

SENATE BILL No. 744

September 7, 2005, Introduced by Senator SWITALSKI and referred to the Committee on Judiciary.

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

3 (a) The peace officer has reasonable cause to believe the
4 person was, at the time of an accident in this state, the operator
5 of a vehicle involved in the accident and was operating the vehicle
6 in violation of section 625 or a local ordinance substantially

1 corresponding to section 625.

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

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

27 (a) A peace officer may arrest a person based in whole or in

1 part upon the results of a preliminary chemical breath analysis.

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

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

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

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

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

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

27 (3) A peace officer shall use the results of a preliminary

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

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

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

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

24 (a) The amount of alcohol or presence of a controlled
25 substance or both in a driver's blood or urine or the amount of
26 alcohol in a person's breath at the time alleged as shown by
27 chemical analysis of the person's blood, urine, or breath is

1 admissible into evidence in any civil or criminal proceeding and is
2 presumed to be the same as at the time the person operated the
3 vehicle.

4 (b) ~~A~~ **THE** person ~~arrested for a crime described in section~~
5 ~~625c(1)~~ shall be advised of all of the following:

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

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

14 (iii) He or she is responsible for obtaining a chemical analysis
15 of a test sample obtained at his or her own request.

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

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

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

1 under section 16215 of the public health code, 1978 PA 368, MCL
2 333.16215, qualified to withdraw blood and acting in a medical
3 environment, may withdraw blood at a peace officer's request to
4 determine the amount of alcohol or presence of a controlled
5 substance or both in the person's blood, as provided in this
6 subsection. Liability for a crime or civil damages predicated on
7 the act of withdrawing or analyzing blood and related procedures
8 does not attach to a licensed physician or individual operating
9 under the delegation of a licensed physician who withdraws or
10 analyzes blood or assists in the withdrawal or analysis in
11 accordance with this act unless the withdrawal or analysis is
12 performed in a negligent manner.

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

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

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

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

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

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

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

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

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

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

26 (8) If a chemical test described in subsection (6) is
27 administered, the test results shall be made available to the

1 person charged or the person's attorney upon written request to the
2 prosecution, with a copy of the request filed with the court. The
3 prosecution shall furnish the results at least 2 days before the
4 day of the trial. The prosecution shall offer the test results as
5 evidence in that trial. Failure to fully comply with the request
6 bars the admission of the results into evidence by the prosecution.

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

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

22 (a) If the person is arrested for a violation of section
23 625(1), (3), (4), (5), (6), (7), or (8), section 625a(5), or
24 section 625m or a local ordinance substantially corresponding to
25 section 625(1), (3), (6), or (8), section 625a(5), or section 625m.

26 (b) If the person is arrested for felonious driving, negligent
27 homicide, manslaughter, or murder resulting from the operation of a

1 motor vehicle, and the peace officer had reasonable grounds to
2 believe the person was operating the vehicle in violation of
3 section 625.

4 (C) THE PEACE OFFICER HAS REASONABLE GROUNDS TO BELIEVE THE
5 PERSON WAS OPERATING THE VEHICLE AT THE TIME THE VEHICLE WAS
6 INVOLVED IN AN ACCIDENT RESULTING IN SERIOUS IMPAIRMENT OF A BODILY
7 FUNCTION OR DEATH.

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

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

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

18 (2) A written report shall immediately be forwarded to the
19 secretary of state by the peace officer. The report shall state
20 that the officer had reasonable grounds to believe that the person
21 had committed a crime **OR WAS INVOLVED IN AN ACCIDENT AS** described
22 in section 625c(1) — and that the person had refused to submit to
23 the test upon the request of the peace officer and had been advised
24 of the consequences of the refusal. The form of the report shall be
25 prescribed and furnished by the secretary of state.

26 Sec. 625f. (1) If a person who refuses to submit to a chemical
27 test pursuant to section 625d does not request a hearing within 14

1 days after the date of notice pursuant to section 625e, the
2 secretary of state shall impose the following license sanctions:

3 (a) If the person was operating a vehicle other than a
4 commercial motor vehicle, suspend or deny the person's operator's
5 or chauffeur's license or permit to drive, or nonresident operating
6 privilege, for 1 year or, for a second or subsequent refusal within
7 7 years, for 2 years. If the person is a resident without a license
8 or permit to operate a vehicle in the state, the secretary of state
9 shall not issue the person a license or permit for 1 year or, for a
10 second or subsequent refusal within 7 years, for 2 years.

11 (b) If the person was operating a commercial motor vehicle,
12 for the first refusal, suspend all vehicle group designations on
13 the person's operator's or chauffeur's license or permit or
14 nonresident privilege to operate a commercial motor vehicle or, if
15 the person is a resident without a license or permit to operate a
16 commercial motor vehicle in the state, not issue the person an
17 operator's or chauffeur's license with vehicle group designations,
18 for 1 year.

19 (c) If the person was operating a commercial motor vehicle,
20 for a second or subsequent refusal that occurred in a separate
21 incident from and within 10 years of a prior refusal, revoke all
22 vehicle group designations on the person's operator's or
23 chauffeur's license or permit or nonresident privilege to operate a
24 commercial motor vehicle or, if the person is a resident without a
25 license or permit to operate a commercial motor vehicle in the
26 state, not issue the person an operator's or chauffeur's license
27 with vehicle group designations, for not less than 10 years and

1 until the person is approved for the issuance of a vehicle group
2 designation.

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

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

23 (3) Except for delay attributable to the unavailability of the
24 defendant, a witness, or material evidence, or due to an
25 interlocutory appeal or exceptional circumstances, but not a delay
26 caused by docket congestion, a hearing shall be finally adjudicated
27 within 77 days after the date of arrest. The hearing officer shall

1 not impose any sanction for a failure to comply with this time
2 limit.

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

4 (a) Whether the peace officer had reasonable grounds to
5 believe that the person had committed a crime **OR WAS INVOLVED IN AN**
6 **ACCIDENT AS** described in section 625c(1).

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

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

11 (d) Whether the person was advised of the rights under section
12 625a(6).

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

16 (6) The hearing officer shall make a record of a hearing held
17 pursuant to this section. The record shall be prepared and
18 transcribed in accordance with section 86 of the administrative
19 procedures act of 1969, 1969 PA 306, MCL 24.286. Upon notification
20 of the filing of a petition for judicial review pursuant to section
21 323 and not less than 10 days before the matter is set for review,
22 the hearing officer shall transmit to the court in which the
23 petition was filed the original or a certified copy of the official
24 record of the proceedings. Proceedings at which evidence was
25 presented need not be transcribed and transmitted if the sole
26 reason for review is to determine whether the court will order the
27 issuance of a restricted license. The parties to the proceedings

1 for judicial review may stipulate that the record be shortened. A
2 party unreasonably refusing to stipulate to a shortened record may
3 be taxed by the court in which the petition is filed for the
4 additional costs. The court may permit subsequent corrections to
5 the record.

6 (7) If the person who requested a hearing does not prevail,
7 the secretary of state shall impose the following license sanctions
8 after the hearing:

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

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

25 (c) If the person was operating a commercial motor vehicle and
26 was arrested for an offense enumerated in section 625c other than a
27 violation of section 625a(5) or 625m, impose the license sanctions

1 described in subdivisions (a) and (b).

2 (8) If the person who requested the hearing prevails, the
3 peace officer who filed the report under section 625d may, with the
4 consent of the prosecuting attorney, file a petition in the circuit
5 court of the county in which the arrest was made to review the
6 determination of the hearing officer as provided in section 323.

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