

HOUSE BILL No. 5665

May 23, 2012, Introduced by Reps. LaFontaine, Somerville, Lori, Jenkins and Hughes and referred to the Committee on Judiciary.

A bill to amend 1949 PA 300, entitled "Michigan vehicle code," by amending sections 625, 625a, 625g, and 625m (MCL 257.625, 257.625a, 257.625g, and 257.625m), sections 625 and 625m as amended by 2008 PA 463 and sections 625a and 625g as amended by 2003 PA 61.

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 general
3 public or generally accessible to motor vehicles, including an area
4 designated for the parking of vehicles, within this state if the
5 person is operating while intoxicated. As used in this section,
6 "operating while intoxicated" means any of the following:

7 (a) The person is under the influence of alcoholic liquor, a
8 controlled substance, or a combination of alcoholic liquor and a
9 controlled substance.

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

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

9 (2) The owner of a vehicle or a person in charge or in control
10 of a vehicle shall not authorize or knowingly permit the vehicle to
11 be operated upon a highway or other place open to the general
12 public or generally accessible to motor vehicles, including an area
13 designated for the parking of motor vehicles, within this state by
14 a person if any of the following apply:

15 (a) The person is under the influence of alcoholic liquor, a
16 controlled substance, or a combination of alcoholic liquor and a
17 controlled substance.

18 (b) The person has an alcohol content of 0.08 grams or more
19 per 100 milliliters of blood, per 210 liters of breath, or per 67
20 milliliters of urine. ~~or, beginning October 1, 2013, the person has~~
21 ~~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) The person's ability to operate the motor vehicle is
24 visibly impaired due to the consumption of alcoholic liquor, a
25 controlled substance, or a combination of alcoholic liquor and a
26 controlled substance.

27 (3) A person, whether licensed or not, shall not operate a

1 vehicle upon a highway or other place open to the general public or
2 generally accessible to motor vehicles, including an area
3 designated for the parking of vehicles, within this state when, due
4 to the consumption of alcoholic liquor, a controlled substance, or
5 a combination of alcoholic liquor and a controlled substance, the
6 person's ability to operate the vehicle is visibly impaired. If a
7 person is charged with violating subsection (1), a finding of
8 guilty under this subsection may be rendered.

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

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

20 (b) If, at the time of the violation, the person is operating
21 a motor vehicle in a manner proscribed under section 653a and
22 causes the death of a police officer, firefighter, or other
23 emergency response personnel, the person is guilty of a felony
24 punishable by imprisonment for not more than 20 years or a fine of
25 not less than \$2,500.00 or more than \$10,000.00, or both. This
26 subdivision applies regardless of whether the person is charged
27 with the violation of section 653a. The judgment of sentence may

1 impose the sanction permitted under section 625n. If the vehicle is
2 not ordered forfeited under section 625n, the court shall order
3 vehicle immobilization under section 904d in the judgment of
4 sentence.

5 (5) A person, whether licensed or not, who operates a motor
6 vehicle in violation of subsection (1), (3), or (8) and by the
7 operation of that motor vehicle causes a serious impairment of a
8 body function of another person is guilty of a felony punishable by
9 imprisonment for not more than 5 years or a fine of not less than
10 \$1,000.00 or more than \$5,000.00, or both. The judgment of sentence
11 may impose the sanction permitted under section 625n. If the
12 vehicle is not ordered forfeited under section 625n, the court
13 shall order vehicle immobilization under section 904d in the
14 judgment of sentence.

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

22 (a) An alcohol content of 0.02 grams or more but less than
23 0.08 grams per 100 milliliters of blood, per 210 liters of breath,
24 or per 67 milliliters of urine. ~~, or, beginning October 1, 2013,~~
25 ~~the person has an alcohol content of 0.02 grams or more but less~~
26 ~~than 0.10 grams per 100 milliliters of blood, per 210 liters of~~
27 ~~breath, or per 67 milliliters of urine.~~

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

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

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

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

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

19 (B) Community service for not less than 30 days or more than
20 90 days.

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

27 (A) Imprisonment under the jurisdiction of the department of

1 corrections for not less than 1 year or more than 5 years.

