

HOUSE BILL No. 4357

March 18, 2015, Introduced by Rep. Lucido 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 2014 PA 219.

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 other intoxicating substance or a
9 combination of alcoholic liquor, a controlled substance, or other

1 intoxicating substance.

2 (b) The person has an alcohol content of 0.08 grams or more
3 per 100 milliliters of blood, per 210 liters of breath, or per 67
4 milliliters of urine, or, beginning October 1, 2018, the person has
5 an alcohol content of 0.10 grams or more per 100 milliliters of
6 blood, per 210 liters of breath, or per 67 milliliters of urine.

7 (c) The person has an alcohol content of 0.17 grams or more
8 per 100 milliliters of blood, per 210 liters of breath, or per 67
9 milliliters of urine.

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

16 (a) The person is under the influence of alcoholic liquor, a
17 controlled substance, other intoxicating substance, or a
18 combination of alcoholic liquor, a controlled substance, or other
19 intoxicating substance.

20 (b) The person has an alcohol content of 0.08 grams or more
21 per 100 milliliters of blood, per 210 liters of breath, or per 67
22 milliliters of urine or, beginning October 1, 2018, the person has
23 an alcohol content of 0.10 grams or more per 100 milliliters of
24 blood, per 210 liters of breath, or per 67 milliliters of urine.

25 (c) The person's ability to operate the motor vehicle is
26 visibly impaired due to the consumption of alcoholic liquor, a
27 controlled substance, or other intoxicating substance, or a

1 combination of alcoholic liquor, a controlled substance, or other
2 intoxicating substance.

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

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

17 (a) Except as provided in subdivisions (b) and (c), the person
18 is guilty of a felony punishable by imprisonment for not more than
19 15 years or a fine of not less than \$2,500.00 or more than
20 \$10,000.00, or both. The judgment of sentence may impose the
21 sanction permitted under section 625n. If the vehicle is not
22 ordered forfeited under section 625n, the court shall order vehicle
23 immobilization under section 904d in the judgment of sentence.

24 (b) If the violation occurs while the person has an alcohol
25 content of 0.17 grams or more per 100 milliliters of blood, per 210
26 liters of breath, or per 67 milliliters of urine, and within 7
27 years of a prior conviction, the person is guilty of a felony

1 punishable by imprisonment for not more than 20 years or a fine of
2 not less than \$2,500.00 or more than \$10,000.00, or both. The
3 judgment of sentence may impose the sanction permitted under
4 section 625n. If the vehicle is not ordered forfeited under section
5 625n, the court shall order vehicle immobilization under section
6 904d in the judgment of sentence.

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

19 (5) A person, whether licensed or not, who operates a motor
20 vehicle in violation of subsection (1), (3), or (8) and by the
21 operation of that motor vehicle causes a serious impairment of a
22 body function of another person is guilty of a crime as follows:

23 (a) Except as provided in subdivision (b), the person is
24 guilty of a felony punishable by imprisonment for not more than 5
25 years or a fine of not less than \$1,000.00 or more than \$5,000.00,
26 or both. The judgment of sentence may impose the sanction permitted
27 under section 625n. If the vehicle is not ordered forfeited under

1 section 625n, the court shall order vehicle immobilization under
2 section 904d in the judgment of sentence.

3 (b) If the violation occurs while the person has an alcohol
4 content of 0.17 grams or more per 100 milliliters of blood, per 210
5 liters of breath, or per 67 milliliters of urine, and within 7
6 years of a prior conviction, the person is guilty of a felony
7 punishable by imprisonment for not more than 10 years or a fine of
8 not less than \$1,000.00 or more than \$5,000.00, or both. The
9 judgment of sentence may impose the sanction permitted under
10 section 625n. If the vehicle is not ordered forfeited under section
11 625n, the court shall order vehicle immobilization under section
12 904d in the judgment of sentence.

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

20 (a) An alcohol content of 0.02 grams or more but less than
21 0.08 grams per 100 milliliters of blood, per 210 liters of breath,
22 or per 67 milliliters of urine, or, beginning October 1, 2018, the
23 person has an alcohol content of 0.02 grams or more but less than
24 0.10 grams per 100 milliliters of blood, per 210 liters of breath,
25 or per 67 milliliters of urine.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (B) Community service for not less than 30 days or more than
25 90 days.

26 (c) In the judgment of sentence under subdivision (a) (i) or
27 (b) (i), the court may, unless the vehicle is ordered forfeited under

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

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

13 (8) ~~A-EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, A~~
14 person, whether licensed or not, shall not operate a vehicle upon a
15 highway or other place open to the general public or generally
16 accessible to motor vehicles, including an area designated for the
17 parking of vehicles, within this state if the person has in his or
18 her body any amount of a controlled substance listed in schedule 1
19 under section 7212 of the public health code, 1978 PA 368, MCL
20 333.7212, or a rule promulgated under that section, or of a
21 controlled substance described in section 7214(a) (iv) of the public
22 health code, 1978 PA 368, MCL 333.7214. **HOWEVER, THIS SUBSECTION**
23 **DOES NOT APPLY IF THE PERSON IS A QUALIFYING PATIENT WHO HAS BEEN**
24 **ISSUED AND POSSESSES A REGISTRY IDENTIFICATION CARD, AND IF HE OR**
25 **SHE HAS IN HIS OR HER BODY A TETRAHYDROCANNABINOL CONTENT OF LESS**
26 **THAN 5 NANOGRAMS PER 1 MILLILITER OF BLOOD. AS USED IN THIS**
27 **SUBSECTION, "QUALIFYING PATIENT" AND "REGISTRY IDENTIFICATION CARD"**

