

Act No. 449
Public Acts of 1994
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STATE OF MICHIGAN
87TH LEGISLATURE
REGULAR SESSION OF 1994

Introduced by Senator Van Regenmorter

ENROLLED SENATE BILL No. 631

AN ACT to amend sections 8a 65 208 303 319 319d 320e 323 and 625 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 certain vehicles operated upon the public highways of this state or any other place open to the general public or generally accessible to motor vehicles 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 and local 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 sections 8a 303 320e and 323 as amended by Act No 359 of the Public Acts of 1993 section 208 as amended by Act No 310 of the Public Acts of 1982 sections 319 and 625 as amended by Act No 211 of the Public Acts of 1994 and section 319d as amended by Act No 100 of the Public Acts of 1991 being sections 257 8a 257 65 257 208 257 303 257 319 257 319d 257 320e 257 323 and 257 625 of the Michigan Compiled Laws

The People of the State of Michigan enact

Section 1 Sections 8a 65 208 303 319 319d 320e 323 and 625 of Act No 300 of the Public Acts of 1949 sections 8a 303 320e and 323 as amended by Act No 359 of the Public Acts of 1993 section 208 as amended by Act No 310 of the Public Acts of 1982 sections 319 and 625 as amended by Act No 211 of the Public Acts of 1994 and section 319d as amended by Act No 100 of the Public Acts of 1991 being sections 257 8a 257 65 257 208 257 303 257 319 257 319d 257 320e 257 323 and 257 625 of the Michigan Compiled Laws are amended to read as follows

Sec 8a Conviction means a final conviction the payment of a fine a plea of guilty or nolo contendere if accepted by the court or a finding of guilt for a criminal law violation or a juvenile adjudication or probate court disposition for a violation that if committed by an adult would be a crime regardless of whether the penalty is rebated or suspended

Sec 65 State means any state territory or possession of the United States Indian country as defined in 18 U S C 1151 the District of Columbia or any province of the Dominion of Canada

Sec 208 (1) Records of the department other than those declared by law to be confidential for the department s use shall be open to public inspection under rules the secretary of state promulgates pursuant to section 3 of the freedom of information act Act No 442 of the Public Acts of 1976 being section 15 233 of the Michigan Compiled Laws

(2) Except as otherwise specified in this section the secretary of state may destroy any department records maintained on file for 7 years including the information contained in the central file maintained under section 204a

(3) Records of convictions of any offense for which points are provided under section 320a(1)(a) (b) (c) or (g) or section 320a(9) may be destroyed after being maintained on file for 10 years

(4) Records of stolen vehicles reported in section 253 may be destroyed after being maintained on file for the year of entry plus 4 years

(5) Except as otherwise specified in this act records the secretary of state considers obsolete and of no further service in carrying out the department's powers and duties may be destroyed upon that determination

(6) If a record of suspension under section 321a does not contain a conviction for a violation of section 904 or a local ordinance substantially corresponding to section 904 during the period of suspension the secretary of state may destroy the record 180 days after the suspension terminates or as provided in subsections (2) to (5)

(7) The secretary of state may destroy a record of receipt of the notice provided for in section 321a(3) after the court involved informs the secretary of state that all outstanding matters regarding section 321a(3) have been resolved

(8) The secretary of state may destroy a record maintained pursuant to section 204a 180 days after the nonresident driver against whom a civil infraction determination is entered complies with an order or judgment issued pursuant to section 907

Sec 303 (1) The secretary of state shall not issue a license under this act to any of the following

(a) A person as an operator who is less than 18 years of age except the secretary of state may issue a license to a person who is not less than 16 years of age and who has satisfactorily passed a driver education course and examination given by a public school or nonpublic school of this or another state offering a course approved by the department of education or an equivalent course and examination as prescribed in section 811 The secretary of state may issue a restricted license to a person not less than 14 years of age as provided in this act This subdivision does not apply to a person who has held a valid driver's license issued by another state territory or possession of the United States or another sovereignty for at least 1 year immediately before application for a driver's license under this act

(b) A person as a chauffeur who is less than 18 years of age except the secretary of state may issue a license to a person who is not less than 16 years of age and who has satisfactorily passed a driver education course and examination given by a public school or nonpublic school of this or another state offering a course approved by the department of education or an equivalent course and examination as prescribed in section 811

(c) A person whose license has been suspended during the period for which the license was suspended

