

SENATE BILL No. 1134

February 20, 2008, Introduced by Senator CROPSEY and referred to the Committee on Judiciary.

A bill to amend 1949 PA 300, entitled
"Michigan vehicle code,"
by amending sections 319, 322, 625, and 625b (MCL 257.319, 257.322,
257.625, and 257.625b), section 319 as amended by 2004 PA 362,
section 322 as amended by 2001 PA 159, section 625 as amended by
2006 PA 564, and section 625b as amended by 2004 PA 62, and by
adding section 20b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 20B. "IGNITION INTERLOCK DEVICE" MEANS AN ALCOHOL
2 CONCENTRATION MEASURING DEVICE THAT PREVENTS A MOTOR VEHICLE FROM
3 BEING STARTED AT ANY TIME WITHOUT FIRST DETERMINING THROUGH A DEEP
4 LUNG SAMPLE THE OPERATOR'S ALCOHOL LEVEL, CALIBRATED SO THAT THE
5 MOTOR VEHICLE CANNOT BE STARTED IF THE BREATH ALCOHOL LEVEL OF THE
6 OPERATOR, AS MEASURED BY THE TEST, REACHES A LEVEL OF 0.025 GRAMS

1 PER 210 LITERS OF BREATH, AND TO WHICH ALL OF THE FOLLOWING APPLY:

2 (A) THE DEVICE MEETS OR EXCEEDS THE MODEL SPECIFICATIONS FOR
3 BREATH ALCOHOL IGNITION INTERLOCK DEVICES (BAIID), 57 FR 11772 -
4 11787 (APRIL 7, 1992).

5 (B) THE DEVICE UTILIZES ALCOHOL-SPECIFIC ELECTROCHEMICAL FUEL
6 SENSOR TECHNOLOGY.

7 (C) AS ITS ANTICIRCUMVENTION METHOD, WHICH IS ENABLED, THE
8 DEVICE INSTALLATION USES A POSITIVE-NEGATIVE-POSITIVE AIR PRESSURE
9 TEST REQUIREMENT, A HUM TONE REQUIREMENT, OR ANY OTHER
10 ANTICIRCUMVENTION METHOD OR TECHNOLOGY THAT FIRST BECOMES
11 COMMERCIALY AVAILABLE AFTER JULY 31, 2007 AND THAT IS APPROVED BY
12 THE DEPARTMENT AS EQUALLY OR MORE EFFECTIVE.

13 Sec. 319. (1) The secretary of state shall immediately suspend
14 a person's license as provided in this section upon receiving a
15 record of the person's conviction for a crime described in this
16 section, whether the conviction is under a law of this state, a
17 local ordinance substantially corresponding to a law of this state,
18 or a law of another state substantially corresponding to a law of
19 this state.

20 (2) The secretary of state shall suspend the person's license
21 for 1 year for any of the following crimes:

22 (a) Fraudulently altering or forging documents pertaining to
23 motor vehicles in violation of section 257.

24 (b) A violation of section 413 of the Michigan penal code,
25 1931 PA 328, MCL 750.413.

26 (c) A violation of section 1 of former 1931 PA 214, MCL
27 752.191, or section 626c.

1 (d) A felony in which a motor vehicle was used. As used in
2 this section, "felony in which a motor vehicle was used" means a
3 felony during the commission of which the person convicted operated
4 a motor vehicle and while operating the vehicle presented real or
5 potential harm to persons or property and 1 or more of the
6 following circumstances existed:

7 (i) The vehicle was used as an instrument of the felony.

8 (ii) The vehicle was used to transport a victim of the felony.

9 (iii) The vehicle was used to flee the scene of the felony.

10 (iv) The vehicle was necessary for the commission of the
11 felony.

12 (e) A violation of section 602a(2) or (3) of this act or
13 section 479a(2) or (3) of the Michigan penal code, 1931 PA 328, MCL
14 750.479a.

15 (3) The secretary of state shall suspend the person's license
16 for 90 days for any of the following crimes:

17 (a) Failing to stop and disclose identity at the scene of an
18 accident resulting in injury in violation of section 617a.

19 (b) A violation of section 601b(2), section 601c(1), section
20 626, or section 653a(3).

21 (c) Malicious destruction resulting from the operation of a
22 vehicle under section 382(1)(b), (c), or (d) of the Michigan penal
23 code, 1931 PA 328, MCL 750.382.

24 (d) A violation of section 703(2) of the Michigan liquor
25 control code of 1998, 1998 PA 58, MCL 436.1703.

26 (4) The secretary of state shall suspend the person's license
27 for 30 days for malicious destruction resulting from the operation

1 of a vehicle under section 382(1)(a) of the Michigan penal code,
2 1931 PA 328, MCL 750.382.

