

HOUSE BILL No. 5742

June 8, 2016, Introduced by Reps. Sarah Roberts and Pscholka and referred to the Committee on Criminal Justice.

A bill to amend 1949 PA 300, entitled
"Michigan vehicle code,"
by amending sections 625, 625a, 625g, and 625m (MCL 257.625,
257.625a, 257.625g, and 257.625m), section 625 as amended by 2014
PA 219, section 625a as amended by 2015 PA 11, section 625g as
amended by 2014 PA 315, and section 625m as amended by 2013 PA 23.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 625. (1) A person, whether licensed or not, shall not
2 operate a vehicle upon a highway or other place open to the general
3 public or generally accessible to motor vehicles, including an area
4 designated for the parking of vehicles, within this state if the
5 person is operating while intoxicated. As used in this section,
6 "operating while intoxicated" means any of the following:

1 (a) The person is under the influence of alcoholic liquor, a
2 controlled substance, or other intoxicating substance or a
3 combination of alcoholic liquor, a controlled substance, or other
4 intoxicating substance.

5 (b) The person has an alcohol content of 0.08 grams or more
6 per 100 milliliters of blood, per 210 liters of breath, or per 67
7 milliliters of urine. ~~, or, beginning October 1, 2018, the person~~
8 ~~has an alcohol content of 0.10 grams or more per 100 milliliters of~~
9 ~~blood, per 210 liters of breath, or per 67 milliliters of urine.~~

10 (c) The person has an alcohol content of 0.17 grams or more
11 per 100 milliliters of blood, per 210 liters of breath, or per 67
12 milliliters of urine.

13 (2) The owner of a vehicle or a person in charge or in control
14 of a vehicle shall not authorize or knowingly permit the vehicle to
15 be operated upon a highway or other place open to the general
16 public or generally accessible to motor vehicles, including an area
17 designated for the parking of motor vehicles, within this state by
18 a person if any of the following apply:

19 (a) The person is under the influence of alcoholic liquor, a
20 controlled substance, other intoxicating substance, or a
21 combination of alcoholic liquor, a controlled substance, or other
22 intoxicating substance.

23 (b) The person has an alcohol content of 0.08 grams or more
24 per 100 milliliters of blood, per 210 liters of breath, or per 67
25 milliliters of urine. ~~or, beginning October 1, 2018, the person has~~
26 ~~an alcohol content of 0.10 grams or more per 100 milliliters of~~
27 ~~blood, per 210 liters of breath, or per 67 milliliters of urine.~~

1 (c) The person's ability to operate the motor vehicle is
2 visibly impaired due to the consumption of alcoholic liquor, a
3 controlled substance, or other intoxicating substance, or a
4 combination of alcoholic liquor, a controlled substance, or other
5 intoxicating substance.

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

16 (4) A person, whether licensed or not, who operates a motor
17 vehicle in violation of subsection (1), (3), or (8) and by the
18 operation of that motor vehicle causes the death of another person
19 is guilty of a crime as follows:

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

27 (b) If the violation occurs while the person has an alcohol

1 content of 0.17 grams or more per 100 milliliters of blood, per 210
2 liters of breath, or per 67 milliliters of urine, and within 7
3 years of a prior conviction, the person is guilty of a felony
4 punishable by imprisonment for not more than 20 years or a fine of
5 not less than \$2,500.00 or more than \$10,000.00, or both. The
6 judgment of sentence may impose the sanction permitted under
7 section 625n. If the vehicle is not ordered forfeited under section
8 625n, the court shall order vehicle immobilization under section
9 904d in the judgment of sentence.

10 (c) If, at the time of the violation, the person is operating
11 a motor vehicle in a manner proscribed under section 653a and
12 causes the death of a police officer, firefighter, or other
13 emergency response personnel, the person is guilty of a felony
14 punishable by imprisonment for not more than 20 years or a fine of
15 not less than \$2,500.00 or more than \$10,000.00, or both. This
16 subdivision applies regardless of whether the person is charged
17 with the violation of section 653a. The judgment of sentence may
18 impose the sanction permitted under section 625n. If the vehicle is
19 not ordered forfeited under section 625n, the court shall order
20 vehicle immobilization under section 904d in the judgment of
21 sentence.

