

# HOUSE BILL No. 5951

May 27, 2004, Introduced by Reps. Wenke, Howell, Newell, Nofs, Hune, Gaffney, Meyer, Stahl and Stakoe and referred to the Committee on Criminal Justice.

A bill to amend 1949 PA 300, entitled "Michigan vehicle code," by amending sections 625a, 625c, 625d, 625e, and 625f (MCL 257.625a, 257.625c, 257.625d, 257.625e, and 257.625f), sections 625a, 625c, and 625f as amended by 2003 PA 61, section 625d as amended by 1994 PA 211, and section 625e as amended by 1991 PA 104, and by adding section 306a.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 306a. (1) A person shall not accompany a student for  
2 purposes of section 306 if any of the following apply:

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

6           (b) The person's ability to direct the operation of a motor  
7 vehicle is impaired due to the consumption of intoxicating

1 liquor, a controlled substance, or a combination of intoxicating  
2 liquor and a controlled substance.

3 (c) The person has an alcohol content of 0.08 grams or more  
4 per 100 milliliters of blood, per 210 liters of breath, or per 67  
5 milliliters of urine or, beginning October 1, 2013, the person  
6 has an alcohol content of 0.10 grams or more per 210 liters of  
7 breath or per 67 milliliters of urine.

8 (2) A person who violates this section is guilty of a crime  
9 as follows:

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

14 (b) If, at the time of the violation of this section, the  
15 student is operating the motor vehicle in violation of section  
16 625(4), the person accompanying the student is guilty of a felony  
17 punishable by imprisonment for not more than 5 years or a fine of  
18 not less than \$1,500.00 or more than \$10,000.00, or both.

19 (c) If, at the time of the violation of this section, the  
20 student is operating the motor vehicle in violation of section  
21 625(5), the person accompanying the student is guilty of a felony  
22 punishable by imprisonment for not more than 2 years or a fine of  
23 not less than \$1,000.00 or more than \$5,000.00, or both.

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

26 (a) The peace officer has reasonable cause to believe the  
27 person was, at the time of an accident in this state, the

1 operator of a vehicle involved in the accident and was operating  
2 the vehicle in violation of section 625 or a local ordinance  
3 substantially corresponding to section 625.

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

10 (c) **The peace officer has reasonable cause to believe that**  
11 **the person was accompanying a student driver in violation of**  
12 **section 306a.**

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

1 while the person had any bodily alcohol content as that term is  
2 defined in section 625(6), **or reasonable cause to believe that**  
3 **the person was accompanying a student driver in violation of**  
4 **section 306a**, may require the person to submit to a preliminary  
5 chemical breath analysis. The following provisions apply with  
6 respect to a preliminary chemical breath analysis administered  
7 under this subsection:

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

10 (b) The results of a preliminary chemical breath analysis are  
11 admissible in a criminal prosecution for a crime enumerated in  
12 section 625c(1) **or a violation of section 306a** or in an  
13 administrative hearing for 1 or more of the following purposes:

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

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

24 (iii) As evidence of the defendant's breath alcohol content,  
25 if offered by the prosecution to rebut testimony elicited on  
26 cross-examination of a prosecution witness that the defendant's  
27 breath alcohol content was lower at the time of the charged

1 offense than when a chemical test was administered under  
2 subsection (6).

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

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

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

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

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

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

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

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

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

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

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

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

5           (v) Refusing a peace officer's request to take a test  
6 described in subparagraph (i), **other than for a violation of**  
7 **section 306a**, will result in the suspension of his or her  
8 operator's or chauffeur's license and vehicle group designation  
9 or operating privilege and in the addition of 6 points to his or  
10 her driver record.

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

26           (d) A chemical test described in this subsection shall be  
27 administered at the request of a peace officer having reasonable

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

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

27 (f) If, after an accident, the driver of a vehicle involved



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

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

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

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

22 (b) Whether the person had an alcohol content of 0.08 grams  
23 or more per 100 milliliters of blood, per 210 liters of breath,  
24 or per 67 milliliters of urine or, beginning October 1, 2013, the  
25 person had an alcohol content of 0.10 grams or more per 100  
26 milliliters of blood, per 210 liters of breath, or per 67  
27 milliliters of urine.

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

5 (i) An alcohol content of 0.02 grams or more but less than  
6 0.08 grams per 100 milliliters of blood, per 210 liters of  
7 breath, or per 67 milliliters of urine or, beginning October 1,  
8 2013, the person had an alcohol content of 0.02 grams or more but  
9 less than 0.10 grams or more per 100 milliliters of blood, per  
10 210 liters of breath, or per 67 milliliters of urine.

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

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

24 (9) A person's refusal to submit to a chemical test as  
25 provided in subsection (6) is admissible in a criminal  
26 prosecution for a crime described in section 625c(1) only to show  
27 that a test was offered to the defendant, but not as evidence in

1 determining the defendant's innocence or guilt. The jury shall  
2 be instructed accordingly.

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

12 (a) ~~If the~~ **The** person is arrested for a violation of  
13 section 625(1), (3), (4), (5), (6), (7), or (8), section 625a(5),  
14 or section 625m or a local ordinance substantially corresponding  
15 to section 625(1), (3), (6), or (8), section 625a(5), or section  
16 625m.

17 (b) ~~If the~~ **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 in violation of section 625.

