

REPRINT

SENATE SUBSTITUTE FOR

HOUSE BILL NO. 4959

(As passed the House, September 24, 1998)

A bill to amend 1949 PA 300, entitled
"Michigan vehicle code,"
by amending sections 624a, 624b, and 625n (MCL 257.624a,
257.624b, and 257.625n), section 624a as amended and section 624b
as added by 1996 PA 493 and section 625n as added by 1996 PA 491;
and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 624a. (1) Except as provided in subsection (2), a
2 person WHO IS AN OPERATOR OR OCCUPANT shall not transport or pos-
3 sess alcoholic liquor in a container that is open or uncapped or
4 upon which the seal is broken within the passenger compartment of
5 a vehicle upon a highway, or within the passenger compartment of
6 a moving vehicle in any place open to the general public or
7 generally accessible to motor vehicles, including an area
8 designated for the parking of vehicles, in this state.

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1 (2) A person may transport or possess alcoholic liquor in a
2 container that is open or uncapped or upon which the seal is
3 broken within the passenger compartment of a vehicle upon a high-
4 way or other place open to the general public or generally acces-
5 sible to motor vehicles, including an area designated for the
6 parking of vehicles in this state, if the vehicle does not have a
7 trunk or compartment separate from the passenger compartment, the
8 container is enclosed or encased, and the container is not
9 readily accessible to the occupants of the vehicle.

10 (3) A person who violates this section is guilty of a
11 misdemeanor. As part of the sentence, the person may be ordered
12 to perform community service and undergo substance abuse screen-
13 ing and assessment at his or her own expense as described in
14 ~~section 33b(1) of the Michigan liquor control act, Act No. 8 of~~
15 ~~the Public Acts of the Extra Session of 1933, being~~
16 ~~section 436.33 of the Michigan Compiled Laws~~ SECTION 703(1) OF
17 THE MICHIGAN LIQUOR CONTROL CODE OF 1998, 1998 PA 58,
18 MCL 436.1703. A court shall not accept a plea of guilty or nolo
19 contendere for a violation of this section from a person charged
20 solely with a violation of section 625(6).

21 ~~-(4) Immediately upon the entry of a conviction for a viola-~~
22 ~~tion of subsection (1), the court shall consider all prior con-~~
23 ~~victions for a violation of subsection (1) or section 624b(1), or~~
24 ~~a local ordinance or law of another state substantially corre-~~
25 ~~sponding to this section or section 624b(1), and the court shall~~
26 ~~do the following:~~

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1 ~~(a) If the court finds that the person has 1 such prior~~
2 ~~conviction, the court shall order the secretary of state to~~
3 ~~suspend the operator's or chauffeur's license of the person for~~
4 ~~not less than 90 days and not more than 180 days. The court may~~
5 ~~order the secretary of state to issue to the person a restricted~~
6 ~~license after the first 30 days of the period of the suspension~~
7 ~~in the manner provided for in section 319(7). In the case of a~~
8 ~~person who does not possess an operator's or chauffeur's license,~~
9 ~~the secretary of state shall deny the application for an~~
10 ~~operator's or chauffeur's license for the applicable suspension~~
11 ~~period.~~

12 ~~(b) If the court finds that the person has 2 or more such~~
13 ~~prior convictions, the court shall order the secretary of state~~
14 ~~to suspend the operator's or chauffeur's license of the person~~
15 ~~for not less than 180 days and not more than 1 year. The court~~
16 ~~may order the secretary of state to issue to the person a~~
17 ~~restricted license after the first 60 days of the period of the~~
18 ~~suspension in the manner provided for in section 319(7). In the~~
19 ~~case of a person who does not possess an operator or chauffeur~~
20 ~~license, the secretary of state shall deny the application for an~~
21 ~~operator's or chauffeur's license for the applicable suspension~~
22 ~~period.~~

23 ~~(5) If a restricted license is allowed under this section,~~
24 ~~the court shall not order the secretary of state to issue a~~
25 ~~restricted license unless the person states under oath, and the~~
26 ~~court finds based upon the record in open court, that the person~~
27 ~~is unable to take public transportation to and from his or her~~

