

HOUSE BILL No. 4005

January 8, 2003, Introduced by Rep. Kratz and referred to the Committee on Criminal Justice.

A bill to amend 1949 PA 300, entitled
"Michigan vehicle code,"
by amending sections 625, 625a, 625c, 625g, and 625m
(MCL 257.625, 257.625a, 257.625c, 257.625g, and 257.625m),
sections 625 and 625m as amended by 2000 PA 460, section 625a as
amended by 1998 PA 351, section 625c as amended by 1998 PA 350,
and section 625g as amended by 1999 PA 73.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 625. (1) A person, whether licensed or not, shall not
2 operate a vehicle upon a highway or other place open to the
3 general public or generally accessible to motor vehicles,
4 including an area designated for the parking of vehicles, within
5 this state if either of the following applies:

6 (a) The person is under the influence of intoxicating liquor,
7 a controlled substance, or a combination of intoxicating liquor

1 and a controlled substance.

2 (b) The person has an alcohol content of ~~0.10~~ **0.08** grams or
3 more per 100 milliliters of blood, per 210 liters of breath, or
4 per 67 milliliters of urine.

5 (2) The owner of a vehicle or a person in charge or in
6 control of a vehicle shall not authorize or knowingly permit the
7 vehicle to be operated upon a highway or other place open to the
8 general public or generally accessible to motor vehicles,
9 including an area designated for the parking of motor vehicles,
10 within this state by a person who is under the influence of
11 intoxicating liquor, a controlled substance, or a combination of
12 intoxicating liquor and a controlled substance, who has an
13 alcohol content of ~~0.10~~ **0.08** grams or more per 100 milliliters
14 of blood, per 210 liters of breath, or per 67 milliliters of
15 urine, or whose ability to operate the motor vehicle is visibly
16 impaired due to the consumption of intoxicating liquor, a
17 controlled substance, or a combination of intoxicating liquor and
18 a controlled substance.

19 (3) A person, whether licensed or not, shall not operate a
20 vehicle upon a highway or other place open to the general public
21 or generally accessible to motor vehicles, including an area
22 designated for the parking of vehicles, within this state when,
23 due to the consumption of intoxicating liquor, a controlled
24 substance, or a combination of intoxicating liquor and a
25 controlled substance, the person's ability to operate the vehicle
26 is visibly impaired. If a person is charged with violating
27 subsection (1), a finding of guilty under this subsection may be

1 rendered.

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

6 (a) Except as provided in subdivision (b), the person is
7 guilty of a felony punishable by imprisonment for not more than
8 15 years or a fine of not less than \$2,500.00 or more than
9 \$10,000.00, or both. The judgment of sentence may impose the
10 sanction permitted under section 625n. If the vehicle is not
11 ordered forfeited under section 625n, the court shall order
12 vehicle immobilization under section 904d in the judgment of
13 sentence.

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

26 (5) A person, whether licensed or not, who operates a motor
27 vehicle in violation of subsection (1) or (3) and by the

1 operation of that motor vehicle causes a serious impairment of a
2 body function of another person is guilty of a felony punishable
3 by imprisonment for not more than 5 years or a fine of not less
4 than \$1,000.00 or more than \$5,000.00, or both. The judgment of
5 sentence may impose the sanction permitted under section 625n.
6 If the vehicle is not ordered forfeited under section 625n, the
7 court shall order vehicle immobilization under section 904d in
8 the judgment of sentence. As used in this subsection, "serious
9 impairment of a body function" includes, but is not limited to, 1
10 or more of the following:

11 (a) Loss of a limb or use of a limb.

12 (b) Loss of a hand, foot, finger, or thumb or use of a hand,
13 foot, finger, or thumb.

14 (c) Loss of an eye or ear or use of an eye or ear.

15 (d) Loss or substantial impairment of a bodily function.

16 (e) Serious visible disfigurement.

17 (f) A comatose state that lasts for more than 3 days.

18 (g) Measurable brain damage or mental impairment.

19 (h) A skull fracture or other serious bone fracture.

20 (i) Subdural hemorrhage or subdural hematoma.

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

1 (a) An alcohol content of not less than 0.02 grams or more
2 than ~~0.07~~ 0.05 grams per 100 milliliters of blood, per 210
3 liters of breath, or per 67 milliliters of urine.

