

SENATE BILL No. 903

December 16, 2003, Introduced by Senator SWITALSKI and referred to the Committee on Judiciary.

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

8 (b) The person is found in the driver's seat of a vehicle

1 parked or stopped on a highway or street within this state if any
2 part of the vehicle intrudes into the roadway and the peace
3 officer has reasonable cause to believe the person was operating
4 the vehicle in violation of section 625 or a local ordinance
5 substantially corresponding to section 625.

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

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

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

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

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

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

21 (c) A person who submits to a preliminary chemical breath
22 analysis remains subject to the requirements of sections 625c,
23 625d, 625e, and 625f for purposes of chemical tests described in
24 those sections.

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

1 infraction.

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

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

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

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

27 (a) The amount of alcohol or presence of a controlled

1 substance or both in a driver's blood or urine or the amount of
2 alcohol in a person's breath at the time alleged as shown by
3 chemical analysis of the person's blood, urine, or breath is
4 admissible into evidence in any civil or criminal proceeding and
5 is presumed to be the same as at the time the person operated the
6 vehicle.

7 (b) ~~A~~ **The person** ~~arrested for a crime described in~~
8 ~~section 625c(1)~~ shall be advised of all of the following:

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

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

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

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

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

1 (c) A sample or specimen of urine or breath shall be taken
2 and collected in a reasonable manner. Only a licensed physician,
3 or an individual operating under the delegation of a licensed
4 physician under section 16215 of the public health code, 1978 PA
5 368, MCL 333.16215, qualified to withdraw blood and acting in a
6 medical environment, may withdraw blood at a peace officer's
7 request to determine the amount of alcohol or presence of a
8 controlled substance or both in the person's blood, as provided
9 in this subsection. Liability for a crime or civil damages
10 predicated on the act of withdrawing or analyzing blood and
11 related procedures does not attach to a licensed physician or
12 individual operating under the delegation of a licensed physician
13 who withdraws or analyzes blood or assists in the withdrawal or
14 analysis in accordance with this act unless the withdrawal or
15 analysis is performed in a negligent manner.

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

1 charged is responsible for obtaining a chemical analysis of the
2 test sample.

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

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

26 (g) The department of state police shall promulgate uniform
27 rules in compliance with the administrative procedures act of

1 1969, 1969 PA 306, MCL 24.201 to 24.328, for the administration
2 of chemical tests for the purposes of this section. An
3 instrument used for a preliminary chemical breath analysis may be
4 used for a chemical test described in this subsection if approved
5 under rules promulgated by the department of state police.

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

9 (a) Whether the person was impaired by, or under the
10 influence of, alcoholic liquor, a controlled substance, or a
11 combination of alcoholic liquor and a controlled substance.

12 (b) Whether the person had an alcohol content of 0.08 grams
13 or more per 100 milliliters of blood, per 210 liters of breath,
14 or per 67 milliliters of urine or, beginning October 1, 2013, the
15 person had an alcohol content of 0.10 grams or more per 100
16 milliliters of blood, per 210 liters of breath, or per 67
17 milliliters of urine.

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

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

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

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

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

20 Sec. 625c. (1) A person who operates a vehicle upon a
21 public highway or other place open to the general public or
22 generally accessible to motor vehicles, including an area
23 designated for the parking of vehicles, within this state is
24 considered to have given consent to chemical tests of his or her
25 blood, breath, or urine for the purpose of determining the amount
26 of alcohol or presence of a controlled substance or both in his
27 or her blood or urine or the amount of alcohol in his or her

1 breath in all of the following circumstances:

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

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

12 (c) **The peace officer has reasonable grounds to believe the**
13 **person was operating the vehicle at the time the vehicle was**
14 **involved in an accident resulting in serious impairment of a**
15 **bodily function or death.**

16 (2) A person who is afflicted with hemophilia, diabetes, or a
17 condition requiring the use of an anticoagulant under the
18 direction of a physician is not considered to have given consent
19 to the 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
2 person had committed a crime **or was involved in an accident as**
3 described in section 625c(1) ~~—~~ and that the person had refused
4 to submit to the test upon the request of the peace officer and
5 had been advised of the consequences of the refusal. The form of
6 the report shall be prescribed and furnished by the secretary of
7 state.

