Act No. 95
Public Acts of 1991
Approved by the Governor
July 30, 1991
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July 31, 1991

STATE OF MICHIGAN
86TH LEGISLATURE
REGULAR SESSION OF 1991

Introduced by Senators Van Regenmorter, Stabenow, Welborn and Ehlers

ENROLLED SENATE BILL No. 314

AN ACT to amend sections 321a, 625a, 625c, 625d, 625f, and 625g of Act No. 300 of the Public Acts of 1949, entitled as amended "An act to provide for the registration, titling, sale, transfer, and regulation of vehicles operated upon the public highways of this state or any other place open to the general public and distressed vehicles; to provide for the licensing of dealers; to provide for the examination, licensing, and control of operators and chauffeurs; to provide for the giving of proof of financial responsibility and security by owners and operators of vehicles; to provide for the imposition, levy, and collection of specific taxes on vehicles, and the levy and collection of sales and use taxes, license fees, and permit fees; to provide for the regulation and use of streets and highways; to create certain funds; to provide penalties and sanctions for a violation of this act; to provide for civil liability of owners and operators of vehicles and service of process on residents and nonresidents; to provide for the levy of certain assessments; to provide for the enforcement of this act; to provide for the creation of and to prescribe the powers and duties of certain state agencies; to repeal all other acts or parts of acts inconsistent with this act or contrary to this act; and to repeal certain parts of this act on a specific date," section 321a as amended by Act No. 89 of the Public Acts of 1989, sections 625a, 625c, 625d, and 625f as amended by Act No. 310 of the Public Acts of 1982 and section 625g as amended by Act No. 515 of the Public Acts of 1980, being sections 257.321a, 257.625a, 257.625c, 257.625d, 257.625f, and 257.625g of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. Sections 321a, 625a, 625c, 625d, 625f, and 625g of Act No. 300 of the Public Acts of 1949, section 321a as amended by Act No. 89 of the Public Acts of 1989, sections 625a, 625c, 625d, and 625f as amended by Act No. 310 of the Public Acts of 1982 and section 625g as amended by Act No. 515 of the Public Acts of 1980, being sections 257.321a, 257.625a, 257.625c, 257.625d, 257.625f, and 257.625g of the Michigan Compiled Laws, are amended to read as follows:

Sec. 321a. (1) A person who fails to answer a citation, or a notice to appear in court for a violation of this act or a local ordinance substantially corresponding to a provision of this act, or for any matter pending, or who fails to comply with an order or judgment issued pursuant to section 907 is guilty of a misdemeanor. A violation of this subsection shall not be considered a violation for any purpose under section 320a.

(2) Except as provided in subsection (3), 28 days or more after the date of noncompliance with an order or judgment, the court shall give notice by mail at the last known address of the person that if the person fails to appear or fails to comply with the order or judgment issued pursuant to section 907, including, but not limited to, paying all fines and costs, within 14 days after the notice is issued, the secretary of state shall suspend the person's operator's or chauffeur's license. If the person fails to appear or fails to comply with the order or judgment issued pursuant to section 907, including, but not limited to, paying all fines and costs, within the 14-day period, the court shall, within 14 days, inform the secretary of state, who shall immediately suspend the license of the person and notify the person of the suspension by regular mail at the person's last known address.

(3) If the person is charged with, or convicted of, a violation of section 625(1), (2), (3), (4), or (5), or a local ordinance substantially corresponding to section 625(1), (2), or (3), and the person fails to answer a citation or a notice to appear in court, or for any matter pending, or fails to comply with an order or judgment of the court, including, but not limited to, paying all fines, costs, and crime victim rights assessments, the court shall immediately give notice by first-class mail sent to the person's last known address that if the person fails to appear within 7 days after the notice is issued, or fails to comply with the order or judgment of the court, including, but not limited to, paying all fines, costs, and crime victim rights assessments, within 14 days after the notice is issued, the secretary of state shall suspend the person's operator's or chauffeur's license. If the person fails to appear within the 7-day period, or fails to comply with the order or judgment of the court, including, but not limited to, paying all fines, costs, and crime victim rights assessments, within the 14-day period, the court shall immediately inform the secretary of state who shall immediately suspend the person's operator's or chauffeur's license and notify the person of the suspension by first-class mail sent to the person's last known address.

