

HOUSE BILL No. 4350

March 2, 1999, Introduced by Reps. Gosselin, Pappageorge, Kukuk, Voorhees, Ehardt, Bradstreet and Jansen and referred to the Committee on Transportation.

A bill to amend 1949 PA 300, entitled "Michigan vehicle code," by amending sections 303, 625, 625a, 625c, 625g, and 625m (MCL 257.303, 257.625, 257.625a, 257.625c, 257.625g, and 257.625m), sections 303 and 625a as amended by 1998 PA 351, sections 625 and 625c as amended by 1998 PA 350, section 625g as amended by 1994 PA 450, and section 625m as amended by 1998 PA 347.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

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

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

3 (d) A person who has been convicted of or received a juve-
4 nile disposition for a violation of section 625(4), (5), or (7).

5 (e) A person who has been convicted of or received a juve-
6 nile disposition for negligent homicide, manslaughter, or murder
7 resulting from the operation of a vehicle.

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

20 (i) Any combination of 2 convictions within 7 years for any
21 of the following or a combination of 1 conviction for a violation
22 or attempted violation of section 625(6) and 1 conviction for any
23 of the following within 7 years:

24 (A) A violation or attempted violation of section 625(1),
25 (3), (4), (5), or (7).

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

1 (C) A violation or attempted violation of section 625m.

2 (D) Negligent homicide, manslaughter, or murder resulting
3 from the operation of a vehicle or an attempt to commit any of
4 those crimes.

5 (ii) Any combination of 3 convictions within 10 years for
6 any of the following or 1 conviction for a violation or attempted
7 violation of section 625(6) and any combination of 2 convictions
8 for any of the following within 10 years, if any of the convic-
9 tions resulted from an arrest on or after January 1, 1992:

10 (A) A violation or attempted violation of section 625(1),
11 (3), (4), (5), or (7).

12 (B) A violation of former section 625(1) or (2) or former
13 section 625b.

14 (C) A violation or attempted violation of section 625m.

15 (D) Negligent homicide, manslaughter, or murder resulting
16 from the operation of a vehicle or an attempt to commit any of
17 those crimes.

18 (g) A person who in the opinion of the secretary of state is
19 afflicted with or suffering from a physical or mental disability
20 or disease preventing that person from exercising reasonable and
21 ordinary control over a motor vehicle while operating the motor
22 vehicle upon the highways.

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

25 (i) A person who is an habitually reckless driver. Two con-
26 victions within 7 years of reckless driving under this act or any
27 other law of this state relating to reckless driving or under a

1 local ordinance of this state or a law of another state that
2 defines the term "reckless driving" substantially similarly to
3 the law of this state are prima facie evidence that the person is
4 an habitually reckless driver.

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

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

14 (l) A person who has been convicted of, has received a juve-
15 nile disposition for, or has been determined responsible for 2 or
16 more moving violations under a law of this state, a local ordi-
17 nance substantially corresponding to a law of this state, or a
18 law of another state substantially corresponding to a law of this
19 state within the preceding 3 years, if the violations occurred
20 before issuance of an original license to the person in this or
21 another state.

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

23 (n) A person who has failed to answer a citation or notice
24 to appear in court or for any matter pending or fails to comply
25 with an order or judgment of the court, including, but not
26 limited to, paying all fines, costs, fees, and assessments, in
27 violation of section 321a, until that person answers the citation

1 or notice to appear in court or for any matter pending or
2 complies with an order or judgment of the court, including, but
3 not limited to, paying all fines, costs, fees, and assessments,
4 as provided under section 321a.

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

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

20 (q) A person not licensed under this act who is determined
21 to have violated section 33b(1) of former 1933 (Ex Sess) PA 8,
22 section 703(1) of the Michigan liquor control code of 1998, 1998
23 PA 58, MCL 436.1703, or section 624a or 624b of this act. The
24 person shall be denied a license under this subdivision for a
25 period of time that corresponds to the period of the licensing
26 sanction that would have been imposed under those sections had
27 the person been licensed at the time of the violation.

1 (r) 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, 1931 PA 328,
4 MCL 750.479a.

