

SENATE BILL NO. 14

January 13, 1999, Introduced by Senator BOUCHARD 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 1998 PA
350.

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 gen-
3 eral public or generally accessible to motor vehicles, including
4 an area designated for the parking of vehicles, within this state
5 if either of the following applies:

6 (a) The person is under the influence of intoxicating
7 liquor, a controlled substance, or a combination of intoxicating
8 liquor and a controlled substance.

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

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

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

23 (4) A person, whether licensed or not, who operates a motor
24 vehicle in violation of subsection (1) or (3) and by the opera-
25 tion of that motor vehicle causes the death of another person is
26 guilty of a felony punishable by imprisonment for not more than
27 15 years or a fine of not less than \$2,500.00 or more than

1 \$10,000.00, or both. The judgment of sentence may impose the
2 sanction permitted under section 625n or 904d. If the violation
3 occurs within 7 years of a prior conviction or within 10 years of
4 2 or more prior convictions, the court shall, unless the vehicle
5 is ordered forfeited under section 625n, order vehicle immobili-
6 zation under section 904d in the judgment of sentence.

7 (5) A person, whether licensed or not, who operates a motor
8 vehicle in violation of subsection (1) or (3) and by the opera-
9 tion of that motor vehicle causes a serious impairment of a body
10 function of another person is guilty of a felony punishable by
11 imprisonment for not more than 5 years or a fine of not less than
12 \$1,000.00 or more than \$5,000.00, or both. The judgment of sen-
13 tence may impose the sanction permitted under section 625n or
14 904d. If the violation occurs within 7 years of a prior convic-
15 tion or within 10 years of 2 or more prior convictions, the court
16 shall, unless the vehicle is ordered forfeited under section
17 625n, order vehicle immobilization under section 904d in the
18 judgment of sentence. As used in this subsection, "serious
19 impairment of a body function" includes, but is not limited to, 1
20 or more of the following:

- 21 (a) Loss of a limb or use of a limb.
- 22 (b) Loss of a hand, foot, finger, or thumb or use of a hand,
23 foot, finger, or thumb.
- 24 (c) Loss of an eye or ear or use of an eye or ear.
- 25 (d) Loss or substantial impairment of a bodily function.
- 26 (e) Serious visible disfigurement.

(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) A person who operates a vehicle in violation of subsection (1), (3), (4), (5), or (6) while another person who is less than 16 years of age is occupying the vehicle is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both. The judgment of sentence may impose the sanction permitted under section 625n. If the violation occurs within 7 years of a prior conviction or within 10 years of 2 or more prior convictions, the court shall, unless the vehicle is ordered forfeited under section 625n, order

1 vehicle immobilization under section 904d in the judgment of
2 sentence. This section does not prohibit a person from being
3 charged with, convicted of, or punished for a violation of sub-
4 section (1), (3), (4), (5), or (6) that is committed by the
5 person while violating this subsection. However, points shall
6 not be assessed under section 320a for both a violation of sub-
7 section (1), (3), (4), (5), or (6) and a violation of this sub-
8 section for conduct arising out of the same transaction.

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

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

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

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

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

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

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

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

26 (c) If the violation occurs within 10 years of 2 or more
27 prior convictions, the person is guilty of a felony and shall be

1 sentenced to pay a fine of not less than \$500.00 or more than
2 \$5,000.00 and to either of the following:

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

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

10 (d) A term of imprisonment imposed under subdivision (b)(ii)
11 or (c) shall not be suspended.

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

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

21 (9) A person who is convicted of violating subsection (2) is
22 guilty of a crime as follows:

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

26 (b) If the person operating the motor vehicle violated
27 subsection (4), a felony punishable by imprisonment for not more

1 than 5 years or a fine of not less than \$1,500.00 or more than
2 \$10,000.00, or both.

3 (c) If the person operating the motor vehicle violated sub-
4 section (5), a felony punishable by imprisonment for not more
5 than 2 years or a fine of not less than \$1,000.00 or more than
6 \$5,000.00, or both.

7 (10) If a person is convicted of violating subsection (3),
8 all of the following apply:

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

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

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

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

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

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

22 (ii) Community service for not less than 30 days or more
23 than 90 days.

24 (c) If the violation occurs within 10 years of 2 or more
25 prior convictions, the person is guilty of a felony and shall be
26 sentenced to pay a fine of not less than \$500.00 or more than
27 \$5,000.00 and either of the following:

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

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

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

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

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

19 (11) If a person is convicted of violating subsection (6),
20 all of the following apply:

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

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

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

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

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

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

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

7 (12) FOLLOWING NOTICE AND AN OPPORTUNITY FOR A HEARING, THE
 8 COURT MAY ORDER A PERSON CONVICTED OF VIOLATING SUBSECTION (4) OR
 9 (5) TO PAY CHILD SUPPORT TO THE PARENT OR GUARDIAN OF THE MINOR
 10 CHILD OF ANY PERSON WHO DIED OR SUFFERED A LONG-TERM INCAPACITAT-
 11 ING INJURY AS A RESULT OF THE VIOLATION. THE COURT SHALL DETER-
 12 MINE THE AMOUNT OF CHILD SUPPORT BY APPLYING THE CHILD SUPPORT
 13 FORMULA DEVELOPED UNDER SECTION 19 OF THE FRIEND OF THE COURT
 14 ACT, 1982 PA 294, MCL 552.519, CONSIDERING THE CONVICTED
 15 DEFENDANT AS IF HE OR SHE WERE A PARENT OF THE CHILD.

