

Act No. 491
Public Acts of 1996
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**STATE OF MICHIGAN
88TH LEGISLATURE
REGULAR SESSION OF 1996**

Introduced by Senators Van Regenmorter, Cisky and Bouchard

ENROLLED SENATE BILL No. 348

AN ACT to amend sections 625, 625a, and 625m 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," section 625 as amended by Act No. 449 of the Public Acts of 1994 and sections 625a and 625m as amended by Act No. 450 of the Public Acts of 1994, being sections 257.625, 257.625a, and 257.625m of the Michigan Compiled Laws; and to add section 625n.

The People of the State of Michigan enact:

Section 1. Sections 625, 625a, and 625m of Act No. 300 of the Public Acts of 1949, section 625 as amended by Act No. 449 of the Public Acts of 1994 and sections 625a and 625m as amended by Act No. 450 of the Public Acts of 1994, being sections 257.625, 257.625a, and 257.625m of the Michigan Compiled Laws, are amended and section 625n is added to read as follows:

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, 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, 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 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. The judgment of sentence may impose the sanction permitted under section 625n.

(5) A person, whether licensed or not, who operates a motor vehicle 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. The judgment of sentence may impose the sanction permitted under section 625n. 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 pay a fine of not less than \$500.00 or more than \$5,000.00 and to either of the following:

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

(ii) Probation with imprisonment in the county jail for not less than 30 days or more than 1 year. Not less than 48 hours of the imprisonment imposed under this subparagraph shall be served consecutively.

(e) The term of imprisonment imposed under subdivision (d) shall not be suspended.

(f) The judgment of sentence under this subsection may impose the sanction permitted under section 625n.

(g) 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) The judgment of sentence under subdivision (b) or (c) may impose the sanction permitted under section 625n.

(e) 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), all of the following 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 under the code of criminal procedure, Act No. 175 of the Public Acts of 1927, being sections 760.1 to 776.22 of the Michigan Compiled Laws.

(12) The court shall impose licensing 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 prosecuting attorney's motion.

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

(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 not less than 7 years.

(24) In a prosecution for a violation of subsection (6), the defendant bears 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.

Sec. 625a. (1) A peace officer may arrest a person without a warrant under either of the following circumstances:

(a) The peace officer has reasonable cause to believe the person was, at the time of an accident in this state, the operator of a vehicle involved in the accident and was operating the vehicle in violation of section 625(1), (3), or (6) or a local ordinance substantially corresponding to section 625(1), (3), or (6).

(b) The person is found in the driver's seat of a vehicle parked or stopped on a highway or street within this state if any part of the vehicle intrudes into the roadway and the peace officer has reasonable cause to believe the person was operating the vehicle in violation of section 625(1), (3), or (6) or a local ordinance substantially corresponding to section 625(1), (3), or (6).

(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 public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state and that the person by the consumption of intoxicating liquor may have affected his or her ability to operate a vehicle, or reasonable cause to believe that a person was operating a commercial motor vehicle within the state while the person's blood, breath, or urine contained any measurable amount of alcohol or while the person had any detectable presence of intoxicating liquor, or reasonable cause to believe that a person who is less than 21 years of age was operating a vehicle upon a public highway or other place open to the public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state while the person had any bodily alcohol content as that term is defined in section 625(6), may require the person to submit to a preliminary chemical breath analysis. The following provisions apply with respect to a preliminary chemical breath analysis administered pursuant to this subsection:

(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 for 1 or more of the following purposes:

(i) To assist the court or hearing officer in determining a challenge to the validity of an arrest. This subparagraph does not limit the introduction of other competent evidence offered to establish the validity of an arrest.

(ii) As evidence of the defendant's breath alcohol content, if offered by the defendant.

(iii) As evidence of the defendant's breath alcohol content, if offered by the prosecution to rebut testimony or other evidence, including but not limited to testimony elicited on cross-examination of a prosecution witness, that is offered or elicited to prove that the defendant's breath alcohol content was lower at the time of the charged offense than when a chemical test was administered pursuant to subsection (6).

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

(d) Except as provided in subsection (5), 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) A peace officer shall use the results of a preliminary chemical breath analysis conducted pursuant to this section to determine whether to order a person out-of-service under section 319d. A peace officer shall order out-of-service as required under section 319d a person who was operating a commercial motor vehicle and who refuses to submit to a preliminary chemical breath analysis as provided in this section. This section does not limit use of other competent evidence by the peace officer to determine whether to order a person out-of-service under section 319d.

(4) A person who was operating a commercial motor vehicle and who is requested to submit to a preliminary chemical breath analysis under this section shall be advised that refusing a peace officer's request to take a test described in this section is a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$100.00, or both, and will result in the issuance of a 24-hour out-of-service order.

