

HOUSE BILL No. 4367

February 22, 2005, Introduced by Reps. Wenke, Nofs and Jones and referred to the Committee on Transportation.

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 AND

1 A CONTROLLED SUBSTANCE.

2 (B) THE PERSON'S ABILITY TO DIRECT THE OPERATION OF A MOTOR
3 VEHICLE IS IMPAIRED DUE TO THE CONSUMPTION OF INTOXICATING LIQUOR,
4 A CONTROLLED SUBSTANCE, OR A COMBINATION OF INTOXICATING LIQUOR AND
5 A CONTROLLED SUBSTANCE.

6 (C) THE PERSON HAS AN ALCOHOL CONTENT OF 0.08 GRAMS OR MORE
7 PER 100 MILLILITERS OF BLOOD, PER 210 LITERS OF BREATH, OR PER 67
8 MILLILITERS OF URINE OR, BEGINNING OCTOBER 1, 2013, THE PERSON HAS
9 AN ALCOHOL CONTENT OF 0.10 GRAMS OR MORE PER 210 LITERS OF BREATH
10 OR PER 67 MILLILITERS OF URINE.

11 (2) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A CRIME AS
12 FOLLOWS:

13 (A) EXCEPT AS PROVIDED IN SUBDIVISIONS (B) AND (C), THE PERSON
14 IS GUILTY OF A MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE
15 THAN 93 DAYS OR A FINE OF NOT LESS THAN \$100.00 OR MORE THAN
16 \$500.00, OR BOTH.

17 (B) IF, AT THE TIME OF THE VIOLATION OF THIS SECTION, THE
18 STUDENT IS OPERATING THE MOTOR VEHICLE IN VIOLATION OF SECTION
19 625(4), THE PERSON ACCOMPANYING THE STUDENT IS GUILTY OF A FELONY
20 PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 5 YEARS OR A FINE OF
21 NOT LESS THAN \$1,500.00 OR MORE THAN \$10,000.00, OR BOTH.

22 (C) IF, AT THE TIME OF THE VIOLATION OF THIS SECTION, THE
23 STUDENT IS OPERATING THE MOTOR VEHICLE IN VIOLATION OF SECTION
24 625(5), THE PERSON ACCOMPANYING THE STUDENT IS GUILTY OF A FELONY
25 PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 2 YEARS OR A FINE OF
26 NOT LESS THAN \$1,000.00 OR MORE THAN \$5,000.00, OR BOTH.

27 Sec. 625a. (1) A peace officer may arrest a person without a

1 warrant under either of the following circumstances:

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

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

13 **(C) THE PEACE OFFICER HAS REASONABLE CAUSE TO BELIEVE THAT THE**
14 **PERSON WAS ACCOMPANYING A STUDENT DRIVER IN VIOLATION OF SECTION**
15 **306A.**

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

1 place open to the public or generally accessible to motor vehicles,
2 including an area designated for the parking of vehicles, within
3 this state while the person had any bodily alcohol content as that
4 term is defined in section 625(6), **OR REASONABLE CAUSE TO BELIEVE**
5 **THAT THE PERSON WAS ACCOMPANYING A STUDENT DRIVER IN VIOLATION OF**
6 **SECTION 306A**, may require the person to submit to a preliminary
7 chemical breath analysis. The following provisions apply with
8 respect to a preliminary chemical breath analysis administered
9 under this subsection:

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

12 (b) The results of a preliminary chemical breath analysis are
13 admissible in a criminal prosecution for a crime enumerated in
14 section 625c(1) **OR A VIOLATION OF SECTION 306A** or in an
15 administrative hearing for 1 or more of the following purposes:

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

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

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

1 alcohol content was lower at the time of the charged offense than
2 when a chemical test was administered under 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 refuses
8 to submit to a preliminary chemical breath analysis upon a lawful
9 request by a peace officer is responsible for a civil infraction.

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

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

26 (5) A person who was operating a commercial motor vehicle and
27 who refuses to submit to a preliminary chemical breath analysis

1 upon a peace officer's lawful request is guilty of a misdemeanor
2 punishable by imprisonment for not more than 93 days or a fine of
3 not more than \$100.00, or both.

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

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

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

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

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

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

26 (iv) If he or she refuses the request of a peace officer to
27 take a test described in subparagraph (i), a test shall not be given

1 without a court order, but the peace officer may seek to obtain a
2 court order.

