

SENATE SUBSTITUTE FOR  
HOUSE BILL NO. 5953

A bill to amend 1931 PA 328, entitled  
"The Michigan penal code,"  
by amending sections 367c, 382, and 479a (MCL 750.367c, 750.382,  
and 750.479a), section 367c as added by 1982 PA 63, section 382  
as amended by 1998 PA 311, and section 479a as amended by 1996  
PA 586.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 367c. ~~—A—~~ THE SECRETARY OF STATE SHALL SUSPEND THE  
2 OPERATOR'S OR CHAUFFEUR'S LICENSE OF A person ~~who is~~ convicted  
3 of an offense OR ATTEMPTED OFFENSE under this chapter involving  
4 the theft of motor vehicle fuel ~~—, which theft~~ THAT occurred by  
5 pumping the fuel into a motor vehicle, ~~may have his or her~~  
6 ~~license to operate a vehicle in this state suspended for up to 1~~  
7 ~~year in addition to any other penalty imposed for the offense.~~  
8 ~~The person whose operator's or chauffeur's license is ordered~~

**HB 5953, As Passed Senate, September 22, 1998**

House Bill No. 5953

2

1 ~~suspended pursuant to this section shall immediately surrender~~  
2 ~~that license to the court. The court shall immediately forward~~  
3 ~~the license and a certificate of conviction to the secretary of~~  
4 ~~state. The certificate of conviction shall indicate the sentence~~  
5 ~~imposed under this section.~~ AS PROVIDED IN SECTION 319 OF THE  
6 MICHIGAN VEHICLE CODE, 1949 PA 300, MCL 257.319.

7       Sec. 382. (1) A person who willfully and maliciously, or  
8 wantonly and without cause, cuts down, destroys, or injures any  
9 tree, shrub, grass, turf, plants, crops, or soil of another that  
10 is standing, growing, or located on the land of another is guilty  
11 of a crime as follows:

12       (a) If the value of the trees, shrubs, grass, turf, plants,  
13 crops, or soil cut down, destroyed, or injured is less than  
14 \$200.00, the person is guilty of a misdemeanor punishable by  
15 imprisonment for not more than 93 days or a fine of not more than  
16 \$500.00 or 3 times the value of the trees, shrubs, grass, turf,  
17 plants, crops, or soil, whichever is greater, or both imprison-  
18 ment and a fine.

19       (b) If any of the following apply, the person is guilty of a  
20 misdemeanor punishable by imprisonment for not more than 1 year  
21 or a fine of not more than \$2,000.00 or 3 times the value of the  
22 trees, shrubs, grass, turf, plants, crops, or soil, whichever is  
23 greater, or both imprisonment and a fine:

24       (i) The value of the trees, shrubs, grass, turf, plants, or  
25 soil cut down, destroyed, or injured is \$200.00 or more but less  
26 than \$1,000.00.

**HB 5953, As Passed Senate, September 22, 1998**

House Bill No. 5953

3

1       (ii) The person violates subdivision (a) and has 1 or more  
2 prior convictions for committing or attempting to commit an  
3 offense under this section or a local ordinance substantially  
4 corresponding to this section.

5       (c) If any of the following apply, the person is guilty of a  
6 felony punishable by imprisonment for not more than 5 years or a  
7 fine of not more than \$10,000.00 or 3 times the value of the  
8 trees, shrubs, grass, turf, plants, crops, or soil, whichever is  
9 greater, or both imprisonment and a fine:

10       (i) The value of the trees, shrubs, grass, turf, plants,  
11 crops, or soil cut down, destroyed, or injured is \$1,000.00 or  
12 more but less than \$20,000.00.

13       (ii) The person violates subdivision (b)(i) and has 1 or  
14 more prior convictions for committing or attempting to commit an  
15 offense under this section. For purposes of this subparagraph,  
16 however, a prior conviction does not include a conviction for a  
17 violation or attempted violation of subdivision (a) or (b)(ii).

18       (d) If any of the following apply, the person is guilty of a  
19 felony punishable by imprisonment for not more than 10 years or a  
20 fine of not more than \$15,000.00 or 3 times the value of the  
21 trees, shrubs, grass, turf, plants, crops, or soil, whichever is  
22 greater, or both imprisonment and a fine:

23       (i) The value of the trees, shrubs, grass, turf, plants,  
24 crops, or soil cut down, destroyed, or injured is \$20,000.00 or  
25 more.

