

HOUSE BILL NO. 4238

February 11, 2021, Introduced by Rep. LaFave and referred to the Committee on Judiciary.

A bill to amend 1965 PA 213, entitled

"An act to provide for setting aside the conviction in certain criminal cases; to provide for the effect of such action; to provide for the retention of certain nonpublic records and their use; to prescribe the powers and duties of certain public agencies and officers; and to prescribe penalties,"

by amending section 1c (MCL 780.621c), as added by 2020 PA 187.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 1c. (1) A person shall not apply to have set aside, and a
- 2 judge shall not set aside, a conviction for any of the following:

1 (a) A felony for which the maximum punishment is life
2 imprisonment or an attempt to commit a felony for which the maximum
3 punishment is life imprisonment.

4 (b) A violation or attempted violation of section 136b(3),
5 136d(1)(b) or (c), 145c, 145d, 520c, 520d, or 520g of the Michigan
6 penal code, 1931 PA 328, MCL 750.136b, 750.136d, 750.145c,
7 750.145d, 750.520c, 750.520d, and 750.520g.

8 (c) A violation or attempted violation of section 520e of the
9 Michigan penal code, 1931 PA 328, MCL 750.520e, if the conviction
10 occurred on or after January 12, 2015.

11 (d) The following traffic offenses:

12 (i) ~~A-Subject to subsection (3), a~~ conviction for operating
13 while intoxicated **committed** by any person.

14 (ii) Any traffic offense committed by an individual with an
15 indorsement on his or her operator's or chauffeur's license to
16 operate a commercial motor vehicle that was committed while the
17 individual was operating the commercial motor vehicle or was in
18 another manner a commercial motor vehicle violation.

19 (iii) Any traffic offense that causes injury or death.

20 (e) A felony conviction for domestic violence, if the person
21 has a previous misdemeanor conviction for domestic violence.

22 (f) A violation of former section 462i or 462j or chapter
23 LXVIIIA or chapter LXXXIII-A of the Michigan penal code, 1931 PA
24 328, MCL 750.462a to 750.462h and 750.543a to 750.543z.

25 (2) The prohibition on the setting aside of the convictions
26 under subsection (1) upon application also applies to the setting
27 aside of convictions without application under section 1g.

28 **(3) The prohibition on setting aside a conviction for**
29 **operating while intoxicated under subsection (1)(d)(i) does not**

1 apply to a conviction for a first violation operating while
 2 intoxicated offense if the person applying to have the first
 3 violation operating while intoxicated offense conviction set aside
 4 has not previously applied to have and had a first violation
 5 operating while intoxicated offense conviction set aside under this
 6 act. However, a conviction for a first violation operating while
 7 intoxicated offense that may be set aside upon application is not
 8 eligible for and shall not be set aside without application under
 9 section 1g.

10 (4) ~~(3)~~—An order setting aside a conviction for a traffic
 11 offense under this act must not require that the conviction be
 12 removed or expunged from the applicant's driving record maintained
 13 by the secretary of state as required under the Michigan vehicle
 14 code, 1949 PA 300, MCL 257.1 to 257.923.

15 (5) As used in this section:

16 (a) "First violation operating while intoxicated offense"
 17 means a violation of any of the following committed by an
 18 individual who at the time of the violation has no prior
 19 convictions for violating section 625 of the Michigan vehicle code,
 20 1949 PA 300, MCL 257.625:

21 (i) Section 625(1), (2), (3), (6), or (8) of the Michigan
 22 vehicle code, 1949 PA 300, MCL 257.625.

23 (ii) A local ordinance substantially corresponding to a
 24 violation listed in subparagraph (i).

25 (iii) A law of an Indian tribe substantially corresponding to a
 26 violation listed in subparagraph (i).

27 (iv) A law of another state substantially corresponding to a
 28 violation listed in subparagraph (i).

29 (v) A law of the United States substantially corresponding to

1 a violation listed in subparagraph (i) .

2 (b) "Operating while intoxicated" means a violation of any of
3 the following that is not a first violation operating while
4 intoxicated offense:

5 (i) Section 625 or 625m of the Michigan vehicle code, 1949 PA
6 300, MCL 257.625 and 257.625m.

7 (ii) A local ordinance substantially corresponding to a
8 violation listed in subparagraph (i) .

9 (iii) A law of an Indian tribe substantially corresponding to a
10 violation listed in subparagraph (i) .

11 (iv) A law of another state substantially corresponding to a
12 violation listed in subparagraph (i) .

13 (v) A law of the United States substantially corresponding to
14 a violation listed in subparagraph (i) .

15 Enacting section 1. This amendatory act takes effect April 11,
16 2021.