22 (5) A person, whether licensed or not, who operates a motor
23 vehicle in violation of subsection (1), (3), or (8) and by the
24 operation of that motor vehicle causes a serious impairment of a
25 body function of another person is guilty of a crime as follows:

26 (a) Except as provided in subdivision (b), the person is
27 guilty of a felony punishable by imprisonment for not more than 5

1 years or a fine of not less than \$1,000.00 or more than \$5,000.00,
2 or both. The judgment of sentence may impose the sanction permitted
3 under section 625n. If the vehicle is not ordered forfeited under
4 section 625n, the court shall order vehicle immobilization under
5 section 904d in the judgment of sentence.

6 (b) If the violation occurs while the person has an alcohol
7 content of 0.17 grams or more per 100 milliliters of blood, per 210
8 liters of breath, or per 67 milliliters of urine, and within 7
9 years of a prior conviction, the person is guilty of a felony
10 punishable by imprisonment for not more than 10 years or a fine of
11 not less than \$1,000.00 or more than \$5,000.00, or both. The
12 judgment of sentence may impose the sanction permitted under
13 section 625n. If the vehicle is not ordered forfeited under section
14 625n, the court shall order vehicle immobilization under section
15 904d in the judgment of sentence.

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

23 (a) An alcohol content of 0.02 grams or more but less than
24 0.08 grams per 100 milliliters of blood, per 210 liters of breath,
25 or per 67 milliliters of urine. ~~, or, beginning October 1, 2018,~~
26 ~~the person has an alcohol content of 0.02 grams or more but less~~
27 ~~than 0.10 grams per 100 milliliters of blood, per 210 liters of~~

1 ~~breath, or per 67 milliliters of urine.~~

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

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

8 (a) He or she shall not operate a vehicle in violation of
9 subsection (1), (3), (4), (5), or (8) while another person who is
10 less than 16 years of age is occupying the vehicle. A person who
11 violates this subdivision is guilty of a crime punishable as
12 follows:

13 (i) Except as provided in subparagraph (ii), a person who
14 violates this subdivision is guilty of a misdemeanor and shall be
15 sentenced to pay a fine of not less than \$200.00 or more than
16 \$1,000.00 and to 1 or more of the following:

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

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

22 (ii) If the violation occurs within 7 years of a prior
23 conviction or after 2 or more prior convictions, regardless of the
24 number of years that have elapsed since any prior conviction, a
25 person who violates this subdivision is guilty of a felony and
26 shall be sentenced to pay a fine of not less than \$500.00 or more
27 than \$5,000.00 and to either of the following:

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

3 (B) Probation with imprisonment in the county jail for not
4 less than 30 days or more than 1 year and community service for not
5 less than 60 days or more than 180 days. Not less than 48 hours of
6 this imprisonment shall be served consecutively. This term of
7 imprisonment shall not be suspended.

8 (b) He or she shall not operate a vehicle in violation of
9 subsection (6) while another person who is less than 16 years of
10 age is occupying the vehicle. A person who violates this
11 subdivision is guilty of a misdemeanor punishable as follows:

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

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

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

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

18 (ii) If the violation occurs within 7 years of a prior
19 conviction or after 2 or more prior convictions, regardless of the
20 number of years that have elapsed since any prior conviction, a
21 person who violates this subdivision shall be sentenced to pay a
22 fine of not less than \$200.00 or more than \$1,000.00 and to 1 or
23 more of the following:

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

27 (B) Community service for not less than 30 days or more than

1 90 days.

2 (c) In the judgment of sentence under subdivision (a) (i) or
3 (b) (i), the court may, unless the vehicle is ordered forfeited
4 under section 625n, order vehicle immobilization as provided in
5 section 904d. In the judgment of sentence under subdivision (a) (ii)
6 or (b) (ii), the court shall, unless the vehicle is ordered
7 forfeited under section 625n, order vehicle immobilization as
8 provided in section 904d.

9 (d) This subsection does not prohibit a person from being
10 charged with, convicted of, or punished for a violation of
11 subsection (4) or (5) that is committed by the person while
12 violating this subsection. However, points shall not be assessed
13 under section 320a for both a violation of subsection (4) or (5)
14 and a violation of this subsection for conduct arising out of the
15 same transaction.

16 (8) A person, whether licensed or not, shall not operate a
17 vehicle upon a 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 if the
20 person has in his or her body any amount of a controlled substance
21 listed in schedule 1 under section 7212 of the public health code,
22 1978 PA 368, MCL 333.7212, or a rule promulgated under that
23 section, or of a controlled substance described in section
24 7214(a) (iv) of the public health code, 1978 PA 368, MCL 333.7214.

