

**SUBSTITUTE FOR
SENATE BILL NO. 870**

A bill to amend 1949 PA 300, entitled
"Michigan vehicle code,"
by amending sections 310d, 320a, 625, 625c, and 727
(MCL 257.310d, 257.320a, 257.625, 257.625c, and 257.727),
section 310d as amended by 1991 PA 99, section 320a as amended by
1996 PA 493, section 625 as amended by 1996 PA 491, section 625c
as amended by 1994 PA 450, and section 727 as amended by 1993
PA 301.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 310d. (1) A license issued under this act to a person
2 not previously licensed in this or in another state shall be des-
3 ignated as probationary for 3 years after the date of issuance.
4 During the first 12 months of probation, the license may be
5 suspended or probationary terms and conditions may be imposed
6 upon failure of the licensee to appear before a magistrate, as

SB 870, As Passed Senate, March 26, 1998

SB 870 as amended March 26, 1998

2

1 provided in this chapter, or upon conviction of the licensee or
2 determination of the licensee's responsibility for a moving vio-
3 lation in this state. The period of suspension or the probation-
4 ary terms and conditions shall not be for more than 12 months and
5 shall be determined by the secretary of state at an examination
6 of the driver by the secretary of state.

7 ~~(2) If a license is suspended or probationary terms and con-~~
8 ~~ditions are imposed by a probate judge~~
9 ~~_____~~, the period during which the
10 ~~suspension or probationary terms and conditions are in effect~~
11 ~~shall be deducted from the period of suspension or probationary~~
12 ~~terms and conditions imposed at an examination of the driver by~~
13 ~~the secretary of state pursuant to subsection (1). If a license~~
14 ~~is suspended or probationary terms and conditions are imposed by~~
15 ~~the probate judge~~
16 ~~_____~~, the probate court shall include the suspension,
17 probationary terms, and conditions, and the period during which
18 the suspension, probationary terms, and conditions apply, on the
19 abstract which the court forwards to the secretary of state.

20 (2) ~~(3)~~ Upon completion of the first 12 months of probation,
21 the secretary of state may require a licensee to be reexamined by the
22 secretary of state if the licensee's driving record contains any
23 of the following:

24 (a) A conviction ~~—~~ OR civil infraction determination ~~—~~ or
25 ~~probate court disposition of~~ FOR a moving violation ~~which~~ THAT
26 was assessed 4 or more points as provided in section 320a.

SB 870, As Passed Senate, March 26, 1998

SB 870 as amended March 26, 1998

3

1 (b) Three convictions ~~—~~ OR 3 civil infraction
2 determinations, ~~3 probate court dispositions,~~ or a combination
3 of convictions ~~—~~ AND civil infraction determinations ~~—~~ and
4 ~~probate court dispositions which~~ THAT equals 3, for moving
5 violations.

6 (c) A total of 6 or more points as provided in section
7 320a.

8 (d) A conviction ~~—~~ OR civil infraction determination ~~—~~ or
9 ~~probate court disposition of~~ FOR a moving violation and an acci-
10 dent for which the official police report indicates the licensee
11 had been drinking intoxicating liquor.

12 (e) A conviction ~~—~~ OR civil infraction determination ~~—~~ or
13 ~~probate court disposition of~~ FOR a moving violation and an acci-
14 dent for which the official police report indicates a moving vio-
15 lation on the part of the licensee.

16 (f) Three accidents for which the official police report
17 indicates a moving violation on the part of the licensee.

18 (g) A suspension pursuant to section 625f.

19 (3) ~~(4)~~ The probationary period shall be extended beyond 3
20 years and the secretary of state may reexamine a licensee as provided
21 in subsection ~~(3)~~ (2) ~~—~~ if any of the following occur and are
22 recorded on the licensee's driving record during the last 10
23 months of the probationary period:

24 (a) A moving violation resulting in a conviction or civil
25 infraction determination.

