

# HOUSE BILL No. 4631

April 19, 2005, Introduced by Reps. David Law, Gosselin, Jones, Ward, Marleau, Kahn, Hildenbrand, Elsenheimer, Taub, Schuitmaker, Hune, Nitz, Nofs and Condino and referred to the Committee on Judiciary.

A bill to amend 1949 PA 300, entitled  
"Michigan vehicle code,"  
by amending section 625 (MCL 257.625), as amended by 2004 PA 62.

**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 either of the following  
7 applies:

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

1 controlled substance.

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

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

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

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

21 (c) The person's ability to operate the motor vehicle is  
22 visibly impaired due to the consumption of alcoholic liquor, a  
23 controlled substance, or a combination of alcoholic liquor and a  
24 controlled substance.

25 (3) A person, whether licensed or not, shall not operate a  
26 vehicle upon a highway or other place open to the general public or  
27 generally accessible to motor vehicles, including an area

1 designated for the parking of vehicles, within this state when, due  
2 to the consumption of alcoholic liquor, a controlled substance, or  
3 a combination of alcoholic liquor and a controlled substance, the  
4 person's ability to operate the vehicle is visibly impaired. If a  
5 person is charged with violating subsection (1), a finding of  
6 guilty under this subsection may be rendered.

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

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

18 (b) If, at the time of the violation, the person is operating  
19 a motor vehicle in a manner proscribed under section 653a and  
20 causes the death of a police officer, firefighter, or other  
21 emergency response personnel, the person is guilty of a felony  
22 punishable by imprisonment for not more than 20 years or a fine of  
23 not less than \$2,500.00 or more than \$10,000.00, or both. This  
24 subdivision applies regardless of whether the person is charged  
25 with the violation of section 653a. The judgment of sentence may  
26 impose the sanction permitted under section 625n. If the vehicle is  
27 not ordered forfeited under section 625n, the court shall order

1 vehicle immobilization under section 904d in the judgment of  
2 sentence.

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

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

20 (a) An alcohol content of 0.02 grams or more but less than  
21 0.08 grams per 100 milliliters of blood, per 210 liters of breath,  
22 or per 67 milliliters of urine, or, beginning October 1, 2013, the  
23 person has an alcohol content of 0.02 grams or more but less than  
24 0.10 grams per 100 milliliters of blood, per 210 liters of breath,  
25 or per 67 milliliters of urine.

26 (b) Any presence of alcohol within a person's body resulting  
27 from the consumption of alcoholic liquor, other than consumption of

1 alcoholic liquor as a part of a generally recognized religious  
2 service or ceremony.

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

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

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

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

17 (B) Community service for not less than 30 days or more than  
18 90 days.

19 (ii) If the violation occurs within 7 years of a prior  
20 conviction or within 10 years of 2 or more prior convictions, a  
21 person who violates this subdivision is guilty of a felony and  
22 shall be sentenced to pay a fine of not less than \$500.00 or more  
23 than \$5,000.00 and to either of the following:

24 (A) Imprisonment under the jurisdiction of the department of  
25 corrections for not less than 1 year or more than 5 years.

26 (B) Probation with imprisonment in the county jail for not  
27 less than 30 days or more than 1 year and community service for not

1 less than 60 days or more than 180 days. Not less than 48 hours of  
2 this imprisonment shall be served consecutively. This term of  
3 imprisonment shall not be suspended.

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

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

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

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

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

14 (ii) If the violation occurs within 7 years of a prior  
15 conviction or within 10 years of 2 or more prior convictions, a  
16 person who violates this subdivision shall be sentenced to pay a  
17 fine of not less than \$200.00 or more than \$1,000.00 and to 1 or  
18 more of the following:

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

22 (B) Community service for not less than 30 days or more than  
23 90 days.

