

HOUSE BILL No. 5652

March 11, 1998, Introduced by Reps. DeVuyst, Horton, Dalman, Jelinek, Jansen, Cassis, Jellema, Bodem, Voorhees, Brackenridge and Gernaat and referred to the Committee on Judiciary.

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

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 gen-
3 eral public or generally accessible to motor vehicles, including
4 an area designated for the parking of vehicles, within this state
5 if either of the following applies:

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

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

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

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

24 (4) A person, whether licensed or not, who operates a motor
25 vehicle in violation of subsection (1) or (3) and by the opera-
26 tion of that motor vehicle causes the death of another person is
27 guilty of a felony punishable by imprisonment for not more than

1 15 years or a fine of not less than \$2,500.00 or more than
2 \$10,000.00, or both. The judgment of sentence may impose the
3 sanction permitted under section 625n.

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

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

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

1 content. As used in this subsection, "any bodily alcohol
2 content" means either of the following:

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

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

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

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

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

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

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

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

21 (i) Community service for not less than 10 days or more than
22 90 days and may be imprisoned for not more than 1 year.

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

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

1 (d) If the violation occurs within 10 years of 2 or more
2 prior convictions, the person is guilty of a felony and shall be
3 sentenced to pay a fine of not less than \$500.00 or more than
4 \$5,000.00 and to either of the following:

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

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

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

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

15 (g) As used in this subsection, "prior conviction" means a
16 conviction for a violation or attempted violation of subsection
17 (1), (4), or (5) or former section 625(1) or (2), a local ordi-
18 nance substantially corresponding to subsection (1) or former
19 section 625(1) or (2), or a law of another state substantially
20 corresponding to subsection (1), (4), or (5) or former section
21 625(1) or (2).

22 (8) A person who is convicted of violating subsection (2) is
23 guilty of a misdemeanor punishable by imprisonment for not more
24 than 90 days or a fine of not less than \$100.00 or more than
25 \$500.00, or both. THE JUDGMENT OF SENTENCE MAY IMPOSE THE SANC-
26 TION PERMITTED UNDER SECTION 625N.

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

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

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

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

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

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

13 (i) Community service for not less than 10 days or more than
14 90 days and may be sentenced to imprisonment for not more than 1
15 year.

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

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

22 (i) Community service for not less than 10 days or more than
23 90 days and may be sentenced to imprisonment for not more than 1
24 year.

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

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

3 (e) As used in this subsection, "prior conviction" means a
4 conviction for a violation or attempted violation of subsection
5 (1), (3), (4), or (5), former section 625(1) or (2), or former
6 section 625b, a local ordinance substantially corresponding to
7 subsection (1) or (3), former section 625(1) or (2), or former
8 section 625b, or a law of another state substantially correspond-
9 ing to subsection (1), (3), (4), or (5), former section 625(1) or
10 (2), or former section 625b.

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

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

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

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

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

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

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

23 (c) As used in this subsection, "prior conviction" means a
24 conviction for a violation or attempted violation of subsection
25 (1), (3), (4), (5), or (6), former section 625(1) or (2), or
26 former section 625b, a local ordinance substantially
27 corresponding to subsection (1), (3), or (6), former section

1 625(1) or (2), or former section 625b, or a law of another state
2 substantially corresponding to subsection (1), (3), (4), (5), or
3 (6), former section 625(1) or (2), or former section 625b.

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

10 (12) The court shall impose licensing sanctions pursuant to
11 section 625b.

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

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

25 (15) If a person is charged with a violation of subsection
26 (1) or (3), the court shall not permit the defendant to enter a
27 plea of guilty or nolo contendere to a charge of violating

1 subsection (6) in exchange for dismissal of the original charge.
2 This subsection does not prohibit the court from dismissing the
3 charge upon the prosecuting attorney's motion.

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

6 (a) An abstract of conviction.

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

8 (c) An admission by the defendant.

9 (17) A person who is convicted of an attempted violation of
10 subsection (1), (3), (4), (5), or (6) or a local ordinance sub-
11 stantially corresponding to subsection (1), (3), or (6) shall be
12 punished as if the offense had been completed.

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

20 (19) Except as otherwise provided in subsection (21), if a
21 person is charged with operating a vehicle while under the influ-
22 ence of a controlled substance or a combination of intoxicating
23 liquor and a controlled substance in violation of subsection (1)
24 or a local ordinance substantially corresponding to
25 subsection (1), the court shall require the jury to return a spe-
26 cial verdict in the form of a written finding or, if the court
27 convicts the person without a jury or accepts a plea of guilty or

1 nolo contendere, the court shall make a finding as to whether the
2 person was under the influence of a controlled substance or a
3 combination of intoxicating liquor and a controlled substance at
4 the time of the violation.

5 (20) Except as otherwise provided in subsection (21), if a
6 person is charged with operating a vehicle while his or her abil-
7 ity to operate the vehicle was visibly impaired due to his or her
8 consumption of a controlled substance or a combination of intoxi-
9 cating liquor and a controlled substance in violation of
10 subsection (3) or a local ordinance substantially corresponding
11 to subsection (3), the court shall require the jury to return a
12 special verdict in the form of a written finding or, if the court
13 convicts the person without a jury or accepts a plea of guilty or
14 nolo contendere, the court shall make a finding as to whether,
15 due to the consumption of a controlled substance or a combination
16 of intoxicating liquor and a controlled substance, the person's
17 ability to operate a motor vehicle was visibly impaired at the
18 time of the violation.

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

22 (a) Whether the defendant was under the influence of a con-
23 trolled substance or a combination of intoxicating liquor and a
24 controlled substance at the time of the violation.

