

SENATE BILL No. 1487

December 1, 2004, Introduced by Senators SCHAUER, JACOBS and CHERRY and referred to the Committee on Transportation.

A bill to amend 1949 PA 300, entitled "Michigan vehicle code," by amending sections 625a, 625c, 625d, 625e, and 625f (MCL 257.625a, 257.625c, 257.625d, 257.625e, and 257.625f), sections 625a, 625c, and 625f as amended by 2003 PA 61, section 625d as amended by 1994 PA 211, and section 625e as amended by 1991 PA 104, and by adding section 306a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 306a. (1) A person shall not accompany a student for
2 purposes of section 306 if any of the following apply:

3 (a) The person is under the influence of intoxicating liquor,
4 a controlled substance, or a combination of intoxicating liquor
5 and a controlled substance.

6 (b) The person's ability to direct the operation of a motor
7 vehicle is impaired due to the consumption of intoxicating

1 liquor, a controlled substance, or a combination of intoxicating
2 liquor and a controlled substance.

3 (c) The person has an alcohol content of 0.08 grams or more
4 per 100 milliliters of blood, per 210 liters of breath, or per 67
5 milliliters of urine.

6 (2) A person who violates this section is guilty of a crime
7 as if he or she were operating the vehicle in violation of
8 section 625 and is subject to the same penalties and sanctions as
9 for the violation of that section.

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

12 (a) The peace officer has reasonable cause to believe the
13 person was, at the time of an accident in this state, the
14 operator of a vehicle involved in the accident and was operating
15 the vehicle in violation of section 625 or a local ordinance
16 substantially corresponding to section 625.

17 (b) The person is found in the driver's seat of a vehicle
18 parked or stopped on a highway or street within this state if any
19 part of the vehicle intrudes into the roadway and the peace
20 officer has reasonable cause to believe the person was operating
21 the vehicle in violation of section 625 or a local ordinance
22 substantially corresponding to section 625.

23 (c) The peace officer has reasonable cause to believe that
24 the person was accompanying a student driver in violation of
25 section 306a.

26 (2) A peace officer who has reasonable cause to believe that
27 a person was operating a vehicle upon a public highway or other

1 place open to the public or generally accessible to motor
2 vehicles, including an area designated for the parking of
3 vehicles, within this state and that the person by the
4 consumption of alcoholic liquor may have affected his or her
5 ability to operate a vehicle, or reasonable cause to believe that
6 a person was operating a commercial motor vehicle within the
7 state while the person's blood, breath, or urine contained any
8 measurable amount of alcohol or while the person had any
9 detectable presence of alcoholic liquor, or reasonable cause to
10 believe that a person who is less than 21 years of age was
11 operating a vehicle upon a public highway or other place open to
12 the public or generally accessible to motor vehicles, including
13 an area designated for the parking of vehicles, within this state
14 while the person had any bodily alcohol content as that term is
15 defined in section 625(6), **or reasonable cause to believe that**
16 **the person was accompanying a student driver in violation of**
17 **section 306a**, may require the person to submit to a preliminary
18 chemical breath analysis. The following provisions apply with
19 respect to a preliminary chemical breath analysis administered
20 under this 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 are
24 admissible in a criminal prosecution for a crime enumerated in
25 section 625c(1) **or in violation of section 306a** or in an
26 administrative hearing for 1 or more of the following purposes:

27 (i) To assist the court or hearing officer in determining a

1 challenge to the validity of an arrest. This subparagraph does
2 not limit the introduction of other competent evidence offered to
3 establish the validity of an arrest.

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

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

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

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

24 (3) A peace officer shall use the results of a preliminary
25 chemical breath analysis conducted pursuant to this section to
26 determine whether to order a person out-of-service under
27 section 319d. A peace officer shall order out-of-service as

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

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

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

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

22 (a) The amount of alcohol or presence of a controlled
23 substance or both in a driver's blood or urine or the amount of
24 alcohol in a person's breath at the time alleged as shown by
25 chemical analysis of the person's blood, urine, or breath is
26 admissible into evidence in any civil or criminal proceeding and
27 is presumed to be the same as at the time the person operated the

1 vehicle.

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

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

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

12 (iii) He or she is responsible for obtaining a chemical
13 analysis of a test sample obtained at his or her own 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), **other than a violation of section**
20 **306a**, will result in the suspension of his or her operator's or
21 chauffeur's license and vehicle group designation or operating
22 privilege and in the addition of 6 points to his or her driver
23 record.

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

1 368, MCL 333.16215, qualified to withdraw blood and acting in a
2 medical environment, may withdraw blood at a peace officer's
3 request to determine the amount of alcohol or presence of a
4 controlled substance or both in the person's blood, as provided
5 in this subsection. Liability for a crime or civil damages
6 predicated on the act of withdrawing or analyzing blood and
7 related procedures does not attach to a licensed physician or
8 individual operating under the delegation of a licensed physician
9 who withdraws or analyzes blood or assists in the withdrawal or
10 analysis in accordance with this act unless the withdrawal or
11 analysis is performed in a negligent manner.

