

**SUBSTITUTE FOR
HOUSE BILL NO. 4920**

A bill to amend 1949 PA 300, entitled
"Michigan vehicle code,"
by amending sections 319, 322, 625, and 625b (MCL 257.319, 257.322,
257.625, and 257.625b), section 319 as amended by 2004 PA 362,
section 322 as amended by 2001 PA 159, section 625 as amended by
2006 PA 564, and section 625b as amended by 2004 PA 62, and by
adding section 20b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 **SEC. 20B. "IGNITION INTERLOCK DEVICE" MEANS AN ALCOHOL**
2 **CONCENTRATION MEASURING DEVICE THAT PREVENTS A MOTOR VEHICLE FROM**
3 **BEING STARTED AT ANY TIME WITHOUT FIRST DETERMINING THROUGH A DEEP**
4 **LUNG SAMPLE THE OPERATOR'S ALCOHOL LEVEL, CALIBRATED SO THAT THE**

1 MOTOR VEHICLE CANNOT BE STARTED IF THE BREATH ALCOHOL LEVEL OF THE
2 OPERATOR, AS MEASURED BY THE TEST, REACHES A LEVEL OF 0.025 GRAMS
3 PER 210 LITERS OF BREATH, AND TO WHICH ALL OF THE FOLLOWING APPLY:

4 (A) THE DEVICE MEETS OR EXCEEDS THE MODEL SPECIFICATIONS FOR
5 BREATH ALCOHOL IGNITION INTERLOCK DEVICES (BAIID), 57 FR 11772 -
6 11787 (APRIL 7, 1992).

7 (B) THE DEVICE UTILIZES ALCOHOL-SPECIFIC ELECTROCHEMICAL FUEL
8 SENSOR TECHNOLOGY.

9 (C) AS ITS ANTICIRCUMVENTION METHOD, WHICH IS ENABLED, THE
10 DEVICE INSTALLATION USES A POSITIVE-NEGATIVE-POSITIVE AIR PRESSURE
11 TEST REQUIREMENT, A HUM TONE REQUIREMENT, OR ANY OTHER
12 ANTICIRCUMVENTION METHOD OR TECHNOLOGY THAT FIRST BECOMES
13 COMMERCIALY AVAILABLE AFTER JULY 31, 2007 AND THAT IS APPROVED BY
14 THE DEPARTMENT AS EQUALLY OR MORE EFFECTIVE.

15 Sec. 319. (1) The secretary of state shall immediately suspend
16 a person's license as provided in this section upon receiving a
17 record of the person's conviction for a crime described in this
18 section, whether the conviction is under a law of this state, a
19 local ordinance substantially corresponding to a law of this state,
20 or a law of another state substantially corresponding to a law of
21 this state.

22 (2) The secretary of state shall suspend the person's license
23 for 1 year for any of the following crimes:

24 (a) Fraudulently altering or forging documents pertaining to
25 motor vehicles in violation of section 257.

26 (b) A violation of section 413 of the Michigan penal code,
27 1931 PA 328, MCL 750.413.

1 (c) A violation of section 1 of former 1931 PA 214, MCL
2 752.191, or section 626c.

3 (d) A felony in which a motor vehicle was used. As used in
4 this section, "felony in which a motor vehicle was used" means a
5 felony during the commission of which the person convicted operated
6 a motor vehicle and while operating the vehicle presented real or
7 potential harm to persons or property and 1 or more of the
8 following circumstances existed:

9 (i) The vehicle was used as an instrument of the felony.

10 (ii) The vehicle was used to transport a victim of the felony.

11 (iii) The vehicle was used to flee the scene of the felony.

12 (iv) The vehicle was necessary for the commission of the
13 felony.

14 (e) A violation of section 602a(2) or (3) of this act or
15 section 479a(2) or (3) of the Michigan penal code, 1931 PA 328, MCL
16 750.479a.

17 (3) The secretary of state shall suspend the person's license
18 for 90 days for any of the following crimes:

19 (a) Failing to stop and disclose identity at the scene of an
20 accident resulting in injury in violation of section 617a.

21 (b) A violation of section 601b(2), section 601c(1), section
22 626, or section 653a(3).

23 (c) Malicious destruction resulting from the operation of a
24 vehicle under section 382(1)(b), (c), or (d) of the Michigan penal
25 code, 1931 PA 328, MCL 750.382.

26 (d) A violation of section 703(2) of the Michigan liquor
27 control code of 1998, 1998 PA 58, MCL 436.1703.

1 (4) The secretary of state shall suspend the person's license
2 for 30 days for malicious destruction resulting from the operation
3 of a vehicle under section 382(1)(a) of the Michigan penal code,
4 1931 PA 328, MCL 750.382.

