

SUBSTITUTE FOR
HOUSE BILL NO. 4713

A bill to amend 1846 RS 1, entitled
"Of the statutes,"
(MCL 8.1 to 8.8) by adding section 9.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 9. (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A
2 PERSON IS NOT GUILTY OF A CRIMINAL OFFENSE UNLESS BOTH OF THE
3 FOLLOWING APPLY:

4 (A) THE PERSON'S CRIMINAL LIABILITY IS BASED ON CONDUCT THAT
5 INCLUDES EITHER A VOLUNTARY ACT OR AN OMISSION TO PERFORM AN ACT OR
6 DUTY THAT THE PERSON IS CAPABLE OF PERFORMING.

7 (B) THE PERSON HAS THE REQUISITE DEGREE OF CULPABILITY FOR
8 EACH ELEMENT OF THE OFFENSE AS TO WHICH A CULPABLE MENTAL STATE IS
9 SPECIFIED BY THE LANGUAGE DEFINING THE OFFENSE.

10 (2) IF THE STATUTORY LANGUAGE DEFINING A CRIMINAL OFFENSE DOES

1 NOT SPECIFY ANY DEGREE OF CULPABILITY AND PLAINLY IMPOSES STRICT
2 CRIMINAL LIABILITY FOR THE CONDUCT DESCRIBED IN THE STATUTE, THEN
3 CULPABILITY IS NOT REQUIRED FOR A PERSON TO BE GUILTY OF THE
4 OFFENSE. THE FACT THAT A SUBSECTION OF A STATUTE PLAINLY IMPOSES
5 STRICT LIABILITY FOR AN OFFENSE DEFINED IN THAT SUBSECTION DOES NOT
6 BY ITSELF PLAINLY IMPOSE STRICT CRIMINAL LIABILITY FOR AN OFFENSE
7 DEFINED IN ANOTHER SUBSECTION OF THAT STATUTE THAT DOES NOT SPECIFY
8 A DEGREE OF CULPABILITY.

9 (3) EXCEPT AS PROVIDED IN SUBSECTION (4), IF STATUTORY
10 LANGUAGE DEFINING AN ELEMENT OF A CRIMINAL OFFENSE THAT IS RELATED
11 TO KNOWLEDGE OR INTENT OR AS TO WHICH MENS REA COULD REASONABLY BE
12 APPLIED NEITHER SPECIFIES CULPABILITY NOR PLAINLY IMPOSES STRICT
13 LIABILITY, THE ELEMENT OF THE OFFENSE IS ESTABLISHED ONLY IF A
14 PERSON ACTS WITH INTENT, KNOWLEDGE, OR RECKLESSNESS.

15 (4) SUBSECTION (3) DOES NOT RELIEVE THE PROSECUTION OF THE
16 BURDEN OF PROVING THE CULPABLE MENTAL STATE REQUIRED BY ANY
17 DEFINITION INCORPORATED INTO THE OFFENSE.

18 (5) IF A STATUTE DEFINING A CRIMINAL OFFENSE PROVIDES THAT
19 NEGLIGENCE SUFFICES TO ESTABLISH AN ELEMENT OF THE OFFENSE, THEN
20 INTENT, KNOWLEDGE, OR RECKLESSNESS IS ALSO SUFFICIENT CULPABILITY
21 TO SATISFY THAT ELEMENT. IF KNOWLEDGE SUFFICES TO ESTABLISH AN
22 ELEMENT OF AN OFFENSE, THEN INTENT IS ALSO SUFFICIENT CULPABILITY
23 TO SATISFY THAT ELEMENT.

24 (6) IT IS NOT A DEFENSE TO A CRIME THAT THE DEFENDANT WAS, AT
25 THE TIME THE CRIME OCCURRED, UNDER THE INFLUENCE OF OR IMPAIRED BY
26 A VOLUNTARILY AND KNOWINGLY CONSUMED ALCOHOLIC LIQUOR, DRUG,
27 INCLUDING A CONTROLLED SUBSTANCE, OTHER SUBSTANCE OR COMPOUND, OR

1 COMBINATION OF ALCOHOLIC LIQUOR, DRUG, OR OTHER SUBSTANCE OR
2 COMPOUND. HOWEVER, IT IS AN AFFIRMATIVE DEFENSE TO A SPECIFIC
3 INTENT CRIME, FOR WHICH THE DEFENDANT HAS THE BURDEN OF PROOF BY A
4 PREPONDERANCE OF THE EVIDENCE, THAT HE OR SHE VOLUNTARILY INGESTED
5 A LEGALLY OBTAINED AND PROPERLY USED MEDICATION OR OTHER SUBSTANCE
6 AND DID NOT KNOW AND REASONABLY SHOULD NOT HAVE KNOWN THAT HE OR
7 SHE WOULD BECOME INTOXICATED OR IMPAIRED.

8 (7) THIS SECTION SHALL NOT APPLY TO, AND SHALL NOT BE
9 CONSTRUED TO AFFECT, CRIMES UNDER ANY OF THE FOLLOWING:

10 (A) THE MICHIGAN VEHICLE CODE, 1949 PA 300, MCL 257.1 TO
11 257.923.

12 (B) ARTICLE 7 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL
13 333.7101 TO 333.7545.