(d) A person who has been convicted of or received a probate court disposition for section 625(4) or (5)

(e) A person who has been convicted of or received a probate court disposition for negligent homicide manslaughter or murder resulting from the operation of a motor vehicle

(f) A person who is an habitual violator of the criminal laws relating to operating a 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 with an alcohol content of 0.10 grams or more per 100 milliliters of blood per 210 liters of breath or per 67 milliliters of urine Convictions of any of the following whether under a law of this state a local ordinance substantially corresponding to a law of this state or a law of another state substantially corresponding to a law of this state are prima facie evidence that the person is an habitual violator as described in this subdivision

(i) Any combination of 2 convictions within 7 years for 1 or more of the following

(A) A violation of section 625(1) (4) or (5)

(B) A violation of former section 625(1) or (2)

(ii) Any combination of 3 convictions within 10 years for 1 or more of the following if any of the convictions resulted from an arrest on or after January 1 1992

(A) A violation of section 625(1) (3) (4) or (5)

(B) A violation of former section 625(1) or (2) or former section 625b

(g) A person who in the opinion of the secretary of state is afflicted with or suffering from a physical or mental disability or disease preventing that person from exercising reasonable and ordinary control over a motor vehicle while operating the motor vehicle upon the highways

(h) A person who is unable to understand highway warning or direction signs in the English language

(i) A person who is an habitually reckless driver Two convictions within 7 years of reckless driving under this act or any other law of this state relating to reckless driving or under a local ordinance of this state or a law of another state that defines the term reckless driving substantially similarly to the law of this state are prima facie evidence that the person is an habitually reckless driver

(j) A person who is an habitual criminal Two convictions of a felony in which a motor vehicle was used in this or another state are prima facie evidence that the person is an habitual criminal

(k) A person who is unable to pass a knowledge skill or ability test administered by the secretary of state in connection with the issuance of an original operator's or chauffeur's license original motorcycle endorsement or an original or renewal of a vehicle group designation or vehicle endorsement

(l) A person who has been convicted of or has received a probate court disposition for or has been determined responsible for 2 or more moving violations under a law of this state a local ordinance substantially corresponding to a law of this state or a law of another state substantially corresponding to a law of this state within the preceding 3 years if the violations occurred before issuance of an original license to the person in this or another state

(m) A nonresident

(n) A person not licensed under this act who has been convicted of or has received a probate court disposition for or has been determined responsible for a crime or civil infraction described in section 319 324 or 904 A person shall be denied a license under this subdivision for the length of time corresponding to the period of the licensing sanction that would have been imposed under section 319 324 or 904 if the person had been licensed at the time of the violation

(o) A person not licensed under this act who has been convicted of or received a probate court disposition for committing a crime described in section 319e A person shall be denied a license under this subdivision for the length of time that corresponds to the period of the licensing sanction that would have been imposed under section 319e if the person had been licensed at the time of the violation

(p) A person not licensed under this act who is determined to have violated section 33b(1) of the Michigan Liquor Control Act Act No 8 of the Public Acts of the Extra Session of 1933 being section 436 33b of the Michigan Compiled Laws or section 624b The person shall be denied a license under this subdivision for a period of time that corresponds to the period of the licensing sanction that would have been imposed under those sections had the person been licensed at the time of the violation

(2) Upon receipt of the appropriate records of conviction the secretary of state shall revoke the operator's or chauffeur's license of a person having any of the following whether under a law of this state a local ordinance substantially corresponding to a law of this state or a law of another state substantially corresponding to a law of this state

(a) Two convictions of reckless driving in violation of section 626 within 7 years

(b) Two convictions of a felony in which a motor vehicle was used within 7 years

(c) Any combination of 2 convictions within 7 years for any of the following

(i) A violation of section 625(1)

(ii) A violation of former section 625(1) or (2)

(iii) A violation of section 625(4) or (5)

(iv) Negligent homicide manslaughter or murder resulting from the operation of a motor vehicle

(d) One conviction under section 625(4) or (5)

(e) One conviction of negligent homicide manslaughter or murder resulting from the operation of a motor vehicle

(f) Any combination of 3 convictions within 10 years for any of the following if any of the convictions resulted from an arrest on or after January 1 1992

(i) A violation of section 625(1) (3) (4) or (5)

(ii) A violation of former section 625(1) or (2) or former section 625b

(iii) Negligent homicide manslaughter or murder resulting from the operation of a motor vehicle

