

**STATE OF MICHIGAN
101ST LEGISLATURE
REGULAR SESSION OF 2021**

Introduced by Reps. Hammoud, Filler and Bellino

ENROLLED HOUSE BILL No. 4308

AN ACT to amend 1949 PA 300, entitled “An act to provide for the registration, titling, sale, transfer, and regulation of certain vehicles operated upon the public highways of this state or any other place open to the general public or generally accessible to motor vehicles and distressed vehicles; to provide for the licensing of dealers; to provide for the examination, licensing, and control of operators and chauffeurs; to provide for the giving of proof of financial responsibility and security by owners and operators of vehicles; to provide for the imposition, levy, and collection of specific taxes on vehicles, and the levy and collection of sales and use taxes, license fees, and permit fees; to provide for the regulation and use of streets and highways; to create certain funds; to provide penalties and sanctions for a violation of this act; to provide for civil liability of manufacturers, the manufacturers of certain devices, the manufacturers of automated technology, upfitters, owners, and operators of vehicles and service of process on residents and nonresidents; to regulate the introduction and use of certain evidence; to regulate and certify the manufacturers of certain devices; to provide for approval and certification of installers and servicers of certain devices; to provide for the levy of certain assessments; to provide for the enforcement of this act; to provide for the creation of and to prescribe the powers and duties of certain state and local agencies; to impose liability upon the state or local agencies; to provide appropriations for certain purposes; to repeal all other acts or parts of acts inconsistent with this act or contrary to this act; and to repeal certain parts of this act on a specific date,” by amending sections 625, 625a, 625g, and 625m (MCL 257.625, 257.625a, 257.625g, and 257.625m), section 625 as amended by 2020 PA 383 and sections 625a, 625g, and 625m as amended by 2017 PA 153.

The People of the State of Michigan enact:

Sec. 625. (1) 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 is operating while intoxicated. As used in this section, “operating while intoxicated” means any of the following:

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

(b) The person has an alcohol content of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine or, beginning 5 years after the state treasurer publishes a certification under subsection (28), the person has an alcohol content of 0.10 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

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

(2) The owner of a vehicle or a person in charge or in control of a vehicle shall not authorize or knowingly permit the vehicle to be operated 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 motor vehicles, within this state by a person if any of the following apply:

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

(b) The person has an alcohol content of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine or, beginning 5 years after the state treasurer publishes a certification under subsection (28), the person has an alcohol content of 0.10 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

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

(3) 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 when, due to the consumption of alcoholic liquor, a controlled substance, or other intoxicating substance, or a combination of alcoholic liquor, a controlled substance, or other intoxicating substance, the person's ability to operate the vehicle is visibly impaired. If a person is charged with violating subsection (1), a finding of guilty under this subsection may be rendered.

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

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

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

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

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

(a) Except as provided in subdivision (b), the person is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not less than \$1,000.00 or more than \$5,000.00, or both. The judgment of sentence may impose the sanction permitted under section 625n. If the vehicle is not ordered forfeited under section 625n, the court shall order vehicle immobilization under section 904d in the judgment of sentence.

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

(6) A person who is less than 21 years of age, 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 any bodily alcohol content. As used in this subsection, "any bodily alcohol content" means either of the following:

(a) An alcohol content of 0.02 grams or more but less than 0.08 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine or, beginning 5 years after the state treasurer publishes a certification under subsection (28), the person has an alcohol content of 0.02 grams or more but less than 0.10 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

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

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

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

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

(A) Imprisonment for not more than 1 year.

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

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

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

(B) Probation with imprisonment in the county jail for not less than 30 days or more than 1 year and community service for not less than 60 days or more than 180 days. Not less than 48 hours of this imprisonment must be served consecutively.

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

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

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

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

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

(C) Imprisonment for not more than 93 days.

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

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

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

(c) In the judgment of sentence under subdivision (a)(i) or (b)(i), the court may, unless the vehicle is ordered 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 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 is convicted of violating subsection (1)(c), imprisonment for not more than 180 days.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) If a person is convicted of violating subsection (3), 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) Imprisonment for not more than 93 days.

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

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

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

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

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

(a) A copy of a judgment of conviction.

(b) An abstract of conviction.

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

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

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

(f) Information contained in a presentence report.

(g) An admission by the defendant.

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

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

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

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

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

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

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

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

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

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

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

(25) As used in this section:

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

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

(A) The official United States Pharmacopoeia.

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

(C) The official National Formulary.

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

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

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

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

(B) Section 625m.

(C) Former section 625b.

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

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

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

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

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

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

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

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

(2) A peace officer who has reasonable cause to believe that a person was operating a vehicle upon a public highway or other place open to the public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state and that the person by the consumption of alcoholic liquor, a controlled substance, or other intoxicating substance or a combination of them may have affected his or her ability to operate a vehicle, or reasonable cause to believe that a person was operating a commercial motor vehicle within the state while the person's blood, breath, or urine contained any measurable amount of alcohol, a controlled substance, or any other intoxicating substance or while the person had any detectable presence of alcoholic liquor, a controlled substance or any other intoxicating substance, or any combination of them, or reasonable cause to believe that a person who is less than 21 years of age was operating a vehicle upon a public highway or other place open to the public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state while the person had any bodily alcohol content as that term is defined in section 625(6), may require the person to submit to a preliminary chemical breath analysis. The following provisions apply to a preliminary chemical breath analysis administered under this subsection:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) If, after an accident, the driver of a vehicle involved in the accident is deceased, a sample of the decedent's blood must be withdrawn in a manner directed by the medical examiner to determine the amount of alcohol or the presence of a controlled substance or other intoxicating substance, or any combination of them, in the decedent's blood. The medical examiner shall give the results of the chemical analysis of the sample to the law enforcement agency investigating the accident and that agency shall forward the results to the department of state police.

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

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

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

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

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

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

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

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

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

(10) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

(4) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) This section.

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

(iii) Former section 625b.

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

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

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

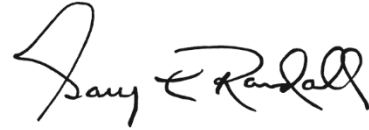
(9) If 2 or more convictions described in subsection (7) are convictions for violations arising out of the same transaction, only 1 conviction must be used to determine whether the person has a prior conviction.

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

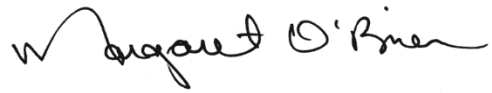
Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 101st Legislature are enacted into law:

- (a) House Bill No. 4220.
- (b) House Bill No. 4309.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved _____

Governor