

HOUSE BILL No. 4191

February 1, 2007, Introduced by Rep. Lemmons and referred to the Committee on Transportation.

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

1 controlled substance.

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

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

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

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

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

25 (3) A person, whether licensed or not, shall not operate a
26 vehicle upon a highway or other place open to the general public or
27 generally accessible to motor vehicles, including an area

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

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

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

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

1 vehicle immobilization under section 904d in the judgment of
2 sentence.

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

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

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

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

1 alcoholic liquor as a part of a generally recognized religious
2 service or ceremony.

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

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

10 (i) Except as provided in subparagraph (ii), a person who
11 violates this subdivision is guilty of a misdemeanor and shall be
12 sentenced to pay a fine of not less than \$200.00 or more than
13 \$1,000.00 and to 1 or more of the following:

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

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

19 (ii) If the violation occurs within 7 years of a prior
20 conviction or after 2 or more prior convictions, regardless of the
21 number of years that have elapsed since any prior conviction, a
22 person who violates this subdivision is guilty of a felony and
23 shall be sentenced to pay a fine of not less than \$500.00 or more
24 than \$5,000.00 and to either of the following:

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

27 (B) Probation with imprisonment in the county jail for not

1 less than 30 days or more than 1 year and community service for not
2 less than 60 days or more than 180 days. Not less than 48 hours of
3 this imprisonment shall be served consecutively. This term of
4 imprisonment shall not be suspended.

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

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

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

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

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

15 (ii) If the violation occurs within 7 years of a prior
16 conviction or after 2 or more prior convictions, regardless of the
17 number of years that have elapsed since any prior conviction, a
18 person who violates this subdivision shall be sentenced to pay a
19 fine of not less than \$200.00 or more than \$1,000.00 and to 1 or
20 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 (c) In the judgment of sentence under subdivision (a) (i) or
27 (b) (i), the court may, unless the vehicle is ordered forfeited under

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

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

13 (8) A person, whether licensed or not, shall not operate a
14 vehicle upon a highway or other place open to the general public or
15 generally accessible to motor vehicles, including an area
16 designated for the parking of vehicles, within this state if the
17 person has **ANY OF THE FOLLOWING** in his or her body: ~~any~~

18 (A) **ANY** amount of a controlled substance listed in schedule 1
19 under section 7212 of the public health code, 1978 PA 368, MCL
20 333.7212, or a rule promulgated under that section, ~~or~~ **OTHER THAN**
21 **MARIHUANA.**

22 (B) **MARIHUANA, AS SHOWN BY 5 OR MORE NANOGRAMS PER MILLILITER**
23 **OF BLOOD OF ANY OF THE FOLLOWING:**

24 (i) **DELTA 9-TETRAHYDROCANNABINOL (DELTA 9-THC).**

25 (ii) **11-HYDROXY-DELTA 9-TETRAHYDROCANNABINOL (11-OH-THC).**

26 (iii) **11-NOR-9-CARBOXY-DELTA 9-TETRAHYDROCANNABINOL (THC-COOH).**

27 (C) **ANY AMOUNT** 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 a person is convicted of violating subsection (1) or
3 (8), all of the following apply:

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

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

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

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

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

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

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

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

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

25 (ii) Probation with imprisonment in the county jail for not
26 less than 30 days or more than 1 year and community service for not
27 less than 60 days or more than 180 days. Not less than 48 hours of

1 the imprisonment imposed under this subparagraph shall be served
2 consecutively.

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

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

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

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

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

17 (b) If the person operating the motor vehicle violated
18 subsection (4), a felony punishable by imprisonment for not more
19 than 5 years or a fine of not less than \$1,500.00 or more than
20 \$10,000.00, or both.

21 (c) If the person operating the motor vehicle violated
22 subsection (5), a felony punishable by imprisonment for not more
23 than 2 years or a fine of not less than \$1,000.00 or more than
24 \$5,000.00, or both.

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

27 (a) Except as otherwise provided in subdivisions (b) and (c),

1 the person is guilty of a misdemeanor punishable by 1 or more of
2 the following:

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

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

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

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

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

13 (ii) Community service for not less than 30 days or more than
14 90 days.

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

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

22 (ii) Probation with imprisonment in the county jail for not
23 less than 30 days or more than 1 year and community service for not
24 less than 60 days or more than 180 days. Not less than 48 hours of
25 the imprisonment imposed under this subparagraph shall be served
26 consecutively.

27 (d) A term of imprisonment imposed under subdivision (b) or

1 (c) shall not be suspended.

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

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

9 (12) If a person is convicted of violating subsection (6), all
10 of the following 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 360 hours.

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

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

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

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

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

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

26 (14) A person sentenced to perform community service under
27 this section shall not receive compensation and shall reimburse the

1 state or appropriate local unit of government for the cost of
2 supervision incurred by the state or local unit of government as a
3 result of the person's activities in that service.

4 (15) If the prosecuting attorney intends to seek an enhanced
5 sentence under this section or a sanction under section 625n based
6 upon the defendant having 1 or more prior convictions, the
7 prosecuting attorney shall include on the complaint and
8 information, or an amended complaint and information, filed in
9 district court, circuit court, municipal court, or family division
10 of circuit court, a statement listing the defendant's prior
11 convictions.

12 (16) If a person is charged with a violation of subsection
13 (1), (3), (4), (5), (7), or (8) or section 625m, the court shall
14 not permit the defendant to enter a plea of guilty or nolo
15 contendere to a charge of violating subsection (6) in exchange for
16 dismissal of the original charge. This subsection does not prohibit
17 the court from dismissing the charge upon the prosecuting
18 attorney's motion.

19 (17) A prior conviction shall be established at sentencing by
20 1 or more of the following:

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

22 (b) An abstract of conviction.

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

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

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

27 (f) Information contained in a presentence report.

1 (g) An admission by the defendant.

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

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

26 (20) A special verdict described in subsections (18) and (19)
27 is not required if a jury is instructed to make a finding solely as

1 to either of the following:

2 (a) Whether the defendant was under the influence of a
3 controlled substance or a combination of alcoholic liquor and a
4 controlled substance at the time of the violation.

5 (b) Whether the defendant was visibly impaired due to his or
6 her consumption of a controlled substance or a combination of
7 alcoholic liquor and a controlled substance at the time of the
8 violation.

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

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

15 (b) On a form or forms prescribed by the state court
16 administrator, forward to the department of state police a record
17 that specifies the penalties imposed by the court, including any
18 term of imprisonment, and any sanction imposed under section 625n
19 or 904d.

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

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

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

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

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

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

21 (ii) Section 625m.

22 (iii) Former section 625b.

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

26 (26) Except for purposes of the enhancement described in
27 subsection (12)(b), only 1 violation or attempted violation of

1 subsection (6), a local ordinance substantially corresponding to
2 subsection (6), or a law of another state substantially
3 corresponding to subsection (6) may be used as a prior conviction.

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