

SENATE BILL No. 294

April 12, 1989, Introduced by Senators CARL, IRWIN, DINGELL, GEO. HART, N. SMITH, CROPSEY, FREDRICKS, EHLERS, J. HART and O'BRIEN and referred to the Committee on Judiciary.

A bill to amend sections 303, 320a, 625, 625a, and 625c of Act No. 300 of the Public Acts of 1949, entitled as amended "Michigan vehicle code," section 303 as amended by Act No. 346 of the Public Acts of 1988, section 320a as amended by Act No. 154 of the Public Acts of 1987, section 625 as amended by Act No. 109 of the Public Acts of 1987, and sections 625a and 625c as amended by Act No. 310 of the Public Acts of 1982, being sections 257.303, 257.320a, 257.625, 257.625a, and 257.625c of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Section 1. Sections 303, 320a, 625, 625a, and 625c of Act
- 2 No. 300 of the Public Acts of 1949, section 303 as amended by Act
- 3 No. 346 of the Public Acts of 1988, section 320a as amended by
- 4 Act No. 154 of the Public Acts of 1987, section 625 as amended by
- 5 Act No. 109 of the Public Acts of 1987, and sections 625a and

1 625c as amended by Act No. 310 of the Public Acts of 1982, being
2 sections 257.303, 257.320a, 257.625, 257.625a, and 257.625c of
3 the Michigan Compiled Laws, are amended to read as follows:

4 Sec. 303. (1) The secretary of state shall not issue a
5 license under this act:

6 (a) To a person, as an operator, who is 17 years of age or
7 less, except that the secretary of state may issue a license to a
8 person who is not less than 16 years of age and who has satisfac-
9 torily passed a driver education course and examination given by
10 a public school or nonpublic school of this or another state
11 offering a course approved by the department of education, or an
12 equivalent examination as prescribed in section 811. The secre-
13 tary of state may issue to a person not less than 14 years of age
14 a restricted license as provided in this act. This subdivision
15 shall not apply to a person who has been the holder of a valid
16 driver's license issued by another state, territory, or posses-
17 sion of the United States or another sovereignty for at least 1
18 year immediately before application for a driver's license under
19 this act.

20 (b) To a person, as a chauffeur, who is 17 years of age or
21 less, except that the secretary of state may issue a license to a
22 person who is not less than 16 years of age and who has satisfac-
23 torily passed a driver education course and examination given by
24 a public school or nonpublic school of this or another state
25 offering a course approved by the department of education, or an
26 equivalent examination as prescribed in section 811.

1 (c) To a person whose license has been suspended during the
2 period for which the license was suspended.

3 (d) To a person whose license has been revoked under this
4 act until the later of the following:

5 (i) The expiration of not less than 1 year after the license
6 was revoked.

7 (ii) The expiration of not less than 5 years after the date
8 of a subsequent revocation occurring within 7 years after the
9 date of any prior revocation.

10 (e) To a person who is an habitual violator of the criminal
11 laws relating to operating a vehicle while impaired by or under
12 the influence of intoxicating liquor or a controlled substance or
13 a combination of intoxicating liquor and a controlled substance,
14 or with a blood alcohol content of ~~0.10%~~ 0.08% or more by
15 weight of alcohol. Convictions of any of the following, whether
16 under a law of this state, a local ordinance substantially corre-
17 sponding to a law of this state, or a law of another state sub-
18 stantially corresponding to a law of this state, shall be prima
19 facie evidence that the person is an habitual violator as
20 described in this subdivision:

21 (i) Two convictions under section 625(1) or (2), or 1 con-
22 viction under section 625(1) and 1 conviction under section
23 625(2) within 7 years.

24 (ii) Three convictions under section 625b within 10 years.

25 (f) To a person who in the opinion of the secretary of state
26 is afflicted with or suffering from a physical or mental
27 disability or disease which prevents that person from exercising

1 reasonable and ordinary control over a motor vehicle while
2 operating the motor vehicle upon the highways.

3 (g) To a person who is unable to understand highway warning
4 or direction signs in the English language.

5 (h) To a person who is an habitually reckless driver. Four
6 convictions of reckless driving under this act or any other law
7 of this state relating to reckless driving or under a local ordi-
8 nance of this state or a law of another state which defines the
9 term "reckless driving" substantially similar to the law of this
10 state shall be prima facie evidence that the person is an habitu-
11 ally reckless driver.