25 (9) If a person is convicted of violating subsection (1) or
26 (8), all of the following apply:

27 (a) Except as otherwise provided in subdivisions (b) and (c),

1 the person is guilty of a misdemeanor punishable by 1 or more of
2 the following:

3 (i) Community service for not more than 360 hours.

4 (ii) Imprisonment for not more than 93 days, or, if the person
5 is convicted of violating subsection (1)(c), imprisonment for not
6 more than 180 days.

7 (iii) A fine of not less than \$100.00 or more than \$500.00,
8 or, if the person is guilty of violating subsection (1)(c), a fine
9 of not less than \$200.00 or more than \$700.00.

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

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

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

18 (c) If the violation occurs after 2 or more prior convictions,
19 regardless of the number of years that have elapsed since any prior
20 conviction, the person is guilty of a felony and shall be sentenced
21 to pay a fine of not less than \$500.00 or more than \$5,000.00 and
22 to either of the following:

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

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

1 the imprisonment imposed under this subparagraph shall be served
2 consecutively.

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

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

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

12 (10) A person who is convicted of violating subsection (2) is
13 guilty of a crime as follows:

14 (a) Except as provided in subdivisions (b) and (c), a
15 misdemeanor punishable by imprisonment for not more than 93 days or
16 a fine of not less than \$100.00 or more than \$500.00, or both.

17 (b) If the person operating the motor vehicle violated
18 subsection (4), a felony punishable by imprisonment for not more
19 than 5 years or a fine of not less than \$1,500.00 or more than
20 \$10,000.00, or both.

21 (c) If the person operating the motor vehicle violated
22 subsection (5), a felony punishable by imprisonment for not more
23 than 2 years or a fine of not less than \$1,000.00 or more than
24 \$5,000.00, or both.

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

27 (a) Except as otherwise provided in subdivisions (b) and (c),

1 the person is guilty of a misdemeanor punishable by 1 or more of
2 the following:

3 (i) Community service for not more than 360 hours.

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

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

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

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

13 (ii) Community service for not less than 30 days or more than
14 90 days.

15 (c) If the violation occurs after 2 or more prior convictions,
16 regardless of the number of years that have elapsed since any prior
17 conviction, the person is guilty of a felony and shall be sentenced
18 to pay a fine of not less than \$500.00 or more than \$5,000.00 and
19 either of the following:

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

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

27 (d) A term of imprisonment imposed under subdivision (b) or

1 (c) shall not be suspended.

2 (e) In the judgment of sentence under subdivision (a), the
3 court may order vehicle immobilization as provided in section 904d.
4 In the judgment of sentence under subdivision (b) or (c), the court
5 shall, unless the vehicle is ordered forfeited under section 625n,
6 order vehicle immobilization as provided in section 904d.

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

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

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

14 (i) Community service for not more than 360 hours.

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

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

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

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

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

22 (13) In addition to imposing the sanctions prescribed under
23 this section, the court may order the person to pay the costs of
24 the prosecution under the code of criminal procedure, 1927 PA 175,
25 MCL 760.1 to 777.69.

26 (14) A person sentenced to perform community service under
27 this section shall not receive compensation and shall reimburse the

1 state or appropriate local unit of government for the cost of
2 supervision incurred by the state or local unit of government as a
3 result of the person's activities in that service.

4 (15) If the prosecuting attorney intends to seek an enhanced
5 sentence under this section or a sanction under section 625n based
6 upon the defendant having 1 or more prior convictions, the
7 prosecuting attorney shall include on the complaint and
8 information, or an amended complaint and information, filed in
9 district court, circuit court, municipal court, or family division
10 of circuit court, a statement listing the defendant's prior
11 convictions.

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

19 (17) A prior conviction shall be established at sentencing by
20 1 or more of the following:

21 (a) A copy of a judgment of conviction.

22 (b) An abstract of conviction.

23 (c) A transcript of a prior trial or a plea-taking or
24 sentencing proceeding.

25 (d) A copy of a court register of actions.

26 (e) A copy of the defendant's driving record.

27 (f) Information contained in a presentence report.

1 (g) An admission by the defendant.

