

**SUBSTITUTE FOR  
HOUSE BILL NO. 4959**

A bill to amend 1949 PA 300, entitled  
"Michigan vehicle code,"  
by amending sections 303, 322, 323, 602a, 624a, 624b, and 625n  
(MCL 257.303, 257.322, 257.323, 257.602a, 257.624a, 257.624b, and  
257.625n), sections 303 and 602a as amended by 1996 PA 587,  
section 323 as amended by 1994 PA 449, section 624a as amended  
and section 624b as added by 1996 PA 493, and section 625n as  
added by 1996 PA 491; and to repeal acts and parts of acts.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 303. (1) The secretary of state shall not issue a  
2 license under this act to any of the following:

3       (a) A person, as an operator, who is less than 18 years of  
4 age, except as otherwise provided in this act.

5       (b) A person, as a chauffeur, who is less than 18 years of  
6 age, except as otherwise provided in this act.

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1 (c) A person whose license has been suspended during the  
2 period for which the license was suspended.

3 (d) A person who has been convicted of or received a  
4 ~~probate court~~ JUVENILE disposition for a violation of section  
5 625(4) or (5).

6 (e) A person who has been convicted of or received a  
7 ~~probate court~~ JUVENILE disposition for negligent homicide, man-  
8 slaughter, or murder resulting from the operation of a motor  
9 vehicle.

10 (f) A person who is an habitual violator of the criminal  
11 laws relating to operating a vehicle while impaired by or under  
12 the influence of intoxicating liquor, a controlled substance, or  
13 a combination of intoxicating liquor and a controlled substance  
14 or with an alcohol content of 0.10 grams or more per 100 millili-  
15 ters of blood, per 210 liters of breath, or per 67 milliliters of  
16 urine. Convictions of any of the following, whether under a law  
17 of this state, a local ordinance substantially corresponding to a  
18 law of this state, or a law of another state substantially corre-  
19 sponding to a law of this state, are prima facie evidence that  
20 the person is an habitual violator as described in this  
21 subdivision:

22 (i) Any combination of 2 convictions within 7 years for any  
23 of the following OR A COMBINATION OF 1 CONVICTION FOR A VIOLATION  
24 OF SECTION 625(6) AND 1 CONVICTION FOR ANY OF THE FOLLOWING  
25 WITHIN 7 YEARS:

26 (A) A violation of section 625(1), (3), (4), or (5).

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1 (B) A violation of former section 625(1) or (2) OR FORMER  
2 SECTION 625B.

3 (C) A VIOLATION OF SECTION 625M.

4 (D) NEGLIGENCE HOMICIDE, MANSLAUGHTER, OR MURDER RESULTING  
5 FROM THE OPERATION OF A VEHICLE.

6 (ii) Any combination of 3 convictions within 10 years for  
7 any of the following, ~~if any of the convictions resulted from an~~  
8 ~~arrest on or after January 1, 1992~~ OR 1 CONVICTION FOR A VIOLA-  
9 TION OF SECTION 625(6) AND ANY COMBINATION OF 2 CONVICTIONS FOR  
10 ANY OF THE FOLLOWING WITHIN 10 YEARS:

11 (A) A violation of section 625(1), (3), (4), or (5).

12 (B) A violation of former section 625(1) or (2) or former  
13 section 625b.

14 (C) A VIOLATION OF SECTION 625M.

15 (D) NEGLIGENCE HOMICIDE, MANSLAUGHTER, OR MURDER RESULTING  
16 FROM THE OPERATION OF A VEHICLE.

17 (g) A person who in the opinion of the secretary of state is  
18 afflicted with or suffering from a physical or mental disability  
19 or disease preventing that person from exercising reasonable and  
20 ordinary control over a motor vehicle while operating the motor  
21 vehicle upon the highways.

22 (h) A person who is unable to understand highway warning or  
23 direction signs in the English language.

24 (i) A person who is an habitually reckless driver. Two con-  
25 victions within 7 years of reckless driving under this act or any  
26 other law of this state relating to reckless driving or under a  
27 local ordinance of this state or a law of another state that

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1 defines the term "reckless driving" substantially similarly to  
2 the law of this state are prima facie evidence that the person is  
3 an habitually reckless driver.

4 (j) A person who is an habitual criminal. Two convictions  
5 of a felony in which a motor vehicle was used in this or another  
6 state are prima facie evidence that the person is an habitual  
7 criminal.

8 (k) A person who is unable to pass a knowledge, skill, or  
9 ability test administered by the secretary of state in connection  
10 with the issuance of an original operator's or chauffeur's  
11 license, original motorcycle indorsement, or an original or  
12 renewal of a vehicle group designation or vehicle indorsement.

13 (l) A person who has been convicted of, has received a  
14 ~~probate court~~ JUVENILE disposition for, or has been determined  
15 responsible for 2 or more moving violations under a law of this  
16 state, a local ordinance substantially corresponding to a law of  
17 this state, or a law of another state substantially corresponding  
18 to a law of this state within the preceding 3 years, if the vio-  
19 lations occurred before issuance of an original license to the  
20 person in this or another state.

21 (m) A nonresident including a foreign exchange student.

22 (N) A PERSON WHO HAS FAILED TO ANSWER A CITATION OR NOTICE  
23 TO APPEAR IN COURT OR FOR ANY MATTER PENDING OR FAILS TO COMPLY  
24 WITH AN ORDER OR JUDGMENT OF THE COURT, INCLUDING, BUT NOT  
25 LIMITED TO, PAYING ALL FINES, COSTS, FEES, AND ASSESSMENTS, IN  
26 VIOLATION OF SECTION 321A, UNTIL THAT PERSON ANSWERS THE CITATION  
27 OR NOTICE TO APPEAR IN COURT OR FOR ANY MATTER PENDING OR

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1 COMPLIES WITH AN ORDER OR JUDGMENT OF THE COURT, INCLUDING, BUT  
2 NOT LIMITED TO, PAYING ALL FINES, COSTS, FEES, AND ASSESSMENTS,  
3 AS PROVIDED UNDER SECTION 321A.