3 (5) For perjury or making a false certification to the
4 secretary of state under any law requiring the registration of a
5 motor vehicle or regulating the operation of a vehicle on a
6 highway, or for conduct prohibited under section 324(1) or a local
7 ordinance substantially corresponding to section 324(1), the
8 secretary shall suspend the person's license as follows:

9 (a) If the person has no prior conviction for an offense
10 described in this subsection within 7 years, for 90 days.

11 (b) If the person has 1 or more prior convictions for an
12 offense described in this subsection within 7 years, for 1 year.

13 (6) For a violation of section 414 of the Michigan penal code,
14 1931 PA 328, MCL 750.414, the secretary of state shall suspend the
15 person's license as follows:

16 (a) If the person has no prior conviction for that offense
17 within 7 years, for 90 days.

18 (b) If the person has 1 or more prior convictions for that
19 offense within 7 years, for 1 year.

20 (7) For a violation of section 624a or 624b of this act or
21 section 703(1) of the Michigan liquor control code of 1998, 1998 PA
22 58, MCL 436.1703, the secretary of state shall suspend the person's
23 license as follows:

24 (a) If the person has 1 prior conviction for an offense
25 described in this subsection or section 33b(1) of former 1933 (Ex
26 Sess) PA 8, for 90 days. The secretary of state may issue the
27 person a restricted license after the first 30 days of suspension.

1 (b) If the person has 2 or more prior convictions for an
2 offense described in this subsection or section 33b(1) of former
3 1933 (Ex Sess) PA 8, for 1 year. The secretary of state may issue
4 the person a restricted license after the first 60 days of
5 suspension.

6 (8) The secretary of state shall suspend the person's license
7 for a violation of section 625 or 625m as follows:

8 (a) For 180 days for a violation of section ~~625(1)~~**625(1) (A)**
9 **OR (B)** or (8) if the person has no prior convictions within 7
10 years. The secretary of state may issue the person a restricted
11 license during a specified portion of the suspension, except that
12 the secretary of state shall not issue a restricted license during
13 the first 30 days of suspension.

14 (b) For 90 days for a violation of section 625(3) if the
15 person has no prior convictions within 7 years. However, if the
16 person is convicted of a violation of section 625(3), for operating
17 a vehicle when, due to the consumption of a controlled substance or
18 a combination of alcoholic liquor and a controlled substance, the
19 person's ability to operate the vehicle was visibly impaired, the
20 secretary of state shall suspend the person's license under this
21 subdivision for 180 days. The secretary of state may issue the
22 person a restricted license during all or a specified portion of
23 the suspension.

24 (c) For 30 days for a violation of section 625(6) if the
25 person has no prior convictions within 7 years. The secretary of
26 state may issue the person a restricted license during all or a
27 specified portion of the suspension.

1 (d) For 90 days for a violation of section 625(6) if the
2 person has 1 or more prior convictions for that offense within 7
3 years.

4 (e) For 180 days for a violation of section 625(7) if the
5 person has no prior convictions within 7 years. The secretary of
6 state may issue the person a restricted license after the first 90
7 days of suspension.

8 (f) For 90 days for a violation of section 625m if the person
9 has no prior convictions within 7 years. The secretary of state may
10 issue the person a restricted license during all or a specified
11 portion of the suspension.

12 (G) FOR THE LONGER OF 1 YEAR OR UNTIL THE PERSON SATISFIES THE
13 CONDITION IN SUBDIVISION (H) FOR A VIOLATION OF SECTION 625(1)(C)
14 IF THE PERSON HAS NO PRIOR CONVICTIONS WITHIN 7 YEARS. THE
15 SECRETARY OF STATE SHALL ISSUE THE PERSON A RESTRICTED LICENSE,
16 EXCEPT THAT THE SECRETARY OF STATE SHALL NOT ISSUE A RESTRICTED
17 LICENSE DURING THE FIRST 45 DAYS OF SUSPENSION.

18 (H) THE DEPARTMENT SHALL ORDER A PERSON CONVICTED OF VIOLATING
19 SECTION 625(1)(C) NOT TO OPERATE A MOTOR VEHICLE UNDER A RESTRICTED
20 LICENSE ISSUED UNDER SUBDIVISION (G) UNLESS THE VEHICLE IS EQUIPPED
21 WITH AN IGNITION INTERLOCK DEVICE APPROVED, CERTIFIED, AND
22 INSTALLED AS REQUIRED UNDER SECTIONS 625K AND 625/. THE IGNITION
23 INTERLOCK DEVICE MAY BE REMOVED AFTER THE MINIMUM PERIOD FOR THE
24 RESTRICTED LICENSE EXPIRES IF THE IGNITION INTERLOCK DEVICE
25 PROVIDER PROVIDES THE DEPARTMENT WITH VERIFICATION THAT THE PERSON
26 HAS OPERATED THE VEHICLE FOR THE MOST RECENT 6 CONTINUOUS MONTHS
27 WITH NO INSTANCES OF REACHING OR EXCEEDING A BLOOD ALCOHOL LEVEL OF

1 **0.025 GRAMS PER 210 LITERS OF BREATH.**

2 (9) For a violation of section 367c of the Michigan penal
3 code, 1931 PA 328, MCL 750.367c, the secretary of state shall
4 suspend the person's license as follows:

5 (a) If the person has no prior conviction for an offense
6 described in this subsection within 7 years, for 6 months.

