

HOUSE BILL No. 4134

February 6, 2001, Introduced by Reps. Gosselin, Bradstreet and Hager and referred to the Committee on Regulatory Reform.

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, 625, and 625m as amended by 2000 PA 460,
section 625a as amended by 1998 PA 351, section 625c as amended
by 1998 PA 350, and section 625g as amended by 1999 PA 73.

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) or (5), sec-
5 tion 653a(4), or section 904(4) or (5).

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

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

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

25 (A) A violation or attempted violation of section 625(1),
26 (3), (4), (5), or (7), section 653a(4), or section 904(4) or
27 (5).

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

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

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

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

12 (A) A violation or attempted violation of section 625(1),
13 (3), (4), (5), or (7), section 653a(4), or section 904(4) or
14 (5).

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

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

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

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

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

1 (i) A person who is an habitually reckless driver. Two
2 convictions within 7 years for violating any combination of sec-
3 tion 626 or section 653a(3) or a local ordinance of this state or
4 a law of another state substantially similar to section 626 or
5 section 653a(3) are prima facie evidence that the person is an
6 habitually reckless driver.

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

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

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

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

25 (n) A person who has failed to answer a citation or notice
26 to appear in court or for any matter pending or fails to comply
27 with an order or judgment of the court, including, but not

1 limited to, paying all fines, costs, fees, and assessments, in
2 violation of section 321a, until that person answers the citation
3 or notice to appear in court or for any matter pending or com-
4 plies with an order or judgment of the court, including, but not
5 limited to, paying all fines, costs, fees, and assessments, as
6 provided under section 321a.

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

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

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

1 sanction that would have been imposed under those sections had
2 the person been licensed at the time of the violation.

3 (r) A person who has been convicted of a violation of sec-
4 tion 602a(4) or (5) of this act or a violation of section 479a(4)
5 or (5) of the Michigan penal code, 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) Any combination of 2 convictions within 7 years for any
13 of the following:

14 (i) Reckless driving in violation of section 626.

15 (ii) A violation or attempted violation of section 653a(3).

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

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

22 (i) A violation or attempted violation of section 625(1),
23 (3), (4), (5), or (7), section 653a(4), or section 904(4) or
24 (5).

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

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

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

5 (d) One conviction for a violation or attempted violation of
6 section 625(4) or (5), section 653a(4), or section 904(4) or
7 (5).

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

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

16 (i) A violation or attempted violation of section 625(1),
17 (3), (4), (5), or (7), section 653a(4), or section 904(4) or
18 (5).

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

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

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

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

1 (3) The secretary of state shall revoke a license under
2 subsection (2) notwithstanding a court order.

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

7 (a) The later of the following:

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

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

13 (b) For a denial under subsection (1)(f), (i), or (j) based
14 on prima facie evidence, the person rebuts the presumption
15 resulting from the prima facie evidence by clear and convincing
16 evidence.

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

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

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

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

2 (b) The vehicle was used to transport a victim of the
3 felony.

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

5 (d) The vehicle was necessary for the commission of the
6 felony.

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

12 (a) The person is under the influence of intoxicating
13 liquor, a controlled substance, or a combination of intoxicating
14 liquor and a controlled substance.

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

18 (2) The owner of a vehicle or a person in charge or in con-
19 trol of a vehicle shall not authorize or knowingly permit the
20 vehicle to be operated upon a highway or other place open to the
21 general public or generally accessible to motor vehicles, includ-
22 ing an area designated for the parking of motor vehicles, within
23 this state by a person who is under the influence of intoxicating
24 liquor, a controlled substance, or a combination of intoxicating
25 liquor and a controlled substance, who has an alcohol content of
26 ~~0.10~~ 0.08 grams or more per 100 milliliters of blood, per 210
27 liters of breath, or per 67 milliliters of urine, or whose

1 ability to operate the motor vehicle is visibly impaired due to
2 the consumption of intoxicating liquor, a controlled substance,
3 or a combination of intoxicating liquor and a controlled
4 substance.

