

# HOUSE BILL No. 5283

October 11, 2005, Introduced by Rep. Wenke and referred to the Committee on Judiciary.

A bill to amend 1949 PA 300, entitled  
"Michigan vehicle code,"  
by amending section 625 (MCL 257.625), as amended by 2004 PA 62.

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

1       Sec. 625. (1) A person, whether licensed or not, shall not  
2       operate a vehicle upon a highway or other place open to the general  
3       public or generally accessible to motor vehicles, including an area  
4       designated for the parking of vehicles, within this state if the  
5       person is operating while intoxicated. As used in this section,  
6       "operating while intoxicated" means either of the following  
7       applies:

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

4 (b) The person has an alcohol content of 0.08 grams or more  
5 per 100 milliliters of blood, per 210 liters of breath, or per 67  
6 milliliters of urine, or, beginning October 1, 2013, the person has  
7 an alcohol content of 0.10 grams or more per 100 milliliters of  
8 blood, per 210 liters of breath, or per 67 milliliters of urine.

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

15 (a) The person is under the influence of alcoholic liquor, a  
16 controlled substance, or a combination of alcoholic liquor and a  
17 controlled substance.

18 (b) The person has an alcohol content of 0.08 grams or more  
19 per 100 milliliters of blood, per 210 liters of breath, or per 67  
20 milliliters of urine or, beginning October 1, 2013, the person has  
21 an alcohol content of 0.10 grams or more per 100 milliliters of  
22 blood, per 210 liters of breath, or per 67 milliliters of urine.

23 (c) The person's ability to operate the motor vehicle is  
24 visibly impaired due to the consumption of alcoholic liquor, a  
25 controlled substance, or a combination of alcoholic liquor and a  
26 controlled substance.

27 (3) A person, whether licensed or not, shall not operate a

1 vehicle upon a highway or other place open to the general public or  
2 generally accessible to motor vehicles, including an area  
3 designated for the parking of vehicles, within this state when, due  
4 to the consumption of alcoholic liquor, a controlled substance, or  
5 a combination of alcoholic liquor and a controlled substance, the  
6 person's ability to operate the vehicle is visibly impaired. If a  
7 person is charged with violating subsection (1), a finding of  
8 guilty under this subsection may be rendered.

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

13 (a) Except as provided in ~~subdivision~~ **SUBDIVISIONS (b) AND**  
14 **(C)**, the person is guilty of a felony punishable by imprisonment  
15 for not more than 15 years or a fine of not less than \$2,500.00 or  
16 more than \$10,000.00, or both. The judgment of sentence may impose  
17 the sanction permitted under section 625n. If the vehicle is not  
18 ordered forfeited under section 625n, the court shall order vehicle  
19 immobilization under section 904d in the judgment of sentence.

20 **(B) EXCEPT AS PROVIDED IN SUBDIVISION (C), IF THE PERSON HAS A**  
21 **PRIOR CONVICTION, THE PERSON IS GUILTY OF A FELONY PUNISHABLE BY**  
22 **IMPRISONMENT FOR NOT LESS THAN 10 YEARS OR MORE THAN 20 YEARS OR A**  
23 **FINE OF NOT LESS THAN \$2,500.00 OR MORE THAN \$10,000.00, OR BOTH.**  
24 **THE JUDGMENT OF SENTENCE MAY IMPOSE THE SANCTION PERMITTED UNDER**  
25 **SECTION 625N. IF THE VEHICLE IS NOT ORDERED FORFEITED UNDER SECTION**  
26 **625N, THE COURT SHALL ORDER VEHICLE IMMOBILIZATION UNDER SECTION**  
27 **904D IN THE JUDGMENT OF SENTENCE.**

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

13           (5) A person, whether licensed or not, who operates a motor  
14 vehicle in violation of subsection (1), (3), or (8) and by the  
15 operation of that motor vehicle causes a serious impairment of a  
16 body function of another person is guilty of a felony punishable by  
17 imprisonment for not more than 5 years or a fine of not less than  
18 \$1,000.00 or more than \$5,000.00, or both. The judgment of sentence  
19 may impose the sanction permitted under section 625n. If the  
20 vehicle is not ordered forfeited under section 625n, the court  
21 shall order vehicle immobilization under section 904d in the  
22 judgment of sentence.