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1 ~~work location, place of alcohol or drug education treatment,~~
2 ~~court probation department, court-ordered community service pro-~~
3 ~~gram, or educational institution, or a place of regularly occur-~~
4 ~~ring medical treatment for a serious condition, or in the course~~
5 ~~of the person's employment or occupation and does not have any~~
6 ~~family members or others able to provide transportation. The~~
7 ~~court order under subsection (4) and the restricted license shall~~
8 ~~indicate the work location of the person to whom it is issued,~~
9 ~~the approved route or routes and permitted times of travel, and~~
10 ~~shall permit the person to whom it is issued only to drive under~~
11 ~~1 or more of the following circumstances:~~

12 ~~(a) To and from the person's residence and work location.~~

13 ~~(b) In the course of the person's employment or occupation.~~

14 ~~(c) To and from the person's residence and an alcohol or~~
15 ~~drug education or treatment program as ordered by the court.~~

16 ~~(d) To and from the person's residence and the court proba-~~
17 ~~tion department, or a court-ordered community service program, or~~
18 ~~both.~~

19 ~~(e) To and from the person's residence and an educational~~
20 ~~institution at which the person is enrolled as a student.~~

21 ~~(f) To and from the person's residence or work location and~~
22 ~~a place of regularly occurring medical treatment for a serious~~
23 ~~condition for the person or a member of the person's household or~~
24 ~~immediate family.~~

25 ~~-(6) The court shall immediately forward the surrendered~~
26 ~~license and an abstract of conviction to the secretary of state.~~
27 ~~A suspension ordered under this subsection shall be in addition~~

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1 ~~to any other suspension of the person's operator's or chauffeur's~~
2 ~~license. If the judgment is appealed to circuit court, the court~~
3 ~~may, ex parte, order the secretary of state to stay the suspen-~~
4 ~~sion issued pursuant to this section pending the outcome of the~~
5 ~~appeal.~~

6 (4) ~~-(7)-~~ This section does not apply to a passenger in a
7 chartered vehicle authorized to operate by the ~~Michigan depart-~~
8 ~~ment of~~ STATE transportation DEPARTMENT.

9 Sec. 624b. (1) A person less than 21 years of age shall not
10 knowingly transport or possess ~~, in a motor vehicle,~~ alcoholic
11 liquor IN A MOTOR VEHICLE AS AN OPERATOR OR OCCUPANT unless the
12 person is employed by a licensee under the ~~Michigan liquor con-~~
13 ~~trol act, Act No. 8 of the Public Acts of the Extra Session of~~
14 ~~1933, being sections 436.1 to 436.58 of the Michigan Compiled~~
15 ~~Laws~~ MICHIGAN LIQUOR CONTROL CODE OF 1998, 1998 PA 58,
16 MCL 436.1101 TO 436.2303, a common carrier designated by the
17 LIQUOR control commission ~~pursuant to Act No. 8 of the Public~~
18 ~~Acts of the Extra Session of 1933~~ UNDER THE MICHIGAN LIQUOR CON-
19 TROL CODE OF 1998, 1998 PA 58, MCL 436.1101 TO 436.2303, the
20 liquor control commission, or an agent of the liquor control com-
21 mission and is transporting or having the alcoholic liquor in a
22 motor vehicle under the person's control during regular working
23 hours and in the course of the person's employment. This section
24 does not prevent a person less than 21 years of age from know-
25 ingly transporting alcoholic liquor in a motor vehicle if a
26 person at least 21 years of age is present inside the motor
27 vehicle. A person who violates this subsection is guilty of a

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1 misdemeanor. As part of the sentence, the person may be ordered
2 to perform community service and undergo substance abuse screen-
3 ing and assessment at his or her own expense as described in sec-
4 tion ~~33b(1) of Act No. 8 of the Extra Session of 1933~~ 703(1) OF
5 THE MICHIGAN LIQUOR CONTROL CODE OF 1998, 1998 PA 58,
6 MCL 436.1703.