(3) The secretary of state shall revoke a license under subsection (2) notwithstanding a court order issued under section 625 section 625b former section 625(1) or (2) or former section 625b or a local ordinance substantially corresponding to section 625 section 625b former section 625(1) or (2) or former section 625b

(4) The secretary of state shall not issue a license under this act to a person whose license has been revoked under this act or denied under subsection (1)(d) (e) (f) (i) or (j) until both of the following occur

(a) The later of the following

(i) The expiration of not less than 1 year after the license was revoked or denied

(ii) The expiration of not less than 5 years after the date of a subsequent revocation or denial occurring within 7 years after the date of any prior revocation or denial

(b) The person meets the requirements of the department

(5) Multiple convictions or civil infraction determinations resulting from the same incident shall be treated as a single violation for purposes of denial or revocation of a license under this section

(6) As used in this section felony in which a motor vehicle was used means a felony during the commission of which the person operated a motor vehicle and while operating the vehicle presented real or potential harm to persons or property and 1 or more of the following circumstances existed

(a) The vehicle was used as an instrument of the felony

- (b) The vehicle was used to transport a victim of the felony
- (c) The vehicle was used to flee the scene of the felony
- (d) The vehicle was necessary for the commission of the felony

Sec 319 (1) The secretary of state shall immediately suspend a person's license for not less than 90 days or more than 2 years upon receiving a record of the person's conviction for any of the following crimes or attempts to commit any of the following crimes whether the conviction is under a law of this state a local ordinance substantially corresponding to a law of this state or a law of another state substantially corresponding to a law of this state

(a) Fraudulently altering or forging documents pertaining to motor vehicles in violation of section 257

(b) Perjury or making a false certification to the secretary of state under any law requiring the registration of a motor vehicle or regulating the operation of a motor vehicle on a highway

(c) A violation of section 413 or 414 of the Michigan penal code Act No 328 of the Public Acts of 1931 being sections 750 413 and 750 414 of the Michigan Compiled Laws or a violation of section 1 of Act No 214 of the Public Acts of 1931 being section 752 191 of the Michigan Compiled Laws

(d) A conviction for reckless driving in violation of section 626

(e) Failing to stop and disclose identity at the scene of an accident resulting in death or injury in violation of section 617 or 617a

(f) A felony in which a motor vehicle was used As used in this section felony in which a motor vehicle was used means a felony during the commission of which the person convicted operated a motor vehicle and while operating the vehicle presented real or potential harm to persons or property and 1 or more of the following circumstances existed

- (i) The vehicle was used as an instrument of the felony
- (ii) The vehicle was used to transport a victim of the felony
- (iii) The vehicle was used to flee the scene of the felony
- (iv) The vehicle was necessary for the commission of the felony

(2) The secretary of state shall suspend the license of a person convicted of malicious destruction resulting from the operation of a motor vehicle under section 382 of the Michigan penal code Act No 328 of the Public Acts of 1931 as amended being section 750 382 of the Michigan Compiled Laws for not more than 1 year as ordered by the court as part of the sentence

(3) The secretary of state shall immediately suspend a person's license for the period specified in the abstract of conviction upon receiving the person's license and abstract of conviction forwarded to the secretary of state pursuant to section 367c of the Michigan penal code Act No 328 of the Public Acts of 1931 being section 750 367c of the Michigan Compiled Laws

(4) Except as otherwise provided in subsection (9) if a court has not ordered a suspension of a person's license under this act for a violation described in subdivision (a) (b) (c) or (d) for a period equal to or greater than the period of a suspension prescribed under subdivision (a) (b) (c) or (d) for the violation the secretary of state shall suspend the license as follows notwithstanding a court order issued under section 625(1) (3) or (6) section 625b former section 625(1) or (2) or former section 625b or a local ordinance substantially corresponding to section 625(1) (3) or (6) section 625b former section 625(1) or (2) or former section 625b

