

**SUBSTITUTE FOR
HOUSE BILL NO. 5160**

A bill to amend 1949 PA 300, entitled
"Michigan vehicle code,"
by amending section 625 (MCL 257.625), as amended by 2006 PA 564.

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

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

27 (B) Probation with imprisonment in the county jail for not

1 less than 30 days or more than 1 year and community service for not
2 less than 60 days or more than 180 days. Not less than 48 hours of
3 this imprisonment shall be served consecutively. This term of
4 imprisonment shall not be suspended.

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

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

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

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

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

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

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

24 (B) Community service for not less than 30 days or more than
25 90 days.

26 (c) In the judgment of sentence under subdivision (a) (i) or
27 (b) (i), the court may, unless the vehicle is ordered forfeited under

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

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

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

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

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

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

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

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

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

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

9 (ii) Community service for not less than 30 days or more than
10 90 days.

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

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

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

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

25 (e) In the judgment of sentence under subdivision (a), the
26 court may order vehicle immobilization as provided in section 904d.
27 In the judgment of sentence under subdivision (b) or (c), the court

1 shall, unless the vehicle is ordered forfeited under section 625n,
2 order vehicle immobilization as provided in section 904d.

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

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

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

10 (b) If the person operating the motor vehicle violated
11 subsection (4), a felony punishable by imprisonment for not more
12 than 5 years or a fine of not less than \$1,500.00 or more than
13 \$10,000.00, or both.

14 (c) If the person operating the motor vehicle violated
15 subsection (5), a felony punishable by imprisonment for not more
16 than 2 years or a fine of not less than \$1,000.00 or more than
17 \$5,000.00, or both.

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

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

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

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

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

26 (b) If the violation occurs within 7 years of 1 prior
27 conviction, the person shall be sentenced to pay a fine of not less

1 than \$200.00 or more than \$1,000.00, and 1 or more of the
2 following:

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

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

8 (c) If the violation occurs after 2 or more prior convictions,
9 regardless of the number of years that have elapsed since any prior
10 conviction, the person is guilty of a felony and shall be sentenced
11 to pay a fine of not less than \$500.00 or more than \$5,000.00 and
12 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 (12) If a person is convicted of violating subsection (6), all
3 of the following apply:

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

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

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

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

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

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

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

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

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

24 (15) If the prosecuting attorney intends to seek an enhanced
25 sentence under this section or a sanction under section 625n based
26 upon the defendant having 1 or more prior convictions, the
27 prosecuting attorney shall include on the complaint and

1 information, or an amended complaint and information, filed in
2 district court, circuit court, municipal court, or family division
3 of circuit court, a statement listing the defendant's prior
4 convictions.

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

12 (17) A prior conviction shall be established at sentencing by
13 1 or more of the following:

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

15 (b) An abstract of conviction.

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

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

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

20 (f) Information contained in a presentence report.

21 (g) An admission by the defendant.

22 (18) Except as otherwise provided in subsection (20), if a
23 person is charged with operating a vehicle while under the
24 influence of a controlled substance or a combination of alcoholic
25 liquor and a controlled substance in violation of subsection (1) or
26 a local ordinance substantially corresponding to subsection (1),
27 the court shall require the jury to return a special verdict in the

1 form of a written finding or, if the court convicts the person
2 without a jury or accepts a plea of guilty or nolo contendere, the
3 court shall make a finding as to whether the person was under the
4 influence of a controlled substance or a combination of alcoholic
5 liquor and a controlled substance at the time of the violation.

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

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

22 (a) Whether the defendant was under the influence of a
23 controlled substance or a combination of alcoholic liquor and a
24 controlled substance at the time of the violation.

25 (b) Whether the defendant was visibly impaired due to his or
26 her consumption of a controlled substance or a combination of
27 alcoholic liquor and a controlled substance at the time of the

1 violation.

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

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

8 (b) On a form or forms prescribed by the state court
9 administrator, forward to the department of state police a record
10 that specifies the penalties imposed by the court, including any
11 term of imprisonment, and any sanction imposed under section 625n
12 or 904d.

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

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

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

27 (25) Subject to subsection (27), as used in this section,

1 "prior conviction" means a conviction for any of the following,
2 whether under a law of this state, a local ordinance substantially
3 corresponding to a law of this state, **A LAW OF THE UNITED STATES**
4 **SUBSTANTIALLY CORRESPONDING TO A LAW OF THIS STATE**, or a law of
5 another state substantially corresponding to a law of this state:

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

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

15 (ii) Section 625m.

16 (iii) Former section 625b.

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

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

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

House Bill No. 5160 as amended December 3, 2008

1 a prior conviction.

2 Enacting section 1. This amendatory act takes effect <<January 1,

3 2009.>>