

**SUBSTITUTE FOR
SENATE BILL NO. 353**

(As amended December 13, 2012)

A bill to amend 1949 PA 300, entitled
"Michigan vehicle code,"
by amending section 625 (MCL 257.625), as amended by 2008 PA 463.

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 any of the following:
7 (a) The person is under the influence of alcoholic liquor, a
8 controlled substance, **OR OTHER INTOXICATING SUBSTANCE** or a
9 combination of alcoholic liquor, ~~and~~ a controlled substance, **[OR]**
10 **OTHER INTOXICATING SUBSTANCE.**

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

6 (c) The person has an alcohol content of 0.17 grams or more
7 per 100 milliliters of blood, per 210 liters of breath, or per 67
8 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, **OTHER INTOXICATING SUBSTANCE**, or a
17 combination of alcoholic liquor, ~~and~~a controlled substance, **OR**
18 **OTHER INTOXICATING SUBSTANCE**.

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

24 (c) The person's ability to operate the motor vehicle is
25 visibly impaired due to the consumption of alcoholic liquor, a
26 controlled substance, **OR OTHER INTOXICATING SUBSTANCE**, or a
27 combination of alcoholic liquor, ~~and~~a controlled substance, **OR**

1 **OTHER INTOXICATING SUBSTANCE.**

2 (3) A person, whether licensed or not, shall not operate a
3 vehicle upon a highway or other place open to the general public or
4 generally accessible to motor vehicles, including an area
5 designated for the parking of vehicles, within this state when, due
6 to the consumption of alcoholic liquor, a controlled substance, **OR**
7 **OTHER INTOXICATING SUBSTANCE**, or a combination of alcoholic liquor,
8 ~~and~~ a controlled substance, **OR OTHER INTOXICATING SUBSTANCE**, the
9 person's ability to operate the vehicle is visibly impaired. If a
10 person is charged with violating subsection (1), a finding of
11 guilty under this subsection may be rendered.

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

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

23 (b) If, at the time of the violation, the person is operating
24 a motor vehicle in a manner proscribed under section 653a and
25 causes the death of a police officer, firefighter, or other
26 emergency response personnel, the person is guilty of a felony
27 punishable by imprisonment for not more than 20 years or a fine of

1 not less than \$2,500.00 or more than \$10,000.00, or both. This
2 subdivision applies regardless of whether the person is charged
3 with the violation of section 653a. The judgment of sentence may
4 impose the sanction permitted under section 625n. If the vehicle is
5 not ordered forfeited under section 625n, the court shall order
6 vehicle immobilization under section 904d in the judgment of
7 sentence.

8 (5) A person, whether licensed or not, who operates a motor
9 vehicle in violation of subsection (1), (3), or (8) and by the
10 operation of that motor vehicle causes a serious impairment of a
11 body 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 sentence
14 may impose the sanction permitted under section 625n. If the
15 vehicle is not ordered forfeited under section 625n, the court
16 shall order vehicle immobilization under section 904d in the
17 judgment of sentence.

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

25 (a) An alcohol content of 0.02 grams or more but less than
26 0.08 grams per 100 milliliters of blood, per 210 liters of breath,
27 or per 67 milliliters of urine, or, beginning October 1, 2013, the

1 person has an alcohol content of 0.02 grams or more but less than
2 0.10 grams per 100 milliliters of blood, per 210 liters of breath,
3 or per 67 milliliters of urine.

4 (b) Any presence of alcohol within a person's body resulting
5 from the consumption of alcoholic liquor, other than consumption of
6 alcoholic liquor as a part of a generally recognized religious
7 service or ceremony.

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

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

15 (i) Except as provided in subparagraph (ii), a person who
16 violates this subdivision is guilty of a misdemeanor and shall be
17 sentenced to pay a fine of not less than \$200.00 or more than
18 \$1,000.00 and to 1 or more of the following:

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

22 (B) Community service for not less than 30 days or more than
23 90 days.

24 (ii) If the violation occurs within 7 years of a prior
25 conviction or after 2 or more prior convictions, regardless of the
26 number of years that have elapsed since any prior conviction, a
27 person who violates this subdivision is guilty of a felony and

1 shall be sentenced to pay a fine of not less than \$500.00 or more
2 than \$5,000.00 and to either of the following:

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

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

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

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

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

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

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

20 (ii) If the violation occurs within 7 years of a prior
21 conviction or after 2 or more prior convictions, regardless of the
22 number of years that have elapsed since any prior conviction, a
23 person who violates this subdivision shall be sentenced to pay a
24 fine of not less than \$200.00 or more than \$1,000.00 and to 1 or
25 more of the following:

26 (A) Imprisonment for not less than 5 days or more than 1 year.