(a) For not less than 90 days or more than 1 year upon receiving a record of the person's conviction for a violation of section 625(3) a local ordinance substantially corresponding to section 625(3) or a law of another state substantially corresponding to section 625(3) if the person has no prior convictions within 7 years for a violation of section 625(1) (3) (4) or (5) former section 625(1) or (2) or former section 625b a local ordinance substantially corresponding to section 625(1) or (3) former section 625(1) or (2) or former section 625b or a law of another state substantially corresponding to section 625(1) (3) (4) or (5) former section 625(1) or (2) or former section 625b However if the person is convicted of a violation of section 625(3) a local ordinance substantially corresponding to section 625(3) or a law of another state substantially corresponding to section 625(3) for operating a vehicle when due to the consumption of a controlled substance or a combination of intoxicating liquor and a controlled substance the person's ability to operate the vehicle was visibly impaired the secretary of state shall suspend the person's license under this subdivision for a period of not less than 6 months or more than 1 year

(b) For not less than 6 months or more than 2 years upon receiving a record of the person's conviction if the person has the following convictions whether under the law of this state a local ordinance substantially corresponding to a law of this state or a law of another state substantially corresponding to a law of this state

- (i) One conviction under section 625(1) or former section 625(1) or (2)
- (ii) Any combination of 2 convictions under section 625(3) or former section 625b within a 7 year period
- (iii) One conviction under section 625(1) or former section 625(1) or (2) and 1 conviction under section 625(3) or former section 625b within a 7 year period

(v) One conviction under section 625(4) or (5) followed by 1 conviction under section 625(3) within a 7 year period

(c) For not less than 30 days or more than 90 days upon receiving a record of the person's conviction for a violation of section 625(6) a local ordinance substantially corresponding to section 625(6) or a law of another state substantially corresponding to section 625(6) if the person has no prior convictions within 7 years for a violation of section 625(1) (3) (4) (5) or (6) former section 625(1) or (2) or former section 625b a local ordinance substantially corresponding to section 625(1) (3) or (6) former section 625(1) or (2) or former section 625b or a law of another state substantially corresponding to section 625(1) (3) (4) (5) or (6) former section 625(1) or (2) or former section 625b

(d) For not less than 90 days or more than 1 year upon receiving a record of the person's conviction for a violation of section 625(6) a local ordinance substantially corresponding to section 625(6) or a law of another state substantially corresponding to section 625(6) if the person has 1 or more prior convictions within 7 years for a violation of section 625(1) (3) (4) (5) or (6) former section 625(1) or (2) or former section 625b a local ordinance substantially corresponding to section 625(1) (3) or (6) former section 625(1) or (2) or former section 625b or a law of another state substantially corresponding to section 625(1) (3) (4) (5) or (6) former section 625(1) or (2) or former section 625b

(5) Upon receiving a certificate of conviction pursuant to section 33b(3) of the Michigan liquor control act Act No 8 of the Public Acts of the Extra Session of 1933 being section 436 33b of the Michigan Compiled Laws or a local ordinance or law of another state substantially corresponding to section 33b(3) of Act No 8 of the Public Acts of the Extra Session of 1933 the secretary of state shall suspend pursuant to court order the person's operator's or chauffeur's license for 90 days A suspension under this subsection shall be in addition to any other suspension of the person's license

(6) Upon receiving the record of a person's conviction for a violation of section 602a of this act or section 479a(1) (4) or (5) of Act No 328 of the Public Acts of 1931 being section 750 479a of the Michigan Compiled Laws the secretary of state immediately shall suspend the person's license for the period ordered by the court as part of the sentence or disposition

(7) Upon the receipt of a civil infraction determination or probate court order of disposition for a violation of section 33b(1) of Act No 8 of the Public Acts of the Extra Session of 1933 being section 436 33b of the Michigan Compiled Laws and section 624b and notwithstanding any court order to the contrary the secretary of state shall suspend the person's operator's or chauffeur's license for the period of time described in section 33b(5) of Act No 8 of the Public Acts of the Extra Session of 1933 or section 624b and if applicable issue a restricted license as ordered by the court in the manner provided for in section 33b(7) or section 624b In the case of a person who does not possess an operator or chauffeur license the secretary of state shall deny the application for an operator or chauffeur license for the applicable suspension period

(8) Except as provided in subsection (10) a suspension pursuant to this section shall be imposed notwithstanding a court order issued under section 625(1) (3) (4) (5) or (6) or section 625b or a local ordinance substantially corresponding to section 625(1) (3) or (6) or section 625b

(9) If the secretary of state receives records of more than 1 conviction of a person resulting from the same incident a suspension shall be imposed only for the violation to which the longest period of suspension applies under this section