26       (ii) The person violates subdivision (c)(i) and has 2 or  
27 more prior convictions for committing or attempting to commit an

**HB 5953, As Passed Senate, September 22, 1998**

House Bill No. 5953

4

1 offense under this section. For purposes of this subparagraph,  
2 however, a prior conviction does not include a conviction for a  
3 violation or attempted violation of subdivision (a) or (b)(ii).

4 (2) ~~—A—~~ THE SECRETARY OF STATE SHALL SUSPEND THE OPERATOR'S  
5 OR CHAUFFEUR'S LICENSE OF A person convicted ~~—under—~~ OF A VIOLA-  
6 TION OR ATTEMPTED VIOLATION OF subsection (1) who committed the  
7 offense with a vehicle, AS PROVIDED IN SECTION 319 OF THE  
8 MICHIGAN VEHICLE CODE, 1949 PA 300, MCL 257.319. AS USED IN THIS  
9 SUBSECTION, "VEHICLE" MEANS THAT TERM as defined in section 79 of  
10 the Michigan vehicle code, 1949 PA 300, MCL 257.79. ~~—, may have~~  
11 ~~his or her operator's or chauffeur's license suspended for not~~  
12 ~~more than 1 year in addition to a penalty imposed under subsec-~~  
13 ~~tion (1).—~~

14 (3) The values of trees, shrubs, grass, turf, plants, crops,  
15 or soil cut down, destroyed, or injured in separate incidents  
16 pursuant to a scheme or course of conduct within any 12-month  
17 period may be aggregated to determine the total value of trees,  
18 shrubs, grass, turf, plants, crops, or soil cut down, destroyed,  
19 or injured.

20 (4) If the prosecuting attorney intends to seek an enhanced  
21 sentence based upon the defendant having 1 or more prior convic-  
22 tions, the prosecuting attorney shall include on the complaint  
23 and information a statement listing the prior conviction or  
24 convictions. The existence of the defendant's prior conviction  
25 or convictions shall be determined by the court, without a jury,  
26 at sentencing or at a separate hearing for that purpose before  
27 sentencing. The existence of a prior conviction may be

**HB 5953, As Passed Senate, September 22, 1998**

House Bill No. 5953

5

1 established by any evidence relevant for that purpose, including,  
2 but not limited to, 1 or more of the following:

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

4 (b) A transcript of a prior trial, plea-taking, or  
5 sentencing.

6 (c) Information contained in a presentence report.

7 (d) The defendant's statement.

8 (5) If the sentence for a conviction under this section is  
9 enhanced by 1 or more prior convictions, those prior convictions  
10 shall not be used to further enhance the sentence for the convic-  
11 tion pursuant to section 10, 11, or 12 of chapter IX of the code  
12 of criminal procedure, 1927 PA 175, MCL 769.10, 769.11, and  
13 769.12.

14 Sec. 479a. (1) A driver of a motor vehicle who is given by  
15 hand, voice, emergency light, or siren a visual or audible signal  
16 by a police or conservation officer, acting in the lawful per-  
17 formance of his or her duty, directing the driver to bring his or  
18 her motor vehicle to a stop shall not willfully fail to obey that  
19 direction by increasing the speed of the vehicle, extinguishing  
20 the lights of the vehicle, or otherwise attempting to flee or  
21 elude the police or conservation officer. This subsection does  
22 not apply unless the police or conservation officer giving the  
23 signal is in uniform and the OFFICER'S vehicle ~~driven by the~~  
24 ~~police or conservation officer~~ is identified as an official  
25 police or department of natural resources vehicle.

26 (2) Except as provided in subsection (3), (4), or (5), an  
27 individual who violates subsection (1) is guilty of fourth-degree

1 fleeing and eluding, a felony punishable by imprisonment for not  
2 more than 2 years or a fine of not more than \$500.00, or both.

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

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

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

12       (c) The individual has a prior conviction for fourth-degree  
13 fleeing and eluding, attempted fourth-degree fleeing and eluding,  
14 or fleeing and eluding under a current or former law of this  
15 state prohibiting substantially similar conduct.

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

21       (a) The violation results in serious injury to an  
22 individual.

23       (b) The individual has 1 or more prior convictions for  
24 first-, second-, or third-degree fleeing and eluding, attempted  
25 first-, second-, or third-degree fleeing and eluding, or fleeing  
26 and eluding under a current or former law of this state  
27 prohibiting substantially similar conduct.