(5) A person who was operating a commercial motor vehicle and who refuses to submit to a preliminary chemical breath analysis upon a peace officer's lawful request 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.

(6) 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 or urine or the amount of alcohol in a person's breath 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) 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.

(ii) The results of the test are admissible in a judicial proceeding as provided under this act and will be considered with other competent evidence in determining the defendant's innocence or guilt.

(iii) He or she is responsible for obtaining a chemical analysis of a test sample obtained pursuant to his or her own request.

(iv) 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.

(v) Refusing a peace officer's request to take a test described in subparagraph (i) will result in the suspension of his or her operator's or chauffeur's license and vehicle group designation 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 an individual operating under the delegation of a licensed physician under section 16215 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.16215 of the Michigan Compiled Laws, qualified to withdraw blood and acting in a medical environment, may withdraw blood at a peace officer's request to determine 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 does not attach to a licensed physician or individual operating under the delegation of a licensed physician 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 a peace officer's request 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. The test results are admissible and shall be considered with other competent evidence in determining the defendant's innocence or guilt. If the person charged is administered a chemical test by a person of his or her own choosing, the person charged is 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 medical treatment, the results of a chemical analysis of that sample are 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 is not 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 to determine 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 pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, for the administration of chemical tests for the purposes of this section. An instrument used for a preliminary chemical breath analysis may be used for a chemical test described in this subsection if approved under rules promulgated by the department of state police.

(7) The provisions of subsection (6) relating to chemical testing do not limit the introduction of any other competent evidence bearing upon the question of whether 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 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, or if the person is less than 21 years of age, whether the person had any bodily alcohol content within his or her body. As used in this section, "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.

(8) If a chemical test described in subsection (6) is administered, the test results 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 prosecution shall offer the test results as evidence in that trial. Failure to fully comply with the request bars the admission of the results into evidence by the prosecution.

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

(a) If there were at the time 0.07 grams or less of alcohol per 100 milliliters of the defendant's blood, per 210 liters of the defendant's breath, or per 67 milliliters of the defendant's urine, it is 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 were at the time more than 0.07 grams but less than 0.10 grams of alcohol per 100 milliliters of the defendant's blood, per 210 liters of the defendant's breath, or per 67 milliliters of the defendant's urine, it is 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 were at the time 0.10 grams or more of alcohol per 100 milliliters of the defendant's blood, per 210 liters of the breath, or per 67 milliliters of the defendant's urine, it is presumed that the defendant was under the influence of intoxicating liquor.

(10) A person's refusal to submit to a chemical test as provided in subsection (6) is admissible in a criminal prosecution for a crime described in section 625c(1) only to show that a test was offered to the defendant, but not as evidence in determining the defendant's innocence or guilt. The jury shall be instructed accordingly.

Sec. 625m. (1) A person, whether licensed or not, who has an alcohol content of 0.04 grams or more but not more than 0.07 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine shall not operate a commercial motor vehicle within this state.

(2) A peace officer may arrest a person without a warrant under either of the following circumstances:

(a) The peace officer has reasonable cause to believe that the person was, at the time of an accident, the driver of a commercial motor vehicle involved in the accident and was operating the vehicle in violation of this section or a local ordinance substantially corresponding to this section.

(b) The person is found in the driver's seat of a commercial motor vehicle parked or stopped on a highway or street within this state if any part of the vehicle intrudes into the roadway and the peace officer has reasonable cause to believe the person was operating the vehicle in violation of this section or a local ordinance substantially corresponding to this section.

(3) A person who is convicted of a violation of this section or a local ordinance substantially corresponding to this section is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$300.00, or both, together with costs of the prosecution. As part of the sentence, the court shall order the secretary of state to suspend the vehicle group designations on the person's operator's or chauffeur's license pursuant to section 319b(1)(c) or, if the vehicle was carrying hazardous material required to have a placard pursuant to 49 C.F.R. parts 100 to 199, pursuant to section 319b(1)(d). The court shall not order the secretary of state to issue a restricted license that would permit the person to operate a commercial motor vehicle.

(4) A person who violates this section or a local ordinance substantially corresponding to this section within 10 years of a prior conviction may be sentenced to imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both. As part of the sentence, the court shall order the secretary of state to revoke the vehicle group designations on the person's operator's or chauffeur's license pursuant to section 319b(1)(e). The court shall not order the secretary of state to issue a restricted license that would permit the person to operate a commercial motor vehicle. As used in this subsection, "prior conviction" means a conviction for a violation of this section, section 625(1), (3), (4), or (5), former section 625(1) or (2), or former section 625b, a local ordinance substantially corresponding to this section, section 625(1) or (3), former section 625(1) or (2), or former section 625b, or a law of another state substantially corresponding to this section, section 625(1), (3), (4), or (5), former section 625(1) or (2), or former section 625b, while operating a commercial motor vehicle.