4       (O) ~~-(n)-~~ A person not licensed under this act who has been  
5 convicted of, has received a ~~probate court~~ JUVENILE disposition  
6 for, or has been determined responsible for a crime or civil  
7 infraction described in section 319, 324, or 904. A person shall  
8 be denied a license under this subdivision for the length of time  
9 corresponding to the period of the licensing sanction that would  
10 have been imposed under section 319, 324, or 904 if the person  
11 had been licensed at the time of the violation.

12       (P) ~~-(o)-~~ A person not licensed under this act who has been  
13 convicted of or received a ~~probate court~~ JUVENILE disposition  
14 for committing a crime described in section 319e. A person shall  
15 be denied a license under this subdivision for the length of time  
16 that corresponds to the period of the licensing sanction that  
17 would have been imposed under section 319e if the person had been  
18 licensed at the time of the violation.

19       (Q) ~~-(p)-~~ A person not licensed under this act who is deter-  
20 mined to have violated section 33b(1) of ~~the Michigan liquor~~  
21 ~~control act, Act No. 8 of the Public Acts of the Extra Session of~~  
22 ~~1933, being section 436.33b of the Michigan Compiled Laws~~ FORMER  
23 1933 (EX SESS) PA 8, SECTION 703(1) OF THE MICHIGAN LIQUOR CON-  
24 TROL CODE OF 1998, 1998 PA 58, MCL 436.1703, or section 624a or  
25 624b. The person shall be denied a license under this subdivi-  
26 sion for a period of time that corresponds to the period of the  
27 licensing sanction that would have been imposed under those

1 sections had the person been licensed at the time of the  
2 violation.

3 (R) ~~(c)~~ A person who has been convicted of a violation of  
4 section 602a(4) or (5) OF THIS ACT or a violation of section  
5 479a(4) or (5) of the Michigan penal code, ~~Act No. 328 of the~~  
6 ~~Public Acts of 1931, being section 750.479a of the Michigan~~  
7 ~~Compiled Laws~~ 1931 PA 328, MCL 750.479A.

8 (2) Upon receiving the appropriate records of conviction,  
9 the secretary of state shall revoke the operator's or chauffeur's  
10 license of a person having any of the following, whether under a  
11 law of this state, a local ordinance substantially corresponding  
12 to a law of this state, or a law of another state substantially  
13 corresponding to a law of this state:

14 (a) Two convictions of reckless driving in violation of sec-  
15 tion 626 within 7 years.

16 (b) Two convictions of a felony in which a motor vehicle was  
17 used within 7 years.

18 (c) Any combination of 2 convictions within 7 years for any  
19 of the following OR A COMBINATION OF 1 CONVICTION FOR A VIOLATION  
20 OF SECTION 625(6) AND 1 CONVICTION FOR ANY OF THE FOLLOWING  
21 WITHIN 7 YEARS:

22 (i) A violation of section 625(1), (3), (4), OR (5).

23 (ii) A violation of former section 625(1) or (2) OR FORMER  
24 SECTION 625B.

25 (iii) A violation of section ~~625(4) or (5)~~ 625M.

26 (iv) Negligent homicide, manslaughter, or murder resulting  
27 from the operation of a ~~motor~~ vehicle.

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1 (d) One conviction under section 625(4) or (5).

2 (e) One conviction of negligent homicide, manslaughter, or  
3 murder resulting from the operation of a ~~motor~~ vehicle.

4 (f) Any combination of 3 convictions within 10 years for any  
5 of the following, ~~if any of the convictions resulted from an~~  
6 ~~arrest on or after January 1, 1992~~ OR 1 CONVICTION FOR A VIOLA-  
7 TION OF SECTION 625(6) AND ANY COMBINATION OF 2 CONVICTIONS FOR  
8 ANY OF THE FOLLOWING WITHIN 10 YEARS:

9 (i) A violation of section 625(1), (3), (4), or (5).

10 (ii) A violation of former section 625(1) or (2) or former  
11 section 625b.

12 (iii) A VIOLATION OF SECTION 625M.

13 (iv) ~~(iii)~~ Negligent homicide, manslaughter, or murder  
14 resulting from the operation of a ~~motor~~ vehicle.

15 (g) A violation of section 602a(4) or (5) of this act or  
16 section 479a(4) or (5) of the Michigan penal code, ~~Act No. 328~~  
17 ~~of the Public Acts of 1931, being section 750.479a of the~~  
18 ~~Michigan Compiled Laws~~ 1931 PA 328, MCL 750.479A.

19 (3) The secretary of state shall revoke a license under sub-  
20 section (2) notwithstanding a court order. ~~issued under section~~  
21 ~~625, section 625b, former section 625(1) or (2), or former sec-~~  
22 ~~tion 625b or a local ordinance substantially corresponding to~~  
23 ~~section 625, section 625b, former section 625(1) or (2), or~~  
24 ~~former section 625b.~~

25 (4) The secretary of state shall not issue a license under  
26 this act to a person whose license has been revoked under this

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1 act or denied under subsection (1)(d), (e), (f), (i), ~~or~~ (j),  
2 OR (R) until ~~both~~ ALL of the following occur, AS APPLICABLE:

3 (a) The later of the following:

4 (i) The expiration of not less than 1 year after the license  
5 was revoked or denied.

6 (ii) The expiration of not less than 5 years after the date  
7 of a subsequent revocation or denial occurring within 7 years  
8 after the date of any prior revocation or denial.

9 (B) FOR A DENIAL UNDER SUBSECTION (1)(F), (I), OR (J) BASED  
10 ON PRIMA FACIE EVIDENCE, THE PERSON REBUTS THE PRESUMPTION  
11 RESULTING FROM THE PRIMA FACIE EVIDENCE BY CLEAR AND CONVINCING  
12 EVIDENCE.

13 (C) ~~(b)~~ The person meets the requirements of the  
14 department.

15 (5) Multiple convictions or civil infraction determinations  
16 resulting from the same incident shall be treated as a single  
17 violation for purposes of denial or revocation of a license under  
18 this section.

19 (6) As used in this section, "felony in which a motor vehi-  
20 cle was used" means a felony during the commission of which the  
21 person operated a motor vehicle and while operating the vehicle  
22 presented real or potential harm to persons or property and 1 or  
23 more of the following circumstances existed:

24 (a) The vehicle was used as an instrument of the felony.

25 (b) The vehicle was used to transport a victim of the  
26 felony.