3 (v) Refusing a peace officer's request to take a test
4 described in subparagraph (i), **OTHER THAN FOR A VIOLATION OF SECTION**
5 **306A**, will result in the suspension of his or her operator's or
6 chauffeur's license and vehicle group designation or operating
7 privilege and in the addition of 6 points to his or her driver
8 record.

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

24 (d) A chemical test described in this subsection shall be
25 administered at the request of a peace officer having reasonable
26 grounds to believe the person has committed a crime described in
27 section 625c(1). A person who takes a chemical test administered at

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

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

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

1 both, in the decedent's blood. The medical examiner shall give the
2 results of the chemical analysis of the sample to the law
3 enforcement agency investigating the accident and that agency shall
4 forward the results to the department of state police.

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

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

15 (a) Whether the person was impaired by, or under the influence
16 of, alcoholic liquor, a controlled substance, or a combination of
17 alcoholic liquor and a controlled substance.

18 (b) Whether the person had an alcohol content of 0.08 grams or
19 more per 100 milliliters of blood, per 210 liters of breath, or per
20 67 milliliters of urine or, beginning October 1, 2013, the person
21 had an alcohol content of 0.10 grams or more per 100 milliliters of
22 blood, per 210 liters of breath, or per 67 milliliters of urine.

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

27 (i) An alcohol content of 0.02 grams or more but less than 0.08

1 grams per 100 milliliters of blood, per 210 liters of breath, or
2 per 67 milliliters of urine or, beginning October 1, 2013, the
3 person had an alcohol content of 0.02 grams or more but less than
4 0.10 grams or more per 100 milliliters of blood, per 210 liters of
5 breath, or per 67 milliliters of urine.

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

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

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

24 Sec. 625c. (1) A person who operates a vehicle upon a public
25 highway or other place open to the general public or generally
26 accessible to motor vehicles, including an area designated for the
27 parking of vehicles, within this state is considered to have given

1 consent to chemical tests of his or her blood, breath, or urine for
2 the purpose of determining the amount of alcohol or presence of a
3 controlled substance or both in his or her blood or urine or the
4 amount of alcohol in his or her breath in all of the following
5 circumstances:

6 (a) ~~If the~~ **THE** person is arrested for a violation of section
7 625(1), (3), (4), (5), (6), (7), or (8), section 625a(5), or
8 section 625m or a local ordinance substantially corresponding to
9 section 625(1), (3), (6), or (8), section 625a(5), or section 625m.

10 (b) ~~If the~~ **THE** person is arrested for felonious driving,
11 negligent homicide, manslaughter, or murder resulting from the
12 operation of a motor vehicle, and the peace officer had reasonable
13 grounds to believe the person was operating the vehicle in
14 violation of section 625.

15 **(C) THE PERSON IS ARRESTED FOR A VIOLATION OF SECTION 306A.**

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

20 (3) The tests shall be administered as provided in section
21 625a(6).

22 Sec. 625d. (1) If a person refuses the request of a peace
23 officer to submit to a chemical test offered pursuant to section
24 625a(6), a test shall not be given without a court order, but the
25 officer may seek to obtain the court order.

26 (2) A written report shall immediately be forwarded to the
27 secretary of state by the peace officer. The report shall state

1 that the officer had reasonable grounds to believe that the person
2 had committed a crime described in section 625c(1), and that the
3 person had refused to submit to the test upon the request of the
4 peace officer and had been advised of the consequences of the
5 refusal. The form of the report shall be prescribed and furnished
6 by the secretary of state. **THIS SUBSECTION DOES NOT APPLY TO A**
7 **REFUSAL ARISING OUT OF AN ARREST FOR A VIOLATION OF SECTION 306A.**

8 Sec. 625e. (1) If a person refuses to submit to a chemical
9 test pursuant to section 625d, the peace officer shall immediately
10 notify the person in writing that within 14 days of the date of the
11 notice the person may request a hearing as provided in section
12 625f. The form of the notice shall be prescribed and furnished by
13 the secretary of state.