2 (18) Except as otherwise provided in subsection (20), if a
3 person is charged with operating a vehicle while under the
4 influence of a controlled substance or other intoxicating substance
5 or a combination of alcoholic liquor, a controlled substance, or
6 other intoxicating substance in violation of subsection (1) or a
7 local ordinance substantially corresponding to subsection (1), the
8 court shall require the jury to return a special verdict in the
9 form of a written finding or, if the court convicts the person
10 without a jury or accepts a plea of guilty or nolo contendere, the
11 court shall make a finding as to whether the person was under the
12 influence of a controlled substance or other intoxicating substance
13 or a combination of alcoholic liquor, a controlled substance, or
14 other intoxicating substance at the time of the violation.

15 (19) Except as otherwise provided in subsection (20), if a
16 person is charged with operating a vehicle while his or her ability
17 to operate the vehicle was visibly impaired due to his or her
18 consumption of a controlled substance or other intoxicating
19 substance or a combination of alcoholic liquor, a controlled
20 substance, or other intoxicating substance in violation of
21 subsection (3) or a local ordinance substantially corresponding to
22 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, due
26 to the consumption of a controlled substance or a combination of
27 alcoholic liquor, a controlled substance, or other intoxicating

1 substance, the person's ability to operate a motor vehicle was
2 visibly impaired at the time of the violation.

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

6 (a) Whether the defendant was under the influence of a
7 controlled substance or a combination of alcoholic liquor, a
8 controlled substance, or other intoxicating substance at the time
9 of the violation.

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

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

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

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

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

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

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

7 (24) The court may order as a condition of probation that a
8 person convicted of violating subsection (1) or (8), or a local
9 ordinance substantially corresponding to subsection (1) or (8),
10 shall not operate a motor vehicle unless that vehicle is equipped
11 with an ignition interlock device approved, certified, and
12 installed as required under sections 625k and 625l.

13 (25) As used in this section:

14 (a) "Intoxicating substance" means any substance, preparation,
15 or a combination of substances and preparations other than alcohol
16 or a controlled substance, that is either of the following:

17 (i) Recognized as a drug in any of the following publications
18 or their supplements:

19 (A) The official United States pharmacopoeia.

20 (B) The official homeopathic pharmacopoeia of the United
21 States.

22 (C) The official national formulary.

23 (ii) A substance, other than food, taken into a person's body,
24 including, but not limited to, vapors or fumes, that is used in a
25 manner or for a purpose for which it was not intended, and that may
26 result in a condition of intoxication.

27 (b) "Prior conviction" means a conviction for any of the

1 following, whether under a law of this state, a local ordinance
2 substantially corresponding to a law of this state, a law of the
3 United States substantially corresponding to a law of this state,
4 or a law of another state substantially corresponding to a law of
5 this state, subject to subsection (27):

6 (i) Except as provided in subsection (26), a violation or
7 attempted violation of any of the following:

8 (A) This section, except a violation of subsection (2), or a
9 violation of any prior enactment of this section in which the
10 defendant operated a vehicle while under the influence of
11 intoxicating or alcoholic liquor or a controlled substance, or a
12 combination of intoxicating or alcoholic liquor and a controlled
13 substance, or while visibly impaired, or with an unlawful bodily
14 alcohol content.

15 (B) Section 625m.

16 (C) Former section 625b.

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

20 (iii) Section 601d or 626(3) or (4).

21 (26) Except for purposes of the enhancement described in
22 subsection (12)(b), only 1 violation or attempted violation of
23 subsection (6), a local ordinance substantially corresponding to
24 subsection (6), or a law of another state substantially
25 corresponding to subsection (6) may be used as a prior conviction.

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

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

3 Sec. 625a. (1) A peace officer may arrest a person without a
4 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 operator
7 of a vehicle involved in the accident and was operating the vehicle
8 in violation of section 625 or a local ordinance substantially
9 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 officer
13 has reasonable cause to believe the person was operating the
14 vehicle in violation of section 625 or a local ordinance
15 substantially corresponding to section 625.

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

1 alcoholic liquor, a controlled substance or any other intoxicating
2 substance, or any combination of them, or reasonable cause to
3 believe that a person who is less than 21 years of age was
4 operating a vehicle upon a public highway or other place open to
5 the public or generally accessible to motor vehicles, including an
6 area designated for the parking of vehicles, within this state
7 while the person had any bodily alcohol content as that term is
8 defined in section 625(6), may require the person to submit to a
9 preliminary chemical breath analysis. The following provisions
10 apply ~~with respect~~ to a preliminary chemical breath analysis
11 administered under this subsection:

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

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

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

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

27 (iii) As evidence of the defendant's breath alcohol content,

1 if offered by the prosecution to rebut testimony elicited on cross-
2 examination of a prosecution witness that the defendant's breath
3 alcohol content was lower at the time of the charged offense than
4 when a chemical test was administered under subsection (6).