7 (b) If the person has 1 or more convictions for an offense
8 described in this subsection within 7 years, for 1 year.

9 (10) For a violation of section 315(4), the secretary of state
10 may suspend the person's license for 6 months.

11 (11) For a violation or attempted violation of section 411a(2)
12 of the Michigan penal code, 1931 PA 328, MCL 750.411a, involving a
13 school, the secretary of state shall suspend the license of a
14 person 14 years of age or over but less than 21 years of age until
15 3 years after the date of the conviction or juvenile disposition
16 for the violation. The secretary of state may issue the person a
17 restricted license after the first 365 days of suspension.

18 (12) Except as provided in subsection (14), a suspension under
19 this section shall be imposed notwithstanding a court order unless
20 the court order complies with section 323.

21 (13) If the secretary of state receives records of more than 1
22 conviction of a person resulting from the same incident, a
23 suspension shall be imposed only for the violation to which the
24 longest period of suspension applies under this section.

25 (14) The secretary of state may waive a restriction,
26 suspension, or revocation of a person's license imposed under this
27 act if the person submits proof that a court in another state

1 revoked, suspended, or restricted his or her license for a period
2 equal to or greater than the period of a restriction, suspension,
3 or revocation prescribed under this act for the violation and that
4 the revocation, suspension, or restriction was served for the
5 violation, or may grant a restricted license.

6 (15) The secretary of state shall not issue a restricted
7 license to a person whose license is suspended under this section
8 unless a restricted license is authorized under this section and
9 the person is otherwise eligible for a license.

10 (16) The secretary of state shall not issue a restricted
11 license to a person under subsection (8) that would permit the
12 person to operate a commercial motor vehicle.

13 (17) ~~A-EXCEPT AS PROVIDED IN SUBSECTION (16), A~~ restricted
14 license issued under this section shall permit the person to whom
15 it is issued to take any driving skills test required by the
16 secretary of state and to ~~drive~~**OPERATE A VEHICLE** under 1 or more
17 of the following circumstances:

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

19 (b) To and from any combination of the following:

20 (i) The person's residence.

21 (ii) The person's work location.

22 (iii) An alcohol or drug education or treatment program as
23 ordered by the court.

24 (iv) The court probation department.

25 (v) A court-ordered community service program.

26 (vi) An educational institution at which the person is enrolled
27 as a student.

1 (vii) A place of regularly occurring medical treatment for a
2 serious condition for the person or a member of the person's
3 household or immediate family.

4 (18) While driving with a restricted license, the person shall
5 carry proof of his or her destination and the hours of any
6 employment, class, or other reason for traveling and shall display
7 that proof upon a peace officer's request.

8 (19) Subject to subsection (21), as used in subsection (8),
9 "prior conviction" means a conviction for any of the following,
10 whether under a law of this state, a local ordinance substantially
11 corresponding to a law of this state, or a law of another state
12 substantially corresponding to a law of this state:

13 (a) Except as provided in subsection (20), a violation or
14 attempted violation of any of the following:

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

22 (ii) Section 625m.

23 (iii) Former section 625b.

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

27 (20) Except for purposes of the suspensions described in

1 subsection (8)(c) and (d), only 1 violation or attempted violation
2 of section 625(6), a local ordinance substantially corresponding to
3 section 625(6), or a law of another state substantially
4 corresponding to section 625(6) may be used as a prior conviction.

5 (21) If 2 or more convictions described in subsection (19) are
6 convictions for violations arising out of the same transaction,
7 only 1 conviction shall be used to determine whether the person has
8 a prior conviction.

9 Sec. 322. (1) The secretary of state shall appoint a hearing
10 officer to hear appeals from persons aggrieved by a final
11 determination of the secretary of state denying an application for
12 an operator's or chauffeur's license, suspending, restricting, or
13 revoking an operator's or chauffeur's license, or other license
14 action.

15 (2) The appeal shall be in writing and filed with the
16 secretary of state within 14 days after the final determination.
17 Upon notice of the appeal, the hearing officer shall require
18 production of all documents filed in the matter, together with a
19 transcript of any testimony taken.

20 (3) In a hearing or matter properly before the hearing
21 officer, he or she may do any of the following:

22 (a) Issue subpoenas to compel attendance of witnesses.

23 (b) Issue process to compel attendance.

24 (c) Punish for contempt any witness failing to appear or
25 testify in the same manner as provided by the rules and practice in
26 the circuit court.