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

20 **(3) THIS SECTION DOES NOT APPLY TO A REFUSAL ARISING OUT OF AN**
21 **ARREST FOR A VIOLATION OF SECTION 306A.**

22 Sec. 625f. (1) If a person who refuses to submit to a chemical
23 test pursuant to section 625d does not request a hearing within 14
24 days after the date of notice ~~pursuant to~~ **AS PROVIDED IN** section
25 625e, the secretary of state shall impose the following license
26 sanctions:

27 (a) If the person was operating a vehicle other than a

1 commercial motor vehicle, suspend or deny the person's operator's
2 or chauffeur's license or permit to drive, or nonresident operating
3 privilege, for 1 year or, for a second or subsequent refusal within
4 7 years, for 2 years. If the person is a resident without a license
5 or permit to operate a vehicle in the state, the secretary of state
6 shall not issue the person a license or permit for 1 year or, for a
7 second or subsequent refusal within 7 years, for 2 years.

8 (b) If the person was operating a commercial motor vehicle,
9 for the first refusal, suspend all vehicle group designations on
10 the person's operator's or chauffeur's license or permit or
11 nonresident privilege to operate a commercial motor vehicle or, if
12 the person is a resident without a license or permit to operate a
13 commercial motor vehicle in the state, not issue the person an
14 operator's or chauffeur's license with vehicle group designations,
15 for 1 year.

16 (c) If the person was operating a commercial motor vehicle,
17 for a second or subsequent refusal that occurred in a separate
18 incident from and within 10 years of a prior refusal, revoke all
19 vehicle group designations on the person's operator's or
20 chauffeur's license or permit or nonresident privilege to operate a
21 commercial motor vehicle or, if the person is a resident without a
22 license or permit to operate a commercial motor vehicle in the
23 state, not issue the person an operator's or chauffeur's license
24 with vehicle group designations, for not less than 10 years and
25 until the person is approved for the issuance of a vehicle group
26 designation.

27 (d) If the person was operating a commercial motor vehicle and

1 was arrested for an offense enumerated in section 625c other than a
2 violation of section 625a(5) or 625m, impose the license sanction
3 described in subdivision (a) and the license sanction described in
4 subdivision (b) or (c), as applicable.

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

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

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

1 (a) Whether the peace officer had reasonable grounds to
2 believe that the person had committed a crime described in section
3 625c(1).

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

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

8 (d) Whether the person was advised of the rights under section
9 625a(6).

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

13 (6) The hearing officer shall make a record of a hearing held
14 ~~pursuant to~~ **UNDER** this section. The record shall be prepared and
15 transcribed in accordance with section 86 of the administrative
16 procedures act of 1969, 1969 PA 306, MCL 24.286. Upon notification
17 of the filing of a petition for judicial review ~~pursuant to~~ **UNDER**
18 section 323 and not less than 10 days before the matter is set for
19 review, the hearing officer shall transmit to the court in which
20 the petition was filed the original or a certified copy of the
21 official record of the proceedings. Proceedings at which evidence
22 was presented need not be transcribed and transmitted if the sole
23 reason for review is to determine whether the court will order the
24 issuance of a restricted license. The parties to the proceedings
25 for judicial review may stipulate that the record be shortened. A
26 party unreasonably refusing to stipulate to a shortened record may
27 be taxed by the court in which the petition is filed for the

1 additional costs. The court may permit subsequent corrections to
2 the record.

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

6 (a) If the person was operating a vehicle other than a
7 commercial motor vehicle, suspend or deny issuance of a license or
8 driving permit or a nonresident operating privilege of the person
9 for 1 year or, for a second or subsequent refusal within 7 years,
10 for 2 years. If the person is a resident without a license or
11 permit to operate a vehicle in the state, the secretary of state
12 shall not issue the person a license or permit for 1 year or, for a
13 second or subsequent refusal within 7 years, for 2 years. The
14 person may file a petition in the circuit court of the county in
15 which the arrest was made to review the suspension or denial as
16 provided in section 323.

17 (b) If the person was operating a commercial motor vehicle,
18 impose the sanction prescribed under subsection (1)(b) or (1)(c),
19 as applicable. The person may file a petition in the circuit court
20 of the county in which the arrest was made to review the suspension
21 or denial as provided in section 323.

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

26 (8) If the person who requested the hearing prevails, the
27 peace officer who filed the report under section 625d may, with the

1 consent of the prosecuting attorney, file a petition in the circuit
2 court of the county in which the arrest was made to review the
3 determination of the hearing officer as provided in section 323.

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

10 (10) THIS SECTION DOES NOT APPLY TO A REFUSAL ARISING OUT OF
11 AN ARREST FOR A VIOLATION OF SECTION 306A.