5 (5) For perjury or making a false certification to the
6 secretary of state under any law requiring the registration of a
7 motor vehicle or regulating the operation of a vehicle on a
8 highway, or for conduct prohibited under section 324(1) or a local
9 ordinance substantially corresponding to section 324(1), the
10 secretary shall suspend the person's license as follows:

11 (a) If the person has no prior conviction for an offense
12 described in this subsection within 7 years, for 90 days.

13 (b) If the person has 1 or more prior convictions for an
14 offense described in this subsection within 7 years, for 1 year.

15 (6) For a violation of section 414 of the Michigan penal code,
16 1931 PA 328, MCL 750.414, the secretary of state shall suspend the
17 person's license as follows:

18 (a) If the person has no prior conviction for that offense
19 within 7 years, for 90 days.

20 (b) If the person has 1 or more prior convictions for that
21 offense within 7 years, for 1 year.

22 (7) For a violation of section 624a or 624b of this act or
23 section 703(1) of the Michigan liquor control code of 1998, 1998 PA
24 58, MCL 436.1703, the secretary of state shall suspend the person's
25 license as follows:

26 (a) If the person has 1 prior conviction for an offense
27 described in this subsection or section 33b(1) of former 1933 (Ex

1 Sess) PA 8, for 90 days. The secretary of state may issue the
2 person a restricted license after the first 30 days of suspension.

3 (b) If the person has 2 or more prior convictions for an
4 offense described in this subsection or section 33b(1) of former
5 1933 (Ex Sess) PA 8, for 1 year. The secretary of state may issue
6 the person a restricted license after the first 60 days of
7 suspension.

8 (8) The secretary of state shall suspend the person's license
9 for a violation of section 625 or 625m as follows:

10 (a) For 180 days for a violation of section ~~625(1)~~**625(1)(A)**
11 **OR (B)** or (8) if the person has no prior convictions within 7
12 years. The secretary of state may issue the person a restricted
13 license during a specified portion of the suspension, except that
14 the secretary of state shall not issue a restricted license during
15 the first 30 days of suspension.

16 (b) For 90 days for a violation of section 625(3) if the
17 person has no prior convictions within 7 years. However, if the
18 person is convicted of a violation of section 625(3), for operating
19 a vehicle when, due to the consumption of a controlled substance or
20 a combination of alcoholic liquor and a controlled substance, the
21 person's ability to operate the vehicle was visibly impaired, the
22 secretary of state shall suspend the person's license under this
23 subdivision for 180 days. The secretary of state may issue the
24 person a restricted license during all or a specified portion of
25 the suspension.

26 (c) For 30 days for a violation of section 625(6) if the
27 person has no prior convictions within 7 years. The secretary of

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1 state may issue the person a restricted license during all or a
2 specified portion of the suspension.

3 (d) For 90 days for a violation of section 625(6) if the
4 person has 1 or more prior convictions for that offense within 7
5 years.

6 (e) For 180 days for a violation of section 625(7) if the
7 person has no prior convictions within 7 years. The secretary of
8 state may issue the person a restricted license after the first 90
9 days of suspension.

10 (f) For 90 days for a violation of section 625m if the person
11 has no prior convictions within 7 years. The secretary of state may
12 issue the person a restricted license during all or a specified
13 portion of the suspension.

14 (G) FOR THE LONGER OF 1 YEAR OR UNTIL THE PERSON SATISFIES THE
15 CONDITION IN SUBDIVISION (H) FOR A VIOLATION OF SECTION 625(1)(C)
16 IF THE PERSON HAS NO PRIOR CONVICTIONS WITHIN 7 YEARS. THE
17 SECRETARY OF STATE SHALL ISSUE THE PERSON A RESTRICTED LICENSE,
18 EXCEPT THAT THE SECRETARY OF STATE SHALL NOT ISSUE A RESTRICTED
19 LICENSE DURING THE FIRST 45 DAYS OF SUSPENSION.

20 (H) THE DEPARTMENT SHALL ORDER A PERSON CONVICTED OF VIOLATING
21 SECTION 625(1)(C) NOT TO OPERATE A MOTOR VEHICLE UNDER A RESTRICTED
22 LICENSE ISSUED UNDER SUBDIVISION (G) UNLESS THE VEHICLE IS EQUIPPED
23 WITH AN IGNITION INTERLOCK DEVICE APPROVED, CERTIFIED, AND
24 INSTALLED AS REQUIRED UNDER SECTIONS 625K AND 625/. THE IGNITION
25 INTERLOCK DEVICE MAY BE REMOVED AFTER THE MINIMUM PERIOD FOR THE
26 RESTRICTED LICENSE EXPIRES IF THE [IGNITION INTERLOCK DEVICE PROVIDER]
27 PROVIDES THE DEPARTMENT WITH VERIFICATION THAT THE PERSON HAS OPERATED THE VEHICLE FOR THE

1 MOST RECENT 6 CONTINUOUS MONTHS WITH NO INSTANCES OF REACHING OR
2 EXCEEDING A BLOOD ALCOHOL LEVEL OF 0.025 GRAMS PER 210 LITERS OF
3 BREATH.

