



HOUSE BILL No. 4919

May 31, 1995, Introduced by Reps. Gilmer and Nye and referred to the Committee on Judiciary and Civil Rights.

A bill to amend section 625 of Act No. 300 of the Public Acts of 1949, entitled as amended
"Michigan vehicle code,"
as amended by Act No. 449 of the Public Acts of 1994, being
section 257.625 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 625 of Act No. 300 of the Public Acts of
2 1949, as amended by Act No. 449 of the Public Acts of 1994, being
3 section 257.625 of the Michigan Compiled Laws, is amended to read
4 as follows:

5 Sec. 625. (1) A person, whether licensed or not, shall not
6 operate a vehicle upon a highway or other place open to the gen-
7 eral public or generally accessible to motor vehicles, including
8 an area designated for the parking of vehicles, within this state
9 if either of the following applies:

1 (a) The person is under the influence of intoxicating liquor
2 or a controlled substance, or a combination of intoxicating
3 liquor and a controlled substance.

4 (b) The person has an alcohol content of 0.10 grams or more
5 per 100 milliliters of blood, per 210 liters of breath, or per 67
6 milliliters of urine.

7 (2) The owner of a vehicle or a person in charge or in con-
8 trol of a vehicle shall not authorize or knowingly permit the
9 vehicle to be operated upon a highway or other place open to the
10 general public or generally accessible to motor vehicles, includ-
11 ing an area designated for the parking of motor vehicles, within
12 this state by a person who is under the influence of intoxicating
13 liquor or a controlled substance, or a combination of intoxicat-
14 ing liquor and a controlled substance, or who has an alcohol con-
15 tent of 0.10 grams or more per 100 milliliters of blood, per 210
16 liters of breath, or per 67 milliliters of urine.

17 (3) A person, whether licensed or not, shall not operate a
18 vehicle upon a highway or other place open to the general public
19 or generally accessible to motor vehicles, including an area des-
20 ignated for the parking of vehicles within this state when, due
21 to the consumption of an intoxicating liquor, a controlled sub-
22 stance, or a combination of an intoxicating liquor and a con-
23 trolled substance, the person's ability to operate the vehicle is
24 visibly impaired. If a person is charged with violating subsec-
25 tion (1), a finding of guilty under this subsection may be
26 rendered.

1 (4) A person, whether licensed or not, who operates a motor
2 vehicle upon a highway or other place open to the general public
3 or generally accessible to motor vehicles, including an area des-
4 ignated for the parking of vehicles, within this state, in viola-
5 tion of subsection (1) or (3), and by the operation of that motor
6 vehicle causes the death of another person is guilty of a felony
7 punishable by imprisonment for not more than 15 years or a fine
8 of not less than \$2,500.00 or more than \$10,000.00, or both.

9 (5) A person, whether licensed or not, who operates a motor
10 vehicle upon a highway or other place open to the general public
11 or generally accessible to motor vehicles, including an area des-
12 ignated for the parking of vehicles, within this state, in viola-
13 tion of subsection (1) or (3) and by the operation of that motor
14 vehicle causes a serious impairment of a body function of another
15 person is guilty of a felony punishable by imprisonment for not
16 more than 5 years or a fine of not less than \$1,000.00 or more
17 than \$5,000.00, or both. As used in this subsection, "serious
18 impairment of a body function" includes, but is not limited to, i
19 or more of the following:

20 (a) Loss of a limb or use of a limb.

21 (b) Loss of a hand, foot, finger, or thumb or use of a hand,
22 foot, finger, or thumb.

23 (c) Loss of an eye or ear or use of an eye or ear.

24 (d) Loss or substantial impairment of a bodily function.

25 (e) Serious visible disfigurement.

26 (f) A comatose state that lasts for more than 3 days.

(g) Measurable brain damage or mental impairment.

(h) A skull fracture or other serious bone fracture.

(i) Subdural hemorrhage or subdural hematoma.