12 (i) To a person who is an habitual criminal. Two convic-
13 tions of a felony involving the use of a motor vehicle in this or
14 another state shall be prima facie evidence that the person is an
15 habitual criminal.

16 (j) To a person who is unable to pass a knowledge, skill, or
17 ability test administered by the secretary of state in connection
18 with the issuance of an original operator's or chauffeur's
19 license, original motorcycle indorsement, or an original or
20 renewal of a vehicle group designation or vehicle indorsement.

21 (k) To a person who has been convicted, received a probate
22 court finding, or been determined responsible for 2 or more
23 moving violations under a law of this state, a local ordinance
24 substantially corresponding to a law of this state, or a law of
25 another state substantially corresponding to a law of this state,
26 within the preceding 3 years, if the violations occurred prior to

1 the issuance of an original license to the person in this or
2 another state.

3 (1) To a nonresident.

4 (2) Upon receipt of the appropriate records of conviction,
5 the secretary of state shall revoke the operator's or chauffeur's
6 license of a person having any of the following convictions,
7 whether under a law of this state, a local ordinance substan-
8 tially corresponding to a law of this state, or a law of another
9 state substantially corresponding to a law of this state:

10 (a) Four convictions of reckless driving within 7 years.

11 (b) Two convictions of a felony involving the use of a motor
12 vehicle within 7 years.

13 (c) Two convictions under section 625(1) or (2), or 1 con-
14 viction under section 625(1) and 1 conviction under section
15 625(2) within 7 years.

16 (d) Three convictions under section 625b within 10 years.

17 (3) The secretary of state shall revoke a license under sub-
18 section (2) notwithstanding a court order issued under section
19 625 or 625b, or a local ordinance substantially corresponding to
20 section 625(1) or (2) or 625b.

21 Sec. 320a. (1) The secretary of state, within 10 days after
22 the receipt of a properly prepared abstract from this or another
23 state, shall record the date of conviction, civil infraction
24 determination, or probate court finding, and the number of points
25 for each, based on the following formula, except as otherwise
26 provided in this section and section 629c:

- 1 (a) Manslaughter, negligent homicide, or a felony
 2 resulting from the operation of a motor vehicle..... 6 points
- 3 (b) Operating a motor vehicle while under the
 4 influence of intoxicating liquor or a controlled sub-
 5 stance, or a combination of an intoxicating liquor and
 6 a controlled substance, or while having a blood alcohol
 7 content of ~~0.10%~~ 0.08% or more by weight of alcohol.. 6 points
- 8 (c) Failing to stop and disclose identity at the
 9 scene of an accident when required by law..... 6 points
- 10 (d) Operating a motor vehicle in a reckless manner 6 points
- 11 (e) Violation of any law or ordinance pertaining
 12 to speed by exceeding the lawful maximum by more than
 13 15 miles per hour..... 4 points
- 14 (f) Violation of section 625b or a law or ordi-
 15 nance substantially corresponding to section 625b..... 4 points
- 16 (g) Fleeing or eluding an officer..... 6 points
- 17 (h) Violation of section 626a or a law or ordi-
 18 nance substantially corresponding to section 626a..... 4 points
- 19 (i) Violation of any law or ordinance pertaining
 20 to speed by exceeding the lawful maximum by more than
 21 10 but not more than 15 miles per hour or careless
 22 driving in violation of section 626b or a law or ordi-
 23 nance substantially corresponding to section 626b..... 3 points
- 24 (j) Violation of any law or ordinance pertaining
 25 to speed by exceeding the lawful maximum by 10 miles
 26 per hour or less..... 2 points

1 (k) Disobeying a traffic signal or stop sign, or
2 improper passing..... 3 points

3 (l) All other moving violations pertaining to the
4 operation of motor vehicles reported under this section 2 points

5 (2) Points shall not be entered for a violation of section
6 311, 658, 717, 719, 719a, or 723.

7 (3) Points shall not be entered for bond forfeitures.

8 (4) Points shall not be entered for overweight loads or for
9 defective equipment.