22 **(c) The person is arrested for a violation of section 306a.**

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

27 (3) The tests shall be administered as provided in section

1 625a(6).

2       Sec. 625d. (1) If a person refuses the request of a peace  
3 officer to submit to a chemical test offered pursuant to section  
4 625a(6), a test shall not be given without a court order, but the  
5 officer may seek to obtain the court order.

6       (2) A written report shall immediately be forwarded to the  
7 secretary of state by the peace officer. The report shall state  
8 that the officer had reasonable grounds to believe that the  
9 person had committed a crime described in section 625c(1), and  
10 that the person had refused to submit to the test upon the  
11 request of the peace officer and had been advised of the  
12 consequences of the refusal. The form of the report shall be  
13 prescribed and furnished by the secretary of state. **This**  
14 **subsection does not apply to a refusal arising out of an arrest**  
15 **for a violation of section 306a.**

16       Sec. 625e. (1) If a person refuses to submit to a chemical  
17 test pursuant to section 625d, the peace officer shall  
18 immediately notify the person in writing that within 14 days of  
19 the date of the notice the person may request a hearing as  
20 provided in section 625f. The form of the notice shall be  
21 prescribed and furnished by the secretary of state.

22       (2) The notice shall specifically state that failure to  
23 request a hearing within 14 days will result in the suspension of  
24 the person's license or permit to drive. The notice shall also  
25 state that there is not a requirement that the person retain  
26 counsel for the hearing, though counsel would be permitted to  
27 represent the person at the hearing.

1           **(3) This section does not apply to a refusal arising out of**  
2 **an arrest for a violation of section 306a.**

3           Sec. 625f. (1) If a person who refuses to submit to a  
4 chemical test pursuant to section 625d does not request a hearing  
5 within 14 days after the date of notice pursuant to section 625e,  
6 the secretary of state shall impose the following license  
7 sanctions:

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

17           (b) If the person was operating a commercial motor vehicle,  
18 for the first refusal, suspend all vehicle group designations on  
19 the person's operator's or chauffeur's license or permit or  
20 nonresident privilege to operate a commercial motor vehicle or,  
21 if the person is a resident without a license or permit to  
22 operate a commercial motor vehicle in the state, not issue the  
23 person an operator's or chauffeur's license with vehicle group  
24 designations, for 1 year.

25           (c) If the person was operating a commercial motor vehicle,  
26 for a second or subsequent refusal that occurred in a separate  
27 incident from and within 10 years of a prior refusal, revoke all

1 vehicle group designations on the person's operator's or  
2 chauffeur's license or permit or nonresident privilege to operate  
3 a commercial motor vehicle or, if the person is a resident  
4 without a license or permit to operate a commercial motor vehicle  
5 in the state, not issue the person an operator's or chauffeur's  
6 license with vehicle group designations, for not less than 10  
7 years and until the person is approved for the issuance of a  
8 vehicle group designation.

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

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

1 to comply with these time limits.

2 (3) Except for delay attributable to the unavailability of  
3 the defendant, a witness, or material evidence, or due to an  
4 interlocutory appeal or exceptional circumstances, but not a  
5 delay caused by docket congestion, a hearing shall be finally  
6 adjudicated within 77 days after the date of arrest. The hearing  
7 officer shall not impose any sanction for a failure to comply  
8 with this time limit.

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

10 (a) Whether the peace officer had reasonable grounds to  
11 believe that the person had committed a crime described in  
12 section 625c(1).

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

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

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

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

22 (6) The hearing officer shall make a record of a hearing held  
23 pursuant to this section. The record shall be prepared and  
24 transcribed in accordance with section 86 of the administrative  
25 procedures act of 1969, 1969 PA 306, MCL 24.286. Upon  
26 notification of the filing of a petition for judicial review  
27 pursuant to section 323 and not less than 10 days before the

1 matter is set for review, the hearing officer shall transmit to  
2 the court in which the petition was filed the original or a  
3 certified copy of the official record of the proceedings.  
4 Proceedings at which evidence was presented need not be  
5 transcribed and transmitted if the sole reason for review is to  
6 determine whether the court will order the issuance of a  
7 restricted license. The parties to the proceedings for judicial  
8 review may stipulate that the record be shortened. A party  
9 unreasonably refusing to stipulate to a shortened record may be  
10 taxed by the court in which the petition is filed for the  
11 additional costs. The court may permit subsequent corrections to  
12 the record.

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

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

27 (b) If the person was operating a commercial motor vehicle,



1 impose the sanction prescribed under subsection (1)(b) or (1)(c),  
2 as applicable. The person may file a petition in the circuit  
3 court of the county in which the arrest was made to review the  
4 suspension or denial as provided in section 323.

5 (c) If the person was operating a commercial motor vehicle  
6 and was arrested for an offense enumerated in section 625c other  
7 than a violation of section 625a(5) or 625m, impose the license  
8 sanctions described in subdivisions (a) and (b).

9 (8) If the person who requested the hearing prevails, the  
10 peace officer who filed the report under section 625d may, with  
11 the consent of the prosecuting attorney, file a petition in the  
12 circuit court of the county in which the arrest was made to  
13 review the determination of the hearing officer as provided in  
14 section 323.

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

21 (10) **This section does not apply to a refusal arising out of**  
22 **an arrest for a violation of section 306a.**