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

(a) An alcohol content of not less than 0.02 grams or more than 0.07 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

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

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

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

(i) Community service for not more than 45 days.

(ii) Imprisonment for not more than 90 days.

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

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

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

3 (i) Community service for not less than 10 days or more than
4 90 days and may be imprisoned for not more than 1 year.

5 (ii) Imprisonment for not less than 48 consecutive hours or
6 more than 1 year and may be sentenced to community service for
7 not more than 90 days.

8 (c) A term of imprisonment imposed under subdivision (b)(ii)
9 shall not be suspended.

10 (d) If the violation occurs within 10 years of 2 or more
11 prior convictions, the person is guilty of a felony and shall be
12 sentenced to imprisonment for not ~~less than 1 year or~~ more than
13 5 years or a fine of not less than \$500.00 or more than
14 \$5,000.00, or both. A term of imprisonment imposed under this
15 subdivision shall not be suspended.

16 (e) As used in this subsection, "prior conviction" means a
17 conviction for a violation or attempted violation of subsection
18 (1), (4), or (5) or former section 625(1) or (2), a local ordi-
19 nance substantially corresponding to subsection (1) or former
20 section 625(1) or (2), or a law of another state substantially
21 corresponding to subsection (1), (4), or (5) or former section
22 625(1) or (2).

23 (8) A person who is convicted of violating subsection (2) is
24 guilty of a misdemeanor punishable by imprisonment for not more
25 than 90 days or a fine of not less than \$100.00 or more than
26 \$500.00, or both.

1 (9) If a person is convicted of violating subsection (3),
2 all of the following apply:

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

6 (i) Community service for not more than 45 days.

7 (ii) Imprisonment for not more than 90 days.

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

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

13 (i) Community service for not less than 10 days or more than
14 90 days and may be sentenced to imprisonment for not more than 1
15 year.

16 (ii) Imprisonment for not more than 1 year and may be sen-
17 tenced to community service for not more than 90 days.

18 (c) If the violation occurs within 10 years of 2 or more
19 prior convictions, the person shall be sentenced to pay a fine of
20 not less than \$200.00 or more than \$1,000.00, and either of the
21 following:

22 (i) Community service for not less than 10 days or more than
23 90 days and may be sentenced to imprisonment for not more than 1
24 year.

25 (ii) Imprisonment for not more than 1 year and may be sen-
26 tenced to community service for not more than 90 days.

1 (d) As used in this subsection, "prior conviction" means a
2 conviction for a violation or attempted violation of subsection
3 (1), (3), (4), or (5), former section 625(1) or (2), or former
4 section 625b, a local ordinance substantially corresponding to
5 subsection (1) or (3), former section 625(1) or (2), or former
6 section 625b, or a law of another state substantially correspond-
7 ing to subsection (1), (3), (4), or (5), former section 625(1) or
8 (2), or former section 625b.

9 (10) If a person is convicted of violating subsection (6),
10 the following shall apply:

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

14 (i) Community service for not more than 45 days.

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

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

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

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

21 (c) As used in this subsection, "prior conviction" means a
22 conviction for a violation or attempted violation of subsection
23 (1), (3), (4), (5), or (6), former section 625(1) or (2), or
24 former section 625b, a local ordinance substantially correspond-
25 ing to subsection (1), (3), or (6), former section 625(1) or (2),
26 or former section 625b, or a law of another state substantially

1 corresponding to subsection (1), (3), (4), (5), or (6), former
2 section 625(1) or (2), or former section 625b.

3 (11) In addition to imposing the sanctions prescribed under
4 subsection (4), (5), (7), (9), or (10), the court may order the
5 person to pay the costs of the prosecution, pursuant to the code
6 of criminal procedure, Act No. 175 of the Public Acts of 1927,
7 being sections 760.1 to 776.21 of the Michigan Compiled Laws.

8 (12) The court shall impose license sanctions pursuant to
9 section 625b.

