

HOUSE BILL No. 4506

April 1, 2003, Introduced by Reps. Stakoe, Ruth Johnson, Nofs, Palsrok, Hoogendyk, Hune, Ward, Stahl, Vagnozzi, Gaffney, Sheen, Vander Veen and Palmer and referred to the Committee on Criminal Justice.

A bill to amend 1949 PA 300, entitled "Michigan vehicle code," by amending sections 625n and 904 (MCL 257.625n and 257.904), section 625n as amended by 1998 PA 349 and section 904 as amended by 2002 PA 534.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 625n. (1) Except as otherwise provided in this section
2 and in addition to any other penalty provided for in this act,
3 the judgment of sentence for a conviction for a violation of
4 section 625(1) described in section 625(8)(b) or (c), a violation
5 of section 625(3) described in section 625(10)(b) or (c), a
6 violation of section 625(4), (5), or (7), or a violation of
7 section 904(4) or (5) **or a third or subsequent violation of**
8 **section 904(1) or (2)** may require 1 of the following with regard
9 to the vehicle used in the offense if the defendant owns the

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1 vehicle in whole or in part or leases the vehicle:

2 (a) Forfeiture of the vehicle if the defendant owns the
3 vehicle in whole or in part.

4 (b) Return of the vehicle to the lessor if the defendant
5 leases the vehicle.

6 (2) The vehicle may be seized pursuant to an order of seizure
7 issued by the court having jurisdiction upon a showing of
8 probable cause that the vehicle is subject to forfeiture or
9 return to the lessor.

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

13 (4) Within 14 days after the defendant's conviction for a
14 violation described in subsection (1), the prosecuting attorney
15 may file a petition with the court for the forfeiture of the
16 vehicle or to have the court order return of a leased vehicle to
17 the lessor. The prosecuting attorney shall give notice by
18 first-class mail or other process to the defendant and his or her
19 attorney, to all owners of the vehicle, and to any person holding
20 a security interest in the vehicle that the court may require
21 forfeiture or return of the vehicle.

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

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

12 (6) Within 14 days after notice by the prosecuting attorney
13 is given under subsection (4), the defendant, an owner, lessee,
14 or holder of a security interest may file a claim of interest in
15 the vehicle with the court. Within 21 days after the expiration
16 of the period for filing claims, but before or at sentencing, the
17 court shall hold a hearing to determine the legitimacy of any
18 claim, the extent of any co-owner's equity interest, the
19 liability of the defendant to any co-lessee, and whether to order
20 the vehicle forfeited or returned to the lessor. In considering
21 whether to order forfeiture, the court shall review the
22 defendant's driving record to determine whether the defendant has
23 multiple convictions under section 625 or a local ordinance
24 substantially corresponding to section 625, or multiple
25 suspensions, restrictions, or denials under section 904, or
26 both. If the defendant has multiple convictions under section
27 625 or multiple suspensions, restrictions, or denials under

1 section 904, or both, that factor shall weigh heavily in favor of
2 forfeiture.

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

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

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

12 (c) Satisfy any order of restitution entered in the
13 prosecution for the violation.

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

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

19 (f) Pay the proper expenses of the proceedings for forfeiture
20 and sale, including, but not limited to, expenses incurred during
21 the seizure process and expenses for maintaining custody of the
22 property, advertising, and court costs.

23 (g) The balance remaining after the payment of items (a)
24 through (f) shall be distributed by the court having jurisdiction
25 over the forfeiture proceedings to the unit or units of
26 government substantially involved in effecting the forfeiture.
27 Seventy-five percent of the money received by a unit of

1 government under this subdivision shall be used to enhance
2 enforcement of the criminal laws and 25% of the money shall be
3 used to implement the crime victim's rights act, 1985 PA 87,
4 MCL 780.751 to 780.834. A unit of government receiving money
5 under this subdivision shall report annually to the department of
6 management and budget the amount of money received under this
7 subdivision that was used to enhance enforcement of the criminal
8 laws and the amount that was used to implement the crime victim's
9 rights act, 1985 PA 87, MCL 780.751 to 780.834.

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

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

16 (10) A person who knowingly conceals, sells, gives away, or
17 otherwise transfers or disposes of a vehicle with the intent to
18 avoid forfeiture or return of the vehicle to the lessor under
19 this section is guilty of a misdemeanor punishable by
20 imprisonment for not more than 1 year or a fine of not more than
21 \$1,000.00, or both.