14 (C) THE IDENTITY THEFT PROTECTION ACT, 2004 PA 452, MCL 445.61
15 TO 445.79C.

16 (D) THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.1 TO
17 750.568.

18 (E) CHAPTER 752 OF THE MICHIGAN COMPILED LAWS.

19 (8) AS USED IN THIS SECTION:

20 (A) "CULPABLE" MEANS SUFFICIENTLY RESPONSIBLE FOR CRIMINAL
21 ACTS OR NEGLIGENCE TO BE AT FAULT AND LIABLE TO PUNISHMENT FOR
22 COMMISSION OF A CRIME.

23 (B) "INTENT" MEANS A DESIRE OR WILL TO ACT WITH RESPECT TO A
24 MATERIAL ELEMENT OF AN OFFENSE IF BOTH OF THE FOLLOWING
25 CIRCUMSTANCES EXIST:

26 (i) THE ELEMENT INVOLVES THE NATURE OF A PERSON'S CONDUCT OR A
27 RESULT OF THAT CONDUCT, AND IT IS THE PERSON'S CONSCIOUS OBJECT TO

1 ENGAGE IN CONDUCT OF THAT NATURE OR TO CAUSE THAT RESULT.

2 (ii) THE ELEMENT INVOLVES THE ATTENDANT CIRCUMSTANCES, AND THE
3 PERSON IS AWARE OF THE EXISTENCE OF THOSE CIRCUMSTANCES OR BELIEVES
4 OR HOPES THAT THEY EXIST.

5 (C) "INTOXICATED OR IMPAIRED" INCLUDES, BUT IS NOT LIMITED TO,
6 A CONDITION OF INTOXICATION RESULTING FROM THE INGESTION OF
7 ALCOHOLIC LIQUOR, A CONTROLLED SUBSTANCE, OR ALCOHOLIC LIQUOR AND A
8 CONTROLLED SUBSTANCE. AS USED IN THIS SUBDIVISION:

9 (i) "ALCOHOLIC LIQUOR" MEANS THAT TERM AS DEFINED IN SECTION
10 105 OF THE MICHIGAN LIQUOR CONTROL CODE OF 1998, 1998 PA 58, MCL
11 436.1105.

12 (ii) "CONTROLLED SUBSTANCE" MEANS THAT TERM AS DEFINED IN
13 SECTION 7104 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.7104.

14 (iii) "INGESTION" MEANS TO HAVE EATEN, DRUNK, INGESTED,
15 INHALED, INJECTED, OR TOPICALLY APPLIED, OR TO HAVE PERFORMED ANY
16 COMBINATION OF THOSE ACTIONS, OR OTHERWISE INTRODUCED INTO THE
17 BODY.

18 (D) "KNOWLEDGE" MEANS AWARENESS OR UNDERSTANDING WITH RESPECT
19 TO A MATERIAL ELEMENT OF AN OFFENSE IF BOTH OF THE FOLLOWING
20 CIRCUMSTANCES EXIST:

21 (i) THE ELEMENT INVOLVES THE NATURE OR THE ATTENDANT
22 CIRCUMSTANCES OF THE PERSON'S CONDUCT, AND THE PERSON IS AWARE THAT
23 HIS OR HER CONDUCT IS OF THAT NATURE OR THAT THOSE CIRCUMSTANCES
24 EXIST.

25 (ii) THE ELEMENT INVOLVES A RESULT OF THE PERSON'S CONDUCT,
26 AND THE PERSON IS AWARE THAT IT IS PRACTICALLY CERTAIN THAT HIS OR
27 HER CONDUCT WILL CAUSE THAT RESULT.

1 (E) "NEGLIGENCE" MEANS THE FAILURE TO USE REASONABLE CARE WITH
2 RESPECT TO A MATERIAL ELEMENT OF AN OFFENSE TO AVOID CONSEQUENCES
3 THAT ARE THE FORESEEABLE OUTCOME OF THE PERSON'S CONDUCT WITH
4 RESPECT TO A MATERIAL ELEMENT OF AN OFFENSE AND THAT THREATEN OR
5 HARM THE SAFETY OF ANOTHER.

6 (F) "RECKLESSNESS" MEANS A PERSON'S CONSCIOUS DISREGARD OF A
7 SUBSTANTIAL AND UNJUSTIFIABLE RISK THAT A MATERIAL ELEMENT EXISTS
8 OR WILL RESULT FROM THE PERSON'S CONDUCT, IF THE RISK IS OF A
9 NATURE AND DEGREE THAT, CONSIDERING THE NATURE AND PURPOSE OF THE
10 PERSON'S CONDUCT AND THE CIRCUMSTANCES KNOWN TO THE PERSON, THE
11 PERSON'S DISREGARD OF THE RISK IS A GROSS DEVIATION FROM THE
12 STANDARD OF CONDUCT THAT A LAW-ABIDING AND REASONABLE PERSON WOULD
13 OBSERVE IN THE PERSON'S SITUATION.

14 Enacting section 1. This amendatory act takes effect 90 days
15 after the date it is enacted into law.

16 Enacting section 2. This amendatory act only applies to crimes
17 committed on or after the date this amendatory act is enacted into
18 law.