(10) The secretary of state may waive a suspension of a person's license imposed under subsection (4)(a) (b) (c) or (d) if the person submits proof that a court in another state revoked suspended or restricted his or her license for a period equal to or greater than the period of a suspension prescribed under subsection (4)(a) (b) (c) or (d) for the violation and that the revocation suspension or restriction was served for the violation or may grant a restricted license

Sec 319d (1) A person whether licensed or not shall not operate a commercial motor vehicle within this state with an alcohol content of 0.015 grams or more per 100 milliliters of blood per 210 liters of breath or per 67 milliliters of urine

(2) A peace officer who has reasonable cause to believe that a person was operating a commercial motor vehicle within the state with an alcohol content of 0.015 grams or more per 100 milliliters of blood per 210 liters of breath or per 67 milliliters of urine as measured by a preliminary chemical breath analysis or a chemical test provided under section 625a shall order the person out of service immediately for 24 hours which shall begin upon issuance of the order

(3) A peace officer shall immediately order a person who refuses to submit to a preliminary chemical breath analysis requested under section 625a(2) out of service for 24 hours which shall begin when the order is issued

(4) A person ordered out of service under this section a local ordinance substantially corresponding to this section or a law or local ordinance of another state substantially corresponding to this section shall not operate a commercial motor vehicle within this state during the 24 hour out of service period

(5) A peace officer who issues an out of service order under this section shall provide for the safe and expeditious disposition of a product carried by a commercial motor vehicle that is hazardous or would result in damage to the vehicle human health or the environment

(6) Failure to comply with subsection (1) is not a civil infraction or criminal violation of this act

(7) A person who violates subsection (4) is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$100 00 or both

Sec 320e (1) Except as otherwise provided in subsection (2) a person whose operator's or chauffeur's license is suspended, revoked, or restricted pursuant to section 303.319, 320, 324, 625, 625b, 625f, or 904 shall pay a license reinstatement fee of \$125 00 to the secretary of state before a license is issued or returned to the person. The increase in the reinstatement fee from \$60 00 to \$125 00 shall be imposed for a license that is issued or returned on or after October 1, 1991, regardless of when the license was suspended, revoked, or restricted. Of the increase in the reinstatement fee from \$60 00 to \$125 00, \$25 00 shall be allocated to the department of state, \$10 00 shall be deposited by the department of treasury in the drunk driving prevention equipment and training fund created under section 625h(1), and \$30 00 shall be deposited by the department of treasury in the drunk driving caseload assistance fund created under section 625h(5). The fee shall be waived if the license was suspended or restricted because of the person's mental or physical infirmity or disability.

(2) A person whose operator's or chauffeur's license is suspended, revoked, or restricted pursuant to section 319(7) shall pay a license reinstatement fee of \$125 00 to the secretary of state before a license is issued or returned to the person. Of the \$125 00, \$95 00 shall be allocated to the department of state, and \$30 00 shall be deposited by the department of treasury in the underage drinking case information management fund created under section 323e. The fee shall be waived if the license was suspended or restricted because of the person's mental or physical infirmity or disability.

(3) A person whose operator's or chauffeur's license is suspended, revoked, or restricted pursuant to section 319e shall pay a license reinstatement fee of \$125 00 to the secretary of state before a license is issued or returned to the person. Of the \$125 00 fee, \$95 00 shall be allocated to the department of state, and \$30 00 shall be deposited by the department of treasury in the drug case information management fund created under section 323d.

(4) Except as otherwise provided in this subsection, the secretary of state shall assess points and take licensing action, including suspending, revoking, or denying a license under this act, according to the law in effect at the time of the conspiracy to commit the offense or at the time the offense was committed or attempted or the civil infraction occurred. If 1 or more of the convictions involved in a licensing sanction to be effected under section 303(1)(f)(ii) or 303(2)(f) is a violation or attempted violation of section 625(1) or (3) or a local ordinance substantially corresponding to section 625(1) or (3) committed or attempted after January 1, 1992, the secretary of state shall apply the law in effect after January 1, 1992.

(5) Except as otherwise provided in this subsection, judicial review of an administrative licensing sanction under section 303 shall be governed by the law in effect at the time the offense was committed or attempted. If 1 or more of the convictions involved in an administrative licensing sanction to be effected under section 303(1)(f)(ii) or 303(2)(f) is a violation or attempted violation of section 625(1) or (3) or a local ordinance substantially corresponding to section 625(1) or (3) committed or attempted after January 1, 1992, judicial review of that sanction shall be governed by the law in effect after January 1, 1992.