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

14 (4) A person, whether licensed or not, who operates a motor
15 vehicle in violation of subsection (1) or (3) and by the opera-
16 tion of that motor vehicle causes the death of another person is
17 guilty of a crime as follows:

18 (a) Except as provided in subdivision (b), the person is
19 guilty of a felony punishable by imprisonment for not more than
20 15 years or a fine of not less than \$2,500.00 or more than
21 \$10,000.00, or both. The judgment of sentence may impose the
22 sanction permitted under section 625n. If the vehicle is not
23 ordered forfeited under section 625n, the court shall order vehi-
24 cle immobilization under section 904d in the judgment of
25 sentence.

26 (b) If, at the time of the violation, the person is
27 operating a motor vehicle in a manner proscribed under section

1 653a and causes the death of a police officer, firefighter, or
2 other emergency response personnel, the person is guilty of a
3 felony punishable by imprisonment for not more than 20 years or a
4 fine of not less than \$2,500.00 or more than \$10,000.00, or
5 both. This subdivision applies regardless of whether the person
6 is charged with the violation of section 653a. The judgment of
7 sentence may impose the sanction permitted under section 625n.
8 If the vehicle is not ordered forfeited under section 625n, the
9 court shall order vehicle immobilization under section 904d in
10 the judgment of sentence.

11 (5) A person, whether licensed or not, who operates a motor
12 vehicle in violation of subsection (1) or (3) and by the opera-
13 tion of that motor vehicle causes a serious impairment of a body
14 function of another person is guilty of a felony punishable by
15 imprisonment for not more than 5 years or a fine of not less than
16 \$1,000.00 or more than \$5,000.00, or both. The judgment of sen-
17 tence may impose the sanction permitted under section 625n. If
18 the vehicle is not ordered forfeited under section 625n, the
19 court shall order vehicle immobilization under section 904d in
20 the judgment of sentence. As used in this subsection, "serious
21 impairment of a body function" includes, but is not limited to, 1
22 or more of the following:

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

24 (b) Loss of a hand, foot, finger, or thumb or use of a hand,
25 foot, finger, or thumb.

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

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

(e) Serious visible disfigurement.

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

(g) Measurable brain damage or mental impairment.

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

(i) Subdural hemorrhage or subdural hematoma.

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

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

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

(7) A person, whether licensed or not, is subject to the following requirements:

(a) He or she shall not operate a vehicle in violation of subsection (1), (3), (4), or (5) while another person who is less than 16 years of age is occupying the vehicle. A person who violates this subdivision is guilty of a crime punishable as follows:

1 (i) Except as provided in subparagraph (ii), a person who
2 violates this subdivision is guilty of a misdemeanor and shall be
3 sentenced to pay a fine of not less than \$200.00 or more than
4 \$1,000.00 and to 1 or more of the following:

5 (A) Imprisonment for not less than 5 days or more than 1
6 year. Not less than 48 hours of this imprisonment shall be
7 served consecutively. This term of imprisonment shall not be
8 suspended.

9 (B) Community service for not less than 30 days or more than
10 90 days.

11 (ii) If the violation occurs within 7 years of a prior con-
12 viction or within 10 years of 2 or more prior convictions, a
13 person who violates this subdivision is guilty of a felony and
14 shall be sentenced to pay a fine of not less than \$500.00 or more
15 than \$5,000.00 and to either of the following:

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

18 (B) Probation with imprisonment in the county jail for not
19 less than 30 days or more than 1 year and community service for
20 not less than 60 days or more than 180 days. Not less than 48
21 hours of this imprisonment shall be served consecutively. This
22 term of imprisonment shall not be suspended.

23 (b) He or she shall not operate a vehicle in violation of
24 subsection (6) while another person who is less than 16 years of
25 age is occupying the vehicle. A person who violates this subdi-
26 vision is guilty of a misdemeanor punishable as follows:

1 (i) Except as provided in subparagraph (ii), a person who
2 violates this subdivision may be sentenced to 1 or more of the
3 following:

4 (A) Community service for not more than 60 days.

5 (B) A fine of not more than \$500.00.

6 (C) Imprisonment for not more than 93 days.