1 (c) The vehicle was used to flee the scene of the felony.

2 (d) The vehicle was necessary for the commission of the  
3 felony.

4 Sec. 322. (1) The secretary of state shall appoint a hear-  
5 ing officer to hear appeals from persons aggrieved by a final  
6 determination of the secretary of state denying an application  
7 for an operator's or chauffeur's license, suspending or revoking  
8 an operator's or chauffeur's license, or other license action.

9 (2) The hearing officer may issue subpoenas to compel  
10 attendance of witnesses in any matter or hearing properly pending  
11 before the officer, issue process to compel attendance, and  
12 punish for contempt any witness failing to appear or testify in  
13 ~~accordance with~~ THE SAME MANNER AS PROVIDED BY the rules and  
14 practice in THE circuit ~~courts so far as the same can be made to~~  
15 ~~apply~~ COURT. The hearing officer may swear witnesses, ~~and~~  
16 administer oaths, and exemplify records in any matter ~~coming~~  
17 before the officer.

18 (3) A VERBATIM RECORD SHALL BE MADE OF THE HEARING.

19 (4) The hearing officer may after A hearing affirm, modify,  
20 or set aside, a final determination of the secretary of state  
21 denying an application for an operator's or chauffeur's license,  
22 ~~or~~ suspending or revoking an operator's or chauffeur's license,  
23 or any other license action. THE HEARING OFFICER SHALL INCLUDE  
24 HIS OR HER FINDINGS OF FACT AND CONCLUSIONS OF LAW IN THE  
25 RECORD.

26 (5) The appeal shall be in writing and shall be filed with  
27 the secretary of state within 14 days after the final

1 determination. ~~The~~ UPON THE FILING OF AN APPEAL, THE hearing  
2 officer shall ~~thereupon~~ require production of all documents  
3 filed in ~~connection with~~ the matter, together with a transcript  
4 of any testimony ~~which may have been~~ taken, and may take ~~such~~  
5 additional testimony ~~as he may deem advisable~~ OR SHE CONSID-  
6 ERS APPROPRIATE.

7       Sec. 323. (1) ~~Except as provided in subsections (5) and~~  
8 ~~(9), a~~ A person aggrieved by a final determination of the secre-  
9 tary of state denying the person an operator's or chauffeur's  
10 license, a vehicle group designation, or an indorsement on a  
11 license or revoking, suspending, or restricting an operator's or  
12 chauffeur's license, vehicle group designation, or an indorsement  
13 may petition for a review of the determination in the circuit  
14 court in the county where the person was arrested if the denial  
15 or suspension was imposed pursuant to section 625f or pursuant to  
16 the order of a trial court under section 328 or, in all other  
17 cases, in the circuit court in the person's county of residence.  
18 The person shall file the petition within 63 days after the  
19 determination is made except that for good cause shown the court  
20 may allow the person to file petition within 182 days after the  
21 determination is made. As provided in section 625f, a peace  
22 officer aggrieved by a determination of a hearing officer in  
23 favor of a person who requested a hearing under section 625f may,  
24 with the prosecuting attorney's consent, petition for review of  
25 the determination in the circuit court in the county where the  
26 arrest was made. The peace officer shall file the petition  
27 within 63 days after the determination is made except that for

1 good cause shown the court may allow the peace officer to file  
2 the petition within 182 days after the determination is made.

3       (2) Except as otherwise provided in this section, the cir-  
4 cuit court shall enter an order setting the cause for hearing for  
5 a day certain not more than 63 days after the order's date. The  
6 order, a copy of the petition that includes the person's full  
7 name, current address, birth date, and driver's license number,  
8 and all supporting affidavits shall be served on the secretary of  
9 state's office in Lansing not less than 20 days before the date  
10 set for the hearing. If the person is seeking a review of the  
11 record prepared pursuant to section 322 or section 625f, the  
12 service upon the secretary of state shall be made not less than  
13 50 days before the date set for the hearing.

14       ~~-(3) Except as otherwise provided in this section, the court~~  
15 ~~may take testimony and examine all the facts and circumstances~~  
16 ~~relating to the denial, suspension, restriction, or revocation of~~  
17 ~~the person's license. The court may affirm, modify, or set aside~~  
18 ~~the restriction, suspension, revocation, or denial except the~~  
19 ~~court shall not order the secretary of state to issue a~~  
20 ~~restricted or unrestricted chauffeur's license that would permit~~  
21 ~~the person to drive a commercial motor vehicle that hauls a haz-~~  
22 ~~ardous material. The court shall duly enter the order and the~~  
23 ~~petitioner shall file a certified copy of the order with the sec-~~  
24 ~~retary of state's office in Lansing within 7 days after entry of~~  
25 ~~the order.~~

1       ~~(4) In reviewing a determination under section 625f, the~~  
2 ~~court shall confine its consideration to 1 or both of the~~  
3 ~~following:~~

4       ~~(a) A review of the record prepared pursuant to section 625f~~  
5 ~~to determine whether the hearing officer properly determined the~~  
6 ~~issues enumerated in section 625f.~~

7       ~~(b) A determination of whether to order a restricted license~~  
8 ~~issued as provided in section 323c.~~

9       ~~(5) This section does not apply to a denial, revocation,~~  
10 ~~suspension, or restriction imposed pursuant to a suspension~~  
11 ~~ordered under section 321a or to a court order issued as part of~~  
12 ~~the sentence for a conviction under either of the following:~~

13       ~~(a) Section 625, section 625m, former section 625(1) or (2),~~  
14 ~~or former section 625b or a local ordinance substantially corre-~~  
15 ~~sponding to section 625(1), (2), or (3), section 625m, former~~  
16 ~~section 625(1) or (2), or former section 625b.~~

17       ~~(b) Part 74 or section 17766a of the public health code, Act~~  
18 ~~No. 368 of the Public Acts of 1978, being sections 333.7401 to~~  
19 ~~333.7461 and section 333.17766a of the Michigan Compiled Laws, or~~  
20 ~~a local ordinance that prohibits conduct prohibited under part 74~~  
21 ~~or section 17766a of Act No. 368 of the Public Acts of 1978.~~

22       ~~(3) —(6)— In reviewing a determination resulting in a~~  
23 ~~denial, SUSPENSION, RESTRICTION, or revocation under —section~~  
24 ~~303(1)(d), (e), or (f) or section 303(2)(c), (d), (e), or (f)—~~  
25 ~~THIS ACT, the court shall confine its consideration to a review~~  
26 ~~of the record prepared pursuant to section 322 OR 625F or the~~  
27 ~~driving record created under section 204a FOR A LEGAL ISSUE, and~~

1 shall not grant ~~relief pursuant to subsection (3)~~ RESTRICTED  
2 DRIVING PRIVILEGES. The court shall set aside the secretary of  
3 state's determination only if the petitioner's substantial rights  
4 have been prejudiced because the determination is any of the  
5 following:

6 (a) In violation of the Constitution of the United States,  
7 the state constitution of 1963, or a statute.