Sec 323 (1) Except as provided in subsections (5) and (9), a person aggrieved by a final determination of the secretary of state denying the person an operator's or chauffeur's license, a vehicle group designation, or an endorsement on a license, or revoking, suspending, or restricting an operator's or chauffeur's license, vehicle group designation, or an endorsement, may petition for a review of the determination in the circuit court in the county where the person was arrested if the denial or suspension was imposed pursuant to section 625f or pursuant to the order of a trial court under section 328, or in all other cases, in the circuit court in the person's county of residence. The person shall file the petition within 63 days after the determination is made, except that for good cause shown, the court may allow the person to file petition within 182 days after the determination is made. As provided in section 625f, a peace officer aggrieved by a determination of a hearing officer in favor of a person who requested a hearing under section 625f may, with the prosecuting attorney's consent, petition for review of the determination in the circuit court in the county where the arrest was made. The peace officer shall file the petition within 63 days after the determination is made, except that for good cause shown, the court may allow the peace officer to file the petition within 182 days after the determination is made.

(2) Except as otherwise provided in this section, the circuit court shall enter an order setting the cause for hearing for a day certain not more than 63 days after the order's date. The order, a copy of the petition that includes the person's full name, current address, birth date, and driver's license number, and all supporting affidavits shall be served on the secretary of state's office in Lansing not less than 20 days before the date set for the hearing. If the person is seeking a review of the record prepared pursuant to section 322 or section 625f, the service upon the secretary of state shall be made not less than 50 days before the date set for the hearing.

(3) Except as otherwise provided in this section, the court may take testimony and examine all the facts and circumstances relating to the denial, suspension, restriction, or revocation of the person's license. The court may affirm, modify, or set aside the restriction, suspension, revocation, or denial, except the court shall not order the secretary of state to issue a restricted or unrestricted chauffeur's license that would permit the person to drive a commercial motor

vehicle that hauls a hazardous material. The court shall duly enter the order and the petitioner shall file a certified copy of the order with the secretary of state's office in Lansing within 7 days after entry of the order.

(4) In reviewing a determination under section 625f, the court shall confine its consideration to 1 or both of the following:

(a) A review of the record prepared pursuant to section 625f to determine whether the hearing officer properly determined the issues enumerated in section 625f.

(b) A determination of whether to order a restricted license issued as provided in section 323c.

(5) This section does not apply to a denial, revocation, suspension, or restriction imposed pursuant to a suspension ordered under section 321a or to a court order issued as part of the sentence for a conviction under either of the following:

(a) Section 625, section 625m, former section 625(1) or (2), or former section 625b or a local ordinance substantially corresponding to section 625(1), (2), or (3), section 625m, former section 625(1) or (2), or former section 625b.

(b) Part 74 or section 17766a of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.7401 to 333.7461 and section 333.17766a of the Michigan Compiled Laws, or a local ordinance that prohibits conduct prohibited under part 74 or section 17766a of Act No. 368 of the Public Acts of 1978.

(6) In reviewing a determination resulting in a denial or revocation under section 303(1)(d), (e), or (f) or section 303(2)(c), (d), (e), or (f), the court shall confine its consideration to a review of the record prepared pursuant to section 322 or the driving record created under section 204a, and shall not grant relief pursuant to subsection (3). The court shall set aside the secretary of state's determination only if the petitioner's substantial rights have been prejudiced because the determination is any of the following:

(a) In violation of the Constitution of the United States, the state constitution of 1963, or a statute.

(b) In excess of the secretary of state's statutory authority or jurisdiction.

(c) Made upon unlawful procedure resulting in material prejudice to the petitioner.

(d) Not supported by competent material and substantial evidence on the whole record.

(e) Arbitrary, capricious, or clearly an abuse or unwarranted exercise of discretion.

(f) Affected by other substantial and material error of law.

(7) This section does not apply to a denial, revocation, suspension, or restriction imposed pursuant to the financial responsibility act contained in chapter V.

(8) This section does not apply to a suspension, revocation, or denial of a vehicle group designation imposed pursuant to section 312f, 319a, or 319b.

(9) This section does not apply to a suspension or denial of a license imposed pursuant to section 303(1)(o) or 319e.