7 (2) Within 30 days after the conviction for a violation of
8 subsection (1) BY THE OPERATOR OF A MOTOR VEHICLE, which convic-
9 tion has become final, ~~complaint may be made by~~ the arresting
10 law enforcement officer or the officer's superior MAY MAKE A
11 COMPLAINT before the court from which the warrant was issued. ~~—~~
12 ~~which~~ THE complaint shall be under oath and shall ~~contain a~~
13 ~~description of~~ DESCRIBE the motor vehicle in which alcoholic
14 liquor was possessed or transported by the ~~person~~ OPERATOR, WHO
15 IS less than 21 years of age, in committing the violation and
16 requesting that the motor vehicle be impounded as provided in
17 this section. Upon the filing of the complaint, the court shall
18 issue to the owner of the motor vehicle an order to show cause
19 why the motor vehicle should not be impounded. The order to show
20 cause shall ~~have~~ FIX a date and time ~~fixed in the order~~ for a
21 hearing, which ~~date~~ shall not be less than 10 days after the
22 issuance of the order. ~~and~~ THE ORDER shall be served by deliv-
23 ering a true copy to the owner not less than 3 full days before
24 the date of hearing or, if the owner cannot be located, by send-
25 ing a true copy by certified mail to the last known address of
26 the owner. If the owner is a nonresident of the state, service

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1 may be made upon the secretary of state as provided in section
2 403.

3 (3) If the court determines upon the hearing of the order to
4 show cause, from competent and relevant evidence, that at the
5 time of the commission of the violation the motor vehicle was
6 being driven by the person less than 21 years of age with the
7 express or implied consent or knowledge of the owner in violation
8 of subsection (1), and that the use of the motor vehicle is not
9 needed by the owner in the direct pursuit of the owner's employ-
10 ment or the actual operation of the owner's business, the court
11 may authorize the impounding of the vehicle for a period ~~—, to be~~
12 ~~determined by the court,—~~ of not less than 15 days or more than
13 30 days. The court's order authorizing the impounding of the
14 vehicle shall authorize a law enforcement officer to take posses-
15 sion without other process of the motor vehicle wherever located
16 and to store the vehicle in a public or private garage at the
17 expense and risk of the owner of the vehicle. The owner of the
18 vehicle may appeal the order to the circuit court and the provi-
19 sions governing the taking of appeals from judgments for damages
20 ~~shall~~ apply to the appeal. This section does not prevent a
21 bona fide lienholder from exercising rights under a lien.

22 (4) A person who knowingly transfers title to a motor vehi-
23 cle for the purpose of avoiding this section is guilty of a
24 misdemeanor.

25 ~~—(5) Immediately upon the entry of a conviction or a probate~~
26 ~~court order of disposition for a violation of subsection (1) or~~
27 ~~section 624a, the court shall consider all prior convictions for~~

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1 ~~a violation of subsection (1) or section 624a, or a local~~
2 ~~ordinance or law of another state substantially corresponding to~~
3 ~~this section or section 624a, and the court shall do 1 of the~~
4 ~~following:~~

5 ~~(a) If the court finds that the person has 1 such prior con-~~
6 ~~viction, the court shall order the secretary of state to suspend~~
7 ~~the operator's or chauffeur's license of the person for a period~~
8 ~~of not less than 90 days and not more than 180 days. The court~~
9 ~~may order the secretary of state to issue to the person a~~
10 ~~restricted license after the first 30 days of the period of the~~
11 ~~suspension in the manner provided for in section 319(7). In the~~
12 ~~case of a person who does not possess an operator's or~~
13 ~~chauffeur's license, the secretary of state shall deny the appli-~~
14 ~~cation for an operator's or chauffeur's license for the applica-~~
15 ~~ble suspension period.~~

16 ~~(b) If the court finds that the person has 2 or more such~~
17 ~~prior convictions, the court shall order the secretary of state~~
18 ~~to suspend the operator's or chauffeur's license of the person~~
19 ~~for a period of not less than 180 days and not more than 1 year.~~
20 ~~The court may order the secretary of state to issue to the person~~
21 ~~a restricted license after the first 60 days of the period of the~~
22 ~~suspension in the manner provided for in section 319(7). In the~~
23 ~~case of a person who does not possess an operator's or~~
24 ~~chauffeur's license, the secretary of state shall deny the appli-~~
25 ~~cation for an operator's or chauffeur's license for the applica-~~
26 ~~ble suspension period.~~