10 (5) If more than 1 conviction, civil infraction determina-
11 tion, or probate court finding results from the same incident,
12 points shall be entered only for the violation which receives the
13 highest number of points under this section.

14 (6) If a person has accumulated 9 points as provided in this
15 section, the secretary of state may call the person in for an
16 interview as to the person's driving ability and record after due
17 notice as to time and place of the interview. If the person
18 fails to appear as provided in this subsection, the secretary of
19 state shall add 3 points to the person's record.

20 (7) If a person is determined to be responsible for a civil
21 infraction for a violation of a law or ordinance pertaining to
22 speed by exceeding the lawful maximum on a street or highway
23 which maximum was reduced by Act No. 28 of the Public Acts of
24 1974, then points shall be entered only pursuant to the
25 following:

1 (a) Sixty miles per hour to the lawful maximum in
 2 effect before being reduced by Act No. 28 of the Public
 3 Acts of 1974..... 1 point

4 (b) Exceeding the lawful maximum in effect before
 5 being reduced by Act No. 28 of the Public Acts of 1974,
 6 by 10 miles per hour or less..... 2 points

7 (c) Exceeding the lawful maximum in effect before
 8 being reduced by Act No. 28 of the Public Acts of 1974,
 9 by more than 10 but not more than 15 miles per hour.... 3 points

10 (d) Exceeding the lawful maximum in effect before
 11 being reduced by Act No. 28 of the Public Acts of 1974,
 12 by more than 15 miles per hour..... 4 points

13 (8) Notwithstanding subsection (7), if a person violates a
 14 speed restriction established by an executive order issued during
 15 a state of energy emergency as provided by Act No. 191 of the
 16 Public Acts of 1982, being sections 10.81 to 10.89 of the
 17 Michigan Compiled Laws, the secretary of state shall enter points
 18 for the violation pursuant to subsection (1).

19 (9) The secretary of state shall enter 6 points upon the
 20 record of a person whose license is suspended or denied pursuant
 21 to section 625f for refusal to submit to a chemical test
 22 described in section 625a. However, if a conviction, civil
 23 infraction determination, or probate court finding results from

1 the same incident, additional points for that offense shall not
2 be entered.

3 (10) If a Michigan driver commits a violation in another
4 state that would be a civil infraction if committed in Michigan,
5 and a conviction results solely because of the failure of the
6 Michigan driver to appear in that state to contest the violation,
7 upon receipt of the abstract of conviction by the secretary of
8 state, the violation shall be noted on the driver's record, but
9 no points shall be assessed against his or her driver's license.

10 Sec. 625. (1) A person, whether licensed or not, who is
11 under the influence of intoxicating liquor or a controlled sub-
12 stance, or a combination of intoxicating liquor and a controlled
13 substance, shall not operate a vehicle upon a highway or other
14 place open to the general public, including an area designated
15 for the parking of vehicles, within the state. A peace officer
16 may, without a warrant, arrest a person when the peace officer
17 has reasonable cause to believe that the person was, at the time
18 of an accident, the driver of a vehicle involved in the accident
19 and was operating the vehicle upon a public highway or other
20 place open to the general public, including an area designated
21 for the parking of vehicles, in the state while in violation of
22 this subsection or of subsection (2), or of a local ordinance
23 substantially corresponding to this subsection or subsection
24 (2).

25 (2) A person, whether licensed or not, whose blood contains
26 ~~0.10%~~ 0.08% or more by weight of alcohol, shall not operate a
27 vehicle upon a highway or other place open to the general public,

1 including an area designated for the parking of vehicles, within
2 the state.

3 (3) The owner of a vehicle or a person in charge or in con-
4 trol of a vehicle shall not authorize or knowingly permit the
5 vehicle to be operated upon a highway or other place open to the
6 general public, including an area designated for the parking of
7 motor vehicles, within the state by a person who is under the
8 influence of intoxicating liquor or a controlled substance, or a
9 combination of intoxicating liquor and a controlled substance.