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

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

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

15 (c) Any combination of 2 convictions within 7 years for any
16 of the following or a combination of 1 conviction for a violation
17 or attempted violation of section 625(6) and 1 conviction for any
18 of the following within 7 years:

19 (i) A violation or attempted violation of section 625(1),
20 (3), (4), (5), or (7).

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

23 (iii) A violation or attempted violation of section 625m.

24 (iv) Negligent homicide, manslaughter, or murder resulting
25 from the operation of a vehicle or an attempt to commit any of
26 those crimes.

1 (d) One conviction for a violation or attempted violation of
2 section 625(4) or (5).

3 (e) One conviction of negligent homicide, manslaughter, or
4 murder resulting from the operation of a vehicle or an attempt to
5 commit any of those crimes.

6 (f) Any combination of 3 convictions within 10 years for any
7 of the following or 1 conviction for a violation or attempted
8 violation of section 625(6) and any combination of 2 convictions
9 for any of the following within 10 years, if any of the convic-
10 tions resulted from an arrest on or after January 1, 1992:

11 (i) A violation or attempted violation of section 625(1),
12 (3), (4), (5), or (7).

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

15 (iii) A violation or attempted violation of section 625m.

16 (iv) Negligent homicide, manslaughter, or murder resulting
17 from the operation of a vehicle or an attempt to commit any of
18 those crimes.

19 (g) A violation of section 602a(4) or (5) of this act or
20 section 479a(4) or (5) of the Michigan penal code, 1931 PA 328,
21 MCL 750.479a.

22 (3) The secretary of state shall revoke a license under sub-
23 section (2) notwithstanding a court order.

24 (4) The secretary of state shall not issue a license under
25 this act to a person whose license has been revoked under this
26 act or denied under subsection (1)(d), (e), (f), (i), (j), or (r)
27 until all of the following occur, as applicable:

1 (a) The later of the following:

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

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

7 (b) For a denial under subsection (1)(f), (i), or (j) based
8 on prima facie evidence, the person rebuts the presumption
9 resulting from the prima facie evidence by clear and convincing
10 evidence.

11 (c) The person meets the requirements of the department.

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

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

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

22 (b) The vehicle was used to transport a victim of the
23 felony.

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

25 (d) The vehicle was necessary for the commission of the
26 felony.

1 Sec. 625. (1) A person, whether licensed or not, shall not
2 operate a vehicle upon a highway or other place open to the
3 general public or generally accessible to motor vehicles, includ-
4 ing an area designated for the parking of vehicles, within this
5 state if either of the following applies:

6 (a) The person is under the influence of intoxicating
7 liquor, a controlled substance, or a combination of intoxicating
8 liquor and a controlled substance.

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

12 (2) The owner of a vehicle or a person in charge or in con-
13 trol of a vehicle shall not authorize or knowingly permit the
14 vehicle to be operated upon a highway or other place open to the
15 general public or generally accessible to motor vehicles, includ-
16 ing an area designated for the parking of motor vehicles, within
17 this state by a person who is under the influence of intoxicating
18 liquor, a controlled substance, or a combination of intoxicating
19 liquor and a controlled substance or who has an alcohol content
20 of ~~0.10~~ 0.08 grams or more per 100 milliliters of blood, per
21 210 liters of breath, or per 67 milliliters of urine.

22 (3) A person, whether licensed or not, shall not operate a
23 vehicle upon a highway or other place open to the general public
24 or generally accessible to motor vehicles, including an area des-
25 ignated for the parking of vehicles, within this state when, due
26 to the consumption of intoxicating liquor, a controlled
27 substance, or a combination of intoxicating liquor and a

1 controlled substance, the person's ability to operate the vehicle
2 is visibly impaired. If a person is charged with violating sub-
3 section (1), a finding of guilty under this subsection may be
4 rendered.

5 (4) A person, whether licensed or not, who operates a motor
6 vehicle in violation of subsection (1) or (3) and by the opera-
7 tion of that motor vehicle causes the death of another person is
8 guilty of a felony punishable by imprisonment for not more than
9 15 years or a fine of not less than \$2,500.00 or more than
10 \$10,000.00, or both. The judgment of sentence may impose the
11 sanction permitted under section 625n or 904d. If the violation
12 occurs within 7 years of a prior conviction or within 10 years of
13 2 or more prior convictions, the court shall, unless the vehicle
14 is ordered forfeited under section 625n, order vehicle immobili-
15 zation under section 904d in the judgment of sentence.