(5) When assessing points and taking license actions under this act, the secretary of state and the court shall treat a conviction for an attempted violation of subsection (1), a local ordinance substantially corresponding to subsection (1), or a law of another state substantially corresponding to subsection (1) the same as if the offense had been completed.

Sec. 625n. (1) Except as otherwise provided in this section and in addition to any other penalty provided for in this act, the judgment of sentence for a conviction for a violation of section 625(1), a violation of section 625(3) described in section 625(9)(b) or (c), or a violation of section 625(4) or (5) may require 1 of the following with regard to the vehicle used in the offense if the defendant owns the vehicle in whole or in part or leases the vehicle:

(a) Forfeiture of the vehicle if the defendant owns the vehicle in whole or in part.

(b) Return of the vehicle to the lessor if the defendant leases the vehicle.

(2) The vehicle may be seized pursuant to an order of seizure issued by the court having jurisdiction upon a showing of probable cause that the vehicle is subject to forfeiture or return to the lessor.

(3) The forfeiture of a vehicle is subject to the interest of the holder of a security interest who did not have prior knowledge of or consent to the violation.

(4) Within 3 days after the defendant's conviction for a violation described in subsection (1), the court shall notify the defendant, his or her attorney, and the prosecuting attorney if the court intends to consider imposing a sanction under this section. Within 3 days after this notice, the prosecuting attorney shall give notice to all owners of the vehicle and any person holding a security interest in the vehicle that the court may require forfeiture or return of the vehicle.

(5) If a vehicle is seized before disposition of the criminal proceedings, a defendant who is an owner or lessee of the vehicle may move the court having jurisdiction over the proceedings to require the seizing agency to file a lien against the vehicle and to return the vehicle to the owner or lessee pending disposition of the criminal proceedings. The court shall hear the motion within 7 days after the motion is filed. If the defendant establishes at the hearing that he or she holds the legal title of the vehicle or that he or she has a leasehold interest and that it is necessary for him or her or a member of his or her family to use the vehicle pending the outcome of the forfeiture action, the court may order the seizing agency to return the vehicle to the owner or lessee. If the court orders the return of the vehicle to the owner or lessee, the court shall order the seizing agency to file a lien against the vehicle.

(6) Within 14 days after notice by the prosecuting attorney is given under subsection (4), an owner, lessee, or holder of a security interest may file a claim of interest in the vehicle. Within 21 days after the expiration of the period for filing claims, but before sentencing, the court shall hold a hearing to determine the legitimacy of any claim, the extent of any co-owner's equity interest, and the liability of the defendant to any co-lessee.

(7) If a vehicle is forfeited under this section, the unit of government that seized the vehicle shall sell the vehicle and dispose of the proceeds in the following order of priority:

(a) Pay any outstanding security interest of a secured party who did not have prior knowledge of or consent to the commission of the violation.

(b) Pay the equity interest of a co-owner who did not have prior knowledge of or consent to the commission of the violation.

(c) Satisfy any order of restitution entered in the prosecution for the violation.

(d) Pay the claim of each person who shows that he or she is a victim of the violation to the extent that the claim is not covered by an order of restitution.

(e) Pay any outstanding lien against the property that has been imposed by a governmental unit.

(f) Pay the proper expenses of the proceedings for forfeiture and sale, including, but not limited to, expenses incurred during the seizure process and expenses for maintaining custody of the property, advertising, and court costs.

(g) The balance remaining after the payment of items (a) through (f) shall be distributed by the court having jurisdiction over the forfeiture proceedings to the unit or units of government substantially involved in effecting the forfeiture. Seventy-five percent of the money received by a unit of government under this subdivision shall be used to enhance enforcement of the criminal laws and 25% of the money shall be used to implement the crime victim's rights act, Act No. 87 of the Public Acts of 1985, being sections 780.751 to 780.834 of the Michigan Compiled Laws. A unit of government receiving money under this subdivision shall report annually to the department of management and budget the amount of money received under this subdivision that was used to enhance enforcement of the criminal laws and the amount that was used to implement the crime victim's rights act.

(8) The court may order the defendant to pay to a co-lessee any liability determined under subsection (6). The order may be enforced in the same manner as a civil judgment.

(9) The return of a vehicle to the lessor under this section does not affect or impair the lessor's rights or the defendant's obligations under the lease.

(10) A person who knowingly conceals, sells, gives away, or otherwise transfers or disposes of a vehicle with the intent to avoid forfeiture or return of the vehicle to the lessor under this section is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$2,000.00, or both.

Section 2. This amendatory act shall take effect April 1, 1997.

Section 3. This amendatory act shall not take effect unless Senate Bill No. 347 of the 88th Legislature is enacted into law.

Secretary of the Senate.

Clerk of the House of Representatives.

Approved -----

Governor.