10 (4) Except as otherwise provided in this section, a person
11 who is convicted of a violation of subsection (1), (2), or (3) is
12 guilty of a misdemeanor, punishable by imprisonment for not more
13 than 90 days, or a fine of not less than \$100.00 nor more than
14 \$500.00, or both, together with costs of the prosecution. As
15 part of the sentence for a violation of subsection (1) or (2),
16 the court shall order the secretary of state to suspend the
17 operator's or chauffeur's license of the person for a period of
18 not less than 6 months nor more than 2 years. The court may
19 order the secretary of state to issue to the person a restricted
20 license permitting the person during all or a specified portion
21 of the period of suspension to drive only to and from the
22 person's residence and work location; in the course of the
23 person's employment or occupation; to and from an alcohol or drug
24 education program or treatment program as ordered by the court;
25 to and from the person's residence and an educational institution
26 at which the person is enrolled as a student; or pursuant to a
27 combination of these restrictions. The court may also order that

1 the restricted license include the requirement that a person
2 shall not operate a motor vehicle unless the vehicle is equipped
3 with a functioning certified ignition interlock device. The
4 device shall be set to render the motor vehicle inoperable if the
5 device detects 0.02% or more by weight of alcohol in the blood of
6 the person who offers a breath sample. The court may order
7 installation of a certified ignition interlock device on any
8 motor vehicle that the person owns or operates, the costs of
9 which shall be borne by the person whose license is restricted.
10 The court shall not order the secretary of state to issue a
11 restricted chauffeur's license which would permit a person to
12 operate a truck or truck tractor, including a trailer, ~~which~~
13 THAT hauls hazardous material. The court shall not order the
14 secretary of state to issue a restricted license unless the
15 person states under oath, and the court finds, that the person is
16 unable to take public transportation to and from his or her work
17 location, place of alcohol or drug education or treatment, or
18 educational institution, and does not have any family members or
19 others able to provide transportation. The court order and
20 license shall indicate the person's work location and the
21 approved route or routes and permitted times of travel. For pur-
22 poses of this subsection, "work location" includes, as applica-
23 ble, either or both of the following:

24 (i) The specific place or places of employment.

25 (ii) The territory or territories regularly visited by the
26 person in pursuance of the person's occupation.

1 (5) A person who violates subsection (1) or (2) or a local
2 ordinance substantially corresponding to subsection (1) or (2)
3 within 7 years of a prior conviction may be sentenced to impris-
4 onment for not more than 1 year, or a fine of not more than
5 \$1,000.00, or both. As part of the sentence, the court shall
6 order the secretary of state to revoke the operator's or
7 chauffeur's license of the person. For purposes of this section,
8 "prior conviction" means a conviction under subsection (1) or
9 (2), a local ordinance substantially corresponding to subsection
10 (1) or (2), or a law of another state substantially corresponding
11 to subsection (1) or (2).

12 (6) A person who violates subsection (1) or (2) or a local
13 ordinance substantially corresponding to subsection (1) or (2)
14 within 10 years of 2 or more prior convictions, as defined in
15 subsection (5), is guilty of a felony. As part of the sentence,
16 the court shall order the secretary of state to revoke the
17 operator's or chauffeur's license of the person.

18 (7) As part of the sentence for a violation of subsection
19 (1) or (2), or a local ordinance substantially corresponding to
20 subsection (1) or (2), the court may order the person to perform
21 service to the community, as designated by the court, without
22 compensation, for a period not to exceed 12 days. The person
23 shall reimburse the state or appropriate local unit of government
24 for the cost of insurance incurred by the state or local unit of
25 government as a result of the person's activities under this
26 subsection.

1 (8) Before imposing sentence for a violation of subsection
2 (1) or (2) or a local ordinance substantially corresponding to
3 subsection (1) or (2), the court shall order the person to
4 undergo screening and assessment by a person or agency designated
5 by the office of substance abuse services, to determine whether
6 the person is likely to benefit from rehabilitative services,
7 including alcohol or drug education and alcohol or drug treatment
8 programs. As part of the sentence, the court may order the
9 person to participate in and successfully complete 1 or more
10 appropriate rehabilitative programs. The person shall pay for
11 the costs of the screening, assessment, and rehabilitative
12 services.

13 (9) Before accepting a plea of guilty under this section,
14 the court shall advise the accused of the statutory consequences
15 possible as the result of a plea of guilty in respect to suspen-
16 sion or revocation of an operator's or chauffeur's license, the
17 penalty imposed for violation of this section, and the limitation
18 on the right of appeal.