(4) A suspension imposed under subsection (2) or (3) shall remain in effect until both of the following occur:

(a) The court informs the secretary of state that the person has appeared before the court and that all matters relating to the violation or to the noncompliance with section 907 are resolved.

(b) The person has paid to the court a $25.00 driver license reinstatement fee. The increase in the reinstatement fee from $10.00 to $25.00 shall be imposed for a license that is suspended on or after April 5, 1988 regardless of when the license was suspended.

(5) The court shall not notify the secretary of state, and the secretary of state shall not suspend the person's license, if the person fails to appear in response to a citation issued for, or fails to comply with an order or judgment involving 1 or more of the following infractions:

(a) The parking or standing of a vehicle.

(b) A pedestrian, passenger, or bicycle violation.

(6) The court may notify a person who has done either of the following, that if the person does not appear within 10 days after the notice is issued, the court will inform the secretary of state of the person's failure to appear:

(a) Failed to answer 2 or more parking violation notices or citations for violating a provision of this act or an ordinance substantially corresponding to a provision of this act pertaining to handicapper parking issued or served after the effective date of the amendatory act that added this subdivision.

(b) Failed to answer 6 or more parking violation notices or citations, issued or served after March 31, 1981, regarding illegal parking.

(7) The secretary of state, upon being informed of the failure of a person to appear as provided in subsection (6), shall not issue a license to the person until both of the following occur:

(a) The court informs the secretary of state that the person has resolved all outstanding matters regarding the notices or citations.

(b) The person has paid to the court a $25.00 driver license reinstatement fee. The increase in the reinstatement fee from $10.00 to $25.00 shall be imposed for a license that is suspended on or after April 5, 1988 regardless of when the license was suspended. If the court determines that the person is not responsible for any of the parking violations for which the person's license was suspended under this subsection, the court shall waive payment of the fee.

(8) For the purposes of subsections (4)(a) and (7)(a), the court shall give to the person a copy of the information being transmitted to the secretary of state. Upon showing that copy, the person shall not be arrested or issued a citation for driving on a suspended license on the basis of any matter resolved under subsection (4)(a) or (7)(a), even if the information being sent to the secretary of state has not yet been received or recorded by the department.

(9) Sixty percent of the driver license reinstatement fees received under subsections (4)(b) and (7)(b) shall be transmitted by the court to the secretary of state on a monthly basis. The funds received by the secretary of state pursuant to this subsection shall be deposited in the state general fund and shall be used to defray the expenses of the secretary of state in processing the suspension and reinstatement of driver licenses under this section.

Sec. 625a. (1) A peace officer, without a warrant, may arrest a person when the peace officer has reasonable cause to believe that the person was, at the time of an accident, the operator of a vehicle involved in the accident in this state while in violation of section 625(1), (3), (4), or (5) or a local ordinance substantially corresponding to section 625(1) or (3).

(2) A peace officer who has reasonable cause to believe that a person was operating a vehicle upon a public highway or other place open to the general public or generally accessible to motor vehicles, including an area

designated for the parking of vehicles, in this state, and that the person by the consumption of intoxicating liquor may have affected his or her ability to operate a vehicle, may require the person to submit to a preliminary chemical breath analysis. The following provisions shall apply with respect to a preliminary chemical breath analysis:

(a) A peace officer may arrest a person based in whole or in part upon the results of a preliminary chemical breath analysis.

(b) The results of a preliminary chemical breath analysis are admissible in a criminal prosecution for a crime enumerated in section 625c(1) or in an administrative hearing solely to assist the court or hearing officer in determining a challenge to the validity of an arrest. This subdivision does not limit the introduction of other competent evidence offered to establish the validity of an arrest.

(c) A person who submits to a preliminary chemical breath analysis shall remain subject to the requirements of sections 625c, 625d, 625e, and 625f for the purposes of chemical tests described in those sections.

(d) A person who refuses to submit to a preliminary chemical breath analysis upon a lawful request by a peace officer is responsible for a civil infraction.