7 (ii) If the violation occurs within 7 years of a prior con-
8 viction or within 10 years of 2 or more prior convictions, a
9 person who violates this subdivision shall be sentenced to pay a
10 fine of not less than \$200.00 or more than \$1,000.00 and to 1 or
11 more of the following:

12 (A) Imprisonment for not less than 5 days or more than 1
13 year. Not less than 48 hours of this imprisonment shall be
14 served consecutively. This term of imprisonment shall not be
15 suspended.

16 (B) Community service for not less than 30 days or more than
17 90 days.

18 (c) In the judgment of sentence under subdivision (a)(i) or
19 (b)(i), the court may, unless the vehicle is ordered forfeited
20 under section 625n, order vehicle immobilization as provided in
21 section 904d. In the judgment of sentence under subdivision
22 (a)(ii) or (b)(ii), the court shall, unless the vehicle is
23 ordered forfeited under section 625n, order vehicle immobiliza-
24 tion as provided in section 904d.

25 (d) This subsection does not prohibit a person from being
26 charged with, convicted of, or punished for a violation of
27 subsection (4) or (5) that is committed by the person while

1 violating this subsection. However, points shall not be assessed
2 under section 320a for both a violation of subsection (4) or (5)
3 and a violation of this subsection for conduct arising out of the
4 same transaction.

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

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

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

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

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

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

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

20 (ii) Community service for not less than 30 days or more
21 than 90 days.

22 (c) If the violation occurs within 10 years of 2 or more
23 prior convictions, the person is guilty of a felony and shall be
24 sentenced to pay a fine of not less than \$500.00 or more than
25 \$5,000.00 and to either of the following:

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

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

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

8 (e) In the judgment of sentence under subdivision (a), the
9 court may order vehicle immobilization as provided in
10 section 904d. In the judgment of sentence under subdivision (b)
11 or (c), the court shall, unless the vehicle is ordered forfeited
12 under section 625n, order vehicle immobilization as provided in
13 section 904d.

14 (f) In the judgment of sentence under subdivision (b) or
15 (c), the court may impose the sanction permitted under
16 section 625n.

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

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

22 (b) If the person operating the motor vehicle violated sub-
23 section (4), a felony punishable by imprisonment for not more
24 than 5 years or a fine of not less than \$1,500.00 or more than
25 \$10,000.00, or both.

26 (c) If the person operating the motor vehicle violated
27 subsection (5), a felony punishable by imprisonment for not more

1 than 2 years or a fine of not less than \$1,000.00 or more than
2 \$5,000.00, or both.

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

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

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

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

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

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

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

18 (ii) Community service for not less than 30 days or more
19 than 90 days.

20 (c) If the violation occurs within 10 years of 2 or more
21 prior convictions, the person is guilty of a felony and shall be
22 sentenced to pay a fine of not less than \$500.00 or more than
23 \$5,000.00 and either of the following:

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

26 (ii) Probation with imprisonment in the county jail for not
27 less than 30 days or more than 1 year and community service for

1 not less than 60 days or more than 180 days. Not less than 48
2 hours of the imprisonment imposed under this subparagraph shall
3 be served consecutively.

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

6 (e) In the judgment of sentence under subdivision (a), the
7 court may order vehicle immobilization as provided in
8 section 904d. In the judgment of sentence under subdivision (b)
9 or (c), the court shall, unless the vehicle is ordered forfeited
10 under section 625n, order vehicle immobilization as provided in
11 section 904d.

12 (f) In the judgment of sentence under subdivision (b) or
13 (c), the court may impose the sanction permitted under
14 section 625n.

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

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

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

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

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

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

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

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

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

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

11 (14) If the prosecuting attorney intends to seek an enhanced
12 sentence under this section or a sanction under section 625n
13 based upon the defendant having 1 or more prior convictions, the
14 prosecuting attorney shall include on the complaint and informa-
15 tion, or an amended complaint and information, filed in district
16 court, circuit court, municipal court, or family division of cir-
17 cuit court, a statement listing the defendant's prior
18 convictions.

19 (15) If a person is charged with a violation of subsection
20 (1), (3), (4), (5), or (7) or section 625m, the court shall not
21 permit the defendant to enter a plea of guilty or nolo contendere
22 to a charge of violating subsection (6) in exchange for dismissal
23 of the original charge. This subsection does not prohibit the
24 court from dismissing the charge upon the prosecuting attorney's
25 motion.