24 (c) In the judgment of sentence under subdivision (a)(i) or  
25 (b)(i), the court may, unless the vehicle is ordered forfeited under  
26 section 625n, order vehicle immobilization as provided in section  
27 904d. In the judgment of sentence under subdivision (a)(ii) or

1 (b)(ii), the court shall, unless the vehicle is ordered forfeited  
2 under section 625n, order vehicle immobilization as provided in  
3 section 904d.

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

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

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

22 (a) Except as otherwise provided in subdivisions (b) and (c),  
23 the person is guilty of a misdemeanor punishable by 1 or more of  
24 the following:

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

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

27 (iii) A fine of not less than \$100.00 or more than \$500.00.

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

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

7 (ii) Community service for not less than 30 days or more than  
8 90 days.

9 (c) If the violation occurs within 10 years of 2 or more prior  
10 convictions, the person is guilty of a felony and shall be  
11 sentenced to pay a fine of not less than \$500.00 or more than  
12 \$5,000.00 and to either of the following:

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

15 (ii) Probation with imprisonment in the county jail for not  
16 less than 30 days or more than 1 year and community service for not  
17 less than 60 days or more than 180 days. Not less than 48 hours of  
18 the imprisonment imposed under this subparagraph shall be served  
19 consecutively.

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

22 (e) In the judgment of sentence under subdivision (a), the  
23 court may order vehicle immobilization as provided in section 904d.  
24 In the judgment of sentence under subdivision (b) or (c), the court  
25 shall, unless the vehicle is ordered forfeited under section 625n,  
26 order vehicle immobilization as provided in section 904d.

27 (f) In the judgment of sentence under subdivision (b) or (c),

1 the court may impose the sanction permitted under section 625n.

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

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

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

11 (c) If the person operating the motor vehicle violated  
12 subsection (5), a felony punishable by imprisonment for not more  
13 than 2 years or a fine of not less than \$1,000.00 or more than  
14 \$5,000.00, or both.

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

17 (a) Except as otherwise provided in subdivisions (b) and (c),  
18 the person is guilty of a misdemeanor punishable by 1 or more of  
19 the following:

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

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

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

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

27 (i) Imprisonment for not less than 5 days or more than 1 year.

1 Not less than 48 hours of the term of imprisonment imposed under  
2 this subparagraph shall be served consecutively.

3 (ii) Community service for not less than 30 days or more than  
4 90 days.

5 (c) If the violation occurs within 10 years of 2 or more prior  
6 convictions, the person is guilty of a felony and shall be  
7 sentenced to pay a fine of not less than \$500.00 or more than  
8 \$5,000.00 and either of the following:

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

11 (ii) Probation with imprisonment in the county jail for not  
12 less than 30 days or more than 1 year and community service for not  
13 less than 60 days or more than 180 days. Not less than 48 hours of  
14 the imprisonment imposed under this subparagraph shall be served  
15 consecutively.

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

18 (e) In the judgment of sentence under subdivision (a), the  
19 court may order vehicle immobilization as provided in section 904d.  
20 In the judgment of sentence under subdivision (b) or (c), the court  
21 shall, unless the vehicle is ordered forfeited under section 625n,  
22 order vehicle immobilization as provided in section 904d.

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

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

27 (a) Except as otherwise provided in subdivision (b), the

1 person is guilty of a misdemeanor punishable by 1 or both of the  
2 following:

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

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

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

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

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

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

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

15 (14) A person sentenced to perform community service under  
16 this section shall not receive compensation and shall reimburse the  
17 state or appropriate local unit of government for the cost of  
18 supervision incurred by the state or local unit of government as a  
19 result of the person's activities in that service.

20 (15) If the prosecuting attorney intends to seek an enhanced  
21 sentence under this section or a sanction under section 625n based  
22 upon the defendant having 1 or more prior convictions, the  
23 prosecuting attorney shall include on the complaint and  
24 information, or an amended complaint and information, filed in  
25 district court, circuit court, municipal court, or family division  
26 of circuit court, a statement listing the defendant's prior  
27 convictions.