(3) The following provisions apply with respect to chemical tests and analysis of a person's blood, urine, or breath, other than preliminary chemical breath analysis:

(a) The amount of alcohol or presence of a controlled substance or both in a driver's blood at the time alleged as shown by chemical analysis of the person's blood, urine, or breath is admissible into evidence in any civil or criminal proceeding.

(b) A person arrested for a crime described in section 625c(1) shall be advised of all of the following:

(*i*) That if he or she takes a chemical test of his or her blood, urine, or breath administered at the request of a peace officer, he or she has the right to demand that a person of his or her own choosing administer 1 of the chemical tests; that the results of the test are admissible in a judicial proceeding as provided under this act and shall be considered with other competent evidence in determining the innocence or guilt of the defendant; and that he or she is responsible for obtaining a chemical analysis of a test sample obtained pursuant to his or her own request.

(*ii*) That if he or she refuses the request of a peace officer to take a test described in subparagraph (*i*), a test shall not be given without a court order, but the peace officer may seek to obtain such a court order.

(*iii*) That his or her refusal of the request of a peace officer to take a test described in subparagraph (*i*) shall result in the suspension of his or her operator's or chauffeur's license or operating privilege, and in the addition of 6 points to his or her driver record.

(c) A sample or specimen of urine or breath shall be taken and collected in a reasonable manner. Only a licensed physician, or a licensed nurse or medical technician under the direction of a licensed physician and qualified to withdraw blood acting in a medical environment, at the request of a peace officer, may withdraw blood for the purpose of determining the amount of alcohol or presence of a controlled substance or both in the person's blood, as provided in this subsection. Liability for a crime or civil damages predicated on the act of withdrawing or analyzing blood and related procedures shall not attach to a qualified person who withdraws or analyzes blood or assists in the withdrawal or analysis in accordance with this act unless the withdrawal or analysis is performed in a negligent manner.

(d) A chemical test described in this subsection shall be administered at the request of a peace officer having reasonable grounds to believe the person has committed a crime described in section 625c(1). A person who takes a chemical test administered at the request of a peace officer, as provided in this section, shall be given a reasonable opportunity to have a person of his or her own choosing administer 1 of the chemical tests described in this subsection within a reasonable time after his or her detention, and the results of the test shall be admissible and shall be considered with other competent evidence in determining the innocence or guilt of the defendant. If the person charged is administered a chemical test by a person of his or her own choosing, the person charged shall be responsible for obtaining a chemical analysis of the test sample.

(e) If, after an accident, the driver of a vehicle involved in the accident is transported to a medical facility and a sample of the driver's blood is withdrawn at that time for the purpose of medical treatment, the results of a chemical analysis of that sample shall be admissible in any civil or criminal proceeding to show the amount of alcohol or presence of a controlled substance or both in the person's blood at the time alleged, regardless of whether the person had been offered or had refused a chemical test. The medical facility or person performing the chemical analysis shall disclose the results of the analysis to a prosecuting attorney who requests the results for use in a criminal prosecution as provided in this subdivision. A medical facility or person disclosing information in compliance with this subsection shall not be civilly or criminally liable for making the disclosure.

(f) If, after an accident, the driver of a vehicle involved in the accident is deceased, a sample of the decedent's blood shall be withdrawn in a manner directed by the medical examiner for the purpose of determining the

amount of alcohol or the presence of a controlled substance, or both, in the decedent's blood. The medical examiner shall give the results of the chemical analysis of the sample to the law enforcement agency investigating the accident, and that agency shall forward the results to the department of state police.

(g) The department of state police shall promulgate uniform rules for the administration of chemical tests for the purposes of this section.

(4) The provisions of subsection (3) relating to chemical testing do not limit the introduction of any other competent evidence bearing upon the question of whether or not a person was impaired by, or under the influence of, intoxicating liquor or a controlled substance, or a combination of intoxicating liquor and a controlled substance, or whether the person had a blood alcohol content of 0.10% or more by weight of alcohol.

(5) If a chemical test described in subsection (3) is administered, the results of the test shall be made available to the person charged or the person's attorney upon written request to the prosecution, with a copy of the request filed with the court. The prosecution shall furnish the results at least 2 days before the day of the trial. The results of the test shall be offered as evidence by the prosecution in that trial. Failure to fully comply with the request shall bar the admission of the results into evidence by the prosecution.