27 Not less than 48 hours of this imprisonment shall be served

1 consecutively. This term of imprisonment shall not be suspended.

2 (B) Community service for not less than 30 days or more than
3 90 days.

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

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

18 (8) A person, whether licensed or not, shall not operate a
19 vehicle upon a highway or other place open to the general public or
20 generally accessible to motor vehicles, including an area
21 designated for the parking of vehicles, within this state if the
22 person has in his or her body any amount of a controlled substance
23 listed in schedule 1 under section 7212 of the public health code,
24 1978 PA 368, MCL 333.7212, or a rule promulgated under that
25 section, or of a controlled substance described in section
26 7214(a) (iv) of the public health code, 1978 PA 368, MCL 333.7214.

27 (9) If a person is convicted of violating subsection (1) or

1 (8), all of the following apply:

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

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

6 (ii) Imprisonment for not more than 93 days, or, if the person
7 is convicted of violating subsection (1)(c), imprisonment for not
8 more than 180 days.

9 (iii) A fine of not less than \$100.00 or more than \$500.00, or,
10 if the person is guilty of violating subsection (1)(c), a fine of
11 not less than \$200.00 or more than \$700.00.

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

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

18 (ii) Community service for not less than 30 days or more than
19 90 days.

20 (c) If the violation occurs after 2 or more prior convictions,
21 regardless of the number of years that have elapsed since any prior
22 conviction, the person is guilty of a felony and shall be sentenced
23 to pay a fine of not less than \$500.00 or more than \$5,000.00 and
24 to either of the following:

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

27 (ii) Probation with imprisonment in the county jail for not

1 less than 30 days or more than 1 year and community service for not
2 less than 60 days or more than 180 days. Not less than 48 hours of
3 the imprisonment imposed under this subparagraph shall be served
4 consecutively.

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

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

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

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

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

19 (b) If the person operating the motor vehicle violated
20 subsection (4), a felony punishable by imprisonment for not more
21 than 5 years or a fine of not less than \$1,500.00 or more than
22 \$10,000.00, or both.

23 (c) If the person operating the motor vehicle violated
24 subsection (5), a felony punishable by imprisonment for not more
25 than 2 years or a fine of not less than \$1,000.00 or more than
26 \$5,000.00, or both.

27 (11) If a person is convicted of violating subsection (3), all

1 of the following apply:

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

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

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

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

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

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

15 (ii) Community service for not less than 30 days or more than
16 90 days.

17 (c) If the violation occurs after 2 or more prior convictions,
18 regardless of the number of years that have elapsed since any prior
19 conviction, the person is guilty of a felony and shall be sentenced
20 to pay a fine of not less than \$500.00 or more than \$5,000.00 and
21 either of the following:

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

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

1 consecutively.

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

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

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

11 (12) If a person is convicted of violating subsection (6), all
12 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 360 hours.

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

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

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

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

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

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

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

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

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

21 (17) A prior conviction shall be established at sentencing by
22 1 or more of the following:

23 (a) A copy of a judgment of conviction.

24 (b) An abstract of conviction.

25 (c) A transcript of a prior trial or a plea-taking or
26 sentencing proceeding.

27 (d) A copy of a court register of actions.

1 (e) A copy of the defendant's driving record.

2 (f) Information contained in a presentence report.

3 (g) An admission by the defendant.

4 (18) Except as otherwise provided in subsection (20), if a
5 person is charged with operating a vehicle while under the
6 influence of a controlled substance **OR OTHER INTOXICATING SUBSTANCE**
7 or a combination of alcoholic liquor, ~~and~~ a controlled substance,
8 **OR OTHER INTOXICATING SUBSTANCE** in violation of subsection (1) or a
9 local ordinance substantially corresponding to subsection (1), the
10 court shall require the jury to return a special verdict in the
11 form of a written finding or, if the court convicts the person
12 without a jury or accepts a plea of guilty or nolo contendere, the
13 court shall make a finding as to whether the person was under the
14 influence of a controlled substance **OR OTHER INTOXICATING SUBSTANCE**
15 or a combination of alcoholic liquor, ~~and~~ a controlled substance,
16 **OR OTHER INTOXICATING SUBSTANCE** at the time of the violation.