1           (16) If a person is charged with a violation of subsection  
2 (1), (3), (4), (5), (7), or (8) or section 625m, the court shall  
3 not permit the defendant to enter a plea of guilty or nolo  
4 contendere to a charge of violating subsection (6) in exchange for  
5 dismissal of the original charge. This subsection does not prohibit  
6 the court from dismissing the charge upon the prosecuting  
7 attorney's motion.

8           (17) A prior conviction shall be established at sentencing by  
9 1 or more of the following:

10           (a) An abstract of conviction.

11           (b) A copy of the defendant's driving record.

12           (c) An admission by the defendant.

13           (18) Except as otherwise provided in subsection (20), if a  
14 person is charged with operating a vehicle while under the  
15 influence of a controlled substance or a combination of alcoholic  
16 liquor and a controlled substance in violation of subsection (1) or  
17 a local ordinance substantially corresponding to subsection (1),  
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 the person was under the  
22 influence of a controlled substance or a combination of alcoholic  
23 liquor and a controlled substance at the time of the violation.

24           (19) Except as otherwise provided in subsection (20), if a  
25 person is charged with operating a vehicle while his or her ability  
26 to operate the vehicle was visibly impaired due to his or her  
27 consumption of a controlled substance or a combination of alcoholic

1 liquor and a controlled substance in violation of subsection (3) or  
2 a local ordinance substantially corresponding to subsection (3),  
3 the court shall require the jury to return a special verdict in the  
4 form of a written finding or, if the court convicts the person  
5 without a jury or accepts a plea of guilty or nolo contendere, the  
6 court shall make a finding as to whether, due to the consumption of  
7 a controlled substance or a combination of alcoholic liquor and a  
8 controlled substance, the person's ability to operate a motor  
9 vehicle was visibly impaired at the time of the violation.

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

13 (a) Whether the defendant was under the influence of a  
14 controlled substance or a combination of alcoholic liquor and a  
15 controlled substance at the time of the violation.

16 (b) Whether the defendant was visibly impaired due to his or  
17 her consumption of a controlled substance or a combination of  
18 alcoholic liquor and a controlled substance at the time of the  
19 violation.

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

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

26 (b) On a form or forms prescribed by the state court  
27 administrator, forward to the department of state police a record

1 that specifies the penalties imposed by the court, including any  
 2 term of imprisonment, and any sanction imposed under section 625n  
 3 or 904d.

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

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

12 (24) The court may order as a condition of probation that a  
 13 person convicted of violating subsection (1) or (8), or a local  
 14 ordinance substantially corresponding to subsection (1) or (8),  
 15 shall not operate a motor vehicle unless that vehicle is equipped  
 16 with an ignition interlock device approved, certified, and  
 17 installed as required under sections 625k and 625l.

18 (25) Subject to subsection (27), as used in this section,  
 19 "prior conviction" means a conviction for any of the following,  
 20 whether under a law of this state, a local ordinance substantially  
 21 corresponding to a law of this state, ~~or~~ a law of another state  
 22 substantially corresponding to a law of this state, **OR A LOCAL**  
 23 **ORDINANCE OF A POLITICAL SUBDIVISION OF ANOTHER STATE SUBSTANTIALLY**  
 24 **CORRESPONDING TO A LAW OF THIS STATE:**

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

27 (i) This section, except a violation of section 625(2), or a

1 violation of any prior enactment of this section in which the  
2 defendant operated a vehicle while under the influence of  
3 intoxicating or alcoholic liquor or a controlled substance, or a  
4 combination of intoxicating or alcoholic liquor and a controlled  
5 substance, or while visibly impaired, or with an unlawful bodily  
6 alcohol content.

7 (ii) Section 625m.

8 (iii) Former section 625b.

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

12 (26) Except for purposes of the enhancement described in  
13 subsection (12)(b), only 1 violation or attempted violation of  
14 subsection (6), a local ordinance substantially corresponding to  
15 subsection (6), or a law of another state substantially  
16 corresponding to subsection (6) may be used as a prior conviction.

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