

SENATE BILL No. 569

June 10, 2003, Introduced by Senators GEORGE, SWITALSKI, BIRKHOZ, JOHNSON, HARDIMAN, JELINEK, EMERSON, BERNERO and PATTERSON and referred to the Committee on Transportation.

A bill to amend 1949 PA 300, entitled "Michigan vehicle code," by amending section 625 (MCL 257.625), as amended by 2000 PA 460.

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

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

9 (b) The person has an alcohol content of 0.10 grams or more
10 per 100 milliliters of blood, per 210 liters of breath, or per 67

1 milliliters of urine.

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

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

26 (4) A person, whether licensed or not, who operates a motor
27 vehicle in violation of subsection (1) or (3) and by the

1 operation of that motor vehicle causes the death of another
2 person is guilty of a crime as follows:

3 (a) Except as provided in subdivision (b), the person is
4 guilty of a felony punishable by imprisonment for not more than
5 15 years or a fine of not less than \$2,500.00 or more than
6 \$10,000.00, or both. The judgment of sentence may impose the
7 sanction permitted under section 625n. If the vehicle is not
8 ordered forfeited under section 625n, the court shall order
9 vehicle immobilization under section 904d in the judgment of
10 sentence.

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

23 (5) A person, whether licensed or not, who operates a motor
24 vehicle in violation of subsection (1) or (3) and by the
25 operation of that motor vehicle causes a serious impairment of a
26 body function of another person is guilty of a felony punishable
27 by imprisonment for not more than 5 years or a fine of not less

1 than \$1,000.00 or more than \$5,000.00, or both. The judgment of
2 sentence may impose the sanction permitted under section 625n.
3 If the vehicle is not ordered forfeited under section 625n, the
4 court shall order vehicle immobilization under section 904d in
5 the judgment of sentence. As used in this subsection, "serious
6 impairment of a body function" includes, but is not limited to, 1
7 or more of the following:

8 (a) Loss of a limb or use of a limb.

9 (b) Loss of a hand, foot, finger, or thumb or use of a hand,
10 foot, finger, or thumb.

11 (c) Loss of an eye or ear or use of an eye or ear.

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

13 (e) Serious visible disfigurement.

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

15 (g) Measurable brain damage or mental impairment.

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

17 (i) Subdural hemorrhage or subdural hematoma.

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
24 content" means either of the following:

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

1 (b) Any presence of alcohol within a person's body resulting
2 from the consumption of intoxicating liquor, other than
3 consumption of intoxicating liquor as a part of a generally
4 recognized religious service or ceremony.

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

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

12 (i) Except as provided in subparagraph (ii), a person who
13 violates this subdivision is guilty of a misdemeanor and shall be
14 sentenced to pay a fine of not less than ~~-\$200.00-~~ **\$400.00** or
15 more than \$1,000.00 and to 1 or more of the following:

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

20 (B) Community service for not less than 30 days or more than
21 90 days.

22 (ii) If the violation occurs within 7 years of a prior
23 conviction or within 10 years of 2 or more prior convictions, a
24 person who violates this subdivision is guilty of a felony and
25 shall be sentenced to pay a fine of not less than ~~-\$500.00~~
26 **\$800.00** or more than \$5,000.00 and to either of the following:

27 (A) Imprisonment under the jurisdiction of the department of

1 corrections for not less than 1 year or more than 5 years.

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

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

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

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

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

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

17 (ii) If the violation occurs within 7 years of a prior
18 conviction or within 10 years of 2 or more prior convictions, a
19 person who violates this subdivision shall be sentenced to pay a
20 fine of not less than \$200.00 or more than \$1,000.00 and to 1 or
21 more of the following:

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

26 (B) Community service for not less than 30 days or more than
27 90 days.

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

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

15 (8) If a person is convicted of violating subsection (1), all
16 of the following apply:

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

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

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

22 (iii) A fine of not less than ~~-\$100.00~~ **\$200.00** or more than
23 \$500.00.