26 (b) An accident for which the official police report
27 indicates a moving violation on the part of the licensee.

SB 870, As Passed Senate, March 26, 1998

SB 870 as amended March 26, 1998

4

1 (c) An accident for which the official police report
2 indicates the licensee had been drinking intoxicating liquor.

3 (d) A license suspension for a reason other than a mental or
4 physical disability.

5 (4) ~~(5)~~ The probationary period shall be extended pursuant to
6 subsection (4) until the licensee completes 10 consecutive months
7 without a moving violation, accident, or suspension enumerated in
8 subsection (4).

9 (5) ~~(6)~~ ~~The secretary of state, upon~~ UPON completion of a
10 reexamination, THE SECRETARY OF STATE may suspend or impose pro-
11 bationary terms and conditions on the license of a probationary
12 licensee, except that a reexamination for subsection (3)(d) (2)(D),
13 ^(e), or (f) shall not result in a license suspension or the imposition
14 of probationary terms or conditions.

15 (6) ~~(7)~~ For 24 months immediately after a licensee's probation-
16 ary period, the secretary of state may require the licensee to be
17 reexamined by the secretary of state if the licensee's driver
18 record has a total of 9 or more points, as provided in section
19 320a, imposed in a period of 2 years and if the licensee's record
20 contains 1 or more of the following:

21 (a) A conviction ~~or probate court disposition,~~ for a vio-
22 lation of section 625(1) OR (7) or former section 625(1) or (2),
23 a local ordinance substantially corresponding to section 625(1)
24 or former section 625(1) or (2), or a law of another state sub-
25 stantially corresponding to section 625(1) OR (7) or former sec-
26 tion 625(1) or (2).

SB 870, As Passed Senate, March 26, 1998

SB 870 as amended March 26, 1998

5

1 (b) A conviction ~~or probate court disposition~~ for driving
2 while visibly impaired due to consumption of intoxicating liquor,
3 a controlled substance, or a combination of intoxicating liquor
4 and a controlled substance.

5 (c) A suspension of the licensee's license pursuant to sec-
6 tion 625f.

7 (d) An accident for which the official police report indi-
8 cates a moving violation on the part of the licensee.

9 (e) An accident for which the official police report indi-
10 cates the licensee had been drinking intoxicating liquor.

11 (7) ~~(8)~~ ~~The secretary of state, upon~~ UPON completion of a
12 reexamination pursuant to subsection ~~(7)~~ (6), THE SECRETARY OF STATE
13 may suspend the license of the licensee, except that a reexamina-
14 tion for subsection ~~(7)(d)~~ (6)(D) or (e) shall not result in a
15 license suspension or restriction.

16 (8) ~~(9)~~ If a licensee fails to appear for a reexamination
17 sched-
18 uled by the secretary of state pursuant to this section, the
19 licensee's license may be suspended immediately and remain sus-
20 pended until the licensee appears for a reexamination by the sec-

21 (9) ~~(10)~~ Notice of a reexamination required under this section
22 shall be given by first class mail to the last known address of
23 the licensee.

24 (10) ~~(11)~~ For purposes of this section:

25 (a) Upon conviction for a moving violation, the date of the
26 arrest for the violation shall be used in determining whether the
27 conviction occurred within the probationary period.

SB 870, As Passed Senate, March 26, 1998

SB 870 as amended March 26, 1998

6

1 (b) Upon entry of a civil infraction determination for a
2 moving violation, the date of issuance of a citation for a civil
3 infraction shall be used in determining whether the civil infrac-
4 tion determination occurred within the probationary period.

5 (c) Information of a reexamination shall not be placed on a
6 driver's record unless the secretary of state suspends a license
7 or imposes probationary terms and conditions.

8 (d) A suspension shall be considered part of a driving
9 record from the date the suspension is imposed until the suspen-
10 sion is terminated.

11 (e) The date of the official police report shall be used in
12 determining whether a licensee was driving a motor vehicle
13 involved in an accident for which the official police report
14 indicates a moving violation on the part of the licensee or indi-
15 cates the licensee had been drinking intoxicating liquor.