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

15 (14) If the prosecuting attorney intends to seek an enhanced
16 sentence under subsection (7)(b) or (d), subsection (9)(b) or
17 (c), or subsection (10)(b) based upon the defendant having 1 or
18 more prior convictions, the prosecuting attorney shall include on
19 the complaint and information, or an amended complaint and infor-
20 mation, filed in district court, circuit court, recorder's court,
21 municipal court, or probate court a statement listing the
22 defendant's prior convictions.

23 (15) If a person is charged with a violation of subsection
24 (1) or (3), the court shall not permit the defendant to enter a
25 plea of guilty or nolo contendere to a charge of violating
26 subsection (6) in exchange for dismissal of the original charge.

1 This subsection does not prohibit the court from dismissing the
2 charge upon the motion of the prosecuting attorney.

3 (16) A prior conviction shall be established at sentencing
4 by 1 or more of the following:

5 (a) An abstract of conviction.

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

7 (c) An admission by the defendant.

8 (17) A person who is convicted of an attempted violation of
9 subsection (1), (3), (4), (5), or (6) or a local ordinance sub-
10 stantially corresponding to subsection (1), (3), or (6) shall be
11 punished as if the offense had been completed.

12 (18) When assessing points and taking licensing action under
13 this act, the secretary of state and the court shall treat a con-
14 viction of an attempted violation of subsection (1), (3), (4),
15 (5), or (6) or a local ordinance substantially corresponding to
16 subsection (1), (3), or (6) or a law of another state substan-
17 tially corresponding to subsection (1), (3), (4), (5), or (6) the
18 same as if the offense had been completed.

19 (19) Except as otherwise provided in subsection (21), if a
20 person is charged with operating a vehicle while under the influ-
21 ence of a controlled substance or a combination of intoxicating
22 liquor and a controlled substance in violation of subsection (1)
23 or a local ordinance substantially corresponding to
24 subsection (1), the court shall require the jury to return a spe-
25 cial verdict in the form of a written finding or, if the court
26 convicts the person without a jury or accepts a plea of guilty or
27 nolo contendere, the court shall make a finding as to whether the

1 person was under the influence of a controlled substance or a
2 combination of intoxicating liquor and a controlled substance at
3 the time of the violation.

4 (20) Except as otherwise provided in subsection (21), if a
5 person is charged with operating a vehicle while his or her abil-
6 ity to operate the vehicle was visibly impaired due to his or her
7 consumption of a controlled substance or a combination of intoxi-
8 cating liquor and a controlled substance in violation of
9 subsection (3) or a local ordinance substantially corresponding
10 to subsection (3), the court shall require the jury to return a
11 special verdict in the form of a written finding or, if the court
12 convicts the person without a jury or accepts a plea of guilty or
13 nolo contendere, the court shall make a finding as to whether,
14 due to the consumption of a controlled substance or a combination
15 of intoxicating liquor and a controlled substance, the person's
16 ability to operate a motor vehicle was visibly impaired at the
17 time of the violation.

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

21 (a) Whether the defendant was under the influence of a con-
22 trolled substance or of a combination of intoxicating liquor and
23 a 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 intoxicating liquor and a controlled substance at the time of the
27 violation.

1 (22) If a jury or court makes a finding under subsection
 2 (19), (20), or (21) that the defendant operated a motor vehicle
 3 under the influence of or while impaired due to the consumption
 4 of a controlled substance, or combination of a controlled sub-
 5 stance and an intoxicating liquor, the court shall do both of the
 6 following:

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

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

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

17 (24) In a prosecution for a violation of subsection (6), the
 18 defendant shall bear the burden of proving that the consumption
 19 of intoxicating liquor was a part of a generally recognized reli-
 20 gious service or ceremony by a preponderance of the evidence.

21 Section 2. This amendatory act shall not take effect unless
 22 all of the following bills of the 88th Legislature are enacted
 23 into law:

24 (a) Senate Bill No. _____ or House Bill No. _____
 25 (request no. 01641'95).

26 (b) Senate Bill No. _____ or House Bill No. _____
 27 (request no. 01735'95).