4 (9) For a violation of section 367c of the Michigan penal
5 code, 1931 PA 328, MCL 750.367c, the secretary of state shall
6 suspend the person's license as follows:

7 (a) If the person has no prior conviction for an offense
8 described in this subsection within 7 years, for 6 months.

9 (b) If the person has 1 or more convictions for an offense
10 described in this subsection within 7 years, for 1 year.

11 (10) For a violation of section 315(4), the secretary of state
12 may suspend the person's license for 6 months.

13 (11) For a violation or attempted violation of section 411a(2)
14 of the Michigan penal code, 1931 PA 328, MCL 750.411a, involving a
15 school, the secretary of state shall suspend the license of a
16 person 14 years of age or over but less than 21 years of age until
17 3 years after the date of the conviction or juvenile disposition
18 for the violation. The secretary of state may issue the person a
19 restricted license after the first 365 days of suspension.

20 (12) Except as provided in subsection (14), a suspension under
21 this section shall be imposed notwithstanding a court order unless
22 the court order complies with section 323.

23 (13) If the secretary of state receives records of more than 1
24 conviction of a person resulting from the same incident, a
25 suspension shall be imposed only for the violation to which the
26 longest period of suspension applies under this section.

27 (14) The secretary of state may waive a restriction,

1 suspension, or revocation of a person's license imposed under this
2 act if the person submits proof that a court in another state
3 revoked, suspended, or restricted his or her license for a period
4 equal to or greater than the period of a restriction, suspension,
5 or revocation prescribed under this act for the violation and that
6 the revocation, suspension, or restriction was served for the
7 violation, or may grant a restricted license.

8 (15) The secretary of state shall not issue a restricted
9 license to a person whose license is suspended under this section
10 unless a restricted license is authorized under this section and
11 the person is otherwise eligible for a license.

12 (16) The secretary of state shall not issue a restricted
13 license to a person under subsection (8) that would permit the
14 person to operate a commercial motor vehicle.

15 (17) ~~A~~**EXCEPT AS PROVIDED IN SUBSECTION (16)**, A restricted
16 license issued under this section shall permit the person to whom
17 it is issued to take any driving skills test required by the
18 secretary of state and to ~~drive~~**OPERATE A VEHICLE** under 1 or more
19 of the following circumstances:

20 (a) In the course of the person's employment or occupation.

21 (b) To and from any combination of the following:

22 (i) The person's residence.

23 (ii) The person's work location.

24 (iii) An alcohol or drug education or treatment program as
25 ordered by the court.

26 (iv) The court probation department.

27 (v) A court-ordered community service program.

1 (vi) An educational institution at which the person is enrolled
2 as a student.

3 (vii) A place of regularly occurring medical treatment for a
4 serious condition for the person or a member of the person's
5 household or immediate family.

6 (18) While driving with a restricted license, the person shall
7 carry proof of his or her destination and the hours of any
8 employment, class, or other reason for traveling and shall display
9 that proof upon a peace officer's request.

10 (19) Subject to subsection (21), as used in subsection (8),
11 "prior conviction" means a conviction for any of the following,
12 whether under a law of this state, a local ordinance substantially
13 corresponding to a law of this state, or a law of another state
14 substantially corresponding to a law of this state:

15 (a) Except as provided in subsection (20), a violation or
16 attempted violation of any of the following:

17 (i) Section 625, except a violation of section 625(2), or a
18 violation of any prior enactment of section 625 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 (20) Except for purposes of the suspensions described in
3 subsection (8)(c) and (d), only 1 violation or attempted violation
4 of section 625(6), a local ordinance substantially corresponding to
5 section 625(6), or a law of another state substantially
6 corresponding to section 625(6) may be used as a prior conviction.

7 (21) If 2 or more convictions described in subsection (19) are
8 convictions for violations arising out of the same transaction,
9 only 1 conviction shall be used to determine whether the person has
10 a prior conviction.

11 Sec. 322. (1) The secretary of state shall appoint a hearing
12 officer to hear appeals from persons aggrieved by a final
13 determination of the secretary of state denying an application for
14 an operator's or chauffeur's license, suspending, restricting, or
15 revoking an operator's or chauffeur's license, or other license
16 action.

17 (2) The appeal shall be in writing and filed with the
18 secretary of state within 14 days after the final determination.
19 Upon notice of the appeal, the hearing officer shall require
20 production of all documents filed in the matter, together with a
21 transcript of any testimony taken.

22 (3) In a hearing or matter properly before the hearing
23 officer, he or she may do any of the following:

24 (a) Issue subpoenas to compel attendance of witnesses.

25 (b) Issue process to compel attendance.

26 (c) Punish for contempt any witness failing to appear or
27 testify in the same manner as provided by the rules and practice in

1 the circuit court.

2 (d) Swear witnesses, administer oaths, and exemplify records
3 in any matter before the officer.

4 (e) Take additional testimony he or she considers appropriate.

