

# SENATE BILL No. 353

May 3, 2011, Introduced by Senators ROBERTSON, COLBECK, PAPPAGEORGE, PROOS and BRANDENBURG 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 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 ANY OTHER INTOXICATING SUBSTANCE** or a  
9 combination of alcoholic liquor, ~~and~~ a controlled substance, **AND**

1 **ANOTHER INTOXICATING SUBSTANCE.**

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

7 (c) The person has an alcohol content of 0.17 grams or more  
8 per 100 milliliters of blood, per 210 liters of breath, or per 67  
9 milliliters of urine.

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

16 (a) The person is under the influence of alcoholic liquor, a  
17 controlled substance, **ANOTHER INTOXICATING SUBSTANCE**, or a  
18 combination of alcoholic liquor, ~~and~~a controlled substance, **OR**  
19 **ANOTHER INTOXICATING SUBSTANCE.**

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

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

1 combination of alcoholic liquor, ~~and~~ a controlled substance, **OR**  
2 **ANOTHER INTOXICATING SUBSTANCE.**

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

13 (4) 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 the death of another person  
16 is guilty of a crime as follows:

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

24 (b) If, at the time of the violation, the person is operating  
25 a motor vehicle in a manner proscribed under section 653a and  
26 causes the death of a police officer, firefighter, or other  
27 emergency response personnel, the person is guilty of a felony

1 punishable by imprisonment for not more than 20 years or a fine of  
2 not less than \$2,500.00 or more than \$10,000.00, or both. This  
3 subdivision applies regardless of whether the person is charged  
4 with the violation of section 653a. The judgment of sentence may  
5 impose the sanction permitted under section 625n. If the vehicle is  
6 not ordered forfeited under section 625n, the court shall order  
7 vehicle immobilization under section 904d in the judgment of  
8 sentence.

9 (5) 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 a serious impairment of a  
12 body function of another person is guilty of a felony punishable by  
13 imprisonment for not more than 5 years or a fine of not less than  
14 \$1,000.00 or more than \$5,000.00, or both. The judgment of sentence  
15 may impose the sanction permitted under section 625n. If the  
16 vehicle is not ordered forfeited under section 625n, the court  
17 shall order vehicle immobilization under section 904d in the  
18 judgment of sentence.

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

26 (a) An alcohol content of 0.02 grams or more but less than  
27 0.08 grams per 100 milliliters of blood, per 210 liters of breath,

1 or per 67 milliliters of urine, or, beginning October 1, 2013, the  
2 person has an alcohol content of 0.02 grams or more but less than  
3 0.10 grams per 100 milliliters of blood, per 210 liters of breath,  
4 or per 67 milliliters of urine.

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

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

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

16 (i) Except as provided in subparagraph (ii), a person who  
17 violates this subdivision is guilty of a misdemeanor and shall be  
18 sentenced to pay a fine of not less than \$200.00 or more than  
19 \$1,000.00 and to 1 or more of the following:

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

23 (B) Community service for not less than 30 days or more than  
24 90 days.

25 (ii) If the violation occurs within 7 years of a prior  
26 conviction or after 2 or more prior convictions, regardless of the  
27 number of years that have elapsed since any prior conviction, a

1 person who violates this subdivision is guilty of a felony and  
2 shall be sentenced to pay a fine of not less than \$500.00 or more  
3 than \$5,000.00 and to either of the following:

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

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

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

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

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

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

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

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

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

1 Not less than 48 hours of this imprisonment shall be served  
2 consecutively. This term of imprisonment shall not be suspended.

3 (B) Community service for not less than 30 days or more than  
4 90 days.

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

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

19 (8) A person, whether licensed or not, shall not operate a  
20 vehicle upon a highway or other place open to the general public or  
21 generally accessible to motor vehicles, including an area  
22 designated for the parking of vehicles, within this state if the  
23 person has in his or her body any amount of a controlled substance  
24 listed in schedule 1 under section 7212 of the public health code,  
25 1978 PA 368, MCL 333.7212, or a rule promulgated under that  
26 section, or of a controlled substance described in section  
27 7214(a) (iv) of the public health code, 1978 PA 368, MCL 333.7214.

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

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

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

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

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

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

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

19           (ii) Community service for not less than 30 days or more than  
20 90 days.

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

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



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

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

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

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

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

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

20           (b) If the person operating the motor vehicle violated  
21 subsection (4), a felony punishable by imprisonment for not more  
22 than 5 years or a fine of not less than \$1,500.00 or more than  
23 \$10,000.00, or both.