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

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

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

15 (i) Except as provided in subparagraph (ii), a person who
16 violates this subdivision is guilty of a misdemeanor and shall be
17 sentenced to pay a fine of not less than \$200.00 or more than
18 \$1,000.00 and to 1 or more of the following:

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

23 (B) Community service for not less than 30 days or more than
24 90 days.

25 (ii) If the violation occurs within 7 years of a prior
26 conviction or within 10 years of 2 or more prior convictions, a
27 person who violates this subdivision is guilty of a felony and

1 shall be sentenced to pay a fine of not less than \$500.00 or more
2 than \$5,000.00 and to either of the following:

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

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

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

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

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

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

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

20 (ii) If the violation occurs within 7 years of a prior
21 conviction or within 10 years of 2 or more prior convictions, a
22 person who violates this subdivision shall be sentenced to pay a
23 fine of not less than \$200.00 or more than \$1,000.00 and to 1 or
24 more of the following:

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

1 suspended.

2 (B) Community service for not less than 30 days or more than
3 90 days.

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

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

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

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

23 (i) Community service for not more than 45 days.

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

25 (iii) A fine of not less than \$100.00 or more than \$500.00.

26 (b) If the violation occurs within 7 years of a prior
27 conviction, the person shall be sentenced to pay a fine of not

1 less than \$200.00 or more than \$1,000.00 and 1 or more of the
2 following:

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

6 (ii) Community service for not less than 30 days or more than
7 90 days.

8 (c) If the violation occurs within 10 years of 2 or more
9 prior convictions, the person is guilty of a felony and shall be
10 sentenced to pay a fine of not less than \$500.00 or more than
11 \$5,000.00 and to either of the following:

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

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

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

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

27 (f) In the judgment of sentence under subdivision (b) or (c),

1 the court may impose the sanction permitted under section 625n.

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

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

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

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

16 (10) If a person is convicted of violating subsection (3),
17 all of the following apply:

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

21 (i) Community service for not more than 45 days.

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

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

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

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

4 (ii) Community service for not less than 30 days or more than
5 90 days.

6 (c) If the violation occurs within 10 years of 2 or more
7 prior convictions, the person is guilty of a felony and shall be
8 sentenced to pay a fine of not less than \$500.00 or more than
9 \$5,000.00 and 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
14 not less than 60 days or more than 180 days. Not less than 48
15 hours of the imprisonment imposed under this subparagraph shall
16 be served consecutively.

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

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

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

27 (11) If a person is convicted of violating subsection (6),

1 all of the following apply:

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

5 (i) Community service for not more than 45 days.

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

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

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

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

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

13 (12) In addition to imposing the sanctions prescribed under
14 this section, the court may order the person to pay the costs of
15 the prosecution under the code of criminal procedure, 1927
16 PA 175, MCL 760.1 to ~~776.22~~ **777.69**.

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

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

1 division of circuit court, a statement listing the defendant's
2 prior convictions.

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

10 (16) A prior conviction shall be established at sentencing by
11 1 or more of the following:

12 (a) An abstract of conviction.

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

14 (c) An admission by the defendant.

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

27 (18) Except as otherwise provided in subsection (19), if a

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

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

17 (a) Whether the defendant was under the influence of a
18 controlled substance or a combination of intoxicating liquor and
19 a controlled substance at the time of the violation.

20 (b) Whether the defendant was visibly impaired due to his or
21 her consumption of a controlled substance or a combination of
22 intoxicating liquor and a controlled substance at the time of the
23 violation.

24 (20) If a jury or court finds under subsection (17), (18), or
25 (19) that the defendant operated a motor vehicle under the
26 influence of or while impaired due to the consumption of a
27 controlled substance or a combination of a controlled substance

1 and an intoxicating liquor, the court shall do both of the
2 following:

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

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

9 (21) Except as otherwise provided by law, a record described
10 in subsection (20)(b) is a public record and the department of
11 state police shall retain the information contained on that
12 record for not less than 7 years.

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

18 (23) Subject to subsection (25), as used in this section,
19 "prior conviction" means a conviction for any of the following,
20 whether under a law of this state, a local ordinance
21 substantially corresponding to a law of this state, or a law of
22 another state substantially corresponding to a law of this
23 state:

24 (a) Except as provided in subsection (24), a violation or
25 attempted violation of subsection (1), (3), (4), (5), (6), or
26 (7), section 625m, former section 625(1) or (2), or former
27 section 625b.