16 Sec. 320a. (1) The secretary of state, within 10 days after
17 the receipt of a properly prepared abstract from this or another
18 state, shall record the date of conviction, civil infraction
19 determination, or probate court disposition, and the number of
20 points for each, based on the following formula, except as other-
21 wise provided in this section and section 629c:

22 (a) Manslaughter, negligent homicide, or a felony
23 resulting from the operation of a motor vehicle..... 6 points

24 (b) A violation [redacted] of section
25 625(1), (4), (5), OR (7) or a law or ordinance substan-
26 tially corresponding to section 625(1), (4) (5), or (7) 6 points

SB 870, As Passed Senate, March 26, 1998

Senate Bill No. 870

7

- 1 ~~(c) A violation or attempted violation of section~~
2 ~~625(4) or (5)..... 6 points~~
- 3 (C) ~~(d)~~ Failing to stop and disclose identity at
4 the scene of an accident when required by law..... 6 points
- 5 (D) ~~(e)~~ Operating a motor vehicle in a reckless
6 manner..... 6 points
- 7 (E) ~~(f)~~ Violation of any law or ordinance per-
8 taining to speed by exceeding the lawful maximum by
9 more than 15 miles per hour..... 4 points
- 10 (F) ~~(g)~~ Violation of section 625(3) or (6) or a
11 law or ordinance substantially corresponding to section
12 625(3) or (6)..... 4 points
- 13 (G) ~~(h)~~ Fleeing or eluding an officer..... 6 points
- 14 (H) ~~(i)~~ Violation of section 626a or a law or
15 ordinance substantially corresponding to section 626a.. 4 points
- 16 (I) ~~(j)~~ Violation of any law or ordinance per-
17 taining to speed by exceeding the lawful maximum by
18 more than 10 but not more than 15 miles per hour or
19 careless driving in violation of section 626b or a law
20 or ordinance substantially corresponding to section
21 626b..... 3 points
- 22 (J) ~~(k)~~ Violation of any law or ordinance per-
23 taining to speed by exceeding the lawful maximum by 10
24 miles per hour or less..... 2 points
- 25 (K) ~~(l)~~ Disobeying a traffic signal or stop
26 sign, or improper passing..... 3 points

SB 870, As Passed Senate, March 26, 1998

SB 870 as amended March 26, 1998

8

1 (1) ~~(m)~~ Violation of section 624a, 624b, or a
2 law or ordinance substantially corresponding to section
3 624a or 624b..... 2 points

4 (M) ~~(n)~~ Until April 1, 2002, violation of sec-
5 tion 310e(4) or (6) or a law or ordinance substantially
6 corresponding to section 310e(4) or (6)..... 2 points

7 (N) ~~(o)~~ All other moving violations pertaining
8 to the operation of motor vehicles reported under this
9 section..... 2 points

10 (O) ~~(p)~~ A refusal by a person less than 21 years
11 of age to submit to a preliminary breath test required
12 by a peace officer under section 625a..... 2 points

13 (2) Points shall not be entered for a violation of
14 section ~~310e(15)~~ 310E(14), 311, 625m, 658, 717, 719, 719a, or 723.

15 (3) Points shall not be entered for bond forfeitures.

16 (4) Points shall not be entered for overweight loads or for
17 defective equipment.

18 (5) If more than 1 conviction, civil infraction determina-
19 tion, or probate court disposition results from the same inci-
20 dent, points shall be entered only for the violation that
21 receives the highest number of points under this section.

22 (6) If a person has accumulated 9 points as provided in this
23 section, the secretary of state may call the person in for an
24 interview as to the person's driving ability and record after due
25 notice as to time and place of the interview. If the person
26 fails to appear as provided in this subsection, the secretary of
27 state shall add 3 points to the person's record.