27 (d) Swear witnesses, administer oaths, and exemplify records

1 in any matter before the officer.

2 (e) Take additional testimony he or she considers appropriate.

3 (4) A verbatim record shall be made of the hearing.

4 (5) After a hearing, the hearing officer may affirm, modify,
5 or set aside a final determination of the secretary of state
6 denying an application for an operator's or chauffeur's license,
7 suspending, restricting, or revoking an operator's or chauffeur's
8 license, or any other license action. The hearing officer shall
9 include his or her findings of fact and conclusions of law in the
10 record.

11 (6) Except as provided in subsection (7), if a person whose
12 license has been denied or revoked under section 303(2)(c), (d), or
13 (g) applies for a license or reinstatement of a license after the
14 time period specified in section 303(4) has elapsed, the hearing
15 officer may issue a restricted license to that person, setting
16 restrictions upon operating a vehicle as the hearing officer
17 determines are appropriate. If the hearing officer issues a
18 restricted license following a hearing held after October 1, 1999,
19 he or she shall do both of the following:

20 (a) Require ~~installation of a~~ **PROPERLY INSTALLED AND**
21 ~~functioning ignition interlock device that meets or exceeds the~~
22 ~~model specifications of the national highway traffic safety~~
23 ~~administration set forth in 57 F.R. p.11772, April 7, 1992,~~ on each
24 motor vehicle the person owns or intends to operate, the costs of
25 which shall be borne by the person whose license is restricted.

26 (b) Condition issuance of a restricted license upon
27 verification by the secretary of state that an ignition interlock

1 device has been installed.

2 (7) The hearing officer shall not issue a restricted license
3 under subsection (6) that would permit the person to operate a
4 commercial motor vehicle that hauls hazardous material.

5 (8) If the hearing officer issues a restricted license to a
6 person who intends to operate a vehicle owned by his or her
7 employer, the secretary of state shall notify the employer of the
8 employee's license restriction that requires the installation of an
9 ignition interlock device. An employer who receives notice under
10 this subsection is not required to install an ignition interlock
11 device on the employer-owned vehicle. This subsection does not
12 apply to a vehicle that is operated by a self-employed individual
13 who uses the vehicle for both business and personal use.

14 (9) If the hearing officer issues a restricted license
15 requiring an ignition interlock device, the initial period for
16 requiring the device shall be **NOT LESS THAN** 1 year. ~~After that~~
17 ~~time, the hearing officer may continue the ignition interlock~~
18 ~~device requirement for any length of time.~~

19 **(10) A PERSON WHO IS ISSUED A RESTRICTED LICENSE REQUIRING AN**
20 **IGNITION INTERLOCK DEVICE SHALL NOT REMOVE THE DEVICE OR CAUSE THE**
21 **DEVICE TO BE REMOVED UNLESS THE DEPARTMENT OR THE COURT HAS ISSUED**
22 **AN ORDER AUTHORIZING ITS REMOVAL.**

23 Sec. 625. (1) A person, whether licensed or not, shall not
24 operate a vehicle upon a highway or other place open to the general
25 public or generally accessible to motor vehicles, including an area
26 designated for the parking of vehicles, within this state if the
27 person is operating while intoxicated. As used in this section,

1 "operating while intoxicated" means ~~either~~ **ANY** of the following:
2 ~~applies.~~

3 (a) The person is under the influence of alcoholic liquor, a
4 controlled substance, or a combination of alcoholic liquor and a
5 controlled substance.

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

11 **(C) THE PERSON HAS AN ALCOHOL CONTENT OF 0.15 GRAMS OR MORE**
12 **PER 100 MILLILITERS OF BLOOD, PER 210 LITERS OF BREATH, OR PER 67**
13 **MILLILITERS OF URINE.**

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

20 (a) The person is under the influence of alcoholic liquor, a
21 controlled substance, or a combination of alcoholic liquor and a
22 controlled substance.

23 (b) The person has an alcohol content of 0.08 grams or more
24 per 100 milliliters of blood, per 210 liters of breath, or per 67
25 milliliters of urine or, beginning October 1, 2013, the person has
26 an alcohol content of 0.10 grams or more per 100 milliliters of
27 blood, per 210 liters of breath, or per 67 milliliters of urine.

1 (c) The person's ability to operate the motor vehicle is
2 visibly impaired due to the consumption of alcoholic liquor, a
3 controlled substance, or a combination of alcoholic liquor and a
4 controlled substance.

5 (3) A person, whether licensed or not, shall not operate a
6 vehicle upon a highway or other place open to the general public or
7 generally accessible to motor vehicles, including an area
8 designated for the parking of vehicles, within this state when, due
9 to the consumption of alcoholic liquor, a controlled substance, or
10 a combination of alcoholic liquor and a controlled substance, the
11 person's ability to operate the vehicle is visibly impaired. If a
12 person is charged with violating subsection (1), a finding of
13 guilty under this subsection may be rendered.