8 (b) In excess of the secretary of state's statutory author-  
9 ity or jurisdiction.

10 (c) Made upon unlawful procedure resulting in material prej-  
11 udice to the petitioner.

12 (d) Not supported by competent, material, and substantial  
13 evidence on the whole record.

14 (e) Arbitrary, capricious, or clearly an abuse or unwar-  
15 ranted exercise of discretion.

16 (f) Affected by other substantial and material error of  
17 law.

18 ~~(7) This section does not apply to a denial, revocation,~~  
19 ~~suspension, or restriction imposed pursuant to the financial~~  
20 ~~responsibility act contained in chapter V.~~

21 ~~(8) This section does not apply to a suspension, revocation,~~  
22 ~~or denial of a vehicle group designation imposed pursuant to~~  
23 ~~section 312f, 319a, or 319b.~~

24 ~~(9) This section does not apply to a suspension or denial of~~  
25 ~~a license imposed pursuant to section 303(1)(o) or 319e.~~

26 Sec. 602a. (1) A driver of a motor vehicle who is given by  
27 hand, voice, emergency light, or siren a visual or audible signal

1 by a police or conservation officer, acting in the lawful  
2 performance of his or her duty, directing the driver to bring his  
3 or her motor vehicle to a stop shall not willfully fail to obey  
4 that direction by increasing the speed of the motor vehicle,  
5 extinguishing the lights of the motor vehicle, or otherwise  
6 attempting to flee or elude the officer. This subsection does  
7 not apply unless the police or conservation officer giving the  
8 signal is in uniform ~~—,~~ and the OFFICER'S vehicle ~~—driven by the~~  
9 ~~police or conservation officer~~ is identified as an official  
10 police or department of natural resources vehicle.

11 (2) Except as provided in subsection (3), (4), or (5), an  
12 individual who violates subsection (1) is guilty of fourth-degree  
13 fleeing and eluding, a felony punishable by imprisonment for not  
14 more than 2 years or a fine of not more than \$500.00, or both.

15 (3) Except as provided in subsection (4) or (5), an individ-  
16 ual who violates subsection (1) is guilty of third-degree fleeing  
17 and eluding, a felony punishable by imprisonment for not more  
18 than 5 years or a fine of not more than \$1,000.00, or both, if 1  
19 or more of the following circumstances apply:

20 (a) The violation results in a collision or accident.

21 (b) A portion of the violation occurred in an area where the  
22 speed limit is 35 miles an hour or less, whether that speed limit  
23 is posted or imposed as a matter of law.

24 (c) The individual has a prior conviction for fourth-degree  
25 fleeing and eluding, attempted fourth-degree fleeing and eluding,  
26 or fleeing and eluding under a current or former law of this  
27 state prohibiting substantially similar conduct.

1       (4) Except as provided in subsection (5), an individual who  
2 violates subsection (1) is guilty of second-degree fleeing and  
3 eluding, a felony punishable by imprisonment for not more than 10  
4 years or a fine of not more than \$5,000.00, or both, if 1 or more  
5 of the following circumstances apply:

6       (a) The violation results in serious injury to an  
7 individual.

8       (b) The individual has 1 or more prior convictions for  
9 first-, second-, or third-degree fleeing and eluding, attempted  
10 first-, second-, or third-degree fleeing and eluding, or fleeing  
11 and eluding under a current or former law of this state prohibit-  
12 ing substantially similar conduct.

13       (c) The individual has any combination of 2 or more prior  
14 convictions for fourth-degree fleeing and eluding, attempted  
15 fourth-degree fleeing and eluding, or fleeing and eluding under a  
16 current or former law of this state prohibiting substantially  
17 similar conduct.

18       (5) If the violation results in the death of another indi-  
19 vidual, an individual who violates subsection (1) is guilty of  
20 first-degree fleeing and eluding, a felony punishable by impris-  
21 onment for not more than 15 years or a fine of not more than  
22 \$10,000.00, or both.

23       ~~-(6) As part of the sentence imposed under subsection (2)~~  
24 ~~or (3), the court shall order the secretary of state to suspend~~  
25 ~~the individual's operator's or chauffeur's license for a period~~  
26 ~~of 1 year. The individual shall not be eligible to receive a~~  
27 ~~restricted license pursuant to section 323 or 323a during the~~

1 ~~first 6 months of the period of suspension. If a term of~~  
2 ~~imprisonment is served as a part of the sentence, the period of~~  
3 ~~suspension of the individual's license shall begin after the com-~~  
4 ~~pletion of the term of imprisonment.~~

5 ~~(7) As part of the sentence imposed under subsection (4) or~~  
6 ~~(5), the court shall order the secretary of state to revoke the~~  
7 ~~individual's operator's or chauffeur's license.~~

8 (6) ~~-(8)-~~ A conviction under this section does not prohibit  
9 a conviction and sentence under any other applicable provision,  
10 except section 479a(2), (3), (4), or (5) of the Michigan penal  
11 code, ~~Act No. 328 of the Public Acts of 1931, being section~~  
12 ~~750.479a of the Michigan Compiled Laws~~ 1931 PA 328,  
13 MCL 750.479A, for conduct arising out of the same transaction.