16 (5) A person, whether licensed or not, who operates a motor
17 vehicle in violation of subsection (1) or (3) and by the opera-
18 tion of that motor vehicle causes a serious impairment of a body
19 function of another person is guilty of a felony punishable by
20 imprisonment for not more than 5 years or a fine of not less than
21 \$1,000.00 or more than \$5,000.00, or both. The judgment of sen-
22 tence may impose the sanction permitted under section 625n or
23 904d. If the violation occurs within 7 years of a prior convic-
24 tion or within 10 years of 2 or more prior convictions, the court
25 shall, unless the vehicle is ordered forfeited under section
26 625n, order vehicle immobilization under section 904d in the
27 judgment of sentence. As used in this subsection, "serious

1 impairment of a body function" includes, but is not limited to, 1
2 or more of the following:

3 (a) Loss of a limb or use of a limb.

4 (b) Loss of a hand, foot, finger, or thumb or use of a hand,
5 foot, finger, or thumb.

6 (c) Loss of an eye or ear or use of an eye or ear.

7 (d) Loss or substantial impairment of a bodily function.

8 (e) Serious visible disfigurement.

9 (f) A comatose state that lasts for more than 3 days.

10 (g) Measurable brain damage or mental impairment.

11 (h) A skull fracture or other serious bone fracture.

12 (i) Subdural hemorrhage or subdural hematoma.

13 (6) A person who is less than 21 years of age, whether
14 licensed or not, shall not operate a vehicle upon a highway or
15 other place open to the general public or generally accessible to
16 motor vehicles, including an area designated for the parking of
17 vehicles, within this state if the person has any bodily alcohol
18 content. As used in this subsection, "any bodily alcohol
19 content" means either of the following:

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

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

1 (7) A person who operates a vehicle in violation of
2 subsection (1), (3), (4), (5), or (6) while another person who is
3 less than 16 years of age is occupying the vehicle is guilty of a
4 misdemeanor punishable by imprisonment for not more than 1 year
5 or a fine of not more than \$1,000.00, or both. The judgment of
6 sentence may impose the sanction permitted under section 625n.
7 If the violation occurs within 7 years of a prior conviction or
8 within 10 years of 2 or more prior convictions, the court shall,
9 unless the vehicle is ordered forfeited under section 625n, order
10 vehicle immobilization under section 904d in the judgment of
11 sentence. This section does not prohibit a person from being
12 charged with, convicted of, or punished for a violation of sub-
13 section (1), (3), (4), (5), or (6) that is committed by the
14 person while violating this subsection. However, points shall
15 not be assessed under section 320a for both a violation of sub-
16 section (1), (3), (4), (5), or (6) and a violation of this sub-
17 section for conduct arising out of the same transaction.

18 (8) If a person is convicted of violating subsection (1),
19 all of the following apply:

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

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

24 (ii) Imprisonment for not more than 93 days.

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

26 (b) If the violation occurs within 7 years of a prior
27 conviction, the person shall be sentenced to pay a fine of not

1 less than \$200.00 or more than \$1,000.00 and 1 or more of the
2 following:

3 (i) Imprisonment for not less than 5 days or more than 1
4 year. Not less than 48 hours of the term of imprisonment imposed
5 under this subparagraph shall be served consecutively.

6 (ii) Community service for not less than 30 days or more
7 than 90 days.

8 (c) If the violation occurs within 10 years of 2 or more
9 prior convictions, the person is guilty of a felony and shall be
10 sentenced to pay a fine of not less than \$500.00 or more than
11 \$5,000.00 and to either of the following:

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

14 (ii) Probation with imprisonment in the county jail for not
15 less than 30 days or more than 1 year and community service for
16 not less than 60 days or more than 180 days. Not less than 48
17 hours of the imprisonment imposed under this subparagraph shall
18 be served consecutively.

