

HOUSE BILL No. 5814

March 19, 2002, Introduced by Reps. George, Gosselin, DeWeese, Tabor and 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 2000
PA 460.

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, who has an alcohol content of
12 0.10 grams or more per 100 milliliters of blood, per 210 liters
13 of breath, or per 67 milliliters of urine, or whose ability to
14 operate the motor vehicle is visibly impaired due to the consump-
15 tion of intoxicating liquor, a controlled substance, or a combi-
16 nation of intoxicating liquor and a controlled substance.

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 intoxicating liquor, a controlled sub-
22 stance, or a combination of intoxicating liquor and a controlled
23 substance, the person's ability to operate the vehicle is visibly
24 impaired. If a person is charged with violating subsection (1),
25 a finding of guilty under this subsection may be rendered.

26 (4) A person, whether licensed or not, who operates a motor
27 vehicle in violation of subsection (1) or (3) and by the

1 operation of that motor vehicle causes the death of another
2 person is guilty of a crime as follows:

3 (a) Except as provided in subdivision (b), the person is
4 guilty of a felony punishable by imprisonment for not more than
5 15 years or a fine of not less than \$2,500.00 or more than
6 \$10,000.00, or both. The judgment of sentence may impose the
7 sanction permitted under section 625n. If the vehicle is not
8 ordered forfeited under section 625n, the court shall order vehi-
9 cle immobilization under section 904d in the judgment of
10 sentence.

11 (b) If, at the time of the violation, the person is operat-
12 ing a motor vehicle in a manner proscribed under section 653a and
13 causes the death of a police officer, firefighter, or other emer-
14 gency response personnel, the person is guilty of a felony pun-
15 ishable by imprisonment for not more than 20 years or a fine of
16 not less than \$2,500.00 or more than \$10,000.00, or both. This
17 subdivision applies regardless of whether the person is charged
18 with the violation of section 653a. The judgment of sentence may
19 impose the sanction permitted under section 625n. If the vehicle
20 is not ordered forfeited under section 625n, the court shall
21 order vehicle immobilization under section 904d in the judgment
22 of sentence.

23 (5) 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 a serious impairment of a body
26 function of another person is guilty of a felony punishable by
27 imprisonment for not more than 5 years or a fine of not less than

1 \$1,000.00 or more than \$5,000.00, or both. The judgment of
2 sentence may impose the sanction permitted under section 625n.
3 If the vehicle is not ordered forfeited under section 625n, the
4 court shall order vehicle immobilization under section 904d in
5 the judgment of sentence. As used in this subsection, "serious
6 impairment of a body function" includes, but is not limited to, 1
7 or more of the following:

- 8 (a) Loss of a limb or use of a limb.
- 9 (b) Loss of a hand, foot, finger, or thumb or use of a hand,
10 foot, finger, or thumb.
- 11 (c) Loss of an eye or ear or use of an eye or ear.
- 12 (d) Loss or substantial impairment of a bodily function.
- 13 (e) Serious visible disfigurement.
- 14 (f) A comatose state that lasts for more than 3 days.
- 15 (g) Measurable brain damage or mental impairment.
- 16 (h) A skull fracture or other serious bone fracture.
- 17 (i) Subdural hemorrhage or subdural hematoma.
- 18 (6) A person who is less than 21 years of age, whether
19 licensed or not, shall not operate a vehicle upon a highway or
20 other place open to the general public or generally accessible to
21 motor vehicles, including an area designated for the parking of
22 vehicles, within this state if the person has any bodily alcohol
23 content. As used in this subsection, "any bodily alcohol
24 content" means either of the following:
 - 25 (a) An alcohol content of not less than 0.02 grams or more
26 than 0.07 grams per 100 milliliters of blood, per 210 liters of
27 breath, or per 67 milliliters of urine.

1 (b) Any presence of alcohol within a person's body resulting
2 from the consumption of intoxicating liquor, other than consump-
3 tion of intoxicating liquor as a part of a generally recognized
4 religious 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), or (5) while another person who is less
9 than 16 years of age is occupying the vehicle. A person who vio-
10 lates 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
17 year. Not less than 48 hours of this imprisonment shall be
18 served consecutively. This term of imprisonment shall not be
19 suspended.

20 (B) Community service for not less than 30 days or more than
21 90 days.

