

# HOUSE BILL No. 5631

March 4, 1998, Introduced by Reps. Voorhees, Fitzgerald, Wojno, Mans, Gustafson, McBryde, Horton, Hammerstrom, London, Byl, Jellema, Freeman, Jelinek, DeVuyst, Goschka, Nye, Mathieu, Owen, Harder, Walberg, Cropsey, Bobier, Oxender, Birkholz, Griffin, Brewer, McNutt, Sanborn, Sikkema, Jansen, Galloway, Cassis, Perricone and Scranton and referred to the Committee on Judiciary.

A bill to amend 1949 PA 300, entitled "Michigan vehicle code," by amending sections 320a and 625 (MCL 257.320a and 257.625), section 320a as amended by 1996 PA 493 and section 625 as amended by 1996 PA 491.

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

1       Sec. 320a. (1) The secretary of state, within 10 days after  
2 the receipt of a properly prepared abstract from this or another  
3 state, shall record the date of conviction, civil infraction  
4 determination, or probate court disposition, and the number of  
5 points for each, based on the following formula, except as other-  
6 wise provided in this section and section 629c:

7       (a) Manslaughter, negligent homicide, or a felony  
8 resulting from the operation of a motor vehicle..... 6 points

- 1 (b) A violation OR ATTEMPTED VIOLATION of section  
 2 625(1), (4), OR (5) or a law or ordinance substantially  
 3 corresponding to section 625(1)..... 6 points
- 4 (c) A violation ~~or attempted violation~~ of sec-  
 5 tion ~~625(4) or (5)~~ 625(2) PUNISHABLE UNDER SECTION  
 6 625(8)(B) OR (C)..... 6 points
- 7 (d) Failing to stop and disclose identity at the  
 8 scene of an accident when required by law..... 6 points
- 9 (e) Operating a motor vehicle in a reckless manner 6 points
- 10 (f) Violation of any law or ordinance pertaining  
 11 to speed by exceeding the lawful maximum by more than  
 12 15 miles per hour..... 4 points
- 13 (g) Violation of section 625(3) or (6) or a law or  
 14 ordinance substantially corresponding to section 625(3)  
 15 or (6)..... 4 points
- 16 (h) Fleeing or eluding an officer..... 6 points
- 17 (i) Violation of section 626a or a law or ordi-  
 18 nance substantially corresponding to section 626a..... 4 points
- 19 (j) Violation of any law or ordinance pertaining  
 20 to speed by exceeding the lawful maximum by more than  
 21 10 but not more than 15 miles per hour or careless  
 22 driving in violation of section 626b or a law or ordi-  
 23 nance substantially corresponding to section 626b..... 3 points
- 24 (k) Violation of any law or ordinance pertaining  
 25 to speed by exceeding the lawful maximum by 10 miles  
 26 per hour or less..... 2 points

- 1       (1) Disobeying a traffic signal or stop sign, or  
 2 improper passing..... 3 points
- 3       (m) Violation of section 624a, 624b, or a law or  
 4 ordinance substantially corresponding to section 624a  
 5 or 624b..... 2 points
- 6       (n) Until April 1, 2002, violation of section  
 7 310e(4) or (6) or a law or ordinance substantially cor-  
 8 responding to section 310e(4) or (6)..... 2 points
- 9       (o) All other moving violations pertaining to the  
 10 operation of motor vehicles reported under this section 2 points
- 11       (p) A refusal by a person less than 21 years of  
 12 age to submit to a preliminary breath test required by  
 13 a peace officer under section 625a..... 2 points
- 14       (2) Points shall not be entered for a violation of  
 15 section 310e(15), 311, 625m, 658, 717, 719, 719a, or 723.
- 16       (3) Points shall not be entered for bond forfeitures.
- 17       (4) Points shall not be entered for overweight loads or for  
 18 defective equipment.
- 19       (5) If more than 1 conviction, civil infraction determina-  
 20 tion, or probate court disposition results from the same inci-  
 21 dent, points shall be entered only for the violation that  
 22 receives the highest number of points under this section.
- 23       (6) If a person has accumulated 9 points as provided in this  
 24 section, the secretary of state may call the person in for an  
 25 interview as to the person's driving ability and record after due  
 26 notice as to time and place of the interview. If the person

1 fails to appear as provided in this subsection, the secretary of  
2 state shall add 3 points to the person's record.