14 (7) ~~-(9)-~~ As used in this section, "serious injury" means a  
15 physical injury that IS NOT NECESSARILY PERMANENT, BUT THAT con-  
16 stitutes ~~permanent~~ serious bodily disfigurement or that seri-  
17 ously ~~and irreparably~~ impairs the functioning of a body organ  
18 or limb. Serious injury includes, but is not limited to, 1 or  
19 more of the following:

- 20 (a) Loss of a limb or use of a limb.  
21 (b) Loss of a hand, foot, finger, or thumb or use of a hand,  
22 foot, finger, or thumb.  
23 (c) Loss of an eye or ear or use of an eye or ear.  
24 (d) Loss or substantial impairment of a bodily function.  
25 (e) Serious visible disfigurement.  
26 (f) A comatose state that lasts for more than 3 days.



1 (g) Measurable brain damage or mental impairment.

2 (h) A skull fracture or other serious bone fracture.

3 (i) Subdural hemorrhage or hematoma.

4 Sec. 624a. (1) Except as provided in subsection (2), a  
5 person shall not transport or possess alcoholic liquor in a con-  
6 tainer that is open or uncapped or upon which the seal is broken  
7 within the passenger compartment of a vehicle upon a highway, or  
8 within the passenger compartment of a moving vehicle in any place  
9 open to the general public or generally accessible to motor vehi-  
10 cles, including an area designated for the parking of vehicles,  
11 in this state.

12 (2) A person may transport or possess alcoholic liquor in a  
13 container that is open or uncapped or upon which the seal is  
14 broken within the passenger compartment of a vehicle upon a high-  
15 way or other place open to the general public or generally acces-  
16 sible to motor vehicles, including an area designated for the  
17 parking of vehicles in this state, if the vehicle does not have a  
18 trunk or compartment separate from the passenger compartment, the  
19 container is enclosed or encased, and the container is not  
20 readily accessible to the occupants of the vehicle.

21 (3) A person who violates this section is guilty of a  
22 misdemeanor. As part of the sentence, the person may be ordered  
23 to perform community service and undergo substance abuse screen-  
24 ing and assessment at his or her own expense as described in  
25 ~~section 33b(1) of the Michigan liquor control act, Act No. 8 of~~  
26 ~~the Public Acts of the Extra Session of 1933, being~~  
27 ~~section 436.33 of the Michigan Compiled Laws~~ SECTION 703(1) OF

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1 THE MICHIGAN LIQUOR CONTROL CODE OF 1998, 1998 PA 58,  
2 MCL 436.1703. A court shall not accept a plea of guilty or nolo  
3 contendere for a violation of this section from a person charged  
4 solely with a violation of section 625(6).

5 ~~(4) Immediately upon the entry of a conviction for a viola-~~  
6 ~~tion of subsection (1), the court shall consider all prior con-~~  
7 ~~victions for a violation of subsection (1) or section 624b(1), or~~  
8 ~~a local ordinance or law of another state substantially corre-~~  
9 ~~sponding to this section or section 624b(1), and the court shall~~  
10 ~~do the following:~~

11 ~~(a) If the court finds that the person has 1 such prior con-~~  
12 ~~viction, the court shall order the secretary of state to suspend~~  
13 ~~the operator's or chauffeur's license of the person for not less~~  
14 ~~than 90 days and not more than 180 days. The court may order the~~  
15 ~~secretary of state to issue to the person a restricted license~~  
16 ~~after the first 30 days of the period of the suspension in the~~  
17 ~~manner provided for in section 319(7). In the case of a person~~  
18 ~~who does not possess an operator's or chauffeur's license, the~~  
19 ~~secretary of state shall deny the application for an operator's~~  
20 ~~or chauffeur's license for the applicable suspension period.~~

21 ~~(b) If the court finds that the person has 2 or more such~~  
22 ~~prior convictions, the court shall order the secretary of state~~  
23 ~~to suspend the operator's or chauffeur's license of the person~~  
24 ~~for not less than 180 days and not more than 1 year. The court~~  
25 ~~may order the secretary of state to issue to the person a~~  
26 ~~restricted license after the first 60 days of the period of the~~  
27 ~~suspension in the manner provided for in section 319(7). In the~~

1 ~~case of a person who does not possess an operator or chauffeur~~  
2 ~~license, the secretary of state shall deny the application for an~~  
3 ~~operator's or chauffeur's license for the applicable suspension~~  
4 ~~period.~~

5 ~~(5) If a restricted license is allowed under this section,~~  
6 ~~the court shall not order the secretary of state to issue a~~  
7 ~~restricted license unless the person states under oath, and the~~  
8 ~~court finds based upon the record in open court, that the person~~  
9 ~~is unable to take public transportation to and from his or her~~  
10 ~~work location, place of alcohol or drug education treatment,~~  
11 ~~court probation department, court-ordered community service pro-~~  
12 ~~gram, or educational institution, or a place of regularly occur-~~  
13 ~~ring medical treatment for a serious condition, or in the course~~  
14 ~~of the person's employment or occupation and does not have any~~  
15 ~~family members or others able to provide transportation. The~~  
16 ~~court order under subsection (4) and the restricted license shall~~  
17 ~~indicate the work location of the person to whom it is issued,~~  
18 ~~the approved route or routes and permitted times of travel, and~~  
19 ~~shall permit the person to whom it is issued only to drive under~~  
20 ~~1 or more of the following circumstances:~~

21 ~~(a) To and from the person's residence and work location.~~

22 ~~(b) In the course of the person's employment or occupation.~~

23 ~~(c) To and from the person's residence and an alcohol or~~  
24 ~~drug education or treatment program as ordered by the court.~~

25 ~~(d) To and from the person's residence and the court proba-~~  
26 ~~tion department, or a court-ordered community service program, or~~  
27 ~~both.~~

~~(e) To and from the person's residence and an educational institution at which the person is enrolled as a student.~~

~~(f) To and from the person's residence or work location and a place of regularly occurring medical treatment for a serious condition for the person or a member of the person's household or immediate family.~~

~~(6) The court shall immediately forward the surrendered license and an abstract of conviction to the secretary of state.~~

~~A suspension ordered under this subsection shall be in addition to any other suspension of the person's operator's or chauffeur's license. If the judgment is appealed to circuit court, the court may, ex parte, order the secretary of state to stay the suspension issued pursuant to this section pending the outcome of the appeal.~~

~~(4) (7) This section does not apply to a passenger in a chartered vehicle authorized to operate by the Michigan department of STATE transportation DEPARTMENT.~~