(6) Except in a prosecution relating solely to a violation of section 625(1)(b), the amount of alcohol in the driver's blood at the time alleged as shown by chemical analysis of the person's blood, urine, or breath shall give rise to the following presumptions:

(a) If there was at the time 0.07% or less by weight of alcohol in the defendant's blood, it shall be presumed that the defendant's ability to operate a motor vehicle was not impaired due to the consumption of intoxicating liquor, and that the defendant was not under the influence of intoxicating liquor.

(b) If there was at the time in excess of 0.07% but less than 0.10% by weight of alcohol in the defendant's blood, it shall be presumed that the defendant's ability to operate a vehicle was impaired within the provisions of section 625(3) due to the consumption of intoxicating liquor.

(c) If there was at the time 0.10% or more by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was under the influence of intoxicating liquor.

(7) A person's refusal to submit to a chemical test as provided in subsection (3) shall be admissible in a criminal prosecution for a crime described in section 625c(1) only for the purpose of showing that a test was offered to the defendant, but not as evidence in determining innocence or guilt of the defendant. The jury shall be instructed accordingly.

Sec. 625c. (1) A person who operates a vehicle upon a public highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state is considered to have given consent to chemical tests of his or her blood, breath, or urine for the purpose of determining the amount of alcohol or presence of a controlled substance or both in his or her blood, in all of the following circumstances:

(a) If the person is arrested for a violation of section 625(1), (3), (4), or (5), or a local ordinance substantially corresponding to section 625(1) or (3).

(b) If the person is arrested for felonious driving, negligent homicide, manslaughter, or murder resulting from the operation of a motor vehicle, and the peace officer had reasonable grounds to believe that the person was operating the vehicle while impaired by or under the influence of intoxicating liquor or a controlled substance or a combination of intoxicating liquor and a controlled substance, or while having a blood alcohol content of 0.10% or more by weight of alcohol.

(2) A person who is afflicted with hemophilia, diabetes, or a condition requiring the use of an anticoagulant under the direction of a physician shall not be considered to have given consent to the withdrawal of blood.

(3) The tests shall be administered as provided in section 625a(3).

Sec. 625d. (1) If a person refuses the request of a peace officer to submit to a chemical test offered pursuant to section 625a(3), a test shall not be given without a court order, but the officer may seek to obtain the court order.

(2) A written report shall immediately be forwarded to the secretary of state by the peace officer. The report shall state that the officer had reasonable grounds to believe that the person had committed a crime described in section 625c(1), and that the person had refused to submit to the test upon the request of the peace officer and had been advised of the consequences of the refusal. The form of the report shall be prescribed and furnished by the secretary of state.

Sec. 625f. (1) If a person who refuses to submit to a chemical test pursuant to section 625d does not request a hearing within 14 days of the date of notice pursuant to section 625e, the secretary of state shall suspend or deny the person's operator's or chauffeur's license or permit to drive, or nonresident operating privilege, for a period

of 6 months, or for a second or subsequent refusal within a period of 7 years, for 1 year. If the person is a resident without a license or permit to operate a vehicle in the state, the secretary of state shall deny to the person the issuance of a license or permit for a period of 6 months, or for a second or subsequent refusal within a period of 7 years, for 1 year.

(2) If a hearing is requested, the secretary of state shall hold the hearing in the same manner and under the same conditions as provided in section 322. A person shall not order a hearing officer to make a particular finding on any issue enumerated under subdivisions (a) to (d). Not less than 5 days' notice of the hearing shall be mailed to the person requesting the hearing, to the peace officer who filed the report under section 625d, and if the prosecuting attorney requests receipt of the notice, to the prosecuting attorney of the county where the arrest was made. The hearing officer may administer oaths, issue subpoenas for the attendance of necessary witnesses, and grant a reasonable request for an adjournment. Not more than 1 adjournment shall be granted to a party and the length of an adjournment shall not exceed 14 days. A hearing under this subsection shall be scheduled to be held within 45 days after the date of arrest and shall, except for delay attributable to the unavailability of the defendant, a witness, or material evidence, or due to an interlocutory appeal or exceptional circumstances, but not a delay caused by docket congestion, be finally adjudicated within 77 days after the date of arrest. The hearing shall cover only the following issues:

(a) Whether the peace officer had reasonable grounds to believe that the person had committed a crime described in section 625c(1).