3 (7) If a person violates a speed restriction established by  
4 an executive order issued during a state of energy emergency as  
5 provided by ~~Act No. 191 of the Public Acts of 1982, being sec-~~  
6 ~~tions 10.81 to 10.89 of the Michigan Compiled Laws~~ 1982 PA 191,  
7 MCL 10.81 TO 10.89, the secretary of state shall enter points for  
8 the violation pursuant to subsection (1).

9 (8) The secretary of state shall enter 6 points upon the  
10 record of a person whose license is suspended or denied pursuant  
11 to section 625f. However, if a conviction, civil infraction  
12 determination, or probate court disposition results from the same  
13 incident, additional points for that offense shall not be  
14 entered.

15 (9) If a Michigan driver commits a violation in another  
16 state that would be a civil infraction if committed in Michigan,  
17 and a conviction results solely because of the failure of the  
18 Michigan driver to appear in that state to contest the violation,  
19 upon receipt of the abstract of conviction by the secretary of  
20 state, the violation shall be noted on the driver's record, but  
21 no points shall be assessed against his or her driver's license.

22 Sec. 625. (1) A person, whether licensed or not, shall not  
23 operate a vehicle upon a highway or other place open to the gen-  
24 eral public or generally accessible to motor vehicles, including  
25 an area designated for the parking of vehicles, within this state  
26 if either of the following applies:

1 (a) The person is under the influence of intoxicating  
2 liquor, a controlled substance, or a combination of intoxicating  
3 liquor and a controlled substance.

4 (b) The person has an alcohol content of 0.10 grams or more  
5 per 100 milliliters of blood, per 210 liters of breath, or per 67  
6 milliliters of urine.

7 (2) The owner of a vehicle or a person in charge or in con-  
8 trol of a vehicle shall not authorize or knowingly permit the  
9 vehicle to be operated upon a highway or other place open to the  
10 general public or generally accessible to motor vehicles, includ-  
11 ing an area designated for the parking of motor vehicles, within  
12 this state by a person who is under the influence of intoxicating  
13 liquor, a controlled substance, or a combination of intoxicating  
14 liquor and a controlled substance or who has an alcohol content  
15 of 0.10 grams or more per 100 milliliters of blood, per 210  
16 liters of breath, or per 67 milliliters of urine.

17 (3) A person, whether licensed or not, shall not operate a  
18 vehicle upon a highway or other place open to the general public  
19 or generally accessible to motor vehicles, including an area des-  
20 ignated for the parking of vehicles, within this state when, due  
21 to the consumption of an intoxicating liquor, a controlled sub-  
22 stance, or a combination of an intoxicating liquor and a con-  
23 trolled substance, the person's ability to operate the vehicle is  
24 visibly impaired. If a person is charged with violating subsec-  
25 tion (1), a finding of guilty under this subsection may be  
26 rendered.

1 (4) A person, whether licensed or not, who operates a motor  
2 vehicle in violation of subsection (1) or (3) and by the  
3 operation of that motor vehicle causes the death of another  
4 person is guilty of a felony punishable by imprisonment for not  
5 more than 15 years or a fine of not less than \$2,500.00 or more  
6 than \$10,000.00, or both. The judgment of sentence may impose  
7 the sanction permitted under section 625n.

8 (5) A person, whether licensed or not, who operates a motor  
9 vehicle in violation of subsection (1) or (3) and by the opera-  
10 tion of that motor vehicle causes a serious impairment of a body  
11 function of another person is guilty of a felony punishable by  
12 imprisonment for not more than 5 years or a fine of not less than  
13 \$1,000.00 or more than \$5,000.00, or both. The judgment of sen-  
14 tence may impose the sanction permitted under section 625n. As  
15 used in this subsection, "serious impairment of a body function"  
16 includes, but is not limited to, 1 or more of the following:

- 17 (a) Loss of a limb or use of a limb.  
18 (b) Loss of a hand, foot, finger, or thumb or use of a hand,  
19 foot, finger, or thumb.  
20 (c) Loss of an eye or ear or use of an eye or ear.  
21 (d) Loss or substantial impairment of a bodily function.  
22 (e) Serious visible disfigurement.  
23 (f) A comatose state that lasts for more than 3 days.  
24 (g) Measurable brain damage or mental impairment.  
25 (h) A skull fracture or other serious bone fracture.  
26 (i) Subdural hemorrhage or subdural hematoma.