19 (d) A term of imprisonment imposed under subdivision (b)(ii)
20 or (c) shall not be suspended.

21 (e) In the judgment of sentence under subdivision (a), the
22 court may order vehicle immobilization as provided in
23 section 904d. In the judgment of sentence under subdivision (b)
24 or (c), the court shall, unless the vehicle is ordered forfeited
25 under section 625n, order vehicle immobilization as provided in
26 section 904d.

1 (f) In the judgment of sentence under subdivision (b) or
2 (c), the court may impose the sanction permitted under
3 section 625n.

4 (9) A person who is convicted of violating subsection (2) is
5 guilty of a crime as follows:

6 (a) Except as provided in subdivisions (b) and (c), a misde-
7 meanor punishable by imprisonment for not more than 93 days or a
8 fine of not less than \$100.00 or more than \$500.00, or both.

9 (b) If the person operating the motor vehicle violated sub-
10 section (4), a felony punishable by imprisonment for not more
11 than 5 years or a fine of not less than \$1,500.00 or more than
12 \$10,000.00, or both.

13 (c) If the person operating the motor vehicle violated sub-
14 section (5), a felony punishable by imprisonment for not more
15 than 2 years or a fine of not less than \$1,000.00 or more than
16 \$5,000.00, or both.

17 (10) If a person is convicted of violating subsection (3),
18 all of the following apply:

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

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

23 (ii) Imprisonment for not more than 93 days.

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

25 (b) If the violation occurs within 7 years of 1 prior con-
26 viction, the person shall be sentenced to pay a fine of not less

1 than \$200.00 or more than \$1,000.00, and 1 or more of the
2 following:

3 (i) Imprisonment for not less than 5 days or more than 1
4 year. Not less than 48 hours of the term of imprisonment imposed
5 under this subparagraph shall be served consecutively.

6 (ii) Community service for not less than 30 days or more
7 than 90 days.

8 (c) If the violation occurs within 10 years of 2 or more
9 prior convictions, the person is guilty of a felony and shall be
10 sentenced to pay a fine of not less than \$500.00 or more than
11 \$5,000.00 and either of the following:

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

14 (ii) Probation with imprisonment in the county jail for not
15 less than 30 days or more than 1 year and community service for
16 not less than 60 days or more than 180 days. Not less than 48
17 hours of the imprisonment imposed under this subparagraph shall
18 be served consecutively.

19 (d) A term of imprisonment imposed under subdivision (b) or
20 (c) shall not be suspended.

21 (e) In the judgment of sentence under subdivision (a), the
22 court may order vehicle immobilization as provided in
23 section 904d. In the judgment of sentence under subdivision (b)
24 or (c), the court shall, unless the vehicle is ordered forfeited
25 under section 625n, order vehicle immobilization as provided in
26 section 904d.

1 (f) In the judgment of sentence under subdivision (b) or
2 (c), the court may impose the sanction permitted under
3 section 625n.

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

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

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

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

11 (b) If the violation occurs within 7 years of 1 or more
12 prior convictions, the person may be sentenced to 1 or more of
13 the following:

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

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

16 (iii) Imprisonment for not more than 93 days.

17 (12) In addition to imposing the sanctions prescribed under
18 this section, the court may order the person to pay the costs of
19 the prosecution under the code of criminal procedure, 1927
20 PA 175, MCL 760.1 to 776.22.

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

26 (14) If the prosecuting attorney intends to seek an enhanced
27 sentence under this section or a sanction under section 625n or

1 904d based upon the defendant having 1 or more prior convictions,
2 the prosecuting attorney shall include on the complaint and
3 information, or an amended complaint and information, filed in
4 district court, circuit court, municipal court, or family divi-
5 sion of circuit court, a statement listing the defendant's prior
6 convictions.

7 (15) If a person is charged with a violation of subsection
8 (1), (3), (4), (5), or (7) or section 625m, the court shall not
9 permit the defendant to enter a plea of guilty or nolo contendere
10 to a charge of violating subsection (6) in exchange for dismissal
11 of the original charge. This subsection does not prohibit the
12 court from dismissing the charge upon the prosecuting attorney's
13 motion.

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

16 (a) An abstract of conviction.