16 (13) ~~-(12)-~~ In addition to imposing the sanctions prescribed
 17 under this section, the court may order the person to pay the
 18 costs of the prosecution under the code of criminal procedure,
 19 1927 PA 175, MCL 760.1 to ~~-776.22-~~ 777.69.

20 (14) ~~-(13)-~~ A person sentenced to perform community service
 21 under this section shall not receive compensation and shall reim-
 22 burse the state or appropriate local unit of government for the
 23 cost of supervision incurred by the state or local unit of gov-
 24 ernment as a result of the person's activities in that service.

25 (15) ~~-(14)-~~ If the prosecuting attorney intends to seek an
 26 enhanced sentence under this section or a sanction under section
 27 625n or 904d based upon the defendant having 1 or more prior

1 convictions, the prosecuting attorney shall include on the
2 complaint and information, or an amended complaint and informa-
3 tion, filed in district court, circuit court, municipal court, or
4 family division of circuit court, a statement listing the
5 defendant's prior convictions.

6 (16) ~~-(15)-~~ If a person is charged with a violation of sub-
7 section (1), (3), (4), (5), or (7) or section 625m, the court
8 shall not permit the defendant to enter a plea of guilty or nolo
9 contendere to a charge of violating subsection (6) in exchange
10 for dismissal of the original charge. This subsection does not
11 prohibit the court from dismissing the charge upon the prosecut-
12 ing attorney's motion.

13 (17) ~~-(16)-~~ A prior conviction shall be established at sen-
14 tencing by 1 or more of the following:

15 (a) An abstract of conviction.

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

17 (c) An admission by the defendant.

18 (18) ~~-(17)-~~ Except as otherwise provided in subsection
19 ~~-(19)-~~ (20), if a person is charged with operating a vehicle
20 while under the influence of a controlled substance or a combina-
21 tion of intoxicating liquor and a controlled substance in viola-
22 tion of subsection (1) or a local ordinance substantially corre-
23 sponding to subsection (1), the court shall require the jury to
24 return a special verdict in the form of a written finding or, if
25 the court convicts the person without a jury or accepts a plea of
26 guilty or nolo contendere, the court shall make a finding as to
27 whether the person was under the influence of a controlled

1 substance or a combination of intoxicating liquor and a
2 controlled substance at the time of the violation.

3 (19) ~~-(18)-~~ Except as otherwise provided in subsection
4 ~~-(19)-~~ (20), if a person is charged with operating a vehicle
5 while his or her ability to operate the vehicle was visibly
6 impaired due to his or her consumption of a controlled substance
7 or a combination of intoxicating liquor and a controlled sub-
8 stance in violation of subsection (3) or a local ordinance sub-
9 stantially corresponding to subsection (3), the court shall
10 require the jury to return a special verdict in the form of a
11 written finding or, if the court convicts the person without a
12 jury or accepts a plea of guilty or nolo contendere, the court
13 shall make a finding as to whether, due to the consumption of a
14 controlled substance or a combination of intoxicating liquor and
15 a controlled substance, the person's ability to operate a motor
16 vehicle was visibly impaired at the time of the violation.

17 (20) ~~-(19)-~~ A special verdict described in subsections ~~-(17)-~~
18 ~~and~~ (18) AND (19) is not required if a jury is instructed to
19 make a finding solely as to either of the following:

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

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

1 (21) ~~-(20)-~~ If a jury or court finds under subsection
2 ~~-(17)-~~ (18), ~~or~~ (19), OR (20) that the defendant operated a
3 motor vehicle under the influence of or while impaired due to the
4 consumption of a controlled substance or a combination of a con-
5 trolled substance and an intoxicating liquor, the court shall do
6 both of the following:

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

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

13 (22) ~~-(21)-~~ Except as otherwise provided by law, a record
14 described in subsection ~~-(20)(b)-~~ (21)(B) is a public record and
15 the department of state police shall retain the information con-
16 tained on that record for not less than 7 years.

17 (23) ~~-(22)-~~ In a prosecution for a violation of subsection
18 (6), the defendant bears the burden of proving that the consump-
19 tion of intoxicating liquor was a part of a generally recognized
20 religious service or ceremony by a preponderance of the
21 evidence.

22 (24) ~~-(23)-~~ Subject to subsection ~~-(25)-~~ (26), as used in
23 this section, "prior conviction" means a conviction for any of
24 the following, whether under a law of this state, a local ordi-
25 nance substantially corresponding to a law of this state, or a
26 law of another state substantially corresponding to a law of this
27 state:

1 (a) Except as provided in subsection ~~-(24)-~~ (25), a
2 violation or attempted violation of subsection (1), (3), (4),
3 (5), (6), or (7), section 625m, former section 625(1) or (2), or
4 former section 625b.

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

8 (25) ~~-(24)-~~ Except for purposes of the enhancement described
9 in subsection (11)(b), only 1 violation or attempted violation of
10 subsection (6), a local ordinance substantially corresponding to
11 subsection (6), or a law of another state substantially corre-
12 sponding to subsection (6) may be used as a prior conviction.

13 (26) ~~-(25)-~~ If 2 or more convictions described in subsection
14 ~~-(23)-~~ (24) are convictions for violations arising out of the
15 same transaction, only 1 conviction shall be used to determine
16 whether the person has a prior conviction.

17 Enacting section 1. This amendatory act takes effect
18 October 1, 1999.

19 Enacting section 2. This amendatory act does not take
20 effect unless Senate Bill No. 13

21 of the 90th Legislature is enacted into
22 law.