

SENATE BILL NO. 617

August 25, 2021, Introduced by Senator VICTORY and referred to the Committee on Judiciary and Public Safety.

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), as amended by 2021 PA 80.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 625. (1) A person, whether licensed or not, shall not
2 operate a vehicle on 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

1 person is operating while intoxicated. As used in this section,
2 "operating while intoxicated" means any of the following:

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

7 (b) The person has an alcohol content of 0.08 grams or more
8 per 100 milliliters of blood, per 210 liters of breath, or per 67
9 milliliters of urine or, beginning 5 years after the state
10 treasurer publishes a certification under subsection (28), the
11 person has 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) The person has an alcohol content of 0.17 grams or more
15 per 100 milliliters of blood, per 210 liters of breath, or per 67
16 milliliters of urine.

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

23 (a) The person is under the influence of alcoholic liquor, a
24 controlled substance, other intoxicating substance, or a
25 combination of alcoholic liquor, a controlled substance, or other
26 intoxicating substance.

27 (b) The person has an alcohol content of 0.08 grams or more
28 per 100 milliliters of blood, per 210 liters of breath, or per 67
29 milliliters of urine or, beginning 5 years after the state

1 treasurer publishes a certification under subsection (28), the
2 person has an alcohol content of 0.10 grams or more per 100
3 milliliters of blood, per 210 liters of breath, or per 67
4 milliliters of urine.

5 (c) The person's ability to operate the motor vehicle is
6 visibly impaired due to the consumption of alcoholic liquor, a
7 controlled substance, or other intoxicating substance, or a
8 combination of alcoholic liquor, a controlled substance, or other
9 intoxicating substance.

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

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

24 (a) Except as provided in subdivisions (b) and (c), the person
25 is guilty of a felony punishable by imprisonment for not more than
26 15 years or a fine of not less than \$2,500.00 or more than
27 \$10,000.00, or both. The judgment of sentence may impose the
28 sanction permitted under section 625n. If the vehicle is not
29 ordered **to be** forfeited under section 625n, the court shall order

1 vehicle immobilization under section 904d in the judgment of
2 sentence.

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

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

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

29 (a) Except as provided in subdivision (b), the person is

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

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

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

24 (a) An alcohol content of 0.02 grams or more but less than
25 0.08 grams per 100 milliliters of blood, per 210 liters of breath,
26 or per 67 milliliters of urine or, beginning 5 years after the
27 state treasurer publishes a certification under subsection (28),
28 the person has an alcohol content of 0.02 grams or more but less
29 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 must 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 more than 1 year.

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

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

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

28 (B) Probation with imprisonment in the county jail for not
29 less than 30 days or more than 1 year and community service for not

1 less than 60 days or more than 180 days. Not less than 48 hours of
2 this imprisonment must be served consecutively.

3 (iii) A term of imprisonment imposed under subparagraph (ii) (A)
4 or (B) must not be suspended unless the defendant agrees to
5 participate in a specialty court program and successfully completes
6 the program.

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

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

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

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

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

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

23 (A) Imprisonment for not less than 5 days or more than 1 year.
24 This term of imprisonment must not be suspended unless the
25 defendant agrees to participate in a specialty court program and
26 successfully completes the program.

27 (B) Community service for not less than 30 days or more than
28 90 days.

29 (c) In the judgment of sentence under subdivision (a) (i) or

(b) (i), the court may, unless the vehicle is ordered **to be** forfeited under section 625n, order vehicle immobilization as provided in section 904d. In the judgment of sentence under subdivision (a) (ii) or (b) (ii), the court shall, unless the vehicle is ordered **to be** forfeited under section 625n, order vehicle immobilization as provided in section 904d.

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

(8) A person, whether licensed or not, shall not operate a vehicle on a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state if the person has in his or her body any amount of a controlled substance listed in schedule 1 under section 7212 of the public health code, 1978 PA 368, MCL 333.7212, or a rule promulgated under that section, or of a controlled substance described in section 7214(a) (iv) of the public health code, 1978 PA 368, MCL 333.7214.