SB 870, As Passed Senate, March 26, 1998

Senate Bill No. 870

9

1 (7) If a person violates a speed restriction established by
2 an executive order issued during a state of energy emergency as
3 provided by ~~Act No. 191 of the Public Acts of 1982, being sec-~~
4 ~~tions 10.81 to 10.89 of the Michigan Compiled Laws~~ 1982 PA 191,
5 MCL 10.81 TO 10.89, the secretary of state shall enter points for
6 the violation pursuant to subsection (1).

7 (8) The secretary of state shall enter 6 points upon the
8 record of a person whose license is suspended or denied pursuant
9 to section 625f. However, if a conviction, civil infraction
10 determination, or probate court disposition results from the same
11 incident, additional points for that offense shall not be
12 entered.

13 (9) If a Michigan driver commits a violation in another
14 state that would be a civil infraction if committed in Michigan,
15 and a conviction results solely because of the failure of the
16 Michigan driver to appear in that state to contest the violation,
17 upon receipt of the abstract of conviction by the secretary of
18 state, the violation shall be noted on the driver's record, but
19 no points shall be assessed against his or her driver's license.

20 Sec. 625. (1) A person, whether licensed or not, shall not
21 operate a vehicle upon a highway or other place open to the gen-
22 eral public or generally accessible to motor vehicles, including
23 an area designated for the parking of vehicles, within this state
24 if either of the following applies:

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

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

4 (2) The owner of a vehicle or a person in charge or in con-
5 trol of a vehicle shall not authorize or knowingly permit the
6 vehicle to be operated upon a highway or other place open to the
7 general public or generally accessible to motor vehicles, includ-
8 ing an area designated for the parking of motor vehicles, within
9 this state by a person who THE OWNER OR PERSON IN CHARGE OR CONTROL
KNOWS OR HAS REASON TO KNOW is under the influence of intoxicating
10 liquor, a controlled substance, or a combination of intoxicating
11 liquor and a controlled substance or who has an alcohol content
12 of 0.10 grams or more per 100 milliliters of blood, per 210
13 liters of breath, or per 67 milliliters of urine.

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

24 (4) A person, whether licensed or not, who operates a motor
25 vehicle in violation of subsection (1) or (3) and by the opera-
26 tion of that motor vehicle causes the death of another person is
27 guilty of a felony punishable by imprisonment for not more than

SB 870, As Passed Senate, March 26, 1998

Senate Bill No. 870

11

1 15 years or a fine of not less than \$2,500.00 or more than
2 \$10,000.00, or both. ~~The~~ IF THE VIOLATION OCCURS WITHIN 7
3 YEARS OF A PRIOR CONVICTION, THE COURT SHALL ORDER RESTRICTED
4 REGISTRATION PLATES UNDER SECTION 904D OR VEHICLE IMMOBILIZATION
5 UNDER SECTION 904E. IF THE VIOLATION OCCURS WITHIN 10 YEARS OF 2
6 OR MORE PRIOR CONVICTIONS, THE judgment of sentence ~~may~~ SHALL
7 impose the sanction ~~permitted~~ REQUIRED under section 625n.
8 FOLLOWING NOTICE AND AN OPPORTUNITY FOR A HEARING, THE COURT MAY
9 ORDER A PERSON CONVICTED OF VIOLATING THIS SUBSECTION TO PAY
10 CHILD SUPPORT TO THE PARENT OR GUARDIAN OF THE MINOR CHILD OF ANY
11 PERSON WHO DIED AS A RESULT OF THE VIOLATION. THE COURT SHALL
12 DETERMINE THE AMOUNT OF CHILD SUPPORT BY APPLYING THE CHILD SUP-
13 PORT FORMULA DEVELOPED UNDER SECTION 19 OF THE FRIEND OF THE
14 COURT ACT, 1982 PA 294, MCL 552.519, CONSIDERING THE CONVICTED
15 DEFENDANT AS IF HE OR SHE WERE A PARENT OF THE CHILD.