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

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

25 (b) If, at the time of the violation, the person is operating
26 a motor vehicle in a manner proscribed under section 653a and
27 causes the death of a police officer, firefighter, or other

1 emergency response personnel, the person is guilty of a felony
2 punishable by imprisonment for not more than 20 years or a fine of
3 not less than \$2,500.00 or more than \$10,000.00, or both. This
4 subdivision applies regardless of whether the person is charged
5 with the violation of section 653a. The judgment of sentence may
6 impose the sanction permitted under section 625n. If the vehicle is
7 not ordered forfeited under section 625n, the court shall order
8 vehicle immobilization under section 904d in the judgment of
9 sentence.

10 (5) A person, whether licensed or not, who operates a motor
11 vehicle in violation of subsection (1), (3), or (8) and by the
12 operation of that motor vehicle causes a serious impairment of a
13 body function of another person is guilty of a felony punishable by
14 imprisonment for not more than 5 years or a fine of not less than
15 \$1,000.00 or more than \$5,000.00, or both. The judgment of sentence
16 may impose the sanction permitted under section 625n. If the
17 vehicle is not ordered forfeited under section 625n, the court
18 shall order vehicle immobilization under section 904d in the
19 judgment of sentence.

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

27 (a) An alcohol content of 0.02 grams or more but less than

1 0.08 grams per 100 milliliters of blood, per 210 liters of breath,
2 or per 67 milliliters of urine, or, beginning October 1, 2013, the
3 person has an alcohol content of 0.02 grams or more but less than
4 0.10 grams per 100 milliliters of blood, per 210 liters of breath,
5 or per 67 milliliters of urine.

6 (b) Any presence of alcohol within a person's body resulting
7 from the consumption of alcoholic liquor, other than consumption of
8 alcoholic liquor as a part of a generally recognized religious
9 service or ceremony.

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

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

17 (i) Except as provided in subparagraph (ii), a person who
18 violates this subdivision is guilty of a misdemeanor and shall be
19 sentenced to pay a fine of not less than \$200.00 or more than
20 \$1,000.00 and to 1 or 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 (ii) If the violation occurs within 7 years of a prior
27 conviction or after 2 or more prior convictions, regardless of the

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

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

7 (B) Probation with imprisonment in the county jail for not
8 less than 30 days or more than 1 year and community service for not
9 less than 60 days or more than 180 days. Not less than 48 hours of
10 this imprisonment shall be served consecutively. This term of
11 imprisonment shall not be suspended.

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

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

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

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

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

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

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

4 (B) Community service for not less than 30 days or more than
5 90 days.

6 (c) In the judgment of sentence under subdivision (a) (i) or
7 (b) (i), the court may, unless the vehicle is ordered forfeited under
8 section 625n, order vehicle immobilization as provided in section
9 904d. In the judgment of sentence under subdivision (a) (ii) or
10 (b) (ii), the court shall, unless the vehicle is ordered forfeited
11 under section 625n, order vehicle immobilization as provided in
12 section 904d.

13 (d) This subsection does not prohibit a person from being
14 charged with, convicted of, or punished for a violation of
15 subsection (4) or (5) that is committed by the person while
16 violating this subsection. However, points shall not be assessed
17 under section 320a for both a violation of subsection (4) or (5)
18 and a violation of this subsection for conduct arising out of the
19 same transaction.

20 (8) A person, whether licensed or not, shall not operate a
21 vehicle upon a highway or other place open to the general public or
22 generally accessible to motor vehicles, including an area
23 designated for the parking of vehicles, within this state if the
24 person has in his or her body any amount of a controlled substance
25 listed in schedule 1 under section 7212 of the public health code,
26 1978 PA 368, MCL 333.7212, or a rule promulgated under that
27 section, or of a controlled substance described in section

1 7214(a)(iv) of the public health code, 1978 PA 368, MCL 333.7214.

2 (9) ~~If~~**EXCEPT AS PROVIDED IN SUBSECTION (10), IF** a person is
3 convicted of violating subsection (1) or (8), all of the following
4 apply:

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

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

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

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

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

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

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

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

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

26 (ii) 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 the imprisonment imposed under this subparagraph shall be served
3 consecutively.

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

6 (e) In the judgment of sentence under subdivision (a), the
7 court may order vehicle immobilization as provided in section 904d.
8 In the judgment of sentence under subdivision (b) or (c), the court
9 shall, unless the vehicle is ordered forfeited under section 625n,
10 order vehicle immobilization as provided in section 904d.