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

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

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

(ii) Imprisonment for not more than 93 days, or, if the person

1 is convicted of violating subsection (1)(c), imprisonment for not
2 more than 180 days.

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

6 (b) If the violation occurs within 7 years of a prior
7 conviction, the person must 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 following:

9 (i) Imprisonment for not less than 5 days or more than 1 year.

10 (ii) Community service for not less than 30 days or more than
11 90 days.

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

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

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

24 (d) A term of imprisonment imposed under subdivision (b) or
25 (c) must not be suspended unless the defendant agrees to
26 participate in a specialty court program and successfully completes
27 the program.

28 (e) In the judgment of sentence under subdivision (a), the
29 court may order vehicle immobilization as provided in section 904d.

1 In the judgment of sentence under subdivision (b) or (c), the court
2 shall, unless the vehicle is ordered **to be** forfeited under section
3 625n, order vehicle immobilization as provided in section 904d.

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

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

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

11 (b) If the person operating the motor vehicle violated
12 subsection (4), a felony punishable by imprisonment for not more
13 than 5 years or a fine of not less than \$1,500.00 or more than
14 \$10,000.00, or both.

15 (c) If the person operating the motor vehicle violated
16 subsection (5), a felony punishable by imprisonment for not more
17 than 2 years or a fine of not less than \$1,000.00 or more than
18 \$5,000.00, or both.

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

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

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

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

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

27 (b) If the violation occurs within 7 years of 1 prior
28 conviction, the person must be sentenced to pay a fine of not less
29 than \$200.00 or more than \$1,000.00, and 1 or more of the

1 following:

2 (i) Imprisonment for not less than 5 days or more than 1 year.

3 (ii) Community service for not less than 30 days or more than
4 90 days.

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

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

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

17 (d) A term of imprisonment imposed under subdivision (b) or
18 (c) must not be suspended unless the defendant agrees to
19 participate in a specialty court program and successfully completes
20 the program.

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

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

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

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

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

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

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

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

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

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

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

16 (14) A person sentenced to perform community service under
17 this section must not receive compensation and must reimburse the
18 state or appropriate local unit of government for the cost of
19 supervision incurred by the state or local unit of government as a
20 result of the person's activities in that service.

21 (15) If the prosecuting attorney intends to seek an enhanced
22 sentence under this section or a sanction under section 625n based
23 on the defendant having 1 or more prior convictions, the
24 prosecuting attorney shall include on the complaint and
25 information, or an amended complaint and information, filed in
26 district court, circuit court, municipal court, or family division
27 of circuit court, a statement listing the defendant's prior
28 convictions.

29 (16) If a person is charged with a violation of subsection

1 (1), (3), (4), (5), (7), or (8) or section 625m, the court shall
2 not permit the defendant to enter a plea of guilty or nolo
3 contendere to a charge of violating subsection (6) in exchange for
4 dismissal of the original charge. This subsection does not prohibit
5 the court from dismissing the charge on the prosecuting attorney's
6 motion.

7 (17) A prior conviction must be established at sentencing by 1
8 or more of the following:

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

10 (b) An abstract of conviction.

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

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

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

15 (f) Information contained in a presentence report.

16 (g) An admission by the defendant.

17 (18) Except as otherwise provided in subsection (20), if a
18 person is charged with operating a vehicle while under the
19 influence of a controlled substance or other intoxicating substance
20 or a combination of alcoholic liquor, a controlled substance, or
21 other intoxicating substance in violation of subsection (1) or a
22 local ordinance substantially corresponding to subsection (1), the
23 court shall require the jury to return a special verdict in the
24 form of a written finding or, if the court convicts the person
25 without a jury or accepts a plea of guilty or nolo contendere, the
26 court shall make a finding as to whether the person was under the
27 influence of a controlled substance or other intoxicating substance
28 or a combination of alcoholic liquor, a controlled substance, or
29 other intoxicating substance at the time of the violation.