5 (4) A verbatim record shall be made of the hearing.

6 (5) After a hearing, the hearing officer may affirm, modify,
7 or set aside a final determination of the secretary of state
8 denying an application for an operator's or chauffeur's license,
9 suspending, restricting, or revoking an operator's or chauffeur's
10 license, or any other license action. The hearing officer shall
11 include his or her findings of fact and conclusions of law in the
12 record.

13 (6) Except as provided in subsection (7), if a person whose
14 license has been denied or revoked under section 303(2)(c), (d), or
15 (g) applies for a license or reinstatement of a license after the
16 time period specified in section 303(4) has elapsed, the hearing
17 officer may issue a restricted license to that person, setting
18 restrictions upon operating a vehicle as the hearing officer
19 determines are appropriate. If the hearing officer issues a
20 restricted license following a hearing held after October 1, 1999,
21 he or she shall do both of the following:

22 (a) Require ~~installation of a~~ **PROPERLY INSTALLED AND**
23 ~~functioning ignition interlock device that meets or exceeds the~~
24 ~~model specifications of the national highway traffic safety~~
25 ~~administration set forth in 57 F.R. p.11772, April 7, 1992,~~ on each
26 motor vehicle the person owns or intends to operate, the costs of
27 which shall be borne by the person whose license is restricted.

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1 (b) Condition issuance of a restricted license upon
2 verification by the secretary of state that an ignition interlock
3 device has been installed.

4 (7) The hearing officer shall not issue a restricted license
5 under subsection (6) that would permit the person to operate a
6 commercial motor vehicle that hauls hazardous material.

7 (8) If the hearing officer issues a restricted license to a
8 person who intends to operate a vehicle owned by his or her
9 employer, the secretary of state shall notify the employer of the
10 employee's license restriction that requires the installation of an
11 ignition interlock device. An employer who receives notice under
12 this subsection is not required to install an ignition interlock
13 device on the employer-owned vehicle. This subsection does not
14 apply to a vehicle that is operated by a self-employed individual
15 who uses the vehicle for both business and personal use.

16 (9) If the hearing officer issues a restricted license
17 requiring an ignition interlock device, the initial period for
18 requiring the device shall be **NOT LESS THAN** 1 year. ~~After that~~
19 ~~time, the hearing officer may continue the ignition interlock~~
20 ~~device requirement for any length of time.~~

21 (10) **A PERSON WHO IS ISSUED A RESTRICTED LICENSE REQUIRING AN**
22 **IGNITION INTERLOCK DEVICE SHALL NOT REMOVE THE DEVICE OR CAUSE THE**
23 **DEVICE TO BE REMOVED UNLESS THE DEPARTMENT [OR THE COURT] HAS ISSUED AN**
24 **ORDER AUTHORIZING ITS REMOVAL.**

25 Sec. 625. (1) A person, whether licensed or not, shall not
26 operate a vehicle upon a highway or other place open to the general
27 public or generally accessible to motor vehicles, including an area

1 designated for the parking of vehicles, within this state if the
2 person is operating while intoxicated. As used in this section,
3 "operating while intoxicated" means ~~either~~ **ANY** of the following:
4 ~~applies:~~

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

8 (b) The person has an alcohol content of 0.08 grams or more
9 per 100 milliliters of blood, per 210 liters of breath, or per 67
10 milliliters of urine, or, beginning October 1, 2013, the person has
11 an alcohol content of 0.10 grams or more per 100 milliliters of
12 blood, per 210 liters of breath, or per 67 milliliters of urine.

13 **(C) THE PERSON HAS AN ALCOHOL CONTENT OF 0.15 GRAMS OR MORE**
14 **PER 100 MILLILITERS OF BLOOD, PER 210 LITERS OF BREATH, OR PER 67**
15 **MILLILITERS OF URINE.**

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

22 (a) The person is under the influence of alcoholic liquor, a
23 controlled substance, or a combination of alcoholic liquor and a
24 controlled substance.

25 (b) The person has an alcohol content of 0.08 grams or more
26 per 100 milliliters of blood, per 210 liters of breath, or per 67
27 milliliters of urine or, beginning October 1, 2013, the person has

1 an alcohol content of 0.10 grams or more per 100 milliliters of
2 blood, per 210 liters of breath, or per 67 milliliters of urine.

3 (c) The person's ability to operate the motor vehicle is
4 visibly impaired due to the consumption of alcoholic liquor, a
5 controlled substance, or a combination of alcoholic liquor and a
6 controlled substance.

7 (3) A person, whether licensed or not, shall not operate a
8 vehicle upon a highway or other place open to the general public or
9 generally accessible to motor vehicles, including an area
10 designated for the parking of vehicles, within this state when, due
11 to the consumption of alcoholic liquor, a controlled substance, or
12 a combination of alcoholic liquor and a controlled substance, the
13 person's ability to operate the vehicle is visibly impaired. If a
14 person is charged with violating subsection (1), a finding of
15 guilty under this subsection may be rendered.