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

18 (c) An admission by the defendant.

19 (17) Except as otherwise provided in subsection (19), 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 (18) Except as otherwise provided in subsection (19), 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 (19) A special verdict described in subsections (17) and
19 (18) 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 (20) If a jury or court finds under subsection (17), (18),
2 or (19) that the defendant operated a motor vehicle under the
3 influence of or while impaired due to the consumption of a con-
4 trolled substance or a combination of a controlled substance and
5 an intoxicating liquor, the court shall do both of the
6 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, and any sanction imposed under section 625n or
12 904d.

13 (21) Except as otherwise provided by law, a record described
14 in subsection (20)(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 (22) 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 (23) Subject to subsection (25), as used in this section,
22 "prior conviction" means a conviction for any of the following,
23 whether under a law of this state, a local ordinance substan-
24 tially corresponding to a law of this state, or a law of another
25 state substantially corresponding to a law of this state:

26 (a) Except as provided in subsection (24), a violation or
27 attempted violation of subsection (1), (3), (4), (5), (6), or

1 (7), section 625m, former section 625(1) or (2), or former
2 section 625b.

3 (b) Negligent homicide, manslaughter, or murder resulting
4 from the operation of a vehicle or an attempt to commit any of
5 those crimes.

6 (24) Except for purposes of the enhancement described in
7 subsection (11)(b), only 1 violation or attempted violation of
8 subsection (6), a local ordinance substantially corresponding to
9 subsection (6), or a law of another state substantially corre-
10 sponding to subsection (6) may be used as a prior conviction.

11 (25) If 2 or more convictions described in subsection (23)
12 are convictions for violations arising out of the same transac-
13 tion, only 1 conviction shall be used to determine whether the
14 person has a prior conviction.

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

17 (a) The peace officer has reasonable cause to believe the
18 person was, at the time of an accident in this state, the opera-
19 tor of a vehicle involved in the accident and was operating the
20 vehicle in violation of section 625 or a local ordinance substan-
21 tially corresponding to section 625.

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

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

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

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

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

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

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

17 (c) A person who submits to a preliminary chemical breath
18 analysis remains subject to the requirements of sections 625c,
19 625d, 625e, and 625f for purposes of chemical tests described in
20 those sections.

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

25 (3) A peace officer shall use the results of a preliminary
26 chemical breath analysis conducted pursuant to this section to
27 determine whether to order a person out-of-service under

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

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

15 (5) A person who was operating a commercial motor vehicle
16 and who refuses to submit to a preliminary chemical breath analy-
17 sis upon a peace officer's lawful request is guilty of a misde-
18 meanor punishable by imprisonment for not more than 93 days or a
19 fine of not more than \$100.00, or both.

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

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

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

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

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

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

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

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

23 (c) A sample or specimen of urine or breath shall be taken
24 and collected in a reasonable manner. Only a licensed physician,
25 or an individual operating under the delegation of a licensed
26 physician under section 16215 of the public health code, 1978 PA
27 368, MCL 333.16215, qualified to withdraw blood and acting in a

1 medical environment, may withdraw blood at a peace officer's
2 request to determine the amount of alcohol or presence of a con-
3 trolled substance or both in the person's blood, as provided in
4 this subsection. Liability for a crime or civil damages predi-
5 cated on the act of withdrawing or analyzing blood and related
6 procedures does not attach to a licensed physician or individual
7 operating under the delegation of a licensed physician who with-
8 draws or analyzes blood or assists in the withdrawal or analysis
9 in accordance with this act unless the withdrawal or analysis is
10 performed in a negligent manner.

11 (d) A chemical test described in this subsection shall be
12 administered at the request of a peace officer having reasonable
13 grounds to believe the person has committed a crime described in
14 section 625c(1). A person who takes a chemical test administered
15 at a peace officer's request as provided in this section shall be
16 given a reasonable opportunity to have a person of his or her own
17 choosing administer 1 of the chemical tests described in this
18 subsection within a reasonable time after his or her detention.
19 The test results are admissible and shall be considered with
20 other admissible evidence in determining the defendant's inno-
21 cence or guilt. If the person charged is administered a chemical
22 test by a person of his or her own choosing, the person charged
23 is responsible for obtaining a chemical analysis of the test
24 sample.