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

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

19 (a) Whether the defendant was under the influence of a
20 controlled substance or a combination of alcoholic liquor, a
21 controlled substance, or other intoxicating substance at the time
22 of the violation.

23 (b) Whether the defendant was visibly impaired due to his or
24 her consumption of a controlled substance or a combination of
25 alcoholic liquor, a controlled substance, or other intoxicating
26 substance at the time of the violation.

27 (21) If a jury or court finds under subsection (18), (19), or
28 (20) that the defendant operated a motor vehicle under the
29 influence of or while impaired due to the consumption of a

1 controlled substance or a combination of a controlled substance, an
2 alcoholic liquor, or other intoxicating substance, the court shall
3 do both of the following:

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

5 (b) On a form or forms prescribed by the state court
6 administrator, forward to the department of state police a record
7 that specifies the penalties imposed by the court, including any
8 term of imprisonment, and any sanction imposed under section 625n
9 or 904d.

10 (22) Except as otherwise provided by law, a record described
11 in subsection (21)(b) is a public record and the department of
12 state police shall retain the information contained on that record
13 for not less than 7 years.

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

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

24 (25) As used in this section:

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

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

1 (A) The official United States Pharmacopoeia.

2 (B) The official Homeopathic Pharmacopoeia of the United
3 States.

4 (C) The official National Formulary.

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

9 (b) "Prior conviction" means a conviction for any of the
10 following, whether under a law of this state, a local ordinance
11 substantially corresponding to a law of this state, a law of the
12 United States substantially corresponding to a law of this state,
13 or a law of another state substantially corresponding to a law of
14 this state, subject to subsection (27):

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

17 (A) This section, except a violation of subsection (2), or a
18 violation of any prior enactment of this section in which the
19 defendant operated a vehicle while under the influence of
20 intoxicating or alcoholic liquor or a controlled substance, or a
21 combination of intoxicating or alcoholic liquor and a controlled
22 substance, or while visibly impaired, or with an unlawful bodily
23 alcohol content.

24 (B) Section 625m.

25 (C) Former section 625b.

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

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

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

6 (27) If 2 or more convictions described in subsection (25) are
7 convictions for violations arising out of the same transaction,
8 only 1 conviction must be used to determine ~~whether~~**if** the person
9 has a prior conviction.

10 (28) Not later than 30 days after this state no longer
11 receives annual federal highway construction funding conditioned on
12 compliance with a national blood alcohol limit, the state treasurer
13 shall certify that fact. The state treasurer shall publish a
14 certification under this subsection on the department of treasury's
15 website.

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

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

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

29 (2) A peace officer who has reasonable cause to believe that a

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

23 (a) A peace officer may arrest a person based in whole or in
24 part ~~upon~~**on** the results of a preliminary chemical breath analysis.

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

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

1 challenge to the validity of an arrest. This subparagraph does not
2 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, if
5 offered by the defendant to rebut testimony elicited on cross-
6 examination of a defense witness that the defendant's breath
7 alcohol content was higher at the time of the charged offense than
8 when a chemical test was administered under subsection (6).

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

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

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

21 (3) A peace officer shall use the results of a preliminary
22 chemical breath analysis conducted under this section to determine
23 whether to order a person out-of-service under section 319d. A
24 peace officer shall order out-of-service as required under section
25 319d a person who was operating a commercial motor vehicle and who
26 refuses to submit to a preliminary chemical breath analysis as
27 provided in this section. This section does not limit use of other
28 competent evidence by the peace officer to determine whether to
29 order a person out-of-service under section 319d.

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

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

13 (6) The following provisions apply to chemical tests and
14 analysis of a person's blood, urine, or breath, other than a
15 preliminary chemical breath analysis:

16 (a) The amount of alcohol or presence of a controlled
17 substance or other intoxicating substance in a driver's blood or
18 urine or the amount of alcohol in a person's breath at the time
19 alleged as shown by chemical analysis of the person's blood, urine,
20 or breath is admissible into evidence in any civil or criminal
21 proceeding and is presumed to be the same as at the time the person
22 operated the vehicle.