24           (c) If the person operating the motor vehicle violated  
25 subsection (5), a felony punishable by imprisonment for not more  
26 than 2 years or a fine of not less than \$1,000.00 or more than  
27 \$5,000.00, or both.

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

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

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

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

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

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

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

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

18           (c) If the violation occurs after 2 or more prior convictions,  
19 regardless of the number of years that have elapsed since any prior  
20 conviction, the person is guilty of a felony and shall be sentenced  
21 to pay a fine of not less than \$500.00 or more than \$5,000.00 and  
22 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 (12) If a person is convicted of violating subsection (6), all  
13 of the following apply:

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

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

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

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

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

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

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

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

1 MCL 760.1 to 777.69.

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

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

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

22 (17) A prior conviction shall be established at sentencing by  
23 1 or more of the following:

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

25 (b) An abstract of conviction.

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

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

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

3 (f) Information contained in a presentence report.

4 (g) An admission by the defendant.

5 (18) Except as otherwise provided in subsection (20), if a  
6 person is charged with operating a vehicle while under the  
7 influence of a controlled substance **OR ANOTHER INTOXICATING**  
8 **SUBSTANCE** or a combination of alcoholic liquor, ~~and~~ a controlled  
9 substance, **OR ANOTHER INTOXICATING SUBSTANCE** in violation of  
10 subsection (1) or a local ordinance substantially corresponding to  
11 subsection (1), 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 the  
15 person was under the influence of a controlled substance **OR ANOTHER**  
16 **INTOXICATING SUBSTANCE** or a combination of alcoholic liquor, ~~and~~ a  
17 controlled substance, **OR ANOTHER INTOXICATING SUBSTANCE** at the time  
18 of the violation.

19 (19) Except as otherwise provided in subsection (20), if a  
20 person is charged with operating a vehicle while his or her ability  
21 to operate the vehicle was visibly impaired due to his or her  
22 consumption of a controlled substance **OR ANOTHER INTOXICATING**  
23 **SUBSTANCE** or a combination of alcoholic liquor, ~~and~~ a controlled  
24 substance, **OR ANOTHER INTOXICATING SUBSTANCE** in violation of  
25 subsection (3) or a local ordinance substantially corresponding to  
26 subsection (3), the court shall require the jury to return a  
27 special verdict in the form of a written finding or, if the court

1 convicts the person without a jury or accepts a plea of guilty or  
2 nolo contendere, the court shall make a finding as to whether, due  
3 to the consumption of a controlled substance or a combination of  
4 alcoholic liquor, ~~and~~a controlled substance, **OR ANOTHER**  
5 **INTOXICATING SUBSTANCE**, the person's ability to operate a motor  
6 vehicle was visibly impaired at the time of the violation.

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

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

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

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

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

25 (b) On a form or forms prescribed by the state court  
26 administrator, forward to the department of state police a record  
27 that specifies the penalties imposed by the court, including any

1 term of imprisonment, and any sanction imposed under section 625n  
2 or 904d.

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

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

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

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

19 (A) "INTOXICATING SUBSTANCE" MEANS ANY SUBSTANCE OR  
20 COMBINATION OF SUBSTANCES, OTHER THAN ALCOHOL OR A CONTROLLED  
21 SUBSTANCE, WHICH MAY AFFECT THE NERVOUS SYSTEM, BRAIN, OR MUSCLES  
22 OF A PERSON SO AS TO IMPAIR, TO AN APPRECIABLE DEGREE, THE PERSON'S  
23 ABILITY TO OPERATE A VEHICLE IN THE MANNER THAT AN ORDINARY PRUDENT  
24 AND CAUTIOUS PERSON, IN FULL POSSESSION OF HIS OR HER FACULTIES,  
25 USING REASONABLE CARE, WOULD OPERATE A SIMILAR VEHICLE UNDER LIKE  
26 CONDITIONS.

27 (B) "PRIOR conviction" means a conviction for any of the

1 following, whether under a law of this state, a local ordinance  
2 substantially corresponding to a law of this state, a law of the  
3 United States substantially corresponding to a law of this state,  
4 or a law of another state substantially corresponding to a law of  
5 this state, **SUBJECT TO SUBSECTION (27)** :

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 subsection (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 (c) Section 601d or 626(3) or (4).

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

26 (27) If 2 or more convictions described in subsection (25) are  
27 convictions for violations arising out of the same transaction,



- 1 only 1 conviction shall be used to determine whether the person has
- 2 a prior conviction.