

# HOUSE BILL No. 6281

June 22, 2010, Introduced by Reps. Rick Jones and Liss 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 2008 PA 463.

**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 any of the following:

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

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

6 (c) ~~The~~**BEGINNING OCTOBER 31, 2010, THE** person has an alcohol  
7 content of 0.17 grams or more per 100 milliliters of blood, per 210  
8 liters of breath, or per 67 milliliters of urine.

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

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

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

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

27 (3) A person, whether licensed or not, shall not operate a

1 vehicle upon a highway or other place open to the general public or  
2 generally accessible to motor vehicles, including an area  
3 designated for the parking of vehicles, within this state when, due  
4 to the consumption of alcoholic liquor, a controlled substance, or  
5 a combination of alcoholic liquor and a controlled substance, the  
6 person's ability to operate the vehicle is visibly impaired. If a  
7 person is charged with violating subsection (1), a finding of  
8 guilty under this subsection may be rendered.

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

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

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

1 impose the sanction permitted under section 625n. If the vehicle is  
2 not ordered forfeited under section 625n, the court shall order  
3 vehicle immobilization under section 904d in the judgment of  
4 sentence.

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

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

22 (a) An alcohol content of 0.02 grams or more but less than  
23 0.08 grams per 100 milliliters of blood, per 210 liters of breath,  
24 or per 67 milliliters of urine, or, beginning October 1, 2013, the  
25 person has an alcohol content of 0.02 grams or more but less than  
26 0.10 grams per 100 milliliters of blood, per 210 liters of breath,  
27 or per 67 milliliters of urine.

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

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

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

12 (i) Except as provided in subparagraph (ii), a person who  
13 violates this subdivision is guilty of a misdemeanor and shall be  
14 sentenced to pay a fine of not less than \$200.00 or more than  
15 \$1,000.00 and to 1 or more of the following:

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

19 (B) Community service for not less than 30 days or more than  
20 90 days.

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

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

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

2 (B) 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 this imprisonment shall be served consecutively. This term of  
6 imprisonment shall not be suspended.

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

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

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

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

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

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

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

26 (B) Community service for not less than 30 days or more than  
27 90 days.

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

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

15 (8) A person, whether licensed or not, shall not operate a  
16 vehicle upon a highway or other place open to the general public or  
17 generally accessible to motor vehicles, including an area  
18 designated for the parking of vehicles, within this state if the  
19 person has in his or her body any amount of a controlled substance  
20 listed in schedule 1 under section 7212 of the public health code,  
21 1978 PA 368, MCL 333.7212, or a rule promulgated under that  
22 section, or of a controlled substance described in section  
23 7214(a) (iv) of the public health code, 1978 PA 368, MCL 333.7214.

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

26 (a) Except as otherwise provided in subdivisions (b) and (c),  
27 the person is guilty of a misdemeanor punishable by 1 or more of

1 the following:

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

3 (ii) Imprisonment for not more than 93 days, or, **BEGINNING**  
4 **OCTOBER 31, 2010**, if the person is convicted of violating  
5 subsection (1)(c), imprisonment for not more than 180 days.

6 (iii) A fine of not less than \$100.00 or more than \$500.00, or,  
7 **BEGINNING OCTOBER 31, 2010**, if the person is guilty of violating  
8 subsection (1)(c), a fine of not less than \$200.00 or more than  
9 \$700.00.

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 WHO WAS PREVIOUSLY CONVICTED OF 3 OR MORE**  
27 **VIOLATIONS OF SUBSECTION (1), (3), (4), (5), OR (8) OR A**

1 SUBSTANTIALLY SIMILAR LAW OF A POLITICAL SUBDIVISION OF THIS STATE,  
2 ANOTHER STATE, A POLITICAL SUBDIVISION OF ANOTHER STATE, OR OF THE  
3 UNITED STATES, AT ANY TIME AND IN ANY COMBINATION, SHALL NOT  
4 OPERATE A VEHICLE UPON A HIGHWAY OR OTHER PLACE OPEN TO THE GENERAL  
5 PUBLIC OR GENERALLY ACCESSIBLE TO VEHICLES, INCLUDING AN AREA  
6 DESIGNATED FOR THE PARKING OF VEHICLES, WITH ANY BODILY ALCOHOL  
7 CONTENT. AS USED IN THIS SUBSECTION, "ANY BODILY ALCOHOL CONTENT"  
8 MEANS EITHER OF THE FOLLOWING:

9 (A) AN ALCOHOL CONTENT OF 0.02 GRAMS OR MORE BUT LESS THAN  
10 0.08 GRAMS PER 100 MILLILITERS OF BLOOD, PER 210 LITERS OF BREATH,  
11 OR PER 67 MILLILITERS OF URINE, OR, BEGINNING OCTOBER 1, 2013, THE  
12 PERSON HAS AN ALCOHOL CONTENT OF 0.02 GRAMS OR MORE BUT LESS THAN  
13 0.10 GRAMS PER 100 MILLILITERS OF BLOOD, PER 210 LITERS OF BREATH,  
14 OR PER 67 MILLILITERS OF URINE.

15 (B) ANY PRESENCE OF ALCOHOL WITHIN A PERSON'S BODY RESULTING  
16 FROM THE CONSUMPTION OF ALCOHOLIC LIQUOR, OTHER THAN CONSUMPTION OF  
17 ALCOHOLIC LIQUOR AS A PART OF A GENERALLY RECOGNIZED RELIGIOUS  
18 SERVICE OR CEREMONY.