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 content"  
2 means either of the following:

3 (a) An alcohol content of 0.02 grams or more but less than  
4 0.08 grams per 100 milliliters of blood, per 210 liters of breath,  
5 or per 67 milliliters of urine, or, beginning October 1, 2013, the  
6 person has an alcohol content of 0.02 grams or more but less than  
7 0.10 grams per 100 milliliters of blood, per 210 liters of breath,  
8 or per 67 milliliters of urine.

9 (b) Any presence of alcohol within a person's body resulting  
10 from the consumption of alcoholic liquor, other than consumption of  
11 alcoholic liquor as a part of a generally recognized religious  
12 service or ceremony.

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

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

20 (i) Except as provided in subparagraph (ii), a person who  
21 violates this subdivision is guilty of a misdemeanor and shall be  
22 sentenced to pay a fine of not less than \$200.00 or more than  
23 \$1,000.00 and to 1 or more of the following:

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

27 (B) Community service for not less than 30 days or more than

1 90 days.

2 (ii) If the violation occurs within 7 years of a prior  
3 conviction or within 10 years of 2 or more prior convictions, a  
4 person who violates this subdivision is guilty of a felony and  
5 shall be sentenced to pay a fine of not less than \$500.00 or more  
6 than \$5,000.00 and to either of the following:

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

9 (B) Probation with imprisonment in the county jail for not  
10 less than 30 days or more than 1 year and community service for not  
11 less than 60 days or more than 180 days. Not less than 48 hours of  
12 this imprisonment shall be served consecutively. This term of  
13 imprisonment shall not be suspended.

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

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

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

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

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

24 (ii) If the violation occurs within 7 years of a prior  
25 conviction or within 10 years of 2 or more prior convictions, a  
26 person who violates this subdivision shall be sentenced to pay a  
27 fine of not less than \$200.00 or more than \$1,000.00 and to 1 or

1 more of the following:

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

5 (B) Community service for not less than 30 days or more than  
6 90 days.

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

14 (d) This subsection does not prohibit a person from being  
15 charged with, convicted of, or punished for a violation of  
16 subsection (4) or (5) that is committed by the person while  
17 violating this subsection. However, points shall not be assessed  
18 under section 320a for both a violation of subsection (4) or (5)  
19 and a violation of this subsection for conduct arising out of the  
20 same transaction.

21 (8) A person, whether licensed or not, shall not operate a  
22 vehicle upon a highway or other place open to the general public or  
23 generally accessible to motor vehicles, including an area  
24 designated for the parking of vehicles, within this state if the  
25 person has in his or her body any amount of a controlled substance  
26 listed in schedule 1 under section 7212 of the public health code,  
27 1978 PA 368, MCL 333.7212, or a rule promulgated under that

1 section, or of a controlled substance described in section  
2 7214(a)(iv) of the public health code, 1978 PA 368, MCL 333.7214.

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

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

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

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

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

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

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

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

19 (c) If the violation occurs within 10 years of 2 or more prior  
20 convictions, the person is guilty of a felony and shall be  
21 sentenced to pay a fine of not less than \$500.00 or more than  
22 \$5,000.00 and to either of the following:

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

25 (ii) Probation with imprisonment in the county jail for not  
26 less than 30 days or more than 1 year and community service for not  
27 less than 60 days or more than 180 days. Not less than 48 hours of



1 the imprisonment imposed under this subparagraph shall be served  
2 consecutively.

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

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

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

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

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

17 (b) If the person operating the motor vehicle violated  
18 subsection (4), a felony punishable by imprisonment for not more  
19 than 5 years or a fine of not less than \$1,500.00 or more than  
20 \$10,000.00, or both.

21 (c) If the person operating the motor vehicle violated  
22 subsection (5), a felony punishable by imprisonment for not more  
23 than 2 years or a fine of not less than \$1,000.00 or more than  
24 \$5,000.00, or both.

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

27 (a) Except as otherwise provided in subdivisions (b) and (c),

1 the person is guilty of a misdemeanor punishable by 1 or more of  
2 the following:

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

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

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

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

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

13 (ii) Community service for not less than 30 days or more than  
14 90 days.

15 (c) If the violation occurs within 10 years of 2 or more prior  
16 convictions, the person is guilty of a felony and shall be  
17 sentenced to pay a fine of not less than \$500.00 or more than  
18 \$5,000.00 and either of the following:

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

21 (ii) Probation with imprisonment in the county jail for not  
22 less than 30 days or more than 1 year and community service for not  
23 less than 60 days or more than 180 days. Not less than 48 hours of  
24 the imprisonment imposed under this subparagraph shall be served  
25 consecutively.