19 (10) The operator's or chauffeur's license of a person found
20 guilty of violating subsection (1) or (2), or a local ordinance
21 substantially corresponding to subsection (1) or (2), shall be
22 surrendered to the court in which the person was convicted, and
23 the court shall immediately forward the surrendered license and
24 an abstract of conviction to the secretary of state. The
25 abstract of conviction shall indicate the sentence imposed. Upon
26 receipt of, and pursuant to, the abstract of conviction, the
27 secretary of state shall suspend or revoke the person's license

1 and, if ordered by the court and the person is otherwise eligible
2 for a license, issue to the person a restricted license stating
3 the limited driving privileges indicated on the abstract. If the
4 license is not forwarded to the secretary of state, an explana-
5 tion of the reason why the license is absent shall be attached.
6 If the conviction is appealed to circuit court, that court may,
7 ex parte, order the secretary of state to rescind the suspension,
8 revocation, or restricted license issued pursuant to this
9 section.

10 Sec. 625a. (1) The amount of alcohol or presence of a con-
11 trolled substance or both in the driver's blood at the time
12 alleged as shown by chemical analysis of the person's blood,
13 urine, or breath shall be admissible into evidence in a criminal
14 prosecution for any of the following:

15 (a) A violation of section 625(1), (2), or (3), or 625b, or
16 of a local ordinance substantially corresponding to section
17 625(1), (2), or (3), or 625b.

18 (b) Felonious driving, negligent homicide, or manslaughter
19 resulting from the operation of a motor vehicle while the driver
20 is alleged to have been impaired by or under the influence of
21 intoxicating liquor or a controlled substance or a combination of
22 intoxicating liquor and a controlled substance, or to have had a
23 blood alcohol content of ~~0.10%~~ 0.08% or more by weight of
24 alcohol.

25 (2) If a test is given, the results of the test shall be
26 made available to the person charged or the person's attorney
27 upon written request to the prosecution, with a copy of the

1 request filed with the court. The prosecution shall furnish the
2 report at least 2 days before the day of the trial and the
3 results shall be offered as evidence by the prosecution in a
4 criminal proceeding. Failure to fully comply with the request
5 shall bar the admission of the results into evidence by the
6 prosecution.

7 (3) Except in a prosecution relating solely to a violation
8 of section 625(2), the amount of alcohol in the driver's blood at
9 the time alleged as shown by chemical analysis of the person's
10 blood, urine, or breath shall give rise to the following
11 presumptions:

12 (a) If there was at the time ~~0.07% or~~ less THAN 0.05% by
13 weight of alcohol in the defendant's blood, it shall be presumed
14 that the ~~defendant was not under the influence~~ DEFENDANT'S
15 ABILITY TO OPERATE A VEHICLE WAS NOT IMPAIRED DUE TO THE
16 CONSUMPTION of intoxicating liquor.

17 (b) If there was at the time ~~in excess of 0.07%~~ 0.05% OR
18 MORE but less than ~~0.10%~~ 0.08% by weight of alcohol in the
19 defendant's blood, it shall be presumed that the defendant's
20 ability to operate a vehicle was impaired within the provisions
21 of section 625b due to the consumption of intoxicating liquor.

22 (c) If there was at the time ~~0.10%~~ 0.08% or more by weight
23 of alcohol in the defendant's blood, it shall be presumed that
24 the defendant was under the influence of intoxicating liquor.

25 (4) A sample or specimen of urine or breath shall be taken
26 and collected in a reasonable manner. Only a licensed physician,
27 or a licensed nurse or medical technician under the direction of

1 a licensed physician and qualified to withdraw blood acting in a
2 medical environment, at the request of a peace officer, may with-
3 draw blood for the purpose of determining the amount of alcohol
4 or presence of a controlled substance or both in the person's
5 blood, as provided in this act. Liability for a crime or civil
6 damages predicated on the act of withdrawing blood and related
7 procedures shall not attach to a qualified person who withdraws
8 blood or assists in the withdrawal in accordance with this act
9 unless the withdrawal is performed in a negligent manner.