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1 ~~(6) If a restricted license is allowed under this section,~~
2 ~~the court shall not order the secretary of state to issue a~~
3 ~~restricted license unless the person states under oath, and the~~
4 ~~court finds based upon the record in open court, that the person~~
5 ~~is unable to take public transportation to and from his or her~~
6 ~~work location, place of alcohol or drug education treatment,~~
7 ~~court probation department, court-ordered community service pro-~~
8 ~~gram, or educational institution, or a place of regularly occur-~~
9 ~~ring medical treatment for a serious condition, or in the course~~
10 ~~of the person's occupation or employment and does not have any~~
11 ~~family members or others able to provide transportation. The~~
12 ~~court order under subsection (5) and the restricted license shall~~
13 ~~indicate the work location of the person to whom it is issued,~~
14 ~~the approved route or routes and permitted times of travel, and~~
15 ~~shall permit the person to whom it is issued only to drive under~~
16 ~~1 or more of the following circumstances:~~

17 ~~(a) To and from the person's residence and work location.~~

18 ~~(b) In the course of the person's employment or occupation.~~

19 ~~(c) To and from the person's residence and an alcohol or~~
20 ~~drug education or treatment program as ordered by the court.~~

21 ~~(d) To and from the person's residence and the court proba-~~
22 ~~tion department, or a court-ordered community service program, or~~
23 ~~both.~~

24 ~~(e) To and from the person's residence and an educational~~
25 ~~institution at which the person is enrolled as a student.~~

26 ~~(f) To and from the person's residence or work location and~~
27 ~~a place of regularly occurring medical treatment for a serious~~

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1 ~~condition for the person or a member of the person's household or~~
2 ~~immediate family.~~

3 ~~(7) The court shall immediately forward the surrendered~~
4 ~~license and an abstract of conviction to the secretary of state.~~
5 ~~A suspension ordered under this subsection shall be in addition~~
6 ~~to any other suspension of the person's operator's or chauffeur's~~
7 ~~license. If the judgment is appealed to circuit court, the court~~
8 ~~may, ex parte, order the secretary of state to stay the suspen-~~
9 ~~sion issued pursuant to this section pending the outcome of the~~
10 ~~appeal.~~

11 (5) ~~(8)~~ A law enforcement agency, upon determining that a
12 person less than 18 years of age allegedly violated this section,
13 shall notify the parent or parents, custodian, or guardian of the
14 person as to the nature of the violation if the name of a parent,
15 guardian, or custodian is reasonably ascertainable by the law
16 enforcement agency. The notice required by this subsection shall
17 be made not later than 48 hours after the law enforcement agency
18 determines that the person who allegedly violated this section is
19 less than 18 years of age and may be made in person, by tele-
20 phone, or by first-class mail.

21 (6) ~~(9)~~ As used in this section, "alcoholic liquor" means
22 that term as defined in section ~~2(a) of Act No. 8 of the Public~~
23 ~~Acts of the Extra Session of 1933, being section 436.2 of the~~
24 ~~Michigan Compiled Laws~~ 105 OF THE MICHIGAN LIQUOR CONTROL CODE
25 OF 1998, 1998 PA 58, MCL 436.1105.

26 Sec. 625n. (1) Except as otherwise provided in this section
27 and in addition to any other penalty provided for in this act,

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1 the judgment of sentence for a conviction for a violation of
2 section 625(1) DESCRIBED IN SECTION 625(8)(B) OR (C), a violation
3 of section 625(3) described in section ~~625(9)(b)~~ 625(10)(B) or
4 (c), ~~or~~ a violation of section 625(4), ~~or~~ (5), OR (7), OR A
5 VIOLATION OF SECTION 904(4) OR (5) may require 1 of the following
6 with regard to the vehicle used in the offense if the defendant
7 owns the vehicle in whole or in part or leases the vehicle:

8 (a) Forfeiture of the vehicle if the defendant owns the
9 vehicle in whole or in part.

10 (b) Return of the vehicle to the lessor if the defendant
11 leases the vehicle.

12 (2) The vehicle may be seized pursuant to an order of sei-
13 zure issued by the court having jurisdiction upon a showing of
14 probable cause that the vehicle is subject to forfeiture or
15 return to the lessor.