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

1 (a) An abstract of conviction.

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

3 (c) An admission by the defendant.

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

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

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

3 (19) A special verdict described in subsections (17) and
4 (18) is not required if a jury is instructed to make a finding
5 solely as to either of the following:

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

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

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

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

20 (b) On a form or forms prescribed by the state court admin-
21 istrators, forward to the department of state police a record that
22 specifies the penalties imposed by the court, including any term
23 of imprisonment, and any sanction imposed under section 625n or
24 904d.

25 (21) Except as otherwise provided by law, a record described
26 in subsection (20)(b) is a public record and the department of

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

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

7 (23) Subject to subsection (25), as used in this section,
8 "prior conviction" means a conviction for any of the following,
9 whether under a law of this state, a local ordinance substan-
10 tially corresponding to a law of this state, or a law of another
11 state substantially corresponding to a law of this state:

12 (a) Except as provided in subsection (24), a violation or
13 attempted violation of subsection (1), (3), (4), (5), (6), or
14 (7), section 625m, former section 625(1) or (2), or former sec-
15 tion 625b.

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

19 (c) A violation of section 653a(4).

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

25 (25) If 2 or more convictions described in subsection (23)
26 are convictions for violations arising out of the same

1 transaction, only 1 conviction shall be used to determine whether
2 the person has a prior conviction.

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

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

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

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

1 public highway or other place open to the public or generally
2 accessible to motor vehicles, including an area designated for
3 the parking of vehicles, within this state while the person had
4 any bodily alcohol content as that term is defined in section
5 625(6), may require the person to submit to a preliminary chemi-
6 cal breath analysis. The following provisions apply with respect
7 to a preliminary chemical breath analysis administered under this
8 subsection:

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

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

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

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

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

1 breath alcohol content was lower at the time of the charged
2 offense than when a chemical test was administered under subsec-
3 tion (6).

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

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

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

22 (4) A person who was operating a commercial motor vehicle
23 and who is requested to submit to a preliminary chemical breath
24 analysis under this section shall be advised that refusing a
25 peace officer's request to take a test described in this section
26 is a misdemeanor punishable by imprisonment for not more than 93

1 days or a fine of not more than \$100.00, or both, and will result
2 in the issuance of a 24-hour out-of-service order.

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

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

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

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

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

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

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

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

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

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

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

15 (e) If, after an accident, the driver of a vehicle involved
16 in the accident is transported to a medical facility and a sample
17 of the driver's blood is withdrawn at that time for medical
18 treatment, the results of a chemical analysis of that sample are
19 admissible in any civil or criminal proceeding to show the amount
20 of alcohol or presence of a controlled substance or both in the
21 person's blood at the time alleged, regardless of whether the
22 person had been offered or had refused a chemical test. The med-
23 ical facility or person performing the chemical analysis shall
24 disclose the results of the analysis to a prosecuting attorney
25 who requests the results for use in a criminal prosecution as
26 provided in this subdivision. A medical facility or person

1 disclosing information in compliance with this subsection is not
2 civilly or criminally liable for making the disclosure.

3 (f) If, after an accident, the driver of a vehicle involved
4 in the accident is deceased, a sample of the decedent's blood
5 shall be withdrawn in a manner directed by the medical examiner
6 to determine the amount of alcohol or the presence of a con-
7 trolled substance, or both, in the decedent's blood. The medical
8 examiner shall give the results of the chemical analysis of the
9 sample to the law enforcement agency investigating the accident
10 and that agency shall forward the results to the department of
11 state police.

12 (g) The department of state police shall promulgate uniform
13 rules in compliance with the administrative procedures act of
14 1969, 1969 PA 306, MCL 24.201 to 24.328, for the administration
15 of chemical tests for the purposes of this section. An instru-
16 ment used for a preliminary chemical breath analysis may be used
17 for a chemical test described in this subsection if approved
18 under rules promulgated by the department of state police.