10 (5) The tests shall be administered at the request of a
11 peace officer having reasonable grounds to believe the person has
12 committed a crime described in subsection (1). A person who
13 takes a chemical test administered at the request of a peace
14 officer, as provided in this section, shall be given a reasonable
15 opportunity to have a person of his or her own choosing adminis-
16 ter 1 of the chemical tests described in this section within a
17 reasonable time after his or her detention, and the results of
18 the test shall be admissible and shall be considered with other
19 competent evidence in determining the innocence or guilt of the
20 defendant. If the person charged is administered a chemical test
21 by a person of his or her own choosing, the person charged shall
22 be responsible for obtaining a chemical analysis of the test
23 sample. The person charged shall be informed that he or she has
24 the right to demand that a person of his or her choosing adminis-
25 ter 1 of the tests provided for in subsection (1), that the
26 results of the test shall be admissible and shall be considered
27 with other competent evidence in determining the innocence or

1 guilt of the defendant, and that the person charged shall be
2 responsible for obtaining a chemical analysis of the test
3 sample.

4 (6) The person charged shall be advised that if the person
5 refuses the request of a peace officer to take a test described
6 in this section, a test shall not be given without a court
7 order. The person charged shall also be advised that the
8 person's refusal of the request of a peace officer to take a test
9 described in this section shall result in the suspension of his
10 or her operator's or chauffeur's license or operating privilege,
11 and in the addition of 6 points to his or her driver record.

12 (7) This section shall not be construed as limiting the
13 introduction of any other competent evidence bearing upon the
14 question of whether or not the person was impaired by or under
15 the influence of intoxicating liquor or a controlled substance,
16 or a combination of intoxicating liquor and a controlled sub-
17 stance, or whether the person had a blood alcohol content of
18 ~~0.10%~~ 0.08% or more by weight of alcohol.

19 (8) If a jury instruction regarding a defendant's refusal to
20 submit to a chemical test under this section is requested by the
21 prosecution or the defendant, the jury instruction shall be given
22 as follows:

23 "Evidence was admitted in this case which, if believed by
24 the jury, could prove that the defendant had exercised his or her
25 right to refuse a chemical test. You are instructed that such a
26 refusal is within the statutory rights of the defendant and is

1 not evidence of his guilt. You are not to consider such a
2 refusal in determining the guilt or innocence of the defendant."

3 (9) If after an accident the driver of a vehicle involved in
4 the accident is transported to a medical facility and a sample of
5 the driver's blood is withdrawn at that time for the purpose of
6 medical treatment, the results of a chemical analysis of that
7 sample shall be admissible in a criminal prosecution for a crime
8 described in subsection (1) to show the amount of alcohol or
9 presence of a controlled substance or both in the person's blood
10 at the time alleged, regardless of whether the person had been
11 offered or had refused a chemical test. The medical facility or
12 person performing the chemical analysis shall disclose the
13 results of the analysis to a prosecuting attorney who requests
14 the results for use in a criminal prosecution as provided in this
15 subsection. A medical facility or person disclosing information
16 in compliance with this subsection shall not be civilly or crimi-
17 nally liable for making the disclosure.

18 (10) If after a highway accident the driver of a vehicle
19 involved in the accident is deceased, a sample of the decedent's
20 blood shall be withdrawn in a manner directed by the medical
21 examiner for the purpose of determining blood alcohol content or
22 presence of a controlled substance or both.

23 Sec. 625c. (1) A person who operates a vehicle upon a
24 public highway or other place open to the general public, includ-
25 ing an area designated for the parking of vehicles, in the state
26 is considered to have given consent to chemical tests of his or
27 her blood, breath, or urine for the purpose of determining the

1 amount of alcohol or presence of a controlled substance or both
2 in his or her blood if:

3 (a) The person is arrested for a violation of section 625(1)
4 or (2) or 625b, or a local ordinance substantially corresponding
5 to section 625(1) or (2) or 625b.

6 (b) The person is arrested for felonious driving, negligent
7 homicide, or manslaughter resulting from the operation of a motor
8 vehicle, and the peace officer had reasonable grounds to believe
9 that the person was operating the vehicle while impaired by or
10 under the influence of intoxicating liquor or a controlled sub-
11 stance or a combination of intoxicating liquor and a controlled
12 substance, or while having a blood alcohol content of ~~0.10%~~
13 0.08% or more by weight of alcohol.

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

18 (3) The tests shall be administered as provided in section
19 625a.