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

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

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

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

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

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

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

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

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

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

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

21 (13) In addition to imposing the sanctions prescribed under  
22 this section, the court may order the person to pay the costs of  
23 the prosecution under the code of criminal procedure, 1927 PA 175,  
24 MCL 760.1 to 777.69.

25 (14) A person sentenced to perform community service under  
26 this section shall not receive compensation and shall reimburse the  
27 state or appropriate local unit of government for the cost of

1 supervision incurred by the state or local unit of government as a  
2 result of the person's activities in that service.

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

11 (16) If a person is charged with a violation of subsection  
12 (1), (3), (4), (5), (7), or (8) or section 625m, the court shall  
13 not permit the defendant to enter a plea of guilty or nolo  
14 contendere to a charge of violating subsection (6) in exchange for  
15 dismissal of the original charge. This subsection does not prohibit  
16 the court from dismissing the charge upon the prosecuting  
17 attorney's motion.

18 (17) A prior conviction shall be established at sentencing by  
19 1 or more of the following:

20 (a) An abstract of conviction.

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

22 (c) An admission by the defendant.

23 (18) Except as otherwise provided in subsection (20), if a  
24 person is charged with operating a vehicle while under the  
25 influence of a controlled substance or a combination of alcoholic  
26 liquor and a controlled substance in violation of subsection (1) or  
27 a local ordinance substantially corresponding to subsection (1),

1 the court shall require the jury to return a special verdict in the  
2 form of a written finding or, if the court convicts the person  
3 without a jury or accepts a plea of guilty or nolo contendere, the  
4 court shall make a finding as to whether the person was under the  
5 influence of a controlled substance or a combination of alcoholic  
6 liquor and a controlled substance at the time of the violation.

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

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

23 (a) Whether the defendant was under the influence of a  
24 controlled substance or a combination of alcoholic liquor and a  
25 controlled substance at the time of the violation.

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

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

3 (21) If a jury or court finds under subsection (18), (19), or  
4 (20) that the defendant operated a motor vehicle under the  
5 influence of or while impaired due to the consumption of a  
6 controlled substance or a combination of a controlled substance and  
7 an alcoholic liquor, the court shall do both of the following:

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

9 (b) On a form or forms prescribed by the state court  
10 administrator, forward to the department of state police a record  
11 that specifies the penalties imposed by the court, including any  
12 term of imprisonment, and any sanction imposed under section 625n  
13 or 904d.

14 (22) Except as otherwise provided by law, a record described  
15 in subsection (21)(b) is a public record and the department of  
16 state police shall retain the information contained on that record  
17 for not less than 7 years.

18 (23) In a prosecution for a violation of subsection (6), the  
19 defendant bears the burden of proving that the consumption of  
20 alcoholic liquor was a part of a generally recognized religious  
21 service or ceremony by a preponderance of the evidence.

22 (24) The court may order as a condition of probation that a  
23 person convicted of violating subsection (1) or (8), or a local  
24 ordinance substantially corresponding to subsection (1) or (8),  
25 shall not operate a motor vehicle unless that vehicle is equipped  
26 with an ignition interlock device approved, certified, and  
27 installed as required under sections 625k and 625l.

1           (25) Subject to subsection (27), as used in this section,  
2 "prior conviction" means a conviction for any of the following,  
3 whether under a law of this state, a local ordinance substantially  
4 corresponding to a law of this state, or a law of another state  
5 substantially corresponding to a law of this state:

6           (a) Except as provided in subsection (26), a violation or  
7 attempted violation of any of the following:

8           (i) This section, except a violation of section 625(2), or a  
9 violation of any prior enactment of this section in which the  
10 defendant operated a vehicle while under the influence of  
11 intoxicating or alcoholic liquor or a controlled substance, or a  
12 combination of intoxicating or alcoholic liquor and a controlled  
13 substance, or while visibly impaired, or with an unlawful bodily  
14 alcohol content.

15           (ii) Section 625m.

16           (iii) Former section 625b.

17           (b) Negligent homicide, manslaughter, or murder resulting from  
18 the operation of a vehicle or an attempt to commit any of those  
19 crimes.

20           (26) Except for purposes of the enhancement described in  
21 subsection (12)(b), only 1 violation or attempted violation of  
22 subsection (6), a local ordinance substantially corresponding to  
23 subsection (6), or a law of another state substantially  
24 corresponding to subsection (6) may be used as a prior conviction.

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

1 a prior conviction.