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

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

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

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

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

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

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

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

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

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

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

15 (8) A person, whether licensed or not, shall not operate a
16 vehicle upon a highway or other place open to the general public or
17 generally accessible to motor vehicles, including an area
18 designated for the parking of vehicles, within this state if the
19 person has in his or her body any amount of a controlled substance
20 listed in schedule 1 under section 7212 of the public health code,
21 1978 PA 368, MCL 333.7212, or a rule promulgated under that
22 section, or of a controlled substance described in section
23 7214(a) (iv) of the public health code, 1978 PA 368, MCL 333.7214.

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

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

1 the following:

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

3 (ii) Imprisonment for not more than 93 days, or, if the person
4 is convicted of violating subsection (1)(c), imprisonment for not
5 more than 180 days.

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

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

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

15 (ii) Community service for not less than 30 days or more than
16 90 days.

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

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

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

1 consecutively.

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

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

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

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

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

16 (b) If the person operating the motor vehicle violated
17 subsection (4), a felony punishable by imprisonment for not more
18 than 5 years or a fine of not less than \$1,500.00 or more than
19 \$10,000.00, or both.

20 (c) If the person operating the motor vehicle violated
21 subsection (5), a felony punishable by imprisonment for not more
22 than 2 years or a fine of not less than \$1,000.00 or more than
23 \$5,000.00, or both.

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

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

1 the following:

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

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

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

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

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

12 (ii) Community service for not less than 30 days or more than
13 90 days.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (14) A person sentenced to perform community service under
26 this section shall not receive compensation and shall reimburse the
27 state or appropriate local unit of government for the cost of

1 supervision incurred by the state or local unit of government as a
2 result of the person's activities in that service.

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

11 (16) If a person is charged with a violation of subsection
12 (1), (3), (4), (5), (7), or (8) or section 625m, the court shall
13 not permit the defendant to enter a plea of guilty or nolo
14 contendere to a charge of violating subsection (6) in exchange for
15 dismissal of the original charge. This subsection does not prohibit
16 the court from dismissing the charge upon the prosecuting
17 attorney's motion.

18 (17) A prior conviction shall be established at sentencing by
19 1 or more of the following:

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

21 (b) An abstract of conviction.

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

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

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

26 (f) Information contained in a presentence report.

27 (g) An admission by the defendant.

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

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

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

1 (a) Whether the defendant was under the influence of a
2 controlled substance or a combination of alcoholic liquor and a
3 controlled substance at the time of the violation.

4 (b) Whether the defendant was visibly impaired due to his or
5 her consumption of a controlled substance or a combination of
6 alcoholic liquor and a controlled substance at the time of the
7 violation.

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

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

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

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

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

27 (24) The court may order as a condition of probation that a

1 person convicted of violating subsection (1) or (8), or a local
2 ordinance substantially corresponding to subsection (1) or (8),
3 shall not operate a motor vehicle unless that vehicle is equipped
4 with an ignition interlock device approved, certified, and
5 installed as required under sections 625k and 625l.

6 (25) Subject to subsection (27), as used in this section,
7 "prior conviction" means a conviction for any of the following,
8 whether under a law of this state, a local ordinance substantially
9 corresponding to a law of this state, a law of the United States
10 substantially corresponding to a law of this state, or a law of
11 another state substantially corresponding to a law of this state:

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

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

21 (ii) Section 625m.

22 (iii) Former section 625b.

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

26 (c) Section 601d or 626(3) or (4).

27 (26) Except for purposes of the enhancement described in

1 subsection (12)(b), only 1 violation or attempted violation of
2 subsection (6), a local ordinance substantially corresponding to
3 subsection (6), or a law of another state substantially
4 corresponding to subsection (6) may be used as a prior conviction.

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

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

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

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

22 (2) A peace officer who has reasonable cause to believe that a
23 person was operating a vehicle upon a public highway or other place
24 open to the public or generally accessible to motor vehicles,
25 including an area designated for the parking of vehicles, within
26 this state and that the person by the consumption of alcoholic
27 liquor may have affected his or her ability to operate a vehicle,

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

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

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

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

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

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

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

7 (c) A person who submits to a preliminary chemical breath
8 analysis remains subject to the requirements of sections 625c,
9 625d, 625e, and 625f for purposes of chemical tests described in
10 those sections.