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

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

22 (b) If the person was operating a commercial motor vehicle,
23 for the first refusal, suspend all vehicle group designations on
24 the person's operator's or chauffeur's license or permit or
25 nonresident privilege to operate a commercial motor vehicle or,
26 if the person is a resident without a license or permit to
27 operate a commercial motor vehicle in the state, not issue the

1 person an operator's or chauffeur's license with vehicle group
2 designations, for 1 year.

3 (c) If the person was operating a commercial motor vehicle,
4 for a second or subsequent refusal that occurred in a separate
5 incident from and within 10 years of a prior refusal, revoke all
6 vehicle group designations on the person's operator's or
7 chauffeur's license or permit or nonresident privilege to operate
8 a commercial motor vehicle or, if the person is a resident
9 without a license or permit to operate a commercial motor vehicle
10 in the state, not issue the person an operator's or chauffeur's
11 license with vehicle group designations, for not less than 10
12 years and until the person is approved for the issuance of a
13 vehicle group designation.

14 (d) If the person was operating a commercial motor vehicle
15 and was arrested for an offense enumerated in section 625c other
16 than a violation of section 625a(5) or 625m, impose the license
17 sanction described in subdivision (a) and the license sanction
18 described in subdivision (b) or (c), as applicable.

19 (2) If a hearing is requested, the secretary of state shall
20 hold the hearing in the same manner and under the same conditions
21 as provided in section 322. Not less than 5 days' notice of the
22 hearing shall be mailed to the person requesting the hearing, to
23 the peace officer who filed the report under section 625d, and if
24 the prosecuting attorney requests receipt of the notice, to the
25 prosecuting attorney of the county where the arrest was made.
26 The hearing officer may administer oaths, issue subpoenas for the
27 attendance of necessary witnesses, and grant a reasonable request

1 for an adjournment. Not more than 1 adjournment shall be granted
2 to a party and the length of an adjournment shall not exceed 14
3 days. A hearing under this subsection shall be scheduled to be
4 held within 45 days after the date of arrest for the violation.
5 The hearing officer shall not impose any sanction for a failure
6 to comply with these time limits.

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

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

15 (a) Whether the peace officer had reasonable grounds to
16 believe that the person had committed a crime **or was involved in**
17 **an accident as** described in section 625c(1).

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

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

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

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

27 (6) The hearing officer shall make a record of a hearing held

1 pursuant to this section. The record shall be prepared and
2 transcribed in accordance with section 86 of the administrative
3 procedures act of 1969, 1969 PA 306, MCL 24.286. Upon
4 notification of the filing of a petition for judicial review
5 pursuant to section 323 and not less than 10 days before the
6 matter is set for review, the hearing officer shall transmit to
7 the court in which the petition was filed the original or a
8 certified copy of the official record of the proceedings.
9 Proceedings at which evidence was presented need not be
10 transcribed and transmitted if the sole reason for review is to
11 determine whether the court will order the issuance of a
12 restricted license. The parties to the proceedings for judicial
13 review may stipulate that the record be shortened. A party
14 unreasonably refusing to stipulate to a shortened record may be
15 taxed by the court in which the petition is filed for the
16 additional costs. The court may permit subsequent corrections to
17 the record.

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

21 (a) If the person was operating a vehicle other than a
22 commercial motor vehicle, suspend or deny issuance of a license
23 or driving permit or a nonresident operating privilege of the
24 person for 1 year or, for a second or subsequent refusal within 7
25 years, for 2 years. If the person is a resident without a
26 license or permit to operate a vehicle in the state, the
27 secretary of state shall not issue the person a license or permit

1 for 1 year or, for a second or subsequent refusal within 7 years,
2 for 2 years. The person may file a petition in the circuit court
3 of the county in which the arrest was made to review the
4 suspension or denial as provided in section 323.

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

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

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

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