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

8           (a) An alcohol content of not less than 0.02 grams or more  
9 than 0.07 grams per 100 milliliters of blood, per 210 liters of  
10 breath, or per 67 milliliters of urine.

11           (b) Any presence of alcohol within a person's body resulting  
12 from the consumption of intoxicating liquor, other than consump-  
13 tion of intoxicating liquor as a part of a generally recognized  
14 religious service or ceremony.

15           (7) If a person is convicted of violating subsection (1),  
16 all of the following apply:

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

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

21           (ii) Imprisonment for not more than 90 days.

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

23           (b) If the violation occurs within 7 years of a prior con-  
24 viction, the person shall be sentenced to pay a fine of not less  
25 than \$200.00 or more than \$1,000.00 and either of the following:

26           (i) Community service for not less than 10 days or more than  
27 90 days and may be imprisoned for not more than 1 year.

1       (ii) Imprisonment for not less than 48 consecutive hours or  
2 more than 1 year and may be sentenced to community service for  
3 not more than 90 days.

4       (c) A term of imprisonment imposed under subdivision (b)(ii)  
5 shall not be suspended.

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

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

12       (ii) Probation with imprisonment in the county jail for not  
13 less than 30 days or more than 1 year. Not less than 48 hours of  
14 the imprisonment imposed under this subparagraph shall be served  
15 consecutively.

16       (e) The term of imprisonment imposed under subdivision (d)  
17 shall not be suspended.

18       (f) The judgment of sentence under this subsection may  
19 impose the sanction permitted under section 625n.

20       (g) As used in this subsection, "prior conviction" means a  
21 conviction for a violation or attempted violation of subsection  
22 (1), (4), or (5) or former section 625(1) or (2), a local ordi-  
23 nance substantially corresponding to subsection (1) or former  
24 section 625(1) or (2), or a law of another state substantially  
25 corresponding to subsection (1), (4), or (5) or former section  
26 625(1) or (2).



1 (8) A person who is convicted of violating subsection (2) is  
2 guilty of a CRIME AS FOLLOWS:

3 (A) EXCEPT AS PROVIDED IN SUBDIVISIONS (B) AND (C), A misde-  
4 meanor punishable by imprisonment for not more than 90 days or a  
5 fine of not less than \$100.00 or more than \$500.00, or both.

6 (B) IF THE PERSON OPERATING THE MOTOR VEHICLE VIOLATED SUB-  
7 SECTION (4), A FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE  
8 THAN 5 YEARS OR A FINE OF NOT LESS THAN \$1,500.00 OR MORE THAN  
9 \$10,000.00, OR BOTH.

10 (C) IF THE PERSON OPERATING THE MOTOR VEHICLE VIOLATED SUB-  
11 SECTION (5), A FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE  
12 THAN 2 YEARS OR A FINE OF NOT LESS THAN \$1,000.00 OR MORE THAN  
13 \$5,000.00, OR BOTH.

14 (9) If a person is convicted of violating subsection (3),  
15 all of the following apply:

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

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

20 (ii) Imprisonment for not more than 90 days.

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

22 (b) If the violation occurs within 7 years of 1 prior con-  
23 viction, the person shall be sentenced to pay a fine of not less  
24 than \$200.00 or more than \$1,000.00, and either of the  
25 following:

1 (i) Community service for not less than 10 days or more than  
2 90 days and may be sentenced to imprisonment for not more than 1  
3 year.

4 (ii) Imprisonment for not more than 1 year and may be sen-  
5 tenced to community service for not more than 90 days.

6 (c) If the violation occurs within 10 years of 2 or more  
7 prior convictions, the person shall be sentenced to pay a fine of  
8 not less than \$200.00 or more than \$1,000.00, and either of the  
9 following:

10 (i) Community service for not less than 10 days or more than  
11 90 days and may be sentenced to imprisonment for not more than 1  
12 year.

13 (ii) Imprisonment for not more than 1 year and may be sen-  
14 tenced to community service for not more than 90 days.

15 (d) The judgment of sentence under subdivision (b) or (c)  
16 may impose the sanction permitted under section 625n.