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

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

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

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

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

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

9 (a) The amount of alcohol or presence of a controlled
10 substance or other intoxicating substance in a driver's blood or
11 urine or the amount of alcohol in a person's breath at the time
12 alleged as shown by chemical analysis of the person's blood, urine,
13 or breath is admissible into evidence in any civil or criminal
14 proceeding and is presumed to be the same as at the time the person
15 operated the vehicle.

16 (b) A person arrested for a crime described in section 625c(1)
17 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, he
20 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 innocence
25 or guilt.

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

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

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

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

25 (d) A chemical test described in this subsection shall be
26 administered at the request of a peace officer having reasonable
27 grounds to believe the person has committed a crime described in

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

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

25 (f) If, after an accident, the driver of a vehicle involved in
26 the accident is deceased, a sample of the decedent's blood shall be
27 withdrawn in a manner directed by the medical examiner to determine

1 the amount of alcohol or the presence of a controlled substance or
2 other intoxicating substance, or any combination of them, in the
3 decedent's blood. The medical examiner shall give the results of
4 the chemical analysis of the sample to the law enforcement agency
5 investigating the accident and that agency shall forward the
6 results to the department of state police.

7 (g) The department of state police shall promulgate uniform
8 rules in compliance with the administrative procedures act of 1969,
9 1969 PA 306, MCL 24.201 to 24.328, for the administration of
10 chemical tests for the purposes of this section. An instrument used
11 for a preliminary chemical breath analysis may be used for a
12 chemical test described in this subsection if approved under rules
13 promulgated by the department of state police.

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

17 (a) Whether the person was impaired by, or under the influence
18 of, alcoholic liquor, a controlled substance or other intoxicating
19 substance, or a combination of alcoholic liquor, a controlled
20 substance, or other intoxicating substance.

21 (b) Whether the person had an alcohol content of 0.08 grams or
22 more per 100 milliliters of blood, per 210 liters of breath, or per
23 67 milliliters of urine. ~~or, beginning October 1, 2018, the person~~
24 ~~had an alcohol content of 0.10 grams or more per 100 milliliters of~~
25 ~~blood, per 210 liters of breath, or per 67 milliliters of urine.~~

26 (c) If the person is less than 21 years of age, whether the
27 person had any bodily alcohol content within his or her body. As

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

3 (i) An alcohol content of 0.02 grams or more but less than
4 0.08 grams per 100 milliliters of blood, per 210 liters of breath,
5 or per 67 milliliters of urine. ~~or, beginning October 1, 2018, the~~
6 ~~person had an alcohol content of 0.02 grams or more but less than~~
7 ~~0.10 grams or more per 100 milliliters of blood, per 210 liters of~~
8 ~~breath, or per 67 milliliters of urine.~~

9 (ii) Any presence of alcohol within a person's body resulting
10 from the consumption of alcoholic liquor, other than the
11 consumption of alcoholic liquor as a part of a generally recognized
12 religious service or ceremony.

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

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

27 (10) As used in this section:

1 (a) "Controlled substance" means that term as defined in
2 section 7104 of the public health code, 1978 PA 368, MCL 333.7104.

3 (b) "Intoxicating substance" means that term as defined in
4 section 625.

5 Sec. 625g. (1) If a person refuses a chemical test offered
6 under section 625a(6), the peace officer who requested the person
7 to submit to the chemical test shall comply with subdivisions (a)
8 and (b). If a person submits to the chemical test or a chemical
9 test is performed under a court order and the test reveals an
10 unlawful alcohol content, or the presence of a controlled substance
11 or other intoxicating substance, or any combination of them, the
12 peace officer who requested the person to submit to the test shall
13 do all of the following, other than subdivision (b) (i):

