content of 0.04 grams or more but not more than ~~0.07~~
9 0.06 grams per 100 milliliters of blood, per 210 liters of
10 breath, or per 67 milliliters of urine shall not operate a com-
11 mercial motor vehicle within this state.

12 (2) A peace officer may arrest a person without a warrant
13 under either of the following circumstances:

14 (a) The peace officer has reasonable cause to believe that
15 the person was, at the time of an accident, the driver of a com-
16 mercial motor vehicle involved in the accident and was operating
17 the vehicle in violation of this section or a local ordinance
18 substantially corresponding to this section.

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

25 (3) A person who is convicted of a violation of this section
26 or a local ordinance substantially corresponding to this section
27 is guilty of a misdemeanor punishable by imprisonment for not

1 more than 90 days or a fine of not more than \$300.00, or both,
2 together with costs of the prosecution. As part of the sentence,
3 the court shall order the secretary of state to suspend the vehi-
4 cle group designations on the person's operator's or chauffeur's
5 license pursuant to section 319b(1)(c) or, if the vehicle was
6 carrying hazardous material required to have a placard pursuant
7 to 49 C.F.R. parts ~~100~~ 106 to 199, pursuant to section
8 319b(1)(d). The court shall not order the secretary of state to
9 issue a restricted license that would permit the person to oper-
10 ate a commercial motor vehicle.

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

1 625(1), (3), (4), or (5), former section 625(1) or (2), or former
2 section 625b, while operating a commercial motor vehicle.

3 (5) When assessing points and taking license actions under
4 this act, the secretary of state and the court shall treat a con-
5 viction for an attempted violation of subsection (1), a local
6 ordinance substantially corresponding to subsection (1), or a law
7 of another state substantially corresponding to subsection (1)
8 the same as if the offense had been completed.