17 (e) As used in this subsection, "prior conviction" means a  
18 conviction for a violation or attempted violation of subsection  
19 (1), (3), (4), or (5), former section 625(1) or (2), or former  
20 section 625b, a local ordinance substantially corresponding to  
21 subsection (1) or (3), former section 625(1) or (2), or former  
22 section 625b, or a law of another state substantially correspond-  
23 ing to subsection (1), (3), (4), or (5), former section 625(1) or  
24 (2), or former section 625b.

25 (10) If a person is convicted of violating subsection (6),  
26 all of the following apply:

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

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

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

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

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

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

11 (c) As used in this subsection, "prior conviction" means a  
12 conviction for a violation or attempted violation of subsection  
13 (1), (3), (4), (5), or (6), former section 625(1) or (2), or  
14 former section 625b, a local ordinance substantially correspond-  
15 ing to subsection (1), (3), or (6), former section 625(1) or (2),  
16 or former section 625b, or a law of another state substantially  
17 corresponding to subsection (1), (3), (4), (5), or (6), former  
18 section 625(1) or (2), or former section 625b.

19 (11) In addition to imposing the sanctions prescribed under  
20 subsection (4), (5), (7), (9), or (10), the court may order the  
21 person to pay the costs of the prosecution under the code of  
22 criminal procedure, ~~Act No. 175 of the Public Acts of 1927,~~  
23 ~~being sections 760.1 to 776.22 of the Michigan Compiled Laws~~  
24 1927 PA 175, MCL 760.1 TO 776.22.

25 (12) The court shall impose licensing sanctions pursuant to  
26 section 625b.

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

6 (14) If the prosecuting attorney intends to seek an enhanced  
7 sentence under subsection (7)(b) or (d), subsection (9)(b) or  
8 (c), or subsection (10)(b) based upon the defendant having 1 or  
9 more prior convictions, the prosecuting attorney shall include on  
10 the complaint and information, or an amended complaint and infor-  
11 mation, filed in district court, circuit court, recorder's court,  
12 municipal court, or ~~probate~~ FAMILY DIVISION OF CIRCUIT court a  
13 statement listing the defendant's prior convictions.

14 (15) If a person is charged with a violation of subsection  
15 (1) or (3), the court shall not permit the defendant to enter a  
16 plea of guilty or nolo contendere to a charge of violating  
17 subsection (6) in exchange for dismissal of the original charge.  
18 This subsection does not prohibit the court from dismissing the  
19 charge upon the prosecuting attorney's motion.

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

22 (a) An abstract of conviction.

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

24 (c) An admission by the defendant.

25 (17) A person who is convicted of an attempted violation of  
26 subsection (1), (3), (4), (5), or (6) or a local ordinance

1 substantially corresponding to subsection (1), (3), or (6) shall  
2 be punished as if the offense had been completed.

3       (18) When assessing points and taking licensing action under  
4 this act, the secretary of state and the court shall treat a con-  
5 viction of an attempted violation of subsection (1), (3), (4),  
6 (5), or (6) or a local ordinance substantially corresponding to  
7 subsection (1), (3), or (6) or a law of another state substan-  
8 tially corresponding to subsection (1), (3), (4), (5), or (6) the  
9 same as if the offense had been completed.

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

22       (20) Except as otherwise provided in subsection (21), if a  
23 person is charged with operating a vehicle while his or her abil-  
24 ity to operate the vehicle was visibly impaired due to his or her  
25 consumption of a controlled substance or a combination of intoxi-  
26 cating liquor and a controlled substance in violation of  
27 subsection (3) or a local ordinance substantially corresponding

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

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

12 (a) Whether the defendant was under the influence of a con-  
13 trolled substance or a combination of intoxicating liquor and a  
14 controlled substance at the time 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 intoxicating liquor and a controlled substance at the time of the  
18 violation.

19 (22) If a jury or court makes a finding under subsection  
20 (19), (20), or (21) that the defendant operated a motor vehicle  
21 under the influence of or while impaired due to the consumption  
22 of a controlled substance or a combination of a controlled sub-  
23 stance and an intoxicating liquor, the court shall do both of the  
24 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, any licensing sanction imposed under  
3 section 625b, and any sanction imposed under section 625n.

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

8 (24) In a prosecution for a violation of subsection (6), the  
9 defendant bears the burden of proving that the consumption of  
10 intoxicating liquor was a part of a generally recognized reli-  
11 gious service or ceremony by a preponderance of the evidence.