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

26 (e) If, after an accident, the driver of a vehicle involved
27 in the accident is transported to a medical facility and a sample

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

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

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

1 under rules promulgated by the department of state police.

2 (7) The provisions of subsection (6) relating to chemical
3 testing do not limit the introduction of any other admissible
4 evidence bearing upon any of the following questions:

5 (a) Whether the person was impaired by, or under the
6 influence of, alcoholic liquor, a controlled substance, or a
7 combination of alcoholic liquor and a controlled substance.

8 (b) Whether the person had an alcohol content of 0.08 grams
9 or more per 100 milliliters of blood, per 210 liters of breath,
10 or per 67 milliliters of urine or, beginning October 1, 2013, the
11 person had an alcohol content of 0.10 grams or more per 100
12 milliliters of blood, per 210 liters of breath, or per 67
13 milliliters of urine.

14 (c) If the person is less than 21 years of age, whether the
15 person had any bodily alcohol content within his or her body. As
16 used in this subdivision, "any bodily alcohol content" means
17 either of the following:

18 (i) An alcohol content of 0.02 grams or more but less than
19 0.08 grams per 100 milliliters of blood, per 210 liters of
20 breath, or per 67 milliliters of urine or, beginning October 1,
21 2013, the person had an alcohol content of 0.02 grams or more but
22 less than 0.10 grams or more per 100 milliliters of blood, per
23 210 liters of breath, or per 67 milliliters of urine.

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

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

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

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

25 (a) ~~If the~~ **The** person is arrested for a violation of
26 section 625(1), (3), (4), (5), (6), (7), or (8), section 625a(5),
27 or section 625m or a local ordinance substantially corresponding

1 to section 625(1), (3), (6), or (8), section 625a(5), or section
2 625m.

3 (b) ~~If the~~ **The** person is arrested for felonious driving,
4 negligent homicide, manslaughter, or murder resulting from the
5 operation of a motor vehicle, and the peace officer had
6 reasonable grounds to believe the person was operating the
7 vehicle in violation of section 625.

8 **(c) The person is arrested for a violation of section 306a.**

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

13 (3) The tests shall be administered as provided in section
14 625a(6).

15 Sec. 625d. (1) If a person refuses the request of a peace
16 officer to submit to a chemical test offered pursuant to section
17 625a(6), a test shall not be given without a court order, but the
18 officer may seek to obtain the court order.

19 (2) A written report shall immediately be forwarded to the
20 secretary of state by the peace officer. The report shall state
21 that the officer had reasonable grounds to believe that the
22 person had committed a crime described in section 625c(1), and
23 that the person had refused to submit to the test upon the
24 request of the peace officer and had been advised of the
25 consequences of the refusal. The form of the report shall be
26 prescribed and furnished by the secretary of state. **This**
27 **subsection does not apply to a refusal arising out of an arrest**

1 **for a violation of section 306a.**

2 Sec. 625e. (1) If a person refuses to submit to a chemical
3 test pursuant to section 625d, the peace officer shall
4 immediately notify the person in writing that within 14 days of
5 the date of the notice the person may request a hearing as
6 provided in section 625f. The form of the notice shall be
7 prescribed and furnished by the secretary of state.

8 (2) The notice shall specifically state that failure to
9 request a hearing within 14 days will result in the suspension of
10 the person's license or permit to drive. The notice shall also
11 state that there is not a requirement that the person retain
12 counsel for the hearing, though counsel would be permitted to
13 represent the person at the hearing.

14 **(3) This section does not apply to a refusal arising out of**
15 **an arrest for a violation of section 306a.**

16 Sec. 625f. (1) If a person who refuses to submit to a
17 chemical test pursuant to section 625d does not request a hearing
18 within 14 days after the date of notice pursuant to section 625e,
19 the secretary of state shall impose the following license
20 sanctions:

21 (a) If the person was operating a vehicle other than a
22 commercial motor vehicle, suspend or deny the person's operator's
23 or chauffeur's license or permit to drive, or nonresident
24 operating privilege, for 1 year or, for a second or subsequent
25 refusal within 7 years, for 2 years. If the person is a resident
26 without a license or permit to operate a vehicle in the state,
27 the secretary of state shall not issue the person a license or

1 permit for 1 year or, for a second or subsequent refusal within 7
2 years, for 2 years.

3 (b) If the person was operating a commercial motor vehicle,
4 for the first refusal, suspend all vehicle group designations on
5 the person's operator's or chauffeur's license or permit or
6 nonresident privilege to operate a commercial motor vehicle or,
7 if the person is a resident without a license or permit to
8 operate a commercial motor vehicle in the state, not issue the
9 person an operator's or chauffeur's license with vehicle group
10 designations, for 1 year.

11 (c) If the person was operating a commercial motor vehicle,
12 for a second or subsequent refusal that occurred in a separate
13 incident from and within 10 years of a prior refusal, revoke all
14 vehicle group designations on the person's operator's or
15 chauffeur's license or permit or nonresident privilege to operate
16 a commercial motor vehicle or, if the person is a resident
17 without a license or permit to operate a commercial motor vehicle
18 in the state, not issue the person an operator's or chauffeur's
19 license with vehicle group designations, for not less than 10
20 years and until the person is approved for the issuance of a
21 vehicle group designation.