**HB 5953, As Passed Senate, September 22, 1998**

House Bill No. 5953

7

1 (c) The individual has any combination of 2 or more prior  
2 convictions for fourth-degree fleeing and eluding, attempted  
3 fourth-degree fleeing and eluding, or fleeing and eluding under a  
4 current or former law of this state prohibiting substantially  
5 similar conduct.

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

11 (6) An individual who forcibly assaults or commits a bodily  
12 injury requiring medical care or attention upon a peace or police  
13 officer of this state while the peace or police officer is  
14 engaged in making a lawful arrest, knowing him or her to be a  
15 peace or police officer, is guilty of a misdemeanor punishable by  
16 a fine of not more than \$1,000.00 or imprisonment for not more  
17 than 2 years, or both.

18 (7) ~~As part of the sentence imposed~~ UPON A CONVICTION FOR  
19 A VIOLATION OR ATTEMPTED VIOLATION under subsection (2) or (3),  
20 ~~the court shall order~~ the secretary of state ~~to~~ SHALL suspend  
21 the individual's operator's or chauffeur's license ~~for a period~~  
22 ~~of 1 year. The individual is not eligible to receive a~~  
23 ~~restricted license during the first 6 months of the period of~~  
24 ~~suspension. If a term of imprisonment is served as a part of the~~  
25 ~~sentence, the period of suspension of the individual's license~~  
26 ~~shall begin after the completion of the term of imprisonment~~ AS

**HB 5953, As Passed Senate, September 22, 1998**

House Bill No. 5953

8

1 PROVIDED IN SECTION 319 OF THE MICHIGAN VEHICLE CODE, 1949

2 PA 300, MCL 257.319.

3       (8) ~~As part of the sentence imposed~~ UPON A CONVICTION FOR

4 A VIOLATION OR ATTEMPTED VIOLATION under subsection (4) or (5),

5 ~~the court shall order~~ the secretary of state ~~to~~ SHALL revoke

6 the individual's operator's or chauffeur's license AS PROVIDED IN

7 SECTION 303 OF THE MICHIGAN VEHICLE CODE, 1949 PA 300,

8 MCL 257.303.

9       (9) Except as otherwise provided, a conviction under this

10 section does not prohibit a conviction and sentence under any

11 other applicable provision for conduct arising out of the same

12 transaction. A conviction under subsection (2), (3), (4), or (5)

13 prohibits a conviction under section 602a of the Michigan vehicle

14 code, ~~Act No. 300 of the Public Acts of 1949, being section~~

15 ~~257.602a of the Michigan Compiled Laws~~ 1949 PA 300,

16 MCL 257.602A, for conduct arising out of the same transaction.

17       (10) As used in this section, "serious injury" means a phys-

18 ical injury that is not necessarily permanent, but that consti-

19 tutes serious bodily disfigurement or that seriously impairs the

20 functioning of a body organ or limb. Serious injury includes,

21 but is not limited to, 1 or more of the following:

22       (a) Loss of a limb or of use of a limb.

23       (b) Loss of a hand, foot, finger, or thumb or of use of a

24 hand, foot, finger, or thumb.

25       (c) Loss of an eye or ear or of use of an eye or ear.

26       (d) Loss or substantial impairment of a bodily function.



**HB 5953, As Passed Senate, September 22, 1998**

House Bill No. 5953

9

1 (e) Serious visible disfigurement.

2 (f) A comatose state that lasts for more than 3 days.

3 (g) Measurable brain damage or mental impairment.

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

5 (i) Subdural hemorrhage or hematoma.

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

8 Enacting section 2. This amendatory act does not take  
9 effect unless all of the following bills of the 89th Legislature  
10 are enacted into law:

11 (a) Senate Bill No. 268.

12 (b) Senate Bill No. 269.

13 (c) Senate Bill No. 625.

14 (d) Senate Bill No. 627.

15 (e) Senate Bill No. 869.

16 (f) Senate Bill No. 870.

17 (g) Senate Bill No. 953.

18 (h) House Bill No. 4210.

19 (i) House Bill No. 4576.

20 (j) House Bill No. 4959.

21 (k) House Bill No. 4960.

22 (l) House Bill No. 4961.

23 (m) House Bill No. 5122.

24 (n) House Bill No. 5123.

25 (o) House Bill No. 5951.

26 (p) House Bill No. 5952.

**HB 5953, As Passed Senate, September 22, 1998**

House Bill No. 5953

10

**1** (q) House Bill No. 5954.

**2** (r) House Bill No. 5955.

**3** (s) House Bill No. 5956.