16 (3) The forfeiture of a vehicle is subject to the interest
17 of the holder of a security interest who did not have prior
18 knowledge of or consent to the violation.

19 (4) Within ~~3~~ 14 days after the defendant's conviction for
20 a violation described in subsection (1), the ~~court shall notify~~
21 ~~the defendant, his or her attorney, and the prosecuting attorney~~
22 ~~if the court intends to consider imposing a sanction under this~~
23 ~~section. Within 3 days after this notice, the~~ PROSECUTING
24 ATTORNEY MAY FILE A PETITION WITH THE COURT FOR THE FORFEITURE OF
25 THE VEHICLE OR TO HAVE THE COURT ORDER RETURN OF A LEASED VEHICLE
26 TO THE LESSOR. THE prosecuting attorney shall give notice BY
27 FIRST-CLASS MAIL OR OTHER PROCESS TO THE DEFENDANT AND HIS OR HER

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1 ATTORNEY, to all owners of the vehicle, and TO any person holding
2 a security interest in the vehicle that the court may require
3 forfeiture or return of the vehicle.

4 (5) If a vehicle is seized before disposition of the crimi-
5 nal proceedings, a defendant who is an owner or lessee of the
6 vehicle may move the court having jurisdiction over the proceed-
7 ings to require the seizing agency to file a lien against the
8 vehicle and to return the vehicle to the owner or lessee pending
9 disposition of the criminal proceedings. The court shall hear
10 the motion within 7 days after the motion is filed. If the
11 defendant establishes at the hearing that he or she holds the
12 legal title ~~of~~ TO the vehicle or that he or she has a leasehold
13 interest and that it is necessary for him or her or a member of
14 his or her family to use the vehicle pending the outcome of the
15 forfeiture action, the court may order the seizing agency to
16 return the vehicle to the owner or lessee. If the court orders
17 the return of the vehicle to the owner or lessee, the court shall
18 order THE DEFENDANT TO POST A BOND IN AN AMOUNT EQUAL TO THE
19 RETAIL VALUE OF THE VEHICLE, AND SHALL ALSO ORDER the seizing
20 agency to file a lien against the vehicle.

21 (6) Within 14 days after notice by the prosecuting attorney
22 is given under subsection (4), THE DEFENDANT, an owner, lessee,
23 or holder of a security interest may file a claim of interest in
24 the vehicle WITH THE COURT. Within 21 days after the expiration
25 of the period for filing claims, but before OR AT sentencing, the
26 court shall hold a hearing to determine the legitimacy of any
27 claim, the extent of any co-owner's equity interest, ~~and~~ the

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1 liability of the defendant to any co-lessee, AND WHETHER TO ORDER
2 THE VEHICLE FORFEITED OR RETURNED TO THE LESSOR. IN CONSIDERING
3 WHETHER TO ORDER FORFEITURE, THE COURT SHALL REVIEW THE
4 DEFENDANT'S DRIVING RECORD TO DETERMINE WHETHER THE DEFENDANT HAS
5 MULTIPLE CONVICTIONS UNDER SECTION 625 OR A LOCAL ORDINANCE SUB-
6 STANTIALLY CORRESPONDING TO SECTION 625, OR MULTIPLE SUSPENSIONS,
7 RESTRICTIONS, OR DENIALS UNDER SECTION 904, OR BOTH. IF THE
8 DEFENDANT HAS MULTIPLE CONVICTIONS UNDER SECTION 625 OR MULTIPLE
9 SUSPENSIONS, RESTRICTIONS, OR DENIALS UNDER SECTION 904, OR BOTH,
10 THAT FACTOR SHALL WEIGH HEAVILY IN FAVOR OF FORFEITURE.

11 (7) If a vehicle is forfeited under this section, the unit
12 of government that seized the vehicle shall sell the vehicle and
13 dispose of the proceeds in the following order of priority:

14 (a) Pay any outstanding security interest of a secured party
15 who did not have prior knowledge of or consent to the commission
16 of the violation.

17 (b) Pay the equity interest of a co-owner who did not have
18 prior knowledge of or consent to the commission of the
19 violation.

20 (c) Satisfy any order of restitution entered in the prosecu-
21 tion for the violation.