22 (d) If the person was operating a commercial motor vehicle
23 and was arrested for an offense enumerated in section 625c other
24 than a violation of section 625a(5) or 625m, impose the license
25 sanction described in subdivision (a) and the license sanction
26 described in subdivision (b) or (c), as applicable.

27 (2) If a hearing is requested, the secretary of state shall

1 hold the hearing in the same manner and under the same conditions
2 as provided in section 322. Not less than 5 days' notice of the
3 hearing shall be mailed to the person requesting the hearing, to
4 the peace officer who filed the report under section 625d, and if
5 the prosecuting attorney requests receipt of the notice, to the
6 prosecuting attorney of the county where the arrest was made.
7 The hearing officer may administer oaths, issue subpoenas for the
8 attendance of necessary witnesses, and grant a reasonable request
9 for an adjournment. Not more than 1 adjournment shall be granted
10 to a party and the length of an adjournment shall not exceed 14
11 days. A hearing under this subsection shall be scheduled to be
12 held within 45 days after the date of arrest for the violation.
13 The hearing officer shall not impose any sanction for a failure
14 to comply with these time limits.

15 (3) Except for delay attributable to the unavailability of
16 the defendant, a witness, or material evidence, or due to an
17 interlocutory appeal or exceptional circumstances, but not a
18 delay caused by docket congestion, a hearing shall be finally
19 adjudicated within 77 days after the date of arrest. The hearing
20 officer shall not impose any sanction for a failure to comply
21 with this time limit.

22 (4) The hearing shall cover only the following issues:

23 (a) Whether the peace officer had reasonable grounds to
24 believe that the person had committed a crime described in
25 section 625c(1).

26 (b) Whether the person was placed under arrest for a crime
27 described in section 625c(1).

1 (c) If the person refused to submit to the test upon the
2 request of the officer, whether the refusal was reasonable.

3 (d) Whether the person was advised of the rights under
4 section 625a(6).

5 (5) A person shall not order a hearing officer to make a
6 particular finding on any issue enumerated in subsection (4)(a)
7 to (d).

8 (6) The hearing officer shall make a record of a hearing held
9 pursuant to this section. The record shall be prepared and
10 transcribed in accordance with section 86 of the administrative
11 procedures act of 1969, 1969 PA 306, MCL 24.286. Upon
12 notification of the filing of a petition for judicial review
13 pursuant to section 323 and not less than 10 days before the
14 matter is set for review, the hearing officer shall transmit to
15 the court in which the petition was filed the original or a
16 certified copy of the official record of the proceedings.
17 Proceedings at which evidence was presented need not be
18 transcribed and transmitted if the sole reason for review is to
19 determine whether the court will order the issuance of a
20 restricted license. The parties to the proceedings for judicial
21 review may stipulate that the record be shortened. A party
22 unreasonably refusing to stipulate to a shortened record may be
23 taxed by the court in which the petition is filed for the
24 additional costs. The court may permit subsequent corrections to
25 the record.

26 (7) If the person who requested a hearing does not prevail,
27 the secretary of state shall impose the following license

1 sanctions after the hearing:

2 (a) If the person was operating a vehicle other than a
3 commercial motor vehicle, suspend or deny issuance of a license
4 or driving permit or a nonresident operating privilege of the
5 person for 1 year or, for a second or subsequent refusal within 7
6 years, for 2 years. If the person is a resident without a
7 license or permit to operate a vehicle in the state, the
8 secretary of state shall not issue the person a license or permit
9 for 1 year or, for a second or subsequent refusal within 7 years,
10 for 2 years. The person may file a petition in the circuit court
11 of the county in which the arrest was made to review the
12 suspension or denial as provided in section 323.

13 (b) If the person was operating a commercial motor vehicle,
14 impose the sanction prescribed under subsection (1)(b) or (1)(c),
15 as applicable. The person may file a petition in the circuit
16 court of the county in which the arrest was made to review the
17 suspension or denial as provided in section 323.

18 (c) If the person was operating a commercial motor vehicle
19 and was arrested for an offense enumerated in section 625c other
20 than a violation of section 625a(5) or 625m, impose the license
21 sanctions described in subdivisions (a) and (b).

22 (8) If the person who requested the hearing prevails, the
23 peace officer who filed the report under section 625d may, with
24 the consent of the prosecuting attorney, file a petition in the
25 circuit court of the county in which the arrest was made to
26 review the determination of the hearing officer as provided in
27 section 323.

1 (9) When it has been finally determined that a nonresident's
2 privilege to operate a vehicle in the state has been suspended or
3 denied, the department shall give notice in writing of the action
4 taken to the motor vehicle administrator of the state of the
5 person's residence and of each state in which he or she has a
6 license to operate a motor vehicle.

7 **(10) This section does not apply to a refusal arising out of**
8 **an arrest for a violation of section 306a.**