Sec. 625. (1) A person, whether licensed or not, shall not operate a vehicle upon a 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 if either of the following applies:

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

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

(2) The owner of a vehicle or a person in charge or in control of a vehicle shall not authorize or knowingly permit the vehicle to be operated upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of motor vehicles, within this state by a person who is under the influence of intoxicating liquor or a controlled substance, or a combination of intoxicating liquor and a controlled substance, or who has an alcohol content of 0.10 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

(3) A person, whether licensed or not, shall not operate a vehicle upon a 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 when, due to the consumption of an intoxicating liquor, a controlled substance, or a combination of an intoxicating liquor and a controlled substance, the person's ability to operate the vehicle is visibly impaired. If a person is charged with violating subsection (1), a finding of guilty under this subsection may be rendered.

(4) A person, whether licensed or not, who operates a motor vehicle upon a 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, in violation of subsection (1) or (3), and by the operation of that motor vehicle causes the death of another person, is guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not less than \$2,500.00 or more than \$10,000.00, or both.

(5) A person whether licensed or not who operates a motor vehicle upon a 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 in violation of subsection (1) or (3) and by the operation of that motor vehicle causes a serious impairment of a body function of another person is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not less than \$1 000 00 or more than \$5 000 00 or both As used in this subsection serious impairment of a body function includes but is not limited to 1 or more of the following

- (a) Loss of a limb or use of a limb
- (b) Loss of a hand foot finger or thumb or use of a hand foot finger or thumb
- (c) Loss of an eye or ear or use of an eye or ear
- (d) Loss or substantial impairment of a bodily function
- (e) Serious visible disfigurement
- (f) A comatose state that lasts for more than 3 days
- (g) Measurable brain damage or mental impairment
- (h) A skull fracture or other serious bone fracture
- (i) Subdural hemorrhage or subdural hematoma

(6) A person who is less than 21 years of age whether licensed or not shall not operate a vehicle upon a 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 if the person has any bodily alcohol content As used in this subsection any bodily alcohol content means either of the following

(a) An alcohol content of not less than 0 02 grams or more than 0 07 grams per 100 milliliters of blood per 210 liters of breath or per 67 milliliters of urine

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

(7) If a person is convicted of violating subsection (1) all of the following apply

(a) Except as otherwise provided in subdivisions (b) and (d) the person is guilty of a misdemeanor punishable by 1 or more of the following

- (i) Community service for not more than 45 days
- (ii) Imprisonment for not more than 90 days
- (iii) A fine of not less than \$100 00 or more than \$500 00

(b) If the violation occurs within 7 years of a prior conviction the person shall be sentenced to pay a fine of not less than \$200 00 or more than \$1 000 00 and either of the following

(i) Community service for not less than 10 days or more than 90 days and may be imprisoned for not more than 1 year

(ii) Imprisonment for not less than 48 consecutive hours or more than 1 year and may be sentenced to community service for not more than 90 days

(c) A term of imprisonment imposed under subdivision (b)(ii) shall not be suspended

(d) If the violation occurs within 10 years of 2 or more prior convictions the person is guilty of a felony and shall be sentenced to imprisonment for not less than 1 year or more than 5 years or a fine of not less than \$500 00 or more than \$5 000 00 or both A term of imprisonment imposed under this subdivision shall not be suspended

(e) As used in this subsection prior conviction means a conviction for a violation or attempted violation of subsection (1) (4) or (5) or former section 625(1) or (2) a local ordinance substantially corresponding to subsection (1) or former section 625(1) or (2) or a law of another state substantially corresponding to subsection (1) (4) or (5) or former section 625(1) or (2)

(8) A person who is convicted of violating subsection (2) is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not less than \$100 00 or more than \$500 00 or both

(9) If a person is convicted of violating subsection (3) all of the following apply

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

- (i) Community service for not more than 45 days
- (ii) Imprisonment for not more than 90 days
- (iii) A fine of not more than \$300 00

(b) If the violation occurs within 7 years of 1 prior conviction the person shall be sentenced to pay a fine of not less than \$200 00 or more than \$1 000 00 and either of the following

(i) Community service for not less than 10 days or more than 90 days and may be sentenced to imprisonment for not more than 1 year

(ii) Imprisonment for not more than 1 year and may be sentenced to community service for not more than 90 days

(c) If the violation occurs within 10 years of 2 or more prior convictions the person shall be sentenced to pay a fine of not less than \$200 00 or more than \$1 000 00 and either of the following