16 (5) A person, whether licensed or not, who operates a motor
17 vehicle in violation of subsection (1) or (3) and by the opera-
18 tion of that motor vehicle causes a serious impairment of a body
19 function of another person is guilty of a felony punishable by
20 imprisonment for not more than 5 years or a fine of not less than
21 \$1,000.00 or more than \$5,000.00, or both. ~~The~~ IF THE VIOLA-
22 TION OCCURS WITHIN 7 YEARS OF A PRIOR CONVICTION, THE COURT SHALL
23 ORDER RESTRICTED REGISTRATION PLATES UNDER SECTION 904D OR VEHI-
24 CLE IMMOBILIZATION UNDER SECTION 904E. IF THE VIOLATION OCCURS
25 WITHIN 10 YEARS OF 2 OR MORE PRIOR CONVICTIONS, THE judgment of
26 sentence ~~may~~ SHALL impose the sanction ~~permitted~~ REQUIRED
27 under section 625n. FOLLOWING NOTICE AND AN OPPORTUNITY FOR A

SB 870, As Passed Senate, March 26, 1998

Senate Bill No. 870

12

1 HEARING, THE COURT MAY ORDER A PERSON CONVICTED OF VIOLATING THIS
2 SUBSECTION TO PAY CHILD SUPPORT TO THE PARENT OR GUARDIAN OF THE
3 MINOR CHILD OF ANY PERSON WHO SUFFERED A LONG-TERM INCAPACITATING
4 INJURY AS A RESULT OF THE VIOLATION. THE COURT SHALL DETERMINE
5 THE AMOUNT OF CHILD SUPPORT BY APPLYING THE CHILD SUPPORT FORMULA
6 DEVELOPED UNDER SECTION 19 OF THE FRIEND OF THE COURT ACT, 1982
7 PA 294, MCL 552.519, CONSIDERING THE CONVICTED DEFENDANT AS IF HE
8 OR SHE WERE A PARENT OF THE CHILD. As used in this subsection,
9 "serious impairment of a body function" includes, but is not
10 limited to, 1 or more of the following:

- 11 (a) Loss of a limb or use of a limb.
- 12 (b) Loss of a hand, foot, finger, or thumb or use of a hand,
13 foot, finger, or thumb.
- 14 (c) Loss of an eye or ear or use of an eye or ear.
- 15 (d) Loss or substantial impairment of a bodily function.
- 16 (e) Serious visible disfigurement.
- 17 (f) A comatose state that lasts for more than 3 days.
- 18 (g) Measurable brain damage or mental impairment.
- 19 (h) A skull fracture or other serious bone fracture.
- 20 (i) Subdural hemorrhage or subdural hematoma.
- 21 (6) A person who is less than 21 years of age, whether
22 licensed or not, shall not operate a vehicle upon a highway or
23 other place open to the general public or generally accessible to
24 motor vehicles, including an area designated for the parking of
25 vehicles, within this state if the person has any bodily alcohol
26 content. As used in this subsection, "any bodily alcohol
27 content" means either of the following:

SB 870, As Passed Senate, March 26, 1998

SB 870 as amended March 26, 1998

13

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

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

8 (7) A PERSON WHO OPERATES OR ATTEMPTS TO OPERATE A VEHICLE
9 IN VIOLATION OF SUBSECTION (1), (3), (4) (5), OR (6) OR SECTION 625M
10 WHILE
11 ANOTHER PERSON WHO IS LESS THAN 16 YEARS OF AGE IS OCCUPYING THE
12 VEHICLE IS GUILTY OF A MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR
13 NOT MORE THAN 1 YEAR OR A FINE OF NOT MORE THAN \$1,000.00, OR
14 BOTH. IF THE VIOLATION OCCURS WITHIN 7 YEARS OF A PRIOR CONVIC-
15 TION, THE COURT SHALL ORDER RESTRICTED REGISTRATION PLATES PURSU-
16 ANT TO SECTION 904D OR VEHICLE IMMOBILIZATION PURSUANT TO SECTION
17 904E. IF THE VIOLATION OCCURS WITHIN 10 YEARS OF 2 OR MORE PRIOR
18 CONVICTIONS, THE JUDGMENT OF SENTENCE SHALL IMPOSE THE SANCTION
19 REQUIRED UNDER SECTION 625N. THIS SECTION DOES NOT PROHIBIT A
20 PERSON FROM BEING CHARGED WITH, CONVICTED OF, OR PUNISHED FOR A
21 VIOLATION OF SUBSECTION (1), (3), (4), (5), OR (6) OR SECTION 625M
22 THAT IS COM-
23 MITTED BY THE PERSON WHILE VIOLATING THIS SUBSECTION. HOWEVER,
24 POINTS SHALL NOT BE ASSESSED UNDER SECTION 320A FOR BOTH A VIOLA-
25 TION OF SUBSECTION (1), (3), (4), (5), OR (6) OR SECTION 625M AND A
26 VIOLATION OF
THIS SUBSECTION FOR CONDUCT ARISING OUT OF THE SAME TRANSACTION.
(8) ~~(7)~~ If a person is convicted of violating subsection
(1), all of the following apply:

SB 870, As Passed Senate, March 26, 1998

Senate Bill No. 870

14

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

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

5 (ii) Imprisonment for not more than ~~90~~ 93 days.

6 (iii) A fine of not less than \$100.00 or more than \$500.00.

7 (b) If the violation occurs within 7 years of a prior con-
8 viction, the person shall be sentenced to pay a fine of not less
9 than \$200.00 or more than \$1,000.00 and either of the following:

10 (i) Community service for not less than 10 days or more than
11 90 days and may be imprisoned for not more than 1 year.

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

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

17 (C) ~~(d)~~ If the violation occurs within 10 years of 2 or
18 more prior convictions, the person is guilty of a felony and
19 shall be sentenced to pay a fine of not less than \$500.00 or more
20 than \$5,000.00 and to either of the following:

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

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

SB 870, As Passed Senate, March 26, 1998

Senate Bill No. 870

15

1 (D) ~~(e) The~~ A term of imprisonment imposed under
2 subdivision ~~(d)~~ (B)(ii) OR (C) shall not be suspended.

3 (E) FOR A VIOLATION DESCRIBED IN SUBDIVISION (B), THE COURT
4 SHALL ORDER RESTRICTED REGISTRATION PLATES UNDER SECTION 904D OR
5 VEHICLE IMMOBILIZATION UNDER SECTION 904E.

6 (f) The judgment of sentence under ~~this subsection may~~
7 SUBDIVISION (C) SHALL impose the sanction ~~permitted~~ REQUIRED
8 under section 625n.

9 ~~(g) As used in this subsection, "prior conviction" means a~~
10 ~~conviction for a violation or attempted violation of subsection~~
11 ~~(1), (4), or (5) or former section 625(1) or (2), a local ordi-~~
12 ~~nance substantially corresponding to subsection (1) or former~~
13 ~~section 625(1) or (2), or a law of another state substantially~~
14 ~~corresponding to subsection (1), (4), or (5) or former section~~
15 ~~625(1) or (2).~~

16 (9) ~~(8)~~ A person who is convicted of violating subsection
17 (2) is guilty of a misdemeanor punishable by imprisonment for not
18 more than ~~90~~ 93 days or a fine of not less than \$100.00 or more
19 than \$500.00, or both.

20 (10) ~~(9)~~ If a person is convicted of violating subsection
21 (3), all of the following apply:

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

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

26 (ii) Imprisonment for not more than ~~90~~ 93 days.

SB 870, As Passed Senate, March 26, 1998

Senate Bill No. 870

16

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

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

6 (i) Community service for not less than 10 days or more than
7 90 days and may be sentenced to imprisonment for not more than 1
8 year.