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

13 **(10) IF A PERSON IS CONVICTED OF VIOLATING SUBSECTION (1)(C),**
14 **THE PERSON IS GUILTY OF A MISDEMEANOR PUNISHABLE BY 1 OR MORE OF**
15 **THE FOLLOWING:**

16 **(A) COMMUNITY SERVICE FOR NOT MORE THAN 360 HOURS.**

17 **(B) IMPRISONMENT FOR NOT MORE THAN 180 DAYS.**

18 **(C) A FINE OF NOT LESS THAN \$200.00 OR MORE THAN \$700.00.**

19 **(11) ~~(10)~~**A person who is convicted of violating subsection
20 (2) is guilty of a crime as follows:

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

24 (b) If the person operating the motor vehicle violated
25 subsection (4), a felony punishable by imprisonment for not more
26 than 5 years or a fine of not less than \$1,500.00 or more than
27 \$10,000.00, or both.

1 (c) If the person operating the motor vehicle violated
2 subsection (5), a felony punishable by imprisonment for not more
3 than 2 years or a fine of not less than \$1,000.00 or more than
4 \$5,000.00, or both.

5 (12) ~~(11)~~—If a person is convicted of violating subsection
6 (3), all of the following apply:

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

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

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

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

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

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

20 (ii) Community service for not less than 30 days or more than
21 90 days.

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

27 (i) Imprisonment under the jurisdiction of the department of

1 corrections for not less than 1 year or more than 5 years.

2 (ii) Probation with imprisonment in the county jail for not
3 less than 30 days or more than 1 year and community service for not
4 less than 60 days or more than 180 days. Not less than 48 hours of
5 the imprisonment imposed under this subparagraph shall be served
6 consecutively.

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

9 (e) In the judgment of sentence under subdivision (a), the
10 court may order vehicle immobilization as provided in section 904d.
11 In the judgment of sentence under subdivision (b) or (c), the court
12 shall, unless the vehicle is ordered forfeited under section 625n,
13 order vehicle immobilization as provided in section 904d.

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

16 (13) ~~(12)~~—If a person is convicted of violating subsection
17 (6), all of the following apply:

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

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

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

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

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

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

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

2 (14) ~~(13)~~—In addition to imposing the sanctions prescribed
3 under this section, the court may order the person to pay the costs
4 of the prosecution under the code of criminal procedure, 1927 PA
5 175, MCL 760.1 to 777.69.

6 (15) ~~(14)~~—A person sentenced to perform community service
7 under this section shall not receive compensation and shall
8 reimburse the state or appropriate local unit of government for the
9 cost of supervision incurred by the state or local unit of
10 government as a result of the person's activities in that service.

11 (16) ~~(15)~~—If the prosecuting attorney intends to seek an
12 enhanced sentence under this section or a sanction under section
13 625n based upon the defendant having 1 or more prior convictions,
14 the prosecuting attorney shall include on the complaint and
15 information, or an amended complaint and information, filed in
16 district court, circuit court, municipal court, or family division
17 of circuit court, a statement listing the defendant's prior
18 convictions.

19 (17) ~~(16)~~—If a person is charged with a violation of
20 subsection (1), (3), (4), (5), (7), or (8) or section 625m, the
21 court shall not permit the defendant to enter a plea of guilty or
22 nolo contendere to a charge of violating subsection (6) in exchange
23 for dismissal of the original charge. This subsection does not
24 prohibit the court from dismissing the charge upon the prosecuting
25 attorney's motion.

26 (18) ~~(17)~~—A prior conviction shall be established at
27 sentencing by 1 or more of the following:

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

2 (b) An abstract of conviction.

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

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

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

7 (f) Information contained in a presentence report.

8 (g) An admission by the defendant.

9 (19) ~~(18)~~—Except as otherwise provided in subsection ~~(20)~~
10 (21), if a person is charged with operating a vehicle while under
11 the influence of a controlled substance or a combination of
12 alcoholic liquor and a controlled substance in violation of
13 subsection (1) or a local ordinance substantially corresponding to
14 subsection (1), the court shall require the jury to return a
15 special verdict in the form of a written finding or, if the court
16 convicts the person without a jury or accepts a plea of guilty or
17 nolo contendere, the court shall make a finding as to whether the
18 person was under the influence of a controlled substance or a
19 combination of alcoholic liquor and a controlled substance at the
20 time of the violation.

21 (20) ~~(19)~~—Except as otherwise provided in subsection ~~(20)~~
22 (21), if a person is charged with operating a vehicle while his or
23 her ability to operate the vehicle was visibly impaired due to his
24 or her consumption of a controlled substance or a combination of
25 alcoholic liquor and a controlled substance in violation of
26 subsection (3) or a local ordinance substantially corresponding to
27 subsection (3), the court shall require the jury to return a

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

8 (21) ~~(20)~~ A special verdict described in subsections ~~(18)~~ and
9 (19) **AND** (20) is not required if a jury is instructed to make a
10 finding solely as to either of the following:

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

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

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

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

24 (b) On a form or forms prescribed by the state court
25 administrator, forward to the department of state police a record
26 that specifies the penalties imposed by the court, including any
27 term of imprisonment, and any sanction imposed under section 625n

1 or 904d.