25 (b) Whether the defendant was visibly impaired due to his or
26 her consumption of a controlled substance or a combination of

1 intoxicating liquor and a controlled substance at the time of the
2 violation.

3 (22) If a jury or court ~~makes a finding~~ FINDS under sub-
4 section (19), (20), or (21) that the defendant operated a motor
5 vehicle under the influence of or while impaired due to the con-
6 sumption of a controlled substance or a combination of a con-
7 trolled substance and an intoxicating liquor, the court shall do
8 both of the following:

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

10 (b) On a form or forms prescribed by the state court admin-
11 istrator, forward to the department of state police a record that
12 specifies the penalties imposed by the court, including any term
13 of imprisonment, any licensing sanction imposed under
14 section 625b, and any sanction imposed under section 625n.

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

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

23 Sec. 625n. (1) Except as otherwise provided in this section
24 and in addition to any other penalty provided for in this act,
25 the judgment of sentence for a conviction for ~~a violation of~~
26 ~~section 625(1), a violation of section 625(3) described in~~
27 ~~section 625(9)(b) or (c), or a violation of section 625(4) or~~

1 ~~(5) ANY OF THE FOLLOWING may require 1 of the following with~~
2 ~~regard to the vehicle used in the offense if the defendant owns~~
3 ~~the vehicle in whole or in part or leases the vehicle: (a)~~
4 ~~Forfeiture~~ FORFEITURE of the vehicle USED IN THE OFFENSE if the
5 defendant owns the vehicle in whole or in part ~~.(b) Return~~ OR
6 RETURN of the vehicle USED IN THE OFFENSE to the lessor if the
7 defendant leases the vehicle: ~~—~~

8 (A) A VIOLATION OF SECTION 625(1), (4), OR (5).

9 (B) A VIOLATION OF SECTION 625(3) DESCRIBED IN
10 SECTION 625(9)(B) OR (C).

11 (C) A VIOLATION OF SECTION 625(2) IF THE PERSON AUTHORIZED
12 OR KNOWINGLY PERMITTED TO OPERATE THE VEHICLE VIOLATED
13 SECTION 625(1), (4), OR (5) OR VIOLATED SECTION 625(3) IN THE
14 MANNER DESCRIBED IN SECTION 625(9)(B), OR (C), REGARDLESS OF
15 WHETHER THE PERSON OPERATING THE VEHICLE WAS CONVICTED OF THE
16 VIOLATION.

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

21 (3) The forfeiture of a vehicle is subject to the interest
22 of the holder of a security interest who did not have prior
23 knowledge of or consent to the violation.

24 (4) Within 3 days after the defendant's conviction for a
25 violation described in subsection (1), the court shall notify the
26 defendant, his or her attorney, and the prosecuting attorney if
27 the court intends to consider imposing a sanction under this

1 section. Within 3 days after this notice, the prosecuting
2 attorney shall give notice to all owners of the vehicle and any
3 person holding a security interest in the vehicle that the court
4 may require forfeiture or return of the vehicle.

5 (5) If a vehicle is seized before disposition of the crimi-
6 nal proceedings, a defendant who is an owner or lessee of the
7 vehicle may move the court having jurisdiction over the proceed-
8 ings to require the seizing agency to file a lien against the
9 vehicle and to return the vehicle to the owner or lessee pending
10 disposition of the criminal proceedings. The court shall hear
11 the motion within 7 days after the motion is filed. If the
12 defendant establishes at the hearing that he or she holds the
13 legal title of the vehicle or that he or she has a leasehold
14 interest and that it is necessary for him or her or a member of
15 his or her family to use the vehicle pending the outcome of the
16 forfeiture action, the court may order the seizing agency to
17 return the vehicle to the owner or lessee. If the court orders
18 the return of the vehicle to the owner or lessee, the court shall
19 order the seizing agency to file a lien against the vehicle.

20 (6) Within 14 days after notice by the prosecuting attorney
21 is given under subsection (4), an owner, lessee, or holder of a
22 security interest may file a claim of interest in the vehicle.
23 Within 21 days after the ~~expiration of the~~ period for filing
24 claims ~~—, but before sentencing~~ EXPIRES, the court shall hold a
25 hearing to determine the legitimacy of any claim, the extent of
26 any co-owner's equity interest, and the liability of the
27 defendant to any co-lessee.

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

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

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

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

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

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

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

21 (g) The balance remaining after the payment of items (a)
22 through (f) shall be distributed by the court having jurisdiction
23 over the forfeiture proceedings to the unit or units of govern-
24 ment substantially involved in effecting the forfeiture.
25 Seventy-five percent of the money received by a unit of govern-
26 ment under this subdivision shall be used to enhance enforcement
27 of the criminal laws and 25% of the money shall be used to

1 implement the crime victim's rights act, ~~Act No. 87 of the~~
2 ~~Public Acts of 1985, being sections 780.751 to 780.834 of the~~
3 ~~Michigan Compiled Laws~~ 1985 PA 87, MCL 780.751 TO 780.834. A
4 unit of government receiving money under this subdivision shall
5 report annually to the department of management and budget the
6 amount of money received under this subdivision that was used to
7 enhance enforcement of the criminal laws and the amount that was
8 used to implement the crime victim's rights act.

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

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

15 (10) A person who knowingly conceals, sells, gives away, or
16 otherwise transfers or disposes of a vehicle with the intent to
17 avoid forfeiture or return of the vehicle to the lessor under
18 this section is guilty of a felony punishable by imprisonment for
19 not more than 4 years or a fine of not more than \$2,000.00, or
20 both.