9 (ii) Imprisonment for not more than 1 year and may be sen-
10 tenced to community service for not more than 90 days.

11 (c) If the violation occurs within 10 years of 2 or more
12 prior convictions, the person IS GUILTY OF A FELONY AND shall be
13 sentenced to pay a fine of not less than ~~-\$200.00-~~ \$500.00 or
14 more than ~~-\$1,000.00,~~ \$5,000.00 and TO either of the following:

15 (i) ~~Community service for not less than 10 days or more~~
16 ~~than 90 days and may be sentenced to imprisonment-~~ IMPRISONMENT
17 UNDER THE JURISDICTION OF THE DEPARTMENT OF CORRECTIONS for not
18 ~~more-~~ LESS than 1 year OR MORE THAN 5 YEARS.

19 (ii) ~~Imprisonment-~~ PROBATION WITH IMPRISONMENT IN THE
20 COUNTY JAIL for not LESS THAN 30 DAYS OR more than 1 year. ~~and~~
21 ~~may be sentenced to community service for not more than 90 days.-~~
22 NOT LESS THAN 48 HOURS OF THE IMPRISONMENT IMPOSED UNDER THIS
23 SUBPARAGRAPH SHALL BE SERVED CONSECUTIVELY.

24 (D) A TERM OF IMPRISONMENT IMPOSED UNDER SUBDIVISION (C)
25 SHALL NOT BE SUSPENDED.

SB 870, As Passed Senate, March 26, 1998

Senate Bill No. 870

17

1 (E) FOR A VIOLATION DESCRIBED IN SUBDIVISION (B), THE COURT
2 SHALL ORDER RESTRICTED REGISTRATION PLATES UNDER SECTION 904D OR
3 VEHICLE IMMOBILIZATION UNDER SECTION 904E.

4 (F) ~~(d)~~ The judgment of sentence under subdivision ~~(b)~~
5 ~~or~~ (c) ~~may~~ SHALL impose the sanction ~~permitted~~ REQUIRED
6 under section 625n.

7 ~~(e) As used in this subsection, "prior conviction" means a~~
8 ~~conviction for a violation or attempted violation of subsection~~
9 ~~(1), (3), (4), or (5), former section 625(1) or (2), or former~~
10 ~~section 625b, a local ordinance substantially corresponding to~~
11 ~~subsection (1) or (3), former section 625(1) or (2), or former~~
12 ~~section 625b, or a law of another state substantially correspond-~~
13 ~~ing to subsection (1), (3), (4), or (5), former section 625(1) or~~
14 ~~(2), or former section 625b.~~

15 (11) ~~(10)~~ If a person is convicted of violating
16 subsection (6), all of the following apply:

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

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

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

22 (b) If the violation occurs within 7 years of 1 or more
23 prior convictions, the person may be sentenced to 1 or ~~both~~
24 MORE of the following:

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

26 (ii) IMPRISONMENT FOR NOT MORE THAN 93 DAYS.

SB 870, As Passed Senate, March 26, 1998

Senate Bill No. 870

18

1 (iii) ~~(ii)~~ A fine of not more than \$500.00.

2 ~~(c) As used in this subsection, "prior conviction" means a~~
3 ~~conviction for a violation or attempted violation of subsection~~
4 ~~(1), (3), (4), (5), or (6), former section 625(1) or (2), or~~
5 ~~former section 625b, a local ordinance substantially correspond-~~
6 ~~ing to subsection (1), (3), or (6), former section 625(1) or (2),~~
7 ~~or former section 625b, or a law of another state substantially~~
8 ~~corresponding to subsection (1), (3), (4), (5), or (6), former~~
9 ~~section 625(1) or (2), or former section 625b.~~

10 (12) ~~(11)~~ In addition to imposing the sanctions prescribed
11 under subsection (4), (5), (7), ~~(9), or~~ (8), (10), OR (11), the
12 court may order the person to pay the costs of the prosecution
13 under the code of criminal procedure, ~~Act No. 175 