19 (15) A PERSON WHO VIOLATES SUBSECTION (14) IS GUILTY OF A  
20 MISDEMEANOR PUNISHABLE BY 1 OR MORE OF THE FOLLOWING:

21 (A) IMPRISONMENT FOR NOT MORE THAN 93 DAYS.

22 (B) COMMUNITY SERVICE FOR NOT MORE THAN 360 HOURS.

23 (C) A FINE OF NOT MORE THAN \$2,500.00.

24 (16) ~~(14)~~—A person sentenced to perform community service  
25 under this section shall not receive compensation and shall  
26 reimburse the state or appropriate local unit of government for the  
27 cost of supervision incurred by the state or local unit of

1 government as a result of the person's activities in that service.

2 (17) ~~(15)~~—If the prosecuting attorney intends to seek an  
3 enhanced sentence under this section or a sanction under section  
4 625n based upon the defendant having 1 or more prior convictions,  
5 the prosecuting attorney shall include on the complaint and  
6 information, or an amended complaint and information, filed in  
7 district court, circuit court, municipal court, or family division  
8 of circuit court, a statement listing the defendant's prior  
9 convictions.

10 (18) ~~(16)~~—If a person is charged with a violation of  
11 subsection (1), (3), (4), (5), (7), or (8) or section 625m, the  
12 court shall not permit the defendant to enter a plea of guilty or  
13 nolo contendere to a charge of violating subsection (6) in exchange  
14 for dismissal of the original charge. This subsection does not  
15 prohibit the court from dismissing the charge upon the prosecuting  
16 attorney's motion.

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

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

20 (b) An abstract of conviction.

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

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

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

25 (f) Information contained in a presentence report.

26 (g) An admission by the defendant.

27 (20) ~~(18)~~—Except as otherwise provided in subsection ~~(20)~~

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

12 (21) ~~(19)~~—Except as otherwise provided in subsection ~~(20)~~  
13 (22), if a person is charged with operating a vehicle while his or  
14 her ability to operate the vehicle was visibly impaired due to his  
15 or her consumption of a controlled substance or a combination of  
16 alcoholic liquor and a controlled substance in violation of  
17 subsection (3) or a local ordinance substantially corresponding to  
18 subsection (3), the court shall require the jury to return a  
19 special verdict in the form of a written finding or, if the court  
20 convicts the person without a jury or accepts a plea of guilty or  
21 nolo contendere, the court shall make a finding as to whether, due  
22 to the consumption of a controlled substance or a combination of  
23 alcoholic liquor and a controlled substance, the person's ability  
24 to operate a motor vehicle was visibly impaired at the time of the  
25 violation.

26 (22) ~~(20)~~—A special verdict described in subsections ~~(18)~~—(20)  
27 and ~~(19)~~—(21) is not required if a jury is instructed to make a

1 finding solely as 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 **(23)** ~~(21)~~—If a jury or court finds under subsection ~~(18)~~—**(20)**,  
10 ~~(19)~~—**(21)**, or ~~(20)~~—**(22)** that the defendant operated a motor vehicle  
11 under the influence of or while impaired due to the consumption of  
12 a controlled substance or a combination of a controlled substance  
13 and 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 **(24)** ~~(22)~~—Except as otherwise provided by law, a record  
21 described in subsection ~~(21)(b)~~—**(23) (B)** is a public record and the  
22 department of state police shall retain the information contained  
23 on that record for not less than 7 years.

24 **(25)** ~~(23)~~—In a prosecution for a violation of subsection (6)  
25 **OR (14)**, the defendant bears the burden of proving that the  
26 consumption of alcoholic liquor was a part of a generally  
27 recognized religious service or ceremony by a preponderance of the

1 evidence.

2       (26) ~~(24)~~—The court may order as a condition of probation that  
3 a person convicted of violating subsection (1) or (8), or a local  
4 ordinance substantially corresponding to subsection (1) or (8),  
5 shall not operate a motor vehicle unless that vehicle is equipped  
6 with an ignition interlock device approved, certified, and  
7 installed as required under sections 625k and 625l.

8       (27) ~~(25)~~—Subject to subsection ~~(27)~~—(29), as used in this  
9 section, "prior conviction" means a conviction for any of the  
10 following, whether under a law of this state, a local ordinance  
11 substantially corresponding to a law of this state, a law of the  
12 United States substantially corresponding to a law of this state,  
13 or a law of another state substantially corresponding to a law of  
14 this state:

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

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

24       (ii) Section 625m.

25       (iii) Former section 625b.

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

1 crimes.

2 (c) ~~Section~~ **BEGINNING OCTOBER 31, 2010, SECTION** 601d or 626(3)  
3 or (4).

4 **(28)** ~~(26)~~ Except for purposes of the enhancement described in  
5 subsection (12)(b), only 1 violation or attempted violation of  
6 subsection (6), a local ordinance substantially corresponding to  
7 subsection (6), or a law of another state substantially  
8 corresponding to subsection (6) may be used as a prior conviction.

9 **(29)** ~~(27)~~ If 2 or more convictions described in subsection  
10 ~~(25)~~ **(27)** are convictions for violations arising out of the same  
11 transaction, only 1 conviction shall be used to determine whether  
12 the person has a prior conviction.