17 (19) Except as otherwise provided in subsection (20), if a
18 person is charged with operating a vehicle while his or her ability
19 to operate the vehicle was visibly impaired due to his or her
20 consumption of a controlled substance **OR OTHER INTOXICATING**
21 **SUBSTANCE** or a combination of alcoholic liquor, ~~and~~ a controlled
22 substance, **OR OTHER INTOXICATING SUBSTANCE** in violation of
23 subsection (3) or a local ordinance substantially corresponding to
24 subsection (3), the court shall require the jury to return a
25 special verdict in the form of a written finding or, if the court
26 convicts the person without a jury or accepts a plea of guilty or
27 nolo contendere, the court shall make a finding as to whether, due

1 to the consumption of a controlled substance or a combination of
2 alcoholic liquor, ~~and~~a controlled substance, **OR OTHER INTOXICATING**
3 **SUBSTANCE**, the person's ability to operate a motor vehicle was
4 visibly impaired at the time of the violation.

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

8 (a) Whether the defendant was under the influence of a
9 controlled substance or a combination of alcoholic liquor, ~~and~~a
10 controlled substance, **OR OTHER INTOXICATING SUBSTANCE** at the time
11 of the violation.

12 (b) Whether the defendant was visibly impaired due to his or
13 her consumption of a controlled substance or a combination of
14 alcoholic liquor, ~~and~~a controlled substance, **OR OTHER INTOXICATING**
15 **SUBSTANCE** at the time of the violation.

16 (21) If a jury or court finds under subsection (18), (19), or
17 (20) that the defendant operated a motor vehicle under the
18 influence of or while impaired due to the consumption of a
19 controlled substance or a combination of a controlled substance,
20 ~~and~~an alcoholic liquor, **OR OTHER INTOXICATING SUBSTANCE**, the court
21 shall do both of the following:

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

23 (b) On a form or forms prescribed by the state court
24 administrator, forward to the department of state police a record
25 that specifies the penalties imposed by the court, including any
26 term of imprisonment, and any sanction imposed under section 625n
27 or 904d.

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

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

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

15 (25) ~~Subject to subsection (27), as AS~~ used in this section: 7
 16 "prior

17 (A) "INTOXICATING SUBSTANCE" MEANS ANY SUBSTANCE, PREPARATION,
 18 OR A COMBINATION OF SUBSTANCES AND PREPARATIONS OTHER THAN ALCOHOL
 19 OR A CONTROLLED SUBSTANCE, THAT IS EITHER OF THE FOLLOWING:

20 (i) RECOGNIZED AS A DRUG IN ANY OF THE FOLLOWING PUBLICATIONS
 21 OR THEIR SUPPLEMENTS:

22 (A) THE OFFICIAL UNITED STATES PHARMACOPOEIA.

23 (B) THE OFFICIAL HOMEOPATHIC PHARMACOPOEIA OF THE UNITED
 24 STATES.

25 (C) THE OFFICIAL NATIONAL FORMULARY.

26 (ii) A SUBSTANCE, OTHER THAN FOOD, TAKEN INTO A PERSON'S BODY,
 27 INCLUDING, BUT NOT LIMITED TO, VAPORS OR FUMES, THAT IS USED IN A

1 MANNER OR FOR A PURPOSE FOR WHICH IT WAS NOT INTENDED, AND THAT MAY
2 RESULT IN A CONDITION OF INTOXICATION.

3 (B) "PRIOR conviction" means a conviction for any of the
4 following, whether under a law of this state, a local ordinance
5 substantially corresponding to a law of this state, a law of the
6 United States substantially corresponding to a law of this state,
7 or a law of another state substantially corresponding to a law of
8 this state, **SUBJECT TO SUBSECTION (27)**:

9 (i) ~~(a)~~—Except as provided in subsection (26), a violation or
10 attempted violation of any of the following:

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

18 (B) ~~(ii)~~—Section 625m.

19 (C) ~~(iii)~~—Former section 625b.

20 (ii) ~~(b)~~—Negligent homicide, manslaughter, or murder resulting
21 from the operation of a vehicle or an attempt to commit any of
22 those crimes.

23 (iii) ~~(e)~~—Section 601d or 626(3) or (4).

24 (26) Except for purposes of the enhancement described in
25 subsection (12)(b), only 1 violation or attempted violation of
26 subsection (6), a local ordinance substantially corresponding to
27 subsection (6), or a law of another state substantially

1 corresponding to subsection (6) may be used as a prior conviction.

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

6 Enacting section 1. This amendatory act takes effect March 31,
7 2013.