19 (7) The provisions of subsection (6) relating to chemical
20 testing do not limit the introduction of any other admissible
21 evidence bearing upon the question of whether a person was
22 impaired by, or under the influence of, intoxicating liquor or a
23 controlled substance, or a combination of intoxicating liquor and
24 a controlled substance, or whether the person had an alcohol con-
25 tent of ~~0.10~~ 0.08 grams or more per 100 milliliters of blood,
26 per 210 liters of breath, or per 67 milliliters of urine, or if
27 the person is less than 21 years of age, whether the person had

1 any bodily alcohol content within his or her body. As used in
2 this section, "any bodily alcohol content" means either of the
3 following:

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

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

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

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

25 (a) If there were at the time ~~0.07~~ 0.05 grams or less of
26 alcohol per 100 milliliters of the defendant's blood, per 210
27 liters of the defendant's breath, or per 67 milliliters of the

1 defendant's urine, it is presumed that the defendant's ability to
2 operate a motor vehicle was not impaired due to the consumption
3 of intoxicating liquor and that the defendant was not under the
4 influence of intoxicating liquor.

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

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

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

23 Sec. 625c. (1) A person who operates a vehicle upon a
24 public highway or other place open to the general public or gen-
25 erally accessible to motor vehicles, including an area designated
26 for the parking of vehicles, within this state is considered to
27 have given consent to chemical tests of his or her blood, breath,

1 or urine for the purpose of determining the amount of alcohol or
2 presence of a controlled substance or both in his or her blood or
3 urine or the amount of alcohol in his or her breath in all of the
4 following circumstances:

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

9 (b) If the person is arrested for felonious driving, negli-
10 gent homicide, manslaughter, or murder resulting from the opera-
11 tion of a motor vehicle, and the peace officer had reasonable
12 grounds to believe the person was operating the vehicle while
13 impaired by or under the influence of intoxicating liquor or a
14 controlled substance or a combination of intoxicating liquor and
15 a controlled substance, or while having an alcohol content of
16 ~~0.10~~ 0.08 grams or more per 100 milliliters of blood, per 210
17 liters of breath, or per 67 milliliters of urine, or if the
18 person is less than 21 years of age while having any bodily alco-
19 hol content. As used in this subdivision, "any bodily alcohol
20 content" means either of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (b) If the case is prosecuted, until the criminal charges
26 against the person are dismissed, the person is acquitted of

1 those charges, or the person's license or permit is suspended,
2 restricted, or revoked.

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

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

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

12 (c) If the person tested is not a person described in
13 subdivision (a) or (b), ~~0.10~~ 0.08 grams or more of alcohol per
14 100 milliliters of blood, per 210 liters of breath, or per 67
15 milliliters of urine.

16 Sec. 625m. (1) A person, whether licensed or not, who has
17 an alcohol content of 0.04 grams or more but not more than ~~0.07~~
18 0.05 grams per 100 milliliters of blood, per 210 liters of
19 breath, or per 67 milliliters of urine shall not operate a com-
20 mercial motor vehicle within this state.

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

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

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

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

13 (4) A person who violates this section or a local ordinance
14 substantially corresponding to this section within 7 years of 1
15 prior conviction may be sentenced to imprisonment for not more
16 than 1 year or a fine of not more than \$1,000.00, or both.

17 (5) A person who violates this section or a local ordinance
18 substantially corresponding to this section within 10 years of 2
19 or more prior convictions is guilty of a felony and shall be sen-
20 tenced to pay a fine of not less than \$500.00 or more than
21 \$5,000.00 and to either of the following:

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

24 (b) Probation with imprisonment in the county jail for not
25 less than 30 days or more than 1 year and community service for
26 not less than 60 days or more than 180 days. Not less than 48

1 hours of the imprisonment imposed under this subdivision shall be
2 served consecutively.

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

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

10 (a) Except as provided in subsection (8), a violation or
11 attempted violation of this section, section 625(1), (3), (4),
12 (5), (6), or (7), former section 625(1) or (2), or former section
13 625b.

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

17 (c) A violation of section 653a(4).

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

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

26 Enacting section 1. This amendatory act does not take
27 effect unless Senate Bill No. _____ or House Bill No. 4084

1 (request no. 00120'01 a) of the 91st Legislature is enacted into
2 law.