(i) Community service for not less than 10 days or more than 90 days and may be sentenced to imprisonment for not more than 1 year

(ii) Imprisonment for not more than 1 year and may be sentenced to community service for not more than 90 days

(d) As used in this subsection prior conviction means a conviction for a violation or attempted violation of subsection (1) (3) (4) or (5) former section 625(1) or (2) or former section 625b a local ordinance substantially corresponding to subsection (1) or (3) former section 625(1) or (2) or former section 625b or a law of another state substantially corresponding to subsection (1) (3) (4) or (5) former section 625(1) or (2) or former section 625b

(10) If a person is convicted of violating subsection (6) the following shall apply

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

(i) Community service for not more than 45 days

(ii) A fine of not more than \$250 00

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

(i) Community service for not more than 60 days

(ii) A fine of not more than \$500 00

(c) As used in this subsection prior conviction means a conviction for a violation or attempted violation of subsection (1) (3) (4) (5) or (6) former section 625(1) or (2) or former section 625b a local ordinance substantially corresponding to subsection (1) (3) or (6) former section 625(1) or (2) or former section 625b or a law of another state substantially corresponding to subsection (1) (3) (4) (5) or (6) former section 625(1) or (2) or former section 625b

(11) In addition to imposing the sanctions prescribed under subsection (4) (5) (7) (9) or (10) the court may order the person to pay the costs of the prosecution pursuant to the code of criminal procedure Act No 175 of the Public Acts of 1927 being sections 760 1 to 776 21 of the Michigan Compiled Laws

(12) The court shall impose license sanctions pursuant to section 625b

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

(14) If the prosecuting attorney intends to seek an enhanced sentence under subsection (7)(b) or (d) subsection (9)(b) or (c) or subsection (10)(b) based upon the defendant having 1 or more prior convictions the prosecuting attorney shall include on the complaint and information or an amended complaint and information filed in district court circuit court recorder's court municipal court or probate court a statement listing the defendant's prior convictions

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

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

(a) An abstract of conviction

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

(c) An admission by the defendant

(17) A person who is convicted of an attempted violation of subsection (1) (3) (4) (5) or (6) or a local ordinance substantially corresponding to subsection (1) (3) or (6) shall be punished as if the offense had been completed

(18) When assessing points and taking licensing action under this act the secretary of state and the court shall treat a conviction of an attempted violation of subsection (1) (3) (4) (5) or (6) or a local ordinance substantially corresponding to subsection (1) (3) or (6) or a law of another state substantially corresponding to subsection (1) (3) (4) (5) or (6) the same as if the offense had been completed

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

(20) Except as otherwise provided in subsection (21) if a person is charged with operating a vehicle while his or her ability to operate the vehicle was visibly impaired due to his or her consumption of a controlled substance or a combination of intoxicating liquor and a controlled substance in violation of subsection (3) or a local ordinance substantially corresponding to subsection (3) the court shall require the jury to return a special verdict in the form of a written finding or if the court convicts the person without a jury or accepts a plea of guilty or nolo contendere the court shall make a finding as to whether due to the consumption of a controlled substance or a combination of intoxicating liquor and a controlled substance the person's ability to operate a motor vehicle was visibly impaired at the time of the violation

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

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

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

(22) If a jury or court makes a finding under subsection (19) (20) or (21) that the defendant operated a motor vehicle under the influence of or while impaired due to the consumption of a controlled substance or combination of a controlled substance and an intoxicating liquor the court shall do both of the following

(a) Report the finding to the secretary of state

(b) Forward to the department of state police on a form or forms prescribed by the state court administrator a record that specifies the penalties imposed by the court including any term of imprisonment and any licensing sanction imposed under section 625b

(23) Except as otherwise provided by law a record described in subsection (22)(b) is a public record and the department of state police shall retain the information contained on that record for a period of not less than 7 years

(24) In a prosecution for a violation of subsection (6) the defendant shall bear the burden of proving that the consumption of intoxicating liquor was a part of a generally recognized religious service or ceremony by a preponderance of the evidence

Section 2 This amendatory act shall take effect May 1 1995

Section 3 This amendatory act shall not take effect unless all of the following bills of the 87th Legislature are enacted into law

(a) House Bill No 4586

(b) House Bill No 5745

Secretary of the Senate

Co Clerk of the House of Representatives

Approved

Governor