24 (b) If the violation occurs within 7 years of a prior
25 conviction, the person shall be sentenced to pay a fine of not
26 less than ~~-\$200.00~~ **\$400.00** or more than \$1,000.00 and 1 or more
27 of the following:

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

4 (ii) Community service for not less than 30 days or more than
5 90 days.

6 (c) If the violation occurs within 10 years of 2 or more
7 prior convictions, the person is guilty of a felony and shall be
8 sentenced to pay a fine of not less than ~~-\$500.00-~~ **\$800.00** or
9 more than \$5,000.00 and to either of the following:

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

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

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

19 (e) In the judgment of sentence under subdivision (a), the
20 court may order vehicle immobilization as provided in
21 section 904d. In the judgment of sentence under subdivision (b)
22 or (c), the court shall, unless the vehicle is ordered forfeited
23 under section 625n, order vehicle immobilization as provided in
24 section 904d.

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

27 (9) A person who is convicted of violating subsection (2) is

1 guilty of a crime as follows:

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

6 (b) If the person operating the motor vehicle violated
7 subsection (4), a felony punishable by imprisonment for not more
8 than 5 years or a fine of not less than \$1,500.00 or more than
9 \$10,000.00, or both.

10 (c) If the person operating the motor vehicle violated
11 subsection (5), a felony punishable by imprisonment for not more
12 than 2 years or a fine of not less than \$1,000.00 or more than
13 \$5,000.00, or both.

14 (10) If a person is convicted of violating subsection (3),
15 all of the following apply:

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

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

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

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

22 (b) If the violation occurs within 7 years of 1 prior
23 conviction, the person shall be sentenced to pay a fine of not
24 less than ~~-\$200.00~~ **\$400.00** or more than \$1,000.00, and 1 or more
25 of the following:

26 (i) Imprisonment for not less than 5 days or more than 1
27 year. Not less than 48 hours of the term of imprisonment imposed

1 under this subparagraph shall be served consecutively.

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

4 (c) If the violation occurs within 10 years of 2 or more
5 prior convictions, the person is guilty of a felony and shall be
6 sentenced to pay a fine of not less than ~~-\$500.00-~~ \$800.00 or
7 more than \$5,000.00 and either of the following:

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

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

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

17 (e) In the judgment of sentence under subdivision (a), the
18 court may order vehicle immobilization as provided in
19 section 904d. In the judgment of sentence under subdivision (b)
20 or (c), the court shall, unless the vehicle is ordered forfeited
21 under section 625n, order vehicle immobilization as provided in
22 section 904d.

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

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

27 (a) Except as otherwise provided in subdivision (b), the

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

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

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

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

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

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

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

11 (12) In addition to imposing the sanctions prescribed under
12 this section, the court may order the person to pay the costs of
13 the prosecution under the code of criminal procedure, 1927
14 PA 175, MCL 760.1 to ~~776.22~~ **777.69**.

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

20 (14) If the prosecuting attorney intends to seek an enhanced
21 sentence under this section or a sanction under section 625n
22 based upon the defendant having 1 or more prior convictions, the
23 prosecuting attorney shall include on the complaint and
24 information, or an amended complaint and information, filed in
25 district court, circuit court, municipal court, or family
26 division of circuit court, a statement listing the defendant's
27 prior convictions.

1 (15) If a person is charged with a violation of subsection
2 (1), (3), (4), (5), or (7) or section 625m, the court shall not
3 permit the defendant to enter a plea of guilty or nolo contendere
4 to a charge of violating subsection (6) in exchange for dismissal
5 of the original charge. This subsection does not prohibit the
6 court from dismissing the charge upon the prosecuting attorney's
7 motion.

8 (16) A prior conviction shall be established at sentencing by
9 1 or more of the following:

10 (a) An abstract of conviction.

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

12 (c) An admission by the defendant.