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

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

27 (b) If, at the time of the violation, the person is operating

1 a motor vehicle in a manner proscribed under section 653a and
2 causes the death of a police officer, firefighter, or other
3 emergency response personnel, the person is guilty of a felony
4 punishable by imprisonment for not more than 20 years or a fine of
5 not less than \$2,500.00 or more than \$10,000.00, or both. This
6 subdivision applies regardless of whether the person is charged
7 with the violation of section 653a. The judgment of sentence may
8 impose the sanction permitted under section 625n. If the vehicle is
9 not ordered forfeited under section 625n, the court shall order
10 vehicle immobilization under section 904d in the judgment of
11 sentence.

12 (5) A person, whether licensed or not, who operates a motor
13 vehicle in violation of subsection (1), (3), or (8) and by the
14 operation of that motor vehicle causes a serious impairment of a
15 body function of another person is guilty of a felony punishable by
16 imprisonment for not more than 5 years or a fine of not less than
17 \$1,000.00 or more than \$5,000.00, or both. The judgment of sentence
18 may impose the sanction permitted under section 625n. If the
19 vehicle is not ordered forfeited under section 625n, the court
20 shall order vehicle immobilization under section 904d in the
21 judgment of sentence.

22 (6) A person who is less than 21 years of age, whether
23 licensed or not, shall not operate a vehicle upon a highway or
24 other place open to the general public or generally accessible to
25 motor vehicles, including an area designated for the parking of
26 vehicles, within this state if the person has any bodily alcohol
27 content. As used in this subsection, "any bodily alcohol content"

1 means either of the following:

2 (a) An alcohol content of 0.02 grams or more but less than
3 0.08 grams per 100 milliliters of blood, per 210 liters of breath,
4 or per 67 milliliters of urine, or, beginning October 1, 2013, the
5 person has an alcohol content of 0.02 grams or more but less than
6 0.10 grams per 100 milliliters of blood, per 210 liters of breath,
7 or per 67 milliliters of urine.

8 (b) Any presence of alcohol within a person's body resulting
9 from the consumption of alcoholic liquor, other than consumption of
10 alcoholic liquor as a part of a generally recognized religious
11 service or ceremony.

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

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

19 (i) Except as provided in subparagraph (ii), a person who
20 violates this subdivision is guilty of a misdemeanor and shall be
21 sentenced to pay a fine of not less than \$200.00 or more than
22 \$1,000.00 and to 1 or 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 (ii) If the violation occurs within 7 years of a prior
2 conviction or after 2 or more prior convictions, regardless of the
3 number of years that have elapsed since any prior conviction, a
4 person who violates this subdivision is guilty of a felony and
5 shall be sentenced to pay a fine of not less than \$500.00 or more
6 than \$5,000.00 and to either of the following:

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

9 (B) Probation with imprisonment in the county jail for not
10 less than 30 days or more than 1 year and community service for not
11 less than 60 days or more than 180 days. Not less than 48 hours of
12 this imprisonment shall be served consecutively. This term of
13 imprisonment shall not be suspended.

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

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

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

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

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

24 (ii) If the violation occurs within 7 years of a prior
25 conviction or after 2 or more prior convictions, regardless of the
26 number of years that have elapsed since any prior conviction, a
27 person who violates this subdivision shall be sentenced to pay a

1 fine of not less than \$200.00 or more than \$1,000.00 and to 1 or
2 more of the following:

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

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

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

15 (d) This subsection does not prohibit a person from being
16 charged with, convicted of, or punished for a violation of
17 subsection (4) or (5) that is committed by the person while
18 violating this subsection. However, points shall not be assessed
19 under section 320a for both a violation of subsection (4) or (5)
20 and a violation of this subsection for conduct arising out of the
21 same transaction.

22 (8) A person, whether licensed or not, shall not operate a
23 vehicle upon a highway or other place open to the general public or
24 generally accessible to motor vehicles, including an area
25 designated for the parking of vehicles, within this state if the
26 person has in his or her body any amount of a controlled substance
27 listed in schedule 1 under section 7212 of the public health code,

1 1978 PA 368, MCL 333.7212, or a rule promulgated under that
2 section, or of a controlled substance described in section
3 7214(a)(iv) of the public health code, 1978 PA 368, MCL 333.7214.