Sec. 624b. (1) A person less than 21 years of age shall not knowingly transport or possess, in a motor vehicle, alcoholic liquor unless the person is employed by a licensee under the ~~Michigan liquor control act, Act No. 8 of the Public Acts of the Extra Session of 1933, being sections 436.1 to 436.58 of the Michigan Compiled Laws~~ MICHIGAN LIQUOR CONTROL CODE OF 1998, 1998 PA 58, MCL 436.1101 TO 436.2303, a common carrier designated by the LIQUOR control commission ~~pursuant to Act No. 8 of the Public Acts of the Extra Session of 1933~~ UNDER THE MICHIGAN LIQUOR CONTROL CODE OF 1998, 1998 PA 58, MCL 436.1101 TO

1 436.2303, the liquor control commission, or an agent of the  
2 liquor control commission and is transporting or having the alco-  
3 holic liquor in a motor vehicle under the person's control during  
4 regular working hours and in the course of the person's  
5 employment. This section does not prevent a person less than 21  
6 years of age from knowingly transporting alcoholic liquor in a  
7 motor vehicle if a person at least 21 years of age is present  
8 inside the motor vehicle. A person who violates this subsection  
9 is guilty of a misdemeanor. As part of the sentence, the person  
10 may be ordered to perform community service and undergo substance  
11 abuse screening and assessment at his or her own expense as  
12 described in section ~~33b(1) of Act No. 8 of the Extra Session of~~  
13 ~~1933~~ 703(1) OF THE MICHIGAN LIQUOR CONTROL CODE OF 1998, 1998  
14 PA 58, MCL 436.1703.

15 (2) Within 30 days after the conviction for a violation of  
16 subsection (1), which conviction has become final, complaint may  
17 be made by the arresting law enforcement officer or the officer's  
18 superior before the court from which the warrant was issued,  
19 which complaint shall be under oath and shall contain a descrip-  
20 tion of the motor vehicle in which alcoholic liquor was possessed  
21 or transported by the person less than 21 years of age in commit-  
22 ting the violation and requesting that the motor vehicle be  
23 impounded as provided in this section. Upon the filing of the  
24 complaint, the court shall issue to the owner of the motor vehi-  
25 cle an order to show cause why the motor vehicle should not be  
26 impounded. The order to show cause shall have a date and time  
27 fixed in the order for a hearing, which date shall not be less

1 than 10 days after the issuance of the order and shall be served  
2 by delivering a true copy to the owner not less than 3 full days  
3 before the date of hearing or, if the owner cannot be located, by  
4 sending a true copy by certified mail to the last known address  
5 of the owner. If the owner is a nonresident of the state, serv-  
6 ice may be made upon the secretary of state as provided in sec-  
7 tion 403.

8       (3) If the court determines upon the hearing of the order to  
9 show cause, from competent and relevant evidence, that at the  
10 time of the commission of the violation the motor vehicle was  
11 being driven by the person less than 21 years of age with the  
12 express or implied consent or knowledge of the owner in violation  
13 of subsection (1), and that the use of the motor vehicle is not  
14 needed by the owner in the direct pursuit of the owner's employ-  
15 ment or the actual operation of the owner's business, the court  
16 may authorize the impounding of the vehicle for a period, to be  
17 determined by the court, of not less than 15 days or more than 30  
18 days. The court's order authorizing the impounding of the vehi-  
19 cle shall authorize a law enforcement officer to take possession  
20 without other process of the motor vehicle wherever located and  
21 to store the vehicle in a public or private garage at the expense  
22 and risk of the owner of the vehicle. The owner of the vehicle  
23 may appeal the order to the circuit court and the provisions gov-  
24 erning the taking of appeals from judgments for damages shall  
25 apply to the appeal. This section does not prevent a bona fide  
26 lienholder from exercising rights under a lien.

1 (4) A person who knowingly transfers title to a motor  
2 vehicle for the purpose of avoiding this section is guilty of a  
3 misdemeanor.

4 ~~(5) Immediately upon the entry of a conviction or a probate~~  
5 ~~court order of disposition for a violation of subsection (1) or~~  
6 ~~section 624a, the court shall consider all prior convictions for~~  
7 ~~a violation of subsection (1) or section 624a, or a local ordi-~~  
8 ~~nance or law of another state substantially corresponding to this~~  
9 ~~section or section 624a, and the court shall do 1 of the~~  
10 ~~following:~~

11 ~~(a) If the court finds that the person has 1 such prior con-~~  
12 ~~viction, the court shall order the secretary of state to suspend~~  
13 ~~the operator's or chauffeur's license of the person for a period~~  
14 ~~of not less than 90 days and not more than 180 days. The court~~  
15 ~~may order the secretary of state to issue to the person a~~  
16 ~~restricted license after the first 30 days of the period of the~~  
17 ~~suspension in the manner provided for in section 319(7). In the~~  
18 ~~case of a person who does not possess an operator's or~~  
19 ~~chauffeur's license, the secretary of state shall deny the appli-~~  
20 ~~cation for an operator's or chauffeur's license for the applica-~~  
21 ~~ble suspension period.~~

22 ~~(b) If the court finds that the person has 2 or more such~~  
23 ~~prior convictions, the court shall order the secretary of state~~  
24 ~~to suspend the operator's or chauffeur's license of the person~~  
25 ~~for a period of not less than 180 days and not more than 1 year.~~  
26 ~~The court may order the secretary of state to issue to the person~~  
27 ~~a restricted license after the first 60 days of the period of the~~

1 ~~suspension in the manner provided for in section 319(7). In the~~  
2 ~~case of a person who does not possess an operator's or~~  
3 ~~chauffeur's license, the secretary of state shall deny the appli-~~  
4 ~~cation for an operator's or chauffeur's license for the applica-~~  
5 ~~ble suspension period.~~

6 ~~(6) If a restricted license is allowed under this section,~~  
7 ~~the court shall not order the secretary of state to issue a~~  
8 ~~restricted license unless the person states under oath, and the~~  
9 ~~court finds based upon the record in open court, that the person~~  
10 ~~is unable to take public transportation to and from his or her~~  
11 ~~work location, place of alcohol or drug education treatment,~~  
12 ~~court probation department, court-ordered community service pro-~~  
13 ~~gram, or educational institution, or a place of regularly occur-~~  
14 ~~ring medical treatment for a serious condition, or in the course~~  
15 ~~of the person's occupation or employment and does not have any~~  
16 ~~family members or others able to provide transportation. The~~  
17 ~~court order under subsection (5) and the restricted license shall~~  
18 ~~indicate the work location of the person to whom it is issued,~~  
19 ~~the approved route or routes and permitted times of travel, and~~  
20 ~~shall permit the person to whom it is issued only to drive under~~  
21 ~~1 or more of the following circumstances:~~