22 (d) Pay the claim of each person who shows that he or she is
23 a victim of the violation to the extent that the claim is not
24 covered by an order of restitution.

25 (e) Pay any outstanding lien against the property that has
26 been imposed by a governmental unit.

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1 (f) Pay the proper expenses of the proceedings for
2 forfeiture and sale, including, but not limited to, expenses
3 incurred during the seizure process and expenses for maintaining
4 custody of the property, advertising, and court costs.

5 (g) The balance remaining after the payment of items (a)
6 through (f) shall be distributed by the court having jurisdiction
7 over the forfeiture proceedings to the unit or units of govern-
8 ment substantially involved in effecting the forfeiture.
9 Seventy-five percent of the money received by a unit of govern-
10 ment under this subdivision shall be used to enhance enforcement
11 of the criminal laws and 25% of the money shall be used to imple-
12 ment the crime victim's rights act, ~~Act No. 87 of the Public~~
13 ~~Acts of 1985, being sections 780.751 to 780.834 of the Michigan~~
14 ~~Compiled Laws~~ 1985 PA 87, MCL 780.751 TO 780.834. A unit of
15 government receiving money under this subdivision shall report
16 annually to the department of management and budget the amount of
17 money received under this subdivision that was used to enhance
18 enforcement of the criminal laws and the amount that was used to
19 implement the crime victim's rights act, 1985 PA 87, MCL 780.751
20 TO 780.834.

21 (8) The court may order the defendant to pay to a co-lessee
22 any liability determined under subsection (6). The order may be
23 enforced in the same manner as a civil judgment.

24 (9) The return of a vehicle to the lessor under this section
25 does not affect or impair the lessor's rights or the defendant's
26 obligations under the lease.

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1 (10) A person who knowingly conceals, sells, gives away, or
2 otherwise transfers or disposes of a vehicle with the intent to
3 avoid forfeiture or return of the vehicle to the lessor under
4 this section is guilty of a ~~felony~~ MISDEMEANOR punishable by
5 imprisonment for not more than ~~4 years~~ 1 YEAR or a fine of not
6 more than ~~\$2,000.00~~ \$1,000.00, or both.

7 (11) THE FAILURE OF THE COURT OR PROSECTOR TO COMPLY WITH
8 ANY TIME LIMIT SPECIFIED IN THIS SECTION DOES NOT PRECLUDE THE
9 COURT FROM ORDERING FORFEITURE OF A VEHICLE OR ITS RETURN TO A
10 LESSOR, UNLESS THE COURT FINDS THAT THE OWNER OR CLAIMANT SUFF-
11 FERED SUBSTANTIAL PREJUDICE AS A RESULT OF THAT FAILURE.

12 (12) THE FORFEITURE PROVISIONS OF THIS SECTION DO NOT PRE-
13 CLUDE THE PROSECUTING ATTORNEY FROM PURSUING A FORFEITURE PRO-
14 CEEDING UNDER ANY OTHER LAW OF THIS STATE OR A LOCAL ORDINANCE
15 SUBSTANTIALLY CORRESPONDING TO THIS SECTION.

16 [

17

18]

19 Enacting section [1]. This amendatory act takes effect
20 October 1, 1999.

21 Enacting section [2]. This amendatory act does not take
22 effect unless all of the following bills of the 89th Legislature
23 are enacted into law:

24 (a) Senate Bill No. 268.

25 (b) Senate Bill No. 269.

26 (c) Senate Bill No. 625.

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- 1 (d) Senate Bill No. 627.
- 2 (e) Senate Bill No. 869.
- 3 (f) Senate Bill No. 870.
- 4 (g) Senate Bill No. 953.
- 5 (h) House Bill No. 4210.
- 6 (i) House Bill No. 4576.
- 7 (j) House Bill No. 4960.
- 8 (k) House Bill No. 4961.
- 9 (l) House Bill No. 5122.
- 10 (m) House Bill No. 5123.
- 11 (n) House Bill No. 5951.
- 12 (o) House Bill No. 5952.
- 13 (p) House Bill No. 5953.
- 14 (q) House Bill No. 5954.
- 15 (r) House Bill No. 5955.
- 16 (s) House Bill No. 5956.