4 (9) ~~IF~~ **EXCEPT AS PROVIDED IN SUBSECTION (10)**, IF a person is
5 convicted of violating subsection (1) or (8), all of the following
6 apply:

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

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

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

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

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

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

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

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

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

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

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

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

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

15 **(10) IF A PERSON IS CONVICTED OF VIOLATING SUBSECTION (1) (C),**
16 **THE PERSON IS GUILTY OF A MISDEMEANOR PUNISHABLE BY 1 OR MORE OF**
17 **THE FOLLOWING:**

18 **(A) COMMUNITY SERVICE FOR NOT MORE THAN 360 HOURS.**

19 **(B) IMPRISONMENT FOR NOT MORE THAN 180 DAYS.**

20 **(C) A FINE OF NOT LESS THAN \$200.00 OR MORE THAN \$700.00.**

21 **(11) ~~(10)~~**A person who is convicted of violating subsection
22 (2) is guilty of a crime as follows:

23 (a) Except as provided in subdivisions (b) and (c), a
24 misdemeanor punishable by imprisonment for not more than 93 days or
25 a 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
4 subsection (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 (12) ~~(11)~~—If a person is convicted of violating subsection
8 (3), all of the following apply:

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

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

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
16 conviction, 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 year.
20 Not less than 48 hours of the term of imprisonment imposed under
21 this subparagraph shall be served consecutively.

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

24 (c) If the violation occurs after 2 or more prior convictions,
25 regardless of the number of years that have elapsed since any prior
26 conviction, the person is guilty of a felony and shall be sentenced
27 to pay a fine of not less than \$500.00 or more than \$5,000.00 and

1 either of the following:

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

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

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

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

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

18 (13) ~~(12)~~—If a person is convicted of violating subsection
19 (6), all of the following apply:

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

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

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

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

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

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

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

4 (14) ~~(13)~~—In addition to imposing the sanctions prescribed
5 under this section, the court may order the person to pay the costs
6 of the prosecution under the code of criminal procedure, 1927 PA
7 175, MCL 760.1 to 777.69.

8 (15) ~~(14)~~—A person sentenced to perform community service
9 under this section shall not receive compensation and shall
10 reimburse the state or appropriate local unit of government for the
11 cost of supervision incurred by the state or local unit of
12 government as a result of the person's activities in that service.

13 (16) ~~(15)~~—If the prosecuting attorney intends to seek an
14 enhanced sentence under this section or a sanction under section
15 625n based upon the defendant having 1 or more prior convictions,
16 the prosecuting attorney shall include on the complaint and
17 information, or an amended complaint and information, filed in
18 district court, circuit court, municipal court, or family division
19 of circuit court, a statement listing the defendant's prior
20 convictions.

21 (17) ~~(16)~~—If a person is charged with a violation of
22 subsection (1), (3), (4), (5), (7), or (8) or section 625m, the
23 court shall not permit the defendant to enter a plea of guilty or
24 nolo contendere to a charge of violating subsection (6) in exchange
25 for dismissal of the original charge. This subsection does not
26 prohibit the court from dismissing the charge upon the prosecuting
27 attorney's motion.

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

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

4 (b) An abstract of conviction.

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

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

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

9 (f) Information contained in a presentence report.

10 (g) An admission by the defendant.

11 (19) ~~(18)~~—Except as otherwise provided in subsection ~~(20)~~
12 (21), if a person is charged with operating a vehicle while under
13 the influence of a controlled substance or a combination of
14 alcoholic liquor and a controlled substance in violation of
15 subsection (1) or a local ordinance substantially corresponding to
16 subsection (1), the court shall require the jury to return a
17 special verdict in the form of a written finding or, if the court
18 convicts the person without a jury or accepts a plea of guilty or
19 nolo contendere, the court shall make a finding as to whether the
20 person was under the influence of a controlled substance or a
21 combination of alcoholic liquor and a controlled substance at the
22 time of the violation.

23 (20) ~~(19)~~—Except as otherwise provided in subsection ~~(20)~~
24 (21), if a person is charged with operating a vehicle while his or
25 her ability to operate the vehicle was visibly impaired due to his
26 or her consumption of a controlled substance or a combination of
27 alcoholic liquor and a controlled substance in violation of

1 subsection (3) or a local ordinance substantially corresponding to
2 subsection (3), the court shall require the jury to return a
3 special verdict in the form of a written finding or, if the court
4 convicts the person without a jury or accepts a plea of guilty or
5 nolo contendere, the court shall make a finding as to whether, due
6 to the consumption of a controlled substance or a combination of
7 alcoholic liquor and a controlled substance, the person's ability
8 to operate a motor vehicle was visibly impaired at the time of the
9 violation.

10 (21) ~~(20)~~ A special verdict described in subsections ~~(18)~~ and
11 (19) **AND (20)** is not required if a jury is instructed to make a
12 finding solely as to either of the following:

13 (a) Whether the defendant was under the influence of a
14 controlled substance or a combination of alcoholic liquor and a
15 controlled substance at the time of the violation.

16 (b) Whether the defendant was visibly impaired due to his or
17 her consumption of a controlled substance or a combination of
18 alcoholic liquor and a controlled substance at the time of the
19 violation.

