

# HOUSE BILL No. 5160

September 5, 2007, Introduced by Reps. Marleau, David Law, Elsenheimer, Condino, Farrah, Meisner, Corriveau, Constan, Angerer, Meekhof, Knollenberg, Meadows, Bieda, Virgil Smith, Ball, Scott, Coulouris, Melton, Rocca, Green, Stakoe, Nofs, Moore, Rick Jones, Espinoza, Brown, Amos, Polidori, Ward, Huizenga, Hildenbrand, Proos, Agema, Calley, Moss, Walker, Moolenaar, Booher, Hansen, Mayes, Hopgood, Sheltroun, Shaffer, Horn, Brandenburg, Casperson, Pastor, Wenke, LaJoy, Acciavatti, Pavlov and Robertson 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 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  
10      controlled substance.

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

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

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

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

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

24 (3) A person, whether licensed or not, shall not operate a  
25 vehicle upon a highway or other place open to the general public or  
26 generally accessible to motor vehicles, including an area  
27 designated for the parking of vehicles, within this state when, due

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

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

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

17 (b) If, at the time of the violation, the person is operating  
18 a motor vehicle in a manner proscribed under section 653a and  
19 causes the death of a police officer, firefighter, or other  
20 emergency response personnel, the person is guilty of a felony  
21 punishable by imprisonment for not more than 20 years or a fine of  
22 not less than \$2,500.00 or more than \$10,000.00, or both. This  
23 subdivision applies regardless of whether the person is charged  
24 with the violation of section 653a. The judgment of sentence may  
25 impose the sanction permitted under section 625n. If the vehicle is  
26 not ordered forfeited under section 625n, the court shall order  
27 vehicle immobilization under section 904d in the judgment of

1 sentence.

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

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

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

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

1 service or ceremony.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



1 order vehicle immobilization as provided in section 904d.

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

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

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

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

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

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

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

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

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

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

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

1 following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 district court, circuit court, municipal court, or family division  
2 of circuit court, a statement listing the defendant's prior  
3 convictions.

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

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

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

14 (b) An abstract of conviction.

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

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

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

19 (f) Information contained in a presentence report.

20 (g) An admission by the defendant.

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

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

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

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

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

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

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

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

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

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

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

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

26          (25) Subject to subsection (27), as used in this section,  
27          "prior conviction" means a conviction for any of the following,

whether under a law of this state, a local ordinance substantially corresponding to a law of this state, ~~or~~ **A LAW OF THE UNITED STATES SUBSTANTIALLY CORRESPONDING TO A LAW OF THIS STATE**, a law of another state substantially corresponding to a law of this state, **OR A LOCAL ORDINANCE OF A POLITICAL SUBDIVISION OF ANOTHER STATE SUBSTANTIALLY CORRESPONDING TO A LAW OF THIS STATE:**

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

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

(ii) Section 625m.

(iii) Former section 625b.

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

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

(27) If 2 or more convictions described in subsection (25) are convictions for violations arising out of the same transaction,

- 1 only 1 conviction shall be used to determine whether the person has
- 2 a prior conviction.