25 (e) If, after an accident, the driver of a vehicle involved
26 in the accident is transported to a medical facility and a sample
27 of the driver's blood is withdrawn at that time for medical

1 treatment, the results of a chemical analysis of that sample are
2 admissible in any civil or criminal proceeding to show the amount
3 of alcohol or presence of a controlled substance or both in the
4 person's blood at the time alleged, regardless of whether the
5 person had been offered or had refused a chemical test. The med-
6 ical facility or person performing the chemical analysis shall
7 disclose the results of the analysis to a prosecuting attorney
8 who requests the results for use in a criminal prosecution as
9 provided in this subdivision. A medical facility or person dis-
10 closing information in compliance with this subsection is not
11 civilly or criminally liable for making the disclosure.

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

21 (g) The department of state police shall promulgate uniform
22 rules in compliance with the administrative procedures act of
23 1969, 1969 PA 306, MCL 24.201 to 24.328, for the administration
24 of chemical tests for the purposes of this section. An instru-
25 ment used for a preliminary chemical breath analysis may be used
26 for a chemical test described in this subsection if approved
27 under rules promulgated by the department of state police.

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

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

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

20 (8) If a chemical test described in subsection (6) is admin-
21 istered, the test results shall be made available to the person
22 charged or the person's attorney upon written request to the
23 prosecution, with a copy of the request filed with the court.
24 The prosecution shall furnish the results at least 2 days before
25 the day of the trial. The prosecution shall offer the test
26 results as evidence in that trial. Failure to fully comply with

1 the request bars the admission of the results into evidence by
2 the prosecution.

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

8 (a) If there were at the time ~~0.07~~ 0.05 grams or less of
9 alcohol per 100 milliliters of the defendant's blood, per 210
10 liters of the defendant's breath, or per 67 milliliters of the
11 defendant's urine, it is presumed that the defendant's ability to
12 operate a motor vehicle was not impaired due to the consumption
13 of intoxicating liquor and that the defendant was not under the
14 influence of intoxicating liquor.

15 (b) If there were at the time more than ~~0.07~~ 0.05 grams
16 but less than ~~0.10~~ 0.08 grams of alcohol per 100 milliliters of
17 the defendant's blood, per 210 liters of the defendant's breath,
18 or per 67 milliliters of the defendant's urine, it is presumed
19 that the defendant's ability to operate a vehicle was impaired
20 within the provisions of section 625(3) due to the consumption of
21 intoxicating liquor.

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

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

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

16 (a) If the person is arrested for a violation of section
17 625(1), (3), (4), (5), (6), or (7), section 625a(5), or section
18 625m or a local ordinance substantially corresponding to section
19 625(1), (3), or (6), section 625a(5), or section 625m.

20 (b) If the person is arrested for felonious driving, negli-
21 gent homicide, manslaughter, or murder resulting from the opera-
22 tion of a motor vehicle, and the peace officer had reasonable
23 grounds to believe the person was operating the vehicle while
24 impaired by or under the influence of intoxicating liquor or a
25 controlled substance or a combination of intoxicating liquor and
26 a controlled substance, or while having an alcohol content of
27 ~~0.10~~ 0.08 grams or more per 100 milliliters of blood, per 210

1 liters of breath, or per 67 milliliters of urine, or if the
2 person is less than 21 years of age while having any bodily alco-
3 hol content. As used in this subdivision, "any bodily alcohol
4 content" means either of the following:

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

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

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

16 (3) The tests shall be administered as provided in section
17 625a(6).

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

24 (a) On behalf of the secretary of state, immediately confis-
25 cate the person's license or permit to operate a motor vehicle
26 and, if the person is otherwise eligible for a license or permit,
27 issue a temporary license or permit to the person. The temporary

1 license or permit shall be on a form provided by the secretary of
2 state.