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

4 (c) A violation of section 653a(4).

5 (24) Except for purposes of the enhancement described in
6 subsection (11)(b), only 1 violation or attempted violation of
7 subsection (6), a local ordinance substantially corresponding to
8 subsection (6), or a law of another state substantially
9 corresponding to subsection (6) may be used as a prior
10 conviction.

11 (25) If 2 or more convictions described in subsection (23)
12 are convictions for violations arising out of the same
13 transaction, only 1 conviction shall be used to determine whether
14 the person has a prior conviction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (b) A person arrested for a crime described in

1 section 625c(1) shall be advised of all of the following:

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

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

10 (iii) He or she is responsible for obtaining a chemical
11 analysis of a test sample obtained pursuant to his or her own
12 request.

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

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

22 (c) A sample or specimen of urine or breath shall be taken
23 and collected in a reasonable manner. Only a licensed physician,
24 or an individual operating under the delegation of a licensed
25 physician under section 16215 of the public health code, 1978 PA
26 368, MCL 333.16215, qualified to withdraw blood and acting in a
27 medical environment, may withdraw blood at a peace officer's

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

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

24 (e) If, after an accident, the driver of a vehicle involved
25 in the accident is transported to a medical facility and a sample
26 of the driver's blood is withdrawn at that time for medical
27 treatment, the results of a chemical analysis of that sample are

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

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

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

27 (7) The provisions of subsection (6) relating to chemical

1 testing do not limit the introduction of any other admissible
2 evidence bearing upon the question of whether a person was
3 impaired by, or under the influence of, intoxicating liquor or a
4 controlled substance, or a combination of intoxicating liquor and
5 a controlled substance, or whether the person had an alcohol
6 content of ~~0.10~~ **0.08** grams or more per 100 milliliters of
7 blood, per 210 liters of breath, or per 67 milliliters of urine,
8 or if the person is less than 21 years of age, whether the person
9 had any bodily alcohol content within his or her body. As used
10 in this section, "any bodily alcohol content" means either of the
11 following:

12 (a) An alcohol content of not less than 0.02 grams or more
13 than ~~0.07~~ **0.05** grams per 100 milliliters of blood, per 210
14 liters of breath, or per 67 milliliters of urine.

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

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

1 (9) Except in a prosecution relating solely to a violation of
2 section 625(1)(b) or (6), the amount of alcohol in the driver's
3 blood, breath, or urine at the time alleged as shown by chemical
4 analysis of the person's blood, breath, or urine gives rise to
5 the following presumptions:

6 (a) If there were at the time ~~0.07~~ **0.05** grams or less of
7 alcohol per 100 milliliters of the defendant's blood, per 210
8 liters of the defendant's breath, or per 67 milliliters of the
9 defendant's urine, it is presumed that the defendant's ability to
10 operate a motor vehicle was not impaired due to the consumption
11 of intoxicating liquor and that the defendant was not under the
12 influence of intoxicating liquor.

13 (b) If there were at the time more than ~~0.07~~ **0.05** grams but
14 less than ~~0.10~~ **0.08** grams of alcohol per 100 milliliters of the
15 defendant's blood, per 210 liters of the defendant's breath, or
16 per 67 milliliters of the defendant's urine, it is presumed that
17 the defendant's ability to operate a vehicle was impaired within
18 the provisions of section 625(3) due to the consumption of
19 intoxicating liquor.

20 (c) If there were at the time ~~0.10~~ **0.08** grams or more of
21 alcohol per 100 milliliters of the defendant's blood, per 210
22 liters of the breath, or per 67 milliliters of the defendant's
23 urine, it is presumed that the defendant was under the influence
24 of intoxicating liquor.

25 (10) A person's refusal to submit to a chemical test as
26 provided in subsection (6) is admissible in a criminal
27 prosecution for a crime described in section 625c(1) only to show

1 that a test was offered to the defendant, but not as evidence in
2 determining the defendant's innocence or guilt. The jury shall
3 be instructed accordingly.