22 ~~(a) To and from the person's residence and work location.~~  
23 ~~(b) In the course of the person's employment or occupation.~~  
24 ~~(c) To and from the person's residence and an alcohol or~~  
25 ~~drug education or treatment program as ordered by the court.~~



1       ~~(d) To and from the person's residence and the court~~  
2 ~~probation department, or a court-ordered community service~~  
3 ~~program, or both.~~

4       ~~(e) To and from the person's residence and an educational~~  
5 ~~institution at which the person is enrolled as a student.~~

6       ~~(f) To and from the person's residence or work location and~~  
7 ~~a place of regularly occurring medical treatment for a serious~~  
8 ~~condition for the person or a member of the person's household or~~  
9 ~~immediate family.~~

10       ~~-(7) The court shall immediately forward the surrendered~~  
11 ~~license and an abstract of conviction to the secretary of state.~~  
12 ~~A suspension ordered under this subsection shall be in addition~~  
13 ~~to any other suspension of the person's operator's or chauffeur's~~  
14 ~~license. If the judgment is appealed to circuit court, the court~~  
15 ~~may, ex parte, order the secretary of state to stay the suspen-~~  
16 ~~sion issued pursuant to this section pending the outcome of the~~  
17 ~~appeal.~~

18       (5) ~~-(8)-~~ A law enforcement agency, upon determining that a  
19 person less than 18 years of age allegedly violated this section,  
20 shall notify the parent or parents, custodian, or guardian of the  
21 person as to the nature of the violation if the name of a parent,  
22 guardian, or custodian is reasonably ascertainable by the law  
23 enforcement agency. The notice required by this subsection shall  
24 be made not later than 48 hours after the law enforcement agency  
25 determines that the person who allegedly violated this section is  
26 less than 18 years of age and may be made in person, by  
27 telephone, or by first-class mail.

1       (6) ~~(9)~~ As used in this section, "alcoholic liquor" means  
2 that term as defined in section ~~2(a) of Act No. 8 of the Public~~  
3 ~~Acts of the Extra Session of 1933, being section 436.2 of the~~  
4 ~~Michigan Compiled Laws~~ 105 OF THE MICHIGAN LIQUOR CONTROL CODE  
5 OF 1998, 1998 PA 58, MCL 436.1105.

6       Sec. 625n. (1) ~~Except as otherwise provided in this sec-~~  
7 ~~tion and in~~ IN addition to any other penalty provided for in  
8 this act, the judgment of sentence for a conviction for a viola-  
9 tion of section 625(1) DESCRIBED IN SECTION 625(7)(B) OR (C), a  
10 violation of section 625(3) described in section 625(9)(b) or  
11 (c), or a violation of section 625(4) or (5) may require 1 of the  
12 following with regard to ~~the~~ A vehicle used in the offense if  
13 the defendant owns the vehicle in whole or in part or leases the  
14 vehicle:

15       (a) Forfeiture of the vehicle if the defendant owns the  
16 vehicle in whole or in part.

17       (b) Return of the vehicle to the lessor if the defendant  
18 leases the vehicle.

19       (2) The vehicle may be seized pursuant to an order of sei-  
20 zure issued by the court having jurisdiction upon a showing of  
21 probable cause that the vehicle is subject to forfeiture or  
22 return to the lessor.

23       (3) IF A VEHICLE IS SEIZED BEFORE DISPOSITION OF THE CRIMI-  
24 NAL PROCEEDINGS, A DEFENDANT WHO IS AN OWNER OR LESSEE OF THE  
25 VEHICLE MAY MOVE THE COURT HAVING JURISDICTION OVER THE PROCEED-  
26 INGS TO REQUIRE THE SEIZING AGENCY TO FILE A LIEN AGAINST THE  
27 VEHICLE AND TO RETURN THE VEHICLE TO THE OWNER OR LESSEE PENDING

1 DISPOSITION OF THE CRIMINAL PROCEEDINGS. THE COURT SHALL HEAR  
2 THE MOTION WITHIN 7 DAYS AFTER THE MOTION IS FILED. IF THE  
3 DEFENDANT ESTABLISHES AT THE HEARING THAT HE OR SHE HOLDS THE  
4 LEGAL TITLE OF THE VEHICLE OR THAT HE OR SHE HAS A LEASEHOLD  
5 INTEREST AND THAT IT IS NECESSARY FOR HIM OR HER OR A MEMBER OF  
6 HIS OR HER FAMILY TO USE THE VEHICLE PENDING THE OUTCOME OF THE  
7 FORFEITURE ACTION, THE COURT MAY ORDER THE SEIZING AGENCY TO  
8 RETURN THE VEHICLE TO THE OWNER OR LESSEE. IF THE COURT ORDERS  
9 THE RETURN OF THE VEHICLE TO THE OWNER OR LESSEE, THE COURT SHALL  
10 ORDER THE SEIZING AGENCY TO FILE A LIEN AGAINST THE VEHICLE.

11 (4) ~~-(3)-~~ The forfeiture of a vehicle is subject to the  
12 interest of the holder of a security interest who did not have  
13 prior knowledge of or consent to the violation.

14 (5) ~~-(4)-~~ Within 3 days after the defendant's conviction for  
15 a violation described in subsection (1), the court shall notify  
16 the defendant, his or her attorney, and the prosecuting attorney  
17 if the court intends to consider imposing a sanction under this  
18 section. Within 3 days after this notice, the prosecuting attor-  
19 ney shall give notice to all owners of the vehicle and any person  
20 holding a security interest in the vehicle that the court may  
21 require forfeiture or return of the vehicle.