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

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

29 (ii) The results of the test are admissible in a judicial

1 proceeding as provided under this act and will be considered with
2 other admissible evidence in determining the defendant's innocence
3 or guilt.

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

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

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

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

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

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

28 (f) If, after an accident, the driver of a vehicle involved in
29 the accident is deceased, a sample of the decedent's blood must be

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

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

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

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

22 (b) Whether the person had an alcohol content of 0.08 grams or
23 more per 100 milliliters of blood, per 210 liters of breath, or per
24 67 milliliters of urine or, beginning 5 years after the state
25 treasurer publishes a certification under section 625(28), the
26 person had an alcohol content of 0.10 grams or more per 100
27 milliliters of blood, per 210 liters of breath, or per 67
28 milliliters of urine.

29 (c) If the person is less than 21 years of age, whether the

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

4 (i) An alcohol content of 0.02 grams or more but less than 0.08
5 grams per 100 milliliters of blood, per 210 liters of breath, or
6 per 67 milliliters of urine or, beginning 5 years after the state
7 treasurer publishes a certification under section 625(28), the
8 person had an alcohol content of 0.02 grams or more but less than
9 0.10 grams or more per 100 milliliters of blood, per 210 liters of
10 breath, or per 67 milliliters of urine.

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

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

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

29 (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 must 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.

28 (iii) Destroy the person's ~~driver's~~**driver** license or permit.

29 (2) If a person submits to a chemical test offered under

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

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

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

26 (b) If the case is prosecuted, until the criminal charges
27 against the person are dismissed, the person is acquitted of those
28 charges, or the person's license or permit is suspended,
29 restricted, or revoked.

1 (4) As used in this section:

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

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

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

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

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

15 (iii) If the person tested is not a person described in
16 subparagraph (i) or (ii), 0.08 grams or more of alcohol per 100
17 milliliters of blood, per 210 liters of breath, or per 67
18 milliliters of urine or, beginning 5 years after the state
19 treasurer publishes a certification under section 625(28), 0.10
20 grams or more of alcohol per 100 milliliters of blood, per 210
21 liters of breath, or per 67 milliliters of urine.

22 Sec. 625m. (1) A person, whether licensed or not, who has an
23 alcohol content of 0.04 grams or more but less than 0.08 grams per
24 100 milliliters of blood, per 210 liters of breath, or per 67
25 milliliters of urine or, beginning 5 years after the state
26 treasurer publishes a certification under section 625(28), an
27 alcohol content of 0.04 grams or more but less than 0.10 grams per
28 100 milliliters of blood, per 210 liters of breath, or per 67
29 milliliters of urine, shall not operate a commercial motor vehicle

1 within this state.

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

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

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

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

21 (4) A person who violates this section or a local ordinance
22 substantially corresponding to this section within 7 years of 1
23 prior conviction may be sentenced to imprisonment for not more than
24 1 year or a fine of not more than \$1,000.00, or both.

25 (5) A person who violates this section or a local ordinance
26 substantially corresponding to this section within 10 years of 2 or
27 more prior convictions is guilty of a felony and must be sentenced
28 to pay a fine of not less than \$500.00 or more than \$5,000.00 and
29 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 the imprisonment imposed under this subdivision must be served
7 consecutively.

8 (6) A term of imprisonment imposed under subsection (4) or (5)
9 must not be suspended.

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

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

17 (i) This section.

18 (ii) Section 625, except a violation of section 625(2), or a
19 violation of any prior enactment of section 625 in which the
20 defendant operated a vehicle while under the influence of
21 intoxicating or alcoholic liquor or a controlled substance, or a
22 combination of intoxicating or alcoholic liquor and a controlled
23 substance, or while visibly impaired, or with an unlawful bodily
24 alcohol content.

25 (iii) Former section 625b.

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

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

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

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

9 Enacting section 1. This amendatory act does not take effect
10 unless Senate Bill No. 616 of the 101st Legislature is enacted into
11 law.