13 (17) Except as otherwise provided in subsection (19), if a
14 person is charged with operating a vehicle while under the
15 influence of a controlled substance or a combination of
16 intoxicating liquor and a controlled substance in violation of
17 subsection (1) or a local ordinance substantially corresponding
18 to subsection (1), the court shall require the jury to return a
19 special verdict in the form of a written finding or, if the court
20 convicts the person without a jury or accepts a plea of guilty or
21 nolo contendere, the court shall make a finding as to whether the
22 person was under the influence of a controlled substance or a
23 combination of intoxicating liquor and a controlled substance at
24 the time of the violation.

25 (18) Except as otherwise provided in subsection (19), if a
26 person is charged with operating a vehicle while his or her
27 ability to operate the vehicle was visibly impaired due to his or

1 her consumption of a controlled substance or a combination of
2 intoxicating liquor and a controlled substance in violation of
3 subsection (3) or a local ordinance substantially corresponding
4 to subsection (3), the court shall require the jury to return a
5 special verdict in the form of a written finding or, if the court
6 convicts the person without a jury or accepts a plea of guilty or
7 nolo contendere, the court shall make a finding as to whether,
8 due to the consumption of a controlled substance or a combination
9 of intoxicating liquor and a controlled substance, the person's
10 ability to operate a motor vehicle was visibly impaired at the
11 time of the violation.

12 (19) A special verdict described in subsections (17) and (18)
13 is not required if a jury is instructed to make a finding solely
14 as to either of the following:

15 (a) Whether the defendant was under the influence of a
16 controlled substance or a combination of intoxicating liquor and
17 a controlled substance at the time of the violation.

18 (b) Whether the defendant was visibly impaired due to his or
19 her consumption of a controlled substance or a combination of
20 intoxicating liquor and a controlled substance at the time of the
21 violation.

22 (20) If a jury or court finds under subsection (17), (18), or
23 (19) that the defendant operated a motor vehicle under the
24 influence of or while impaired due to the consumption of a
25 controlled substance or a combination of a controlled substance
26 and an intoxicating liquor, the court shall do both of the
27 following:

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

2 (b) On a form or forms prescribed by the state court
3 administrator, forward to the department of state police a record
4 that specifies the penalties imposed by the court, including any
5 term of imprisonment, and any sanction imposed under section 625n
6 or 904d.

7 (21) Except as otherwise provided by law, a record described
8 in subsection (20)(b) is a public record and the department of
9 state police shall retain the information contained on that
10 record for not less than 7 years.

11 (22) In a prosecution for a violation of subsection (6), the
12 defendant bears the burden of proving that the consumption of
13 intoxicating liquor was a part of a generally recognized
14 religious service or ceremony by a preponderance of the
15 evidence.

16 (23) Subject to subsection (25), as used in this section,
17 "prior conviction" means a conviction for any of the following,
18 whether under a law of this state, a local ordinance
19 substantially corresponding to a law of this state, or a law of
20 another state substantially corresponding to a law of this
21 state:

22 (a) Except as provided in subsection (24), a violation or
23 attempted violation of subsection (1), (3), (4), (5), (6), or
24 (7), section 625m, former section 625(1) or (2), or former
25 section 625b.

26 (b) Negligent homicide, manslaughter, or murder resulting
27 from the operation of a vehicle or an attempt to commit any of

1 those crimes.

2 (c) A violation of section 653a(4).

3 (24) Except for purposes of the enhancement described in
4 subsection (11)(b), only 1 violation or attempted violation of
5 subsection (6), a local ordinance substantially corresponding to
6 subsection (6), or a law of another state substantially
7 corresponding to subsection (6) may be used as a prior
8 conviction.

9 (25) If 2 or more convictions described in subsection (23)
10 are convictions for violations arising out of the same
11 transaction, only 1 conviction shall be used to determine whether
12 the person has a prior conviction.