2 (23) ~~(22)~~—Except as otherwise provided by law, a record
3 described in subsection ~~(21)(b)~~—(22) (B) is a public record and the
4 department of state police shall retain the information contained
5 on that record for not less than 7 years.

6 (24) ~~(23)~~—In a prosecution for a violation of subsection (6),
7 the defendant bears the burden of proving that the consumption of
8 alcoholic liquor was a part of a generally recognized religious
9 service or ceremony by a preponderance of the evidence.

10 (25) ~~(24)~~—The court may order as a condition of probation that
11 a person convicted of violating subsection (1) or (8), or a local
12 ordinance substantially corresponding to subsection (1) or (8),
13 shall not operate a motor vehicle unless that vehicle is equipped
14 with an ignition interlock device approved, certified, and
15 installed as required under sections 625k and 625/.

16 (26) THE COURT SHALL ORDER THAT A PERSON CONVICTED OF
17 VIOLATING SUBSECTION (1) (C) OR A LOCAL ORDINANCE SUBSTANTIALLY
18 CORRESPONDING TO SUBSECTION (1) (C) SHALL NOT OPERATE A MOTOR
19 VEHICLE UNLESS THAT VEHICLE IS EQUIPPED WITH AN IGNITION INTERLOCK
20 DEVICE APPROVED, CERTIFIED, AND INSTALLED AS REQUIRED UNDER
21 SECTIONS 625K AND 625/. WHEN A PERSON IS FOUND GUILTY OF A VIOLATION
22 DESCRIBED IN THIS SUBSECTION BY THE COURT OR BY A JURY, OR THE
23 COURT ACCEPTS A PERSON'S PLEA OF GUILTY OR OF NO CONTEST TO THE
24 VIOLATION, THE COURT SHALL ORDER AND INFORM THE PERSON THAT EVERY
25 VEHICLE REGISTERED INDIVIDUALLY OR JOINTLY TO THE PERSON SHALL BE
26 EQUIPPED WITH AN IGNITION INTERLOCK DEVICE NOT LATER THAN THE TIME
27 OF SENTENCING FOR THAT VIOLATION. AT SENTENCING FOR THE VIOLATION,

1 THE COURT SHALL ASCERTAIN WHETHER THE VEHICLE IS EQUIPPED WITH AN
2 INTERLOCK DEVICE. A PERSON WHO FAILS TO COMPLY WITH AN ORDER UNDER
3 THIS SUBSECTION IS GUILTY OF CONTEMPT OF COURT.

4 (27) ~~(25)~~—Subject to subsection ~~(27)~~—(29), as used in this
5 section, "prior conviction" means a conviction for any of the
6 following, whether under a law of this state, a local ordinance
7 substantially corresponding to a law of this state, or a law of
8 another state substantially corresponding to a law of this state:

9 (a) Except as provided in subsection ~~(26)~~—(28), a violation or
10 attempted violation of any of the following:

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

18 (ii) Section 625m.

19 (iii) Former section 625b.

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

23 (28) ~~(26)~~—Except for purposes of the enhancement described in
24 subsection (12)(b), only 1 violation or attempted violation of
25 subsection (6), a local ordinance substantially corresponding to
26 subsection (6), or a law of another state substantially
27 corresponding to subsection (6) may be used as a prior conviction.

1 (29) ~~(27)~~—If 2 or more convictions described in subsection
2 ~~(25)~~—(27) are convictions for violations arising out of the same
3 transaction, only 1 conviction shall be used to determine whether
4 the person has a prior conviction.

5 Sec. 625b. (1) A person arrested for a misdemeanor violation
6 of section 625(1), (3), (6), (7), or (8) or section 625m or a local
7 ordinance substantially corresponding to section 625(1), (3), (6),
8 or (8) or section 625m shall be arraigned on the citation,
9 complaint, or warrant not more than 14 days after the arrest for
10 the violation or, if an arrest warrant is issued or reissued, not
11 more than 14 days after the issued or reissued arrest warrant is
12 served, whichever is later. The court shall not dismiss a case or
13 impose any other sanction for a failure to comply with this time
14 limit. The time limit does not apply to a violation of section
15 625(1), (3), (7), or (8) or section 625m punishable as a felony or
16 a violation of section 625(1), (3), (6), (7), or (8) or section
17 625m joined with a felony charge.