20 (22) ~~(21)~~ If a jury or court finds under subsection ~~(18)~~,
21 (19), ~~or (20)~~, **OR (21)** that the defendant operated a motor vehicle
22 under the influence of or while impaired due to the consumption of
23 a controlled substance or a combination of a controlled substance
24 and an alcoholic liquor, the court shall do both of the following:

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

26 (b) On a form or forms prescribed by the state court
27 administrator, forward to the department of state police a record

1 that specifies the penalties imposed by the court, including any
2 term of imprisonment, and any sanction imposed under section 625n
3 or 904d.

4 (23) ~~(22)~~—Except as otherwise provided by law, a record
5 described in subsection ~~(21)(b)~~—(22) (B) is a public record and the
6 department of state police shall retain the information contained
7 on that record for not less than 7 years.

8 (24) ~~(23)~~—In a prosecution for a violation of subsection (6),
9 the defendant bears the burden of proving that the consumption of
10 alcoholic liquor was a part of a generally recognized religious
11 service or ceremony by a preponderance of the evidence.

12 (25) ~~(24)~~—The court may order as a condition of probation that
13 a person convicted of violating subsection (1) or (8), or a local
14 ordinance substantially corresponding to subsection (1) or (8),
15 shall not operate a motor vehicle unless that vehicle is equipped
16 with an ignition interlock device approved, certified, and
17 installed as required under sections 625k and 625l.

18 (26) THE COURT SHALL ORDER THAT A PERSON CONVICTED OF
19 VIOLATING SUBSECTION (1) (C) OR A LOCAL ORDINANCE SUBSTANTIALLY
20 CORRESPONDING TO SUBSECTION (1) (C) SHALL NOT OPERATE A MOTOR
21 VEHICLE UNLESS THAT VEHICLE IS EQUIPPED WITH AN IGNITION INTERLOCK
22 DEVICE APPROVED, CERTIFIED, AND INSTALLED AS REQUIRED UNDER
23 SECTIONS 625K AND 625L. WHEN A PERSON IS FOUND GUILTY OF A VIOLATION
24 DESCRIBED IN THIS SUBSECTION BY THE COURT OR BY A JURY, OR THE
25 COURT ACCEPTS A PERSON'S PLEA OF GUILTY OR OF NO CONTEST TO THE
26 VIOLATION, THE COURT SHALL ORDER AND INFORM THE PERSON THAT EVERY
27 VEHICLE REGISTERED INDIVIDUALLY OR JOINTLY TO THE PERSON SHALL BE

1 EQUIPPED WITH AN IGNITION INTERLOCK DEVICE NOT LATER THAN THE TIME
 2 OF SENTENCING FOR THAT VIOLATION. AT SENTENCING FOR THE VIOLATION,
 3 THE COURT SHALL ASCERTAIN WHETHER THE VEHICLE IS EQUIPPED WITH AN
 4 INTERLOCK DEVICE. A PERSON WHO FAILS TO COMPLY WITH AN ORDER UNDER
 5 THIS SUBSECTION IS GUILTY OF CONTEMPT OF COURT.

6 (27) ~~(25)~~ Subject to subsection ~~(27)~~ **(29)**, as used in this
 7 section, "prior conviction" means a conviction for any of the
 8 following, whether under a law of this state, a local ordinance
 9 substantially corresponding to a law of this state, or a law of
 10 another state substantially corresponding to a law of this state:

11 (a) Except as provided in subsection ~~(26)~~ **(28)**, a violation or
 12 attempted violation of any of the following:

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

20 (ii) Section 625m.

21 (iii) Former section 625b.

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

25 **(28)** ~~(26)~~ Except for purposes of the enhancement described in
 26 subsection (12)(b), only 1 violation or attempted violation of
 27 subsection (6), a local ordinance substantially corresponding to

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

3 (29) ~~(27)~~—If 2 or more convictions described in subsection
4 ~~(25)~~—(27) are convictions for violations arising out of the same
5 transaction, only 1 conviction shall be used to determine whether
6 the person has a prior conviction.

7 Sec. 625b. (1) A person arrested for a misdemeanor violation
8 of section 625(1), (3), (6), (7), or (8) or section 625m or a local
9 ordinance substantially corresponding to section 625(1), (3), (6),
10 or (8) or section 625m shall be arraigned on the citation,
11 complaint, or warrant not more than 14 days after the arrest for
12 the violation or, if an arrest warrant is issued or reissued, not
13 more than 14 days after the issued or reissued arrest warrant is
14 served, whichever is later. The court shall not dismiss a case or
15 impose any other sanction for a failure to comply with this time
16 limit. The time limit does not apply to a violation of section
17 625(1), (3), (7), or (8) or section 625m punishable as a felony or
18 a violation of section 625(1), (3), (6), (7), or (8) or section
19 625m joined with a felony charge.