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

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

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

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

12 (2) If a person submits to a chemical test offered pursuant
13 to section 625a(6) that requires an analysis of blood or urine
14 and a report of the results of that chemical test is not immedi-
15 ately available, the peace officer who requested the person to
16 submit to the test shall comply with subsection (1)(a) pending
17 receipt of the test report. If the report reveals an unlawful
18 alcohol content, the peace officer who requested the person to
19 submit to the test shall immediately comply with
20 subsection (1)(b). If the report does not reveal an unlawful
21 alcohol content, the peace officer who requested the person to
22 submit to the test shall immediately notify the person of the
23 test results and immediately return the person's license or
24 permit by first-class mail to the address given at the time of
25 arrest.

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

1 (a) If the case is not prosecuted, for 90 days after
2 issuance or until the person's license or permit is suspended
3 pursuant to section 625f, whichever occurs earlier. The prose-
4 cuting attorney shall notify the secretary of state if a case
5 referred to the prosecuting attorney is not prosecuted. The
6 arresting law enforcement agency shall notify the secretary of
7 state if a case is not referred to the prosecuting attorney for
8 prosecution.

9 (b) If the case is prosecuted, until the criminal charges
10 against the person are dismissed, the person pleads guilty or
11 nolo contendere to or is found guilty of or acquitted of those
12 charges, or the person's license or permit is suspended pursuant
13 to section 625f, whichever occurs earlier.

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

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

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

23 (c) If the person tested is not a person described in
24 subdivision (a) or (b), ~~0.10~~ 0.08 grams or more of alcohol per
25 100 milliliters of blood, per 210 liters of breath, or per 67
26 milliliters of urine.

1 Sec. 625m. (1) A person, whether licensed or not, who has
2 an alcohol content of 0.04 grams or more but not more than ~~0.07~~
3 0.05 grams per 100 milliliters of blood, per 210 liters of
4 breath, or per 67 milliliters of urine shall not operate a com-
5 mercial motor vehicle within this state.

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

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

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

19 (3) Except as otherwise provided in subsections (4) and (5),
20 a person who is convicted of a violation of this section or a
21 local ordinance substantially corresponding to this section is
22 guilty of a misdemeanor punishable by imprisonment for not more
23 than 93 days or a fine of not more than \$300.00, or both,
24 together with costs of the prosecution.

25 (4) A person who violates this section or a local ordinance
26 substantially corresponding to this section within 7 years of 1

1 prior conviction may be sentenced to imprisonment for not more
2 than 1 year or a fine of not more than \$1,000.00, or both.

3 (5) A person who violates this section or a local ordinance
4 substantially corresponding to this section within 10 years of 2
5 or more prior convictions is guilty of a felony and shall be sen-
6 tenced to pay a fine of not less than \$500.00 or more than
7 \$5,000.00 and to either of the following:

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

10 (b) Probation with imprisonment in the county jail for not
11 less than 30 days or more than 1 year and community service for
12 not less than 60 days or more than 180 days. Not less than 48
13 hours of the imprisonment imposed under this subdivision shall be
14 served consecutively.

15 (6) A term of imprisonment imposed under subsection (4) or
16 (5) shall not be suspended.

17 (7) Subject to subsection (9), as used in this section,
18 "prior conviction" means a conviction for any of the following,
19 whether under a law of this state, a local ordinance substan-
20 tially corresponding to a law of this state, or a law of another
21 state substantially corresponding to a law of this state:

22 (a) Except as provided in subsection (8), a violation or
23 attempted violation of this section, section 625(1), (3), (4),
24 (5), (6), or (7), former section 625(1) or (2), or former section
25 625b.

1 (b) Negligent homicide, manslaughter, or murder resulting
2 from the operation of a vehicle or an attempt to commit any of
3 those crimes.

4 (8) Only 1 violation or attempted violation of
5 section 625(6), a local ordinance substantially corresponding to
6 section 625(6), or a law of another state substantially corre-
7 sponding to section 625(6) may be used as a prior conviction.

8 (9) If 2 or more convictions described in subsection (7) are
9 convictions for violations arising out of the same transaction,
10 only 1 conviction shall be used to determine whether the person
11 has a prior conviction.

12 Enacting section 1. This amendatory act does not take
13 effect unless Senate Bill No. ___ or House Bill No. ___ (request
14 no. 02049'99 a) of the 90th Legislature is enacted into law.