22 (11) The failure of the court or prosecutor to comply with
23 any time limit specified in this section does not preclude the
24 court from ordering forfeiture of a vehicle or its return to a
25 lessor, unless the court finds that the owner or claimant
26 suffered substantial prejudice as a result of that failure.

27 (12) The forfeiture provisions of this section do not

1 preclude the prosecuting attorney from pursuing a forfeiture
2 proceeding under any other law of this state or a local ordinance
3 substantially corresponding to this section.

4 Sec. 904. (1) A person whose operator's or chauffeur's
5 license or registration certificate has been suspended or revoked
6 and who has been notified as provided in section 212 of that
7 suspension or revocation, whose application for license has been
8 denied, or who has never applied for a license, shall not operate
9 a motor vehicle upon a highway or other place open to the general
10 public or generally accessible to motor vehicles, including an
11 area designated for the parking of motor vehicles, within this
12 state.

13 (2) A person shall not knowingly permit a motor vehicle owned
14 by the person to be operated upon a highway or other place open
15 to the general public or generally accessible to motor vehicles,
16 including an area designated for the parking of vehicles, within
17 this state by a person whose license or registration certificate
18 is suspended or revoked, whose application for license has been
19 denied, or who has never applied for a license, except as
20 permitted under this act.

21 (3) Except as otherwise provided in this section, a person
22 who violates subsection (1) or (2) is guilty of a misdemeanor
23 punishable as follows:

24 (a) For a first violation, by imprisonment for not more than
25 93 days or a fine of not more than \$500.00, or both. Unless the
26 vehicle was stolen or used with the permission of a person who
27 did not knowingly permit an unlicensed driver to operate the

1 vehicle, the registration plates of the vehicle shall be canceled
2 by the secretary of state upon notification by a peace officer.

3 (b) For a violation that occurs after a prior conviction, by
4 imprisonment for not more than 1 year or a fine of not more than
5 \$1,000.00, or both. Unless the vehicle was stolen, the
6 registration plates of the vehicle shall be canceled by the
7 secretary of state upon notification by a peace officer.

8 (4) A person who operates a motor vehicle in violation of
9 subsection (1) and who, by operation of that motor vehicle,
10 causes the death of another person is guilty of a felony
11 punishable by imprisonment for not more than 15 years or a fine
12 of not less than \$2,500.00 or more than \$10,000.00, or both.
13 This subsection does not apply to a person whose operator's or
14 chauffeur's license was suspended because that person failed to
15 answer a citation or comply with an order or judgment pursuant to
16 section 321a.

17 (5) A person who operates a motor vehicle in violation of
18 subsection (1) and who, by operation of that motor vehicle,
19 causes the serious impairment of a body function of another
20 person is guilty of a felony punishable by imprisonment for not
21 more than 5 years or a fine of not less than \$1,000.00 or more
22 than \$5,000.00, or both. This subsection does not apply to a
23 person whose operator's or chauffeur's license was suspended
24 because that person failed to answer a citation or comply with an
25 order or judgment pursuant to section 321a. As used in this
26 subsection and subsection (7), "serious impairment of a body
27 function" includes, but is not limited to, 1 or more of the

1 following:

2 (a) Loss of a limb or loss of use of a limb.

3 (b) Loss of a foot, hand, finger, or thumb or loss of use of
4 a foot, hand, finger, or thumb.

5 (c) Loss of an eye or ear or loss of use of an eye or ear.

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

7 (e) Serious visible disfigurement.

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

9 (g) Measurable brain or mental impairment.

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

11 (i) Subdural hemorrhage or subdural hematoma.

12 (6) In addition to being subject to any other penalty
13 provided for in this act, if a person **is convicted for a third or**
14 **subsequent time under subsection (1) or (2) or** is convicted under
15 subsection (4) or (5), the court may impose the sanction
16 permitted under section 625n. If the vehicle is not ordered
17 forfeited under section 625n, the court shall order vehicle
18 immobilization under section 904d in the judgment of sentence.