18 (2) The court shall schedule a pretrial conference between the
19 prosecuting attorney, the defendant, and the defendant's attorney
20 in each case in which the defendant is charged with a misdemeanor
21 violation of section 625(1), (3), (6), (7), or (8) or section 625m
22 or a local ordinance substantially corresponding to section 625(1),
23 (3), (6), or (8) or section 625m. The pretrial conference shall be
24 held not more than 35 days after the person's arrest for the
25 violation or, if an arrest warrant is issued or reissued, not more
26 than 35 days after the issued or reissued arrest warrant is served,
27 whichever is later. If the court has only 1 judge who sits in more

1 than 1 location in that district, the pretrial conference shall be
2 held not more than 42 days after the person's arrest for the
3 violation or, if an arrest warrant is issued or reissued, not more
4 than 42 days after the date the issued or reissued arrest warrant
5 is served, whichever is later. The court shall not dismiss a case
6 or impose any other sanction for a failure to comply with the
7 applicable time limit. The 35- and 42-day time limits do not apply
8 to a violation of section 625(1), (3), (7), or (8) or section 625m
9 punishable as a felony or a violation of section 625(1), (3), (6),
10 (7), or (8) or section 625m joined with a felony charge. The court
11 shall order the defendant to attend the pretrial conference and may
12 accept a plea by the defendant at the conclusion of the pretrial
13 conference. The court may adjourn the pretrial conference upon the
14 motion of a party for good cause shown. Not more than 1 adjournment
15 shall be granted to a party, and the length of an adjournment shall
16 not exceed 14 days.

17 (3) Except for delay attributable to the unavailability of the
18 defendant, a witness, or material evidence or due to an
19 interlocutory appeal or exceptional circumstances, but not a delay
20 caused by docket congestion, the court shall finally adjudicate, by
21 a plea of guilty or nolo contendere, entry of a verdict, or other
22 final disposition, a case in which the defendant is charged with a
23 misdemeanor violation of section 625(1), (3), (6), (7), or (8) or
24 section 625m or a local ordinance substantially corresponding to
25 section 625(1), (3), (6), or (8) or section 625m, within 77 days
26 after the person is arrested for the violation or, if an arrest
27 warrant is issued or reissued, not more than 77 days after the date

1 the issued or reissued arrest warrant is served, whichever is
2 later. The court shall not dismiss a case or impose any other
3 sanction for a failure to comply with this time limit. The 77-day
4 time limit does not apply to a violation of section 625(1), (3),
5 (7), or (8) or section 625m punishable as a felony or a violation
6 of section 625(1), (3), (6), (7), or (8) or section 625m joined
7 with a felony charge.

8 (4) Before accepting a plea of guilty or nolo contendere under
9 section 625 or a local ordinance substantially corresponding to
10 section 625(1), (2), (3), (6), or (8), the court shall advise the
11 accused of the maximum possible term of imprisonment and the
12 maximum possible fine that may be imposed for the violation and
13 shall advise the defendant that the maximum possible license
14 sanctions that may be imposed will be based upon the master driving
15 record maintained by the secretary of state under section 204a.

16 (5) Before imposing sentence for a violation of section
17 625(1), (3), (4), (5), (6), (7), or (8) or a local ordinance
18 substantially corresponding to section 625(1), (3), (6), or (8),
19 the court shall order the person to undergo screening and
20 assessment by a person or agency designated by the office of
21 substance abuse services to determine whether the person is likely
22 to benefit from rehabilitative services, including alcohol or drug
23 education and alcohol or drug treatment programs. Except as
24 otherwise provided in this subsection, the court may order the
25 person to participate in and successfully complete 1 or more
26 appropriate rehabilitative programs as part of the sentence. If the
27 person **WAS CONVICTED UNDER SECTION 625(1)(C) OR** has 1 or more prior

1 convictions, the court shall order the person to participate in and
2 successfully complete 1 or more appropriate rehabilitative programs
3 as part of the sentence, **INCLUDING, BUT NOT LIMITED TO, AN ALCOHOL**
4 **TREATMENT PROGRAM OR A SELF-HELP PROGRAM FOR A PERIOD OF NOT LESS**
5 **THAN 1 YEAR. THE TREATMENT PLAN SHALL BE DEVISED FROM AN ASSESSMENT**
6 **PERFORMED BY AN APPROPRIATELY LICENSED ALCOHOL ASSESSOR AND**
7 **APPROVED BY THE COURT.** The person shall pay for the costs of the
8 screening, assessment, and rehabilitative services. **THIS SUBSECTION**
9 **DOES NOT REQUIRE THE PERSON TO SUCCESSFULLY COMPLETE AN ORDERED**
10 **REHABILITATIVE PROGRAM BEFORE DRIVING A VEHICLE WITH AN IGNITION**
11 **INTERLOCK DEVICE ON A RESTRICTED LICENSE.**

12 (6) If the judgment and sentence are appealed to circuit
13 court, the court may ex parte order the secretary of state to stay
14 the suspension, revocation, or restricted license issued by the
15 secretary of state pending the outcome of the appeal.

16 Enacting section 1. This amendatory act does not take effect
17 unless House Bill No. 4289 of the 94th Legislature is enacted into
18 law.

19 Enacting section 2. This amendatory act takes effect October
20 1, 2008.