22 (ii) If the violation occurs within 7 years of a prior con-
23 viction or within 10 years of 2 or more prior convictions, 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:

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

3 (B) 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 this imprisonment shall be served consecutively. This
7 term of imprisonment shall not be suspended.

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

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

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

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

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

18 (ii) If the violation occurs within 7 years of a prior con-
19 viction or within 10 years of 2 or more prior convictions, 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
24 year. Not less than 48 hours of this imprisonment shall be
25 served consecutively. This term of imprisonment shall not be
26 suspended.

1 (B) Community service for not less than 30 days or more than
2 90 days.

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

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

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

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

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

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

24 (iii) A fine of not less than ~~-\$100.00-~~ \$200.00 or more than
25 \$500.00.

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

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

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

6 (ii) Community service for not less than 30 days or more
7 than 90 days.

8 (c) If the violation occurs within 10 years of 2 or more
9 prior convictions, the person is guilty of a felony and shall be
10 sentenced to pay a fine of not less than \$500.00 or more than
11 \$5,000.00 and to either of the following:

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

14 (ii) Probation with imprisonment in the county jail for not
15 less than 30 days or more than 1 year and community service for
16 not less than 60 days or more than 180 days. Not less than 48
17 hours of the imprisonment imposed under this subparagraph shall
18 be served consecutively.

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

21 (e) In the judgment of sentence under subdivision (a), the
22 court may order vehicle immobilization as provided in
23 section 904d. In the judgment of sentence under subdivision (b)
24 or (c), the court shall, unless the vehicle is ordered forfeited
25 under section 625n, order vehicle immobilization as provided in
26 section 904d.

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

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

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

9 (b) If the person operating the motor vehicle violated sub-
10 section (4), a felony punishable by imprisonment for not more
11 than 5 years or a fine of not less than \$1,500.00 or more than
12 \$10,000.00, or both.

13 (c) If the person operating the motor vehicle violated sub-
14 section (5), a felony punishable by imprisonment for not more
15 than 2 years or a fine of not less than \$1,000.00 or more than
16 \$5,000.00, or both.

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

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

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

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

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

25 (b) If the violation occurs within 7 years of 1 prior con-
26 viction, the person shall be sentenced to pay a fine of not less

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

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

6 (ii) Community service for not less than 30 days or more
7 than 90 days.

8 (c) If the violation occurs within 10 years of 2 or more
9 prior convictions, the person is guilty of a felony and shall be
10 sentenced to pay a fine of not less than \$500.00 or more than
11 \$5,000.00 and either of the following:

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

14 (ii) Probation with imprisonment in the county jail for not
15 less than 30 days or more than 1 year and community service for
16 not less than 60 days or more than 180 days. Not less than 48
17 hours of the imprisonment imposed under this subparagraph shall
18 be served consecutively.

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

21 (e) In the judgment of sentence under subdivision (a), the
22 court may order vehicle immobilization as provided in
23 section 904d. In the judgment of sentence under subdivision (b)
24 or (c), the court shall, unless the vehicle is ordered forfeited
25 under section 625n, order vehicle immobilization as provided in
26 section 904d.

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

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

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

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

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

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

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

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

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

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

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

26 (14) If the prosecuting attorney intends to seek an enhanced
27 sentence under this section or a sanction under section 625n

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

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

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

16 (a) An abstract of conviction.

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

18 (c) An admission by the defendant.

19 (17) Except as otherwise provided in subsection (19), 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 (18) Except as otherwise provided in subsection (19), 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 (19) A special verdict described in subsections (17) and
19 (18) 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 a combination of intoxicating liquor and a
23 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 (20) If a jury or court finds under subsection (17), (18),
2 or (19) that the defendant operated a motor vehicle under the
3 influence of or while impaired due to the consumption of a con-
4 trolled substance or a combination of a controlled substance and
5 an intoxicating liquor, the court shall do both of the
6 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 (21) Except as otherwise provided by law, a record described
14 in subsection (20)(b) is a public record and the department of
15 state police shall retain the information contained on that
16 record for not less than 7 years.

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

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

26 (a) Except as provided in subsection (24), a violation or
27 attempted violation of subsection (1), (3), (4), (5), (6), or

1 (7), section 625m, former section 625(1) or (2), or former
2 section 625b.

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

6 (c) A violation of section 653a(4).

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

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