4 Sec. 625c. (1) A person who operates a vehicle upon a
5 public highway or other place open to the general public or
6 generally accessible to motor vehicles, including an area
7 designated for the parking of vehicles, within this state is
8 considered to have given consent to chemical tests of his or her
9 blood, breath, or urine for the purpose of determining the amount
10 of alcohol or presence of a controlled substance or both in his
11 or her blood or urine or the amount of alcohol in his or her
12 breath in all of the following circumstances:

13 (a) If the person is arrested for a violation of section
14 625(1), (3), (4), (5), (6), or (7), section 625a(5), or section
15 625m or a local ordinance substantially corresponding to section
16 625(1), (3), or (6), section 625a(5), or section 625m.

17 (b) If the person is arrested for felonious driving,
18 negligent homicide, manslaughter, or murder resulting from the
19 operation of a motor vehicle, and the peace officer had
20 reasonable grounds to believe the person was operating the
21 vehicle while impaired by or under the influence of intoxicating
22 liquor or a controlled substance or a combination of intoxicating
23 liquor and a controlled substance, or while having an alcohol
24 content of ~~0.10~~ 0.08 grams or more per 100 milliliters of
25 blood, per 210 liters of breath, or per 67 milliliters of urine,
26 or if the person is less than 21 years of age while having any
27 bodily alcohol content. As used in this subdivision, "any bodily

1 alcohol content" means either of the following:

2 (i) An alcohol content of not less than 0.02 grams or more
3 than ~~0.07~~ 0.05 grams per 100 milliliters of blood, per 210
4 liters of breath, or per 67 milliliters of urine.

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

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

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

15 Sec. 625g. (1) If a person refuses a chemical test offered
16 pursuant to section 625a(6), or submits to the chemical test or
17 a chemical test is performed pursuant to a court order and the
18 test reveals an unlawful alcohol content, the peace officer who
19 requested the person to submit to the test shall do all of the
20 following:

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

27 (b) Except as provided in subsection (2), immediately do all

1 of the following:

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

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

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

9 (2) If a person submits to a chemical test offered pursuant
10 to section 625a(6) that requires an analysis of blood or urine
11 and a report of the results of that chemical test is not
12 immediately available, the peace officer who requested the person
13 to submit to the test shall comply with subsection (1)(a) pending
14 receipt of the test report. If the report reveals an unlawful
15 alcohol content, the peace officer who requested the person to
16 submit to the test shall immediately comply with
17 subsection (1)(b). If the report does not reveal an unlawful
18 alcohol content, the peace officer who requested the person to
19 submit to the test shall immediately notify the person of the
20 test results and immediately return the person's license or
21 permit by first-class mail to the address given at the time of
22 arrest.

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

25 (a) If the case is not prosecuted, for 90 days after issuance
26 or until the person's license or permit is suspended pursuant to
27 section 625f, whichever occurs earlier. The prosecuting attorney

1 shall notify the secretary of state if a case referred to the
2 prosecuting attorney is not prosecuted. The arresting law
3 enforcement agency shall notify the secretary of state if a case
4 is not referred to the prosecuting attorney for prosecution.

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

9 (4) As used in this section, "unlawful alcohol content" means
10 any of the following, as applicable:

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

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

18 (c) If the person tested is not a person described in
19 subdivision (a) or (b), ~~0.10~~ **0.08** grams or more of alcohol per
20 100 milliliters of blood, per 210 liters of breath, or per 67
21 milliliters of urine.

22 Sec. 625m. (1) A person, whether licensed or not, who has
23 an alcohol content of 0.04 grams or more but not more than ~~0.07~~
24 **0.05** grams per 100 milliliters of blood, per 210 liters of
25 breath, or per 67 milliliters of urine shall not operate a
26 commercial motor vehicle within this state.

27 (2) A peace officer may arrest a person without a warrant

1 under either of the following circumstances:

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

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

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

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

23 (5) A person who violates this section or a local ordinance
24 substantially corresponding to this section within 10 years of 2
25 or more prior convictions is guilty of a felony and shall be
26 sentenced to pay a fine of not less than \$500.00 or more than
27 \$5,000.00 and to either of the following:

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

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

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

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

16 (a) Except as provided in subsection (8), a violation or
17 attempted violation of this section, section 625(1), (3), (4),
18 (5), (6), or (7), former section 625(1) or (2), or former section
19 625b.

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

23 (c) A violation of section 653a(4).

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

1 conviction.

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

6 Enacting section 1. This amendatory act does not take
7 effect unless Senate Bill No. _____ or House Bill No. _____
8 (request no. 00345'03 a) of the 92nd Legislature is enacted into
9 law.