22 ~~-(5) If a vehicle is seized before disposition of the crimi-~~  
23 ~~nal proceedings, a defendant who is an owner or lessee of the~~  
24 ~~vehicle may move the court having jurisdiction over the proceed-~~  
25 ~~ings to require the seizing agency to file a lien against the~~  
26 ~~vehicle and to return the vehicle to the owner or lessee pending~~  
27 ~~disposition of the criminal proceedings. The court shall hear~~

~~1 the motion within 7 days after the motion is filed. If the  
2 defendant establishes at the hearing that he or she holds the  
3 legal title of the vehicle or that he or she has a leasehold  
4 interest and that it is necessary for him or her or a member of  
5 his or her family to use the vehicle pending the outcome of the  
6 forfeiture action, the court may order the seizing agency to  
7 return the vehicle to the owner or lessee. If the court orders  
8 the return of the vehicle to the owner or lessee, the court shall  
9 order the seizing agency to file a lien against the vehicle.~~

10       (6) Within 14 days after notice HAS BEEN GIVEN by the prose-  
11 cuting attorney ~~is given~~ under subsection ~~(4)~~ (5), an owner,  
12 lessee, or holder of a security interest may file a claim of  
13 interest in the vehicle ~~— Within~~ WITH THE COURT. IF NO CLAIM  
14 IS FILED, THE COURT SHALL ORDER THE VEHICLE FORFEITED OR RETURNED  
15 TO THE LESSOR. IF A CLAIM IS FILED, THE COURT SHALL HOLD A HEAR-  
16 ING BEFORE SENTENCING AND WITHIN 21 days after the expiration of  
17 the period for filing claims. ~~—, but before sentencing~~ AT THE  
18 HEARING, the court shall ~~hold a hearing to~~ determine the legit-  
19 imacy of any claim, the extent of any co-owner's equity interest,  
20 and the liability of the defendant to any co-lessee.

21       (7) If a vehicle is forfeited under this section, the unit  
22 of government that seized the vehicle shall sell the vehicle and  
23 dispose of the proceeds in the following order of priority:

24       (a) Pay any outstanding security interest of a secured party  
25 who did not have prior knowledge of or consent to the commission  
26 of the violation.

1 (b) Pay the equity interest of a co-owner who did not have  
2 prior knowledge of or consent to the commission of the  
3 violation.

4 (c) Satisfy any order of restitution entered in the prosecu-  
5 tion for the violation.

6 (d) Pay the claim of each person who shows that he or she is  
7 a victim of the violation to the extent that the claim is not  
8 covered by an order of restitution.

9 (e) Pay any outstanding lien against the property that has  
10 been imposed by a governmental unit.

11 (f) Pay the proper expenses of the proceedings for forfei-  
12 ture and sale, including, but not limited to, expenses incurred  
13 during the seizure process and expenses for maintaining custody  
14 of the property, advertising, and court costs.

15 (g) The balance remaining after the payment of items (a)  
16 through (f) shall be distributed by the court having jurisdiction  
17 over the forfeiture proceedings to the unit or units of govern-  
18 ment substantially involved in effecting the forfeiture.

19 Seventy-five percent of the money received by a unit of govern-  
20 ment under this subdivision shall be used to enhance enforcement  
21 of the criminal laws and 25% of the money shall be used to imple-  
22 ment the crime victim's rights act, ~~Act No. 87 of the Public~~  
23 ~~Acts of 1985, being sections 780.751 to 780.834 of the Michigan~~  
24 ~~Compiled Laws~~ 1985 PA 87, MCL 780.751 TO 780.834. A unit of  
25 government receiving money under this subdivision shall report  
26 annually to the department of management and budget the amount of  
27 money received under this subdivision that was used to enhance

1 enforcement of the criminal laws and the amount that was used to  
2 implement the crime victim's rights act.

3       (8) The court may order the defendant to pay to a co-lessee  
4 any liability determined under subsection (6). The order may be  
5 enforced in the same manner as a civil judgment.

6       (9) The return of a vehicle to the lessor under this section  
7 does not affect or impair the lessor's rights or the defendant's  
8 obligations under the lease.

9       (10) A person who knowingly conceals, sells, gives away, or  
10 otherwise transfers or disposes of a vehicle with the intent to  
11 avoid forfeiture or return of the vehicle to the lessor under  
12 this section is guilty of a ~~felony~~ MISDEMEANOR punishable by  
13 imprisonment for not more than ~~4 years~~ 1 YEAR or a fine of not  
14 more than ~~\$2,000.00~~ \$1,000.00, or both.

15       (11) THE FAILURE OF THE COURT OR PROSECUTOR TO COMPLY WITH  
16 ANY TIME LIMIT SPECIFIED IN THIS SECTION DOES NOT PRECLUDE THE  
17 COURT FROM ORDERING FORFEITURE OF A VEHICLE OR ITS RETURN TO A  
18 LESSOR, UNLESS THE COURT FINDS THAT THE OWNER OR CLAIMANT SUFF-  
19 FERED SUBSTANTIAL PREJUDICE AS A RESULT OF THE FAILURE.

20       (12) THE FORFEITURE PROVISIONS OF THIS SECTION DO NOT PRE-  
21 CLUDE THE PROSECUTING ATTORNEY FROM PURSUING A FORFEITURE PRO-  
22 CEEDING UNDER ANY OTHER LAW OF THIS STATE OR A LOCAL ORDINANCE  
23 SUBSTANTIALLY CORRESPONDING TO THIS SECTION.

24       Enacting section 1. Sections 323a and 323c of the Michigan  
25 vehicle code, 1949 PA 300, MCL 257.323a and 257.323c, are  
26 repealed.

**HB4959, As Passed House, July 1, 1998**

House Bill No. 4959

31

1 Enacting section 2. This amendatory act takes effect  
2 October 1, 1999.

3 Enacting section 3. This amendatory act does not take  
4 effect unless all of the following bills of the 89th Legislature  
5 are enacted into law:

- 6 (a) House Bill No. 4210.
- 7 (b) House Bill No. 4576.
- 8 (c) House Bill No. 4960.
- 9 (d) House Bill No. 4961.
- 10 (e) House Bill No. 5122.
- 11 (f) House Bill No. 5123.
- 12 (g) House Bill No. 5951.
- 13 (h) House Bill No. 5952.
- 14 (i) House Bill No. 5953.
- 15 (j) House Bill No. 5954.
- 16 (k) House Bill No. 5955.
- 17 (l) House Bill No. 5956.