(b) Whether the person was placed under arrest for a crime described in section 625c(1).

(c) If the person refused to submit to the test upon the request of the officer, whether the refusal was reasonable.

(d) Whether the person was advised of the rights under section 625a(3).

(3) The hearing officer shall make a record of proceedings held pursuant to subsection (2). The record shall be prepared and transcribed in accordance with section 86 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being section 24.286 of the Michigan Compiled Laws. Upon notification of the filing of a petition for judicial review pursuant to section 323, the hearing officer shall transmit to the court in which the petition was filed, not less than 10 days before the matter is set for review, the original or a certified copy of the official record of the proceedings. Proceedings at which evidence was presented need not be transcribed and transmitted if the sole reason for review is to determine whether or not the court will order the issuance of a restricted license. The parties to the proceedings for judicial review may stipulate that the record be shortened. A party unreasonably refusing to stipulate to a shortened record may be taxed by the court in which the petition is filed for the additional costs. The court may permit subsequent corrections to the record.

(4) After a hearing, if the person who requested the hearing does not prevail, the secretary of state shall suspend or deny issuance of a license or driving permit or a nonresident operating privilege of the person for a period of 6 months, or for a second or subsequent refusal within 7 years, for 1 year. If the person is a resident without a license or permit to operate a vehicle in the state, the secretary of state shall deny to the person the issuance of a license or permit for a period of 6 months, or for a second or subsequent refusal within 7 years, for 1 year. The person may file a petition in the circuit court of the county in which the arrest was made to review the suspension or denial as provided in section 323. If after the hearing the person who requested the hearing prevails, the peace officer who filed the report under section 625d may, with the consent of the prosecuting attorney, file a petition in the circuit court of the county in which the arrest was made to review the determination of the hearing officer as provided in section 323.

(5) When it has been finally determined that a nonresident's privilege to operate a vehicle in the state has been suspended or denied, the department shall give notice in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of each state in which he or she has a license to operate a motor vehicle.

Sec. 625g. (1) If a person refuses a chemical test offered pursuant to section 625a(3), or submits to the chemical test and the test reveals a blood alcohol content of 0.10% or more by weight of alcohol, the peace officer who requested the person to submit to the test shall do all of the following:

(a) On behalf of the secretary of state, immediately confiscate the person's license or permit to operate a motor vehicle, and, if the person is otherwise eligible for a license or permit, issue a temporary license or permit to the person that is valid until the criminal charges against the person are dismissed, or until the person pleads guilty or nolo contendere to, or is found guilty of, those charges. The temporary license or permit shall be on a form provided by the secretary of state.

(b) Except as provided in subsection (2), immediately do all of the following:

(*i*) Forward a copy of the written report of the person's refusal to submit to a chemical test to the secretary of state.

(*ii*) Notify the secretary of state by means of the law enforcement information network that a temporary license or permit was issued to the person.

(*iii*) Except as provided in subsection (2), destroy the person's driver's license or permit.

(2) If a person submits to a chemical test offered pursuant to section 625a(3) that requires the withdrawal of blood and a report of the results of that chemical test is not immediately available, the peace officer who requested the person to submit to the test shall comply with subsection (1)(a) pending receipt of the test report. If, upon receipt, the report reveals a blood alcohol content of 0.10% or more by weight of alcohol, the peace officer who requested the person to submit to the test shall immediately comply with subsection (1)(b). If, upon receipt, the report reveals a blood alcohol content of less than 0.10% by weight of alcohol, the peace officer who requested the person to submit to the test shall immediately notify the person of the test results, and immediately return the person's license or permit by first-class mail to the address given at the time of arrest.

Section 2. This amendatory act shall take effect January 1, 1992.

Section 3. This amendatory act shall not take effect unless all of the following bills of the 86th Legislature are enacted into law:

(a) Senate Bill No. 315.

(b) House Bill No. 4827.

(c) House Bill No. 4828.

This act is ordered to take immediate effect.

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Secretary of the Senate.

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Clerk of the House of Representatives.

Approved .....

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Governor.