1 MEAN THOSE TERMS AS DEFINED IN SECTION 3 OF THE MICHIGAN MEDICAL
2 MARIHUANA ACT, 2008 IL 1, MCL 333.26423.

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

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

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

9 (ii) Imprisonment for not more than 93 days, or, if the person
10 is convicted of violating subsection (1)(c), imprisonment for not
11 more than 180 days.

12 (iii) A fine of not less than \$100.00 or more than \$500.00, or,
13 if the person is guilty of violating subsection (1)(c), a fine of
14 not less than \$200.00 or more than \$700.00.

15 (b) If the violation occurs within 7 years of a 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 following:

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

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

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

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

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

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

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

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

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

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

22 (b) If the person operating the motor vehicle violated
23 subsection (4), a felony punishable by imprisonment for not more
24 than 5 years or a fine of not less than \$1,500.00 or more than
25 \$10,000.00, or both.

26 (c) If the person operating the motor vehicle violated
27 subsection (5), a felony punishable by imprisonment for not more

1 than 2 years or a fine of not less than \$1,000.00 or more than
2 \$5,000.00, or both.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (12) If a person is convicted of violating subsection (6), all
15 of the following apply:

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

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

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

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

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

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

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

27 (13) In addition to imposing the sanctions prescribed under

1 this section, the court may order the person to pay the costs of
2 the prosecution under the code of criminal procedure, 1927 PA 175,
3 MCL 760.1 to 777.69.

4 (14) A person sentenced to perform community service under
5 this section shall not receive compensation and shall reimburse the
6 state or appropriate local unit of government for the cost of
7 supervision incurred by the state or local unit of government as a
8 result of the person's activities in that service.

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

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

24 (17) A prior conviction shall be established at sentencing by
25 1 or more of the following:

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

27 (b) An abstract of conviction.

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

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

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

5 (f) Information contained in a presentence report.

6 (g) An admission by the defendant.

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

20 (19) Except as otherwise provided in subsection (20), if a
21 person is charged with operating a vehicle while his or her ability
22 to operate the vehicle was visibly impaired due to his or her
23 consumption of a controlled substance or other intoxicating
24 substance or a combination of alcoholic liquor, a controlled
25 substance, or other intoxicating substance in violation of
26 subsection (3) or a local ordinance substantially corresponding to
27 subsection (3), the court shall require the jury to return a

1 special verdict in the form of a written finding or, if the court
2 convicts the person without a jury or accepts a plea of guilty or
3 nolo contendere, the court shall make a finding as to whether, due
4 to the consumption of a controlled substance or a combination of
5 alcoholic liquor, a controlled substance, or other intoxicating
6 substance, the person's ability to operate a motor vehicle was
7 visibly impaired at the time of the violation.

8 (20) A special verdict described in subsections (18) and (19)
9 is not required if a jury is instructed to make a finding solely as
10 to either of the following:

11 (a) Whether the defendant was under the influence of a
12 controlled substance or a combination of alcoholic liquor, a
13 controlled substance, or other intoxicating substance at the time
14 of the violation.

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

19 (21) If a jury or court finds under subsection (18), (19), or
20 (20) that the defendant operated a motor vehicle under the
21 influence of or while impaired due to the consumption of a
22 controlled substance or a combination of a controlled substance, an
23 alcoholic liquor, or other intoxicating substance, the court shall
24 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 (22) Except as otherwise provided by law, a record described
5 in subsection (21)(b) is a public record and the department of
6 state police shall retain the information contained on that record
7 for not less than 7 years.

8 (23) In a prosecution for a violation of subsection (6), the
9 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 (24) The court may order as a condition of probation that a
13 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 (25) As used in this section:

19 (a) "Intoxicating substance" means any substance, preparation,
20 or a combination of substances and preparations other than alcohol
21 or a controlled substance, that is either of the following:

22 (i) Recognized as a drug in any of the following publications
23 or their supplements:

24 (A) The official United States pharmacopoeia.

25 (B) The official homeopathic pharmacopoeia of the United
26 States.

27 (C) The official national formulary.

1 (ii) A substance, other than food, taken into a person's body,
2 including, but not limited to, vapors or fumes, that is used in a
3 manner or for a purpose for which it was not intended, and that may
4 result in a condition of intoxication.

5 (b) "Prior conviction" means a conviction for any of the
6 following, whether under a law of this state, a local ordinance
7 substantially corresponding to a law of this state, a law of the
8 United States substantially corresponding to a law of this state,
9 or a law of another state substantially corresponding to a law of
10 this state, subject to subsection (27):

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

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

20 (B) Section 625m.

21 (C) Former section 625b.

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

25 (iii) Section 601d or 626(3) or (4).

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

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

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

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