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

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

23 (4) A person who was operating a commercial motor vehicle and
24 who is requested to submit to a preliminary chemical breath
25 analysis under this section shall be advised that refusing a peace
26 officer's request to take a test described in this section is a
27 misdemeanor punishable by imprisonment for not more than 93 days or

1 a fine of not more than \$100.00, or both, and will result in the
2 issuance of a 24-hour out-of-service order.

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

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

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

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

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

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

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

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

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

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

27 (d) A chemical test described in this subsection shall be

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

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

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

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

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

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

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

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

26 (c) If the person is less than 21 years of age, whether the
27 person had any bodily alcohol content within his or her body. As

1 used in this subdivision, "any bodily alcohol content" means either
2 of the following:

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

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

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

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

27 Sec. 625g. (1) If a person refuses a chemical test offered

1 ~~pursuant to~~ **UNDER** section 625a(6), or submits to the chemical test
2 or a chemical test is performed ~~pursuant to~~ **UNDER** a court order and
3 the test reveals an unlawful alcohol content, the peace officer who
4 requested the person to submit to the test shall do all of the
5 following:

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

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

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

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

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

21 (2) If a person submits to a chemical test offered ~~pursuant to~~
22 **UNDER** section 625a(6) that requires an analysis of blood or urine
23 and a report of the results of that chemical test is not
24 immediately available, the peace officer who requested the person
25 to submit to the test shall comply with subsection (1)(a) pending
26 receipt of the test report. If the report reveals an unlawful
27 alcohol content, the peace officer who requested the person to

1 submit to the test shall immediately comply with subsection (1)(b).
2 If the report does not reveal an unlawful alcohol content, the
3 peace officer who requested the person to submit to the test shall
4 immediately notify the person of the test results and immediately
5 return the person's license or permit by first-class mail to the
6 address given at the time of arrest.

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

9 (a) If the case is not prosecuted, for 90 days after issuance
10 or until the person's license or permit is suspended ~~pursuant to~~
11 **UNDER** section 625f, whichever occurs earlier. The prosecuting
12 attorney shall notify the secretary of state if a case referred to
13 the prosecuting attorney is not prosecuted. The arresting law
14 enforcement agency shall notify the secretary of state if a case is
15 not referred to the prosecuting attorney for prosecution.

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

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

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

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

1 milliliters of urine.

2 (c) If the person tested is not a person described in
3 subdivision (a) or (b), 0.08 grams or more of alcohol per 100
4 milliliters of blood, per 210 liters of breath, or per 67
5 milliliters of urine. ~~, or, beginning October 1, 2013, 0.10 grams~~
6 ~~or more of alcohol per 100 milliliters of blood, per 210 liters of~~
7 ~~breath, or per 67 milliliters of urine.~~

8 Sec. 625m. (1) A person, whether licensed or not, who has an
9 alcohol content of 0.04 grams or more but less than 0.08 grams per
10 100 milliliters of blood, per 210 liters of breath, or per 67
11 milliliters of urine, ~~or, beginning October 1, 2013, an alcohol~~
12 ~~content of 0.04 grams or more but less than 0.10 grams per 100~~
13 ~~milliliters of blood, per 210 liters of breath, or per 67~~
14 ~~milliliters of urine,~~ shall not operate a commercial motor vehicle
15 within this state.

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

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

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

1 ordinance substantially corresponding to this section.

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

8 (4) A person who violates this section or a local ordinance
9 substantially corresponding to this section within 7 years of 1
10 prior conviction may be sentenced to imprisonment for not more than
11 1 year or a fine of not more than \$1,000.00, or both.

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

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

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

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

26 (7) Subject to subsection (9), as used in this section, "prior
27 conviction" means a conviction for any of the following, whether

1 under a law of this state, a local ordinance substantially
2 corresponding to a law of this state, or a law of another state
3 substantially corresponding to a law of this state:

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

6 (i) This section.

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

14 (iii) Former section 625b.

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

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

19 (8) Only 1 violation or attempted violation of section 625(6),
20 a local ordinance substantially corresponding to section 625(6), or
21 a law of another state substantially corresponding to section
22 625(6) may be used as a prior conviction.

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

27 Enacting section 1. This amendatory act does not take effect

1 unless Senate Bill No. ____ or House Bill No. 5664 (request no.
2 05069'12 a *) of the 96th Legislature is enacted into law.