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

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

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

25 (ii) Notify the secretary of state by means of the law
26 enforcement information network that a temporary license or permit
27 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 under
3 section 625a(6) that requires an analysis of blood or urine and a
4 report of the results of that chemical test is not immediately
5 available, the peace officer who requested the person to submit to
6 the test shall comply with subsection (1)(a) and (b)(ii) and
7 indicate in the notice under subsection (1)(b)(ii) that a
8 subsequent chemical test is pending. If the report reveals an
9 unlawful alcohol content, or the presence of a controlled substance
10 or other intoxicating substance, or any combination of them, the
11 peace officer who requested the person to submit to the test shall
12 immediately comply with subsection (1)(b)(iii). If the report does
13 not reveal an unlawful alcohol content, or the presence of a
14 controlled substance or other intoxicating substance, or any
15 combination of them, the peace officer who requested the person to
16 submit to the test shall immediately notify the person of the test
17 results and immediately return the person's license or permit by
18 first-class mail to the address provided at the time of arrest.

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

21 (a) If the case is not prosecuted, for 90 days after issuance
22 or until the person's license or permit is suspended under section
23 625f, whichever occurs earlier. The prosecuting attorney shall
24 notify the secretary of state if a case referred to the prosecuting
25 attorney is not prosecuted. The arresting law enforcement agency
26 shall notify the secretary of state if a case is not referred to
27 the prosecuting attorney for prosecution.

1 (b) If the case is prosecuted, until the criminal charges
2 against the person are dismissed, the person is acquitted of those
3 charges, or the person's license or permit is suspended,
4 restricted, or revoked.

5 (4) As used in this section:

6 (a) "Controlled substance" means that term as defined in
7 section 7104 of the public health code, 1978 PA 368, MCL 333.7104.

8 (b) "Intoxicating substance" means that term as defined in
9 section 625.

10 (c) "Unlawful alcohol content" means any of the following, as
11 applicable:

12 (i) If the person tested is less than 21 years of age, 0.02
13 grams or more of alcohol per 100 milliliters of blood, per 210
14 liters of breath, or per 67 milliliters of urine.

15 (ii) If the person tested was operating a commercial motor
16 vehicle within this state, 0.04 grams or more of alcohol per 100
17 milliliters of blood, per 210 liters of breath, or per 67
18 milliliters of urine.

19 (iii) If the person tested is not a person described in
20 subparagraph (i) or (ii), 0.08 grams or more of alcohol per 100
21 milliliters of blood, per 210 liters of breath, or per 67
22 milliliters of urine. ~~, or, beginning October 1, 2018, 0.10 grams~~
23 ~~or more of alcohol per 100 milliliters of blood, per 210 liters of~~
24 ~~breath, or per 67 milliliters of urine.~~

25 Sec. 625m. (1) A person, whether licensed or not, who has an
26 alcohol content of 0.04 grams or more but less than 0.08 grams per
27 100 milliliters of blood, per 210 liters of breath, or per 67

1 milliliters of urine ~~, or, beginning October 1, 2018, an alcohol~~
2 ~~content of 0.04 grams or more but less than 0.10 grams per 100~~
3 ~~milliliters of blood, per 210 liters of breath, or per 67~~
4 ~~milliliters of urine,~~ shall not operate a commercial motor vehicle
5 within this state.

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

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

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

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

25 (4) A person who violates this section or a local ordinance
26 substantially corresponding to this section within 7 years of 1
27 prior conviction may be sentenced to imprisonment for not more than

1 1 year or a fine of not more than \$1,000.00, or both.

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

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

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

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

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

21 (a) Except as provided in subsection (8), a violation or
22 attempted violation of any of the following:

23 (i) This section.

24 (ii) Section 625, except a violation of section 625(2), or a
25 violation of any prior enactment of section 625 in which the
26 defendant operated a vehicle while under the influence of
27 intoxicating or alcoholic liquor or a controlled substance, or a

1 combination of intoxicating or alcoholic liquor and a controlled
2 substance, or while visibly impaired, or with an unlawful bodily
3 alcohol content.

4 (iii) Former section 625b.

5 (iv) Section 601d or section 626(3) or (4).

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

9 (8) Only 1 violation or attempted violation of section 625(6),
10 a local ordinance substantially corresponding to section 625(6), or
11 a law of another state substantially corresponding to section
12 625(6) may be used as a prior conviction.

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

17 Enacting section 1. This amendatory act takes effect 90 days
18 after the date it is enacted into law.

19 Enacting section 2. This amendatory act does not take effect
20 unless Senate Bill No. ____ or House Bill No. 5743 (request no.
21 05936'16 a) of the 98th Legislature is enacted into law.