19 (7) A person shall not knowingly permit a motor vehicle owned
20 by the person to be operated upon a highway or other place open
21 to the general public or generally accessible to motor vehicles,
22 including an area designated for the parking of vehicles, within
23 this state, by a person whose license or registration certificate
24 is suspended or revoked, whose application for license has been
25 denied, or who has never been licensed except as permitted by
26 this act. If a person permitted to operate a motor vehicle in
27 violation of this subsection causes the serious impairment of a

1 body function of another person by operation of that motor
2 vehicle, the person knowingly permitting the operation of that
3 motor vehicle is guilty of a felony punishable by imprisonment
4 for not more than 2 years, or a fine of not less than \$1,000.00
5 or more than \$5,000.00, or both. If a person permitted to
6 operate a motor vehicle in violation of this subsection causes
7 the death of another person by operation of that motor vehicle,
8 the person knowingly permitting the operation of that motor
9 vehicle is guilty of a felony punishable by imprisonment for not
10 more than 5 years, or a fine of not less than \$1,000.00 or more
11 than \$5,000.00, or both.

12 (8) If the prosecuting attorney intends to seek an enhanced
13 sentence under this section based upon the defendant having 1 or
14 more prior convictions, the prosecuting attorney shall include on
15 the complaint and information, or an amended complaint and
16 information, filed in district court, circuit court, municipal
17 court, or family division of circuit court, a statement listing
18 the defendant's prior convictions.

19 (9) A prior conviction under this section shall be
20 established at or before sentencing by 1 or more of the
21 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 (10) Upon receiving a record of a person's conviction or
26 civil infraction determination for the unlawful operation of a
27 motor vehicle or a moving violation reportable under section 732

1 while the person's operator's or chauffeur's license is suspended
2 or revoked, the secretary of state immediately shall impose an
3 additional like period of suspension or revocation. This
4 subsection applies only if the violation occurs during a
5 suspension of definite length or if the violation occurs before
6 the person is approved for a license following a revocation.

7 (11) Upon receiving a record of a person's conviction or
8 civil infraction determination for the unlawful operation of a
9 motor vehicle or a moving violation reportable under section 732
10 while the person's operator's or chauffeur's license is
11 indefinitely suspended or whose application for a license has
12 been denied, the secretary of state immediately shall impose a
13 30-day period of suspension or denial.

14 (12) Upon receiving a record of the conviction, bond
15 forfeiture, or a civil infraction determination of a person for
16 unlawful operation of a motor vehicle requiring a vehicle group
17 designation while the designation is suspended or revoked
18 pursuant to section 319b, or while the person is disqualified
19 from operating a commercial motor vehicle under chapter 313 of
20 title 49 of the United States Code, 49 U.S.C. 31301 to 31317, the
21 secretary of state immediately shall impose an additional like
22 period of suspension or revocation. This subsection applies only
23 if the violation occurs during a suspension of definite length or
24 if the violation occurs before the person is approved for a
25 license following a revocation.

26 (13) If the secretary of state receives records of more than
27 1 conviction or civil infraction determination resulting from the

1 same incident, all of the convictions or civil infraction
2 determinations shall be treated as a single violation for
3 purposes of imposing an additional period of suspension or
4 revocation under subsection (10), (11), or (12).

5 (14) Before a person is arraigned before a district court
6 magistrate or judge on a charge of violating this section, the
7 arresting officer shall obtain the person's driving record from
8 the secretary of state and shall furnish the record to the
9 court. The driving record of the person may be obtained from the
10 secretary of state's computer information network.

11 (15) This section does not apply to a person who operates a
12 vehicle solely for the purpose of protecting human life or
13 property if the life or property is endangered and summoning
14 prompt aid is essential.

15 (16) A person whose vehicle group designation is suspended or
16 revoked and who has been notified as provided in section 212 of
17 that suspension or revocation, or whose application for a vehicle
18 group designation has been denied as provided in this act, or who
19 has never applied for a vehicle group designation and who
20 operates a commercial motor vehicle within this state, except as
21 permitted under this act, while any of those conditions exist is
22 guilty of a misdemeanor punishable, except as otherwise provided
23 in this section, by imprisonment for not less than 3 days or more
24 than 93 days or a fine of not more than \$100.00, or both.

25 (17) If a person has a second or subsequent suspension or
26 revocation under this section within 7 years as indicated on the
27 person's Michigan driving record, the court shall proceed as

1 provided in section 904d.

2 (18) Any period of suspension or revocation required under
3 subsection (10), (11), or (12) does not apply to a person who has
4 only 1 currently effective suspension or denial on his or her
5 Michigan driving record under section 321a and was convicted of
6 or received a civil infraction determination for a violation that
7 occurred during that suspension or denial. This subsection may
8 only be applied once during the person's lifetime.

9 (19) For purposes of this section, a person who never applied
10 for a license includes a person who applied for a license, was
11 denied, and never applied again.