20 (2) The court shall schedule a pretrial conference between the
21 prosecuting attorney, the defendant, and the defendant's attorney
22 in each case in which the defendant is charged with a misdemeanor
23 violation of section 625(1), (3), (6), (7), or (8) or section 625m
24 or a local ordinance substantially corresponding to section 625(1),
25 (3), (6), or (8) or section 625m. The pretrial conference shall be
26 held not more than 35 days after the person's arrest for the
27 violation or, if an arrest warrant is issued or reissued, not more

1 than 35 days after the issued or reissued arrest warrant is served,
2 whichever is later. If the court has only 1 judge who sits in more
3 than 1 location in that district, the pretrial conference shall be
4 held not more than 42 days after the person's arrest for the
5 violation or, if an arrest warrant is issued or reissued, not more
6 than 42 days after the date the issued or reissued arrest warrant
7 is served, whichever is later. The court shall not dismiss a case
8 or impose any other sanction for a failure to comply with the
9 applicable time limit. The 35- and 42-day time limits do not apply
10 to a violation of section 625(1), (3), (7), or (8) or section 625m
11 punishable as a felony or a violation of section 625(1), (3), (6),
12 (7), or (8) or section 625m joined with a felony charge. The court
13 shall order the defendant to attend the pretrial conference and may
14 accept a plea by the defendant at the conclusion of the pretrial
15 conference. The court may adjourn the pretrial conference upon the
16 motion of a party for good cause shown. Not more than 1 adjournment
17 shall be granted to a party, and the length of an adjournment shall
18 not exceed 14 days.

19 (3) Except for delay attributable to the unavailability of the
20 defendant, a witness, or material evidence or due to an
21 interlocutory appeal or exceptional circumstances, but not a delay
22 caused by docket congestion, the court shall finally adjudicate, by
23 a plea of guilty or nolo contendere, entry of a verdict, or other
24 final disposition, a case in which the defendant is charged with a
25 misdemeanor violation of section 625(1), (3), (6), (7), or (8) or
26 section 625m or a local ordinance substantially corresponding to
27 section 625(1), (3), (6), or (8) or section 625m, within 77 days

1 after the person is arrested for the violation or, if an arrest
2 warrant is issued or reissued, not more than 77 days after the date
3 the issued or reissued arrest warrant is served, whichever is
4 later. The court shall not dismiss a case or impose any other
5 sanction for a failure to comply with this time limit. The 77-day
6 time limit does not apply to a violation of section 625(1), (3),
7 (7), or (8) or section 625m punishable as a felony or a violation
8 of section 625(1), (3), (6), (7), or (8) or section 625m joined
9 with a felony charge.

10 (4) Before accepting a plea of guilty or nolo contendere under
11 section 625 or a local ordinance substantially corresponding to
12 section 625(1), (2), (3), (6), or (8), the court shall advise the
13 accused of the maximum possible term of imprisonment and the
14 maximum possible fine that may be imposed for the violation and
15 shall advise the defendant that the maximum possible license
16 sanctions that may be imposed will be based upon the master driving
17 record maintained by the secretary of state under section 204a.

18 (5) Before imposing sentence for a violation of section
19 625(1), (3), (4), (5), (6), (7), or (8) or a local ordinance
20 substantially corresponding to section 625(1), (3), (6), or (8),
21 the court shall order the person to undergo screening and
22 assessment by a person or agency designated by the office of
23 substance abuse services to determine whether the person is likely
24 to benefit from rehabilitative services, including alcohol or drug
25 education and alcohol or drug treatment programs. Except as
26 otherwise provided in this subsection, the court may order the
27 person to participate in and successfully complete 1 or more

1 appropriate rehabilitative programs as part of the sentence. If the
2 person **WAS CONVICTED UNDER SECTION 625(1)(C) OR** has 1 or more prior
3 convictions, the court shall order the person to participate in and
4 successfully complete 1 or more appropriate rehabilitative programs
5 as part of the sentence, **INCLUDING, BUT NOT LIMITED TO, AN ALCOHOL**
6 **TREATMENT PROGRAM OR A SELF-HELP PROGRAM FOR A PERIOD OF NOT LESS**
7 **THAN 1 YEAR. THE TREATMENT PLAN SHALL BE DEvised FROM AN ASSESSMENT**
8 **PERFORMED BY AN APPROPRIATELY LICENSED ALCOHOL ASSESSOR AND**
9 **APPROVED BY THE COURT.** The person shall pay for the costs of the
10 screening, assessment, and rehabilitative services. **THIS SUBSECTION**
11 **DOES NOT REQUIRE THE PERSON TO SUCCESSFULLY COMPLETE AN ORDERED**
12 **REHABILITATIVE PROGRAM BEFORE DRIVING A VEHICLE WITH AN IGNITION**
13 **INTERLOCK DEVICE ON A RESTRICTED LICENSE.**

14 (6) If the judgment and sentence are appealed to circuit
15 court, the court may ex parte order the secretary of state to stay
16 the suspension, revocation, or restricted license issued by the
17 secretary of state pending the outcome of the appeal.

18 Enacting section 1. This amendatory act does not take effect
19 unless House Bill No. 4289 of the 94th Legislature is enacted into
20 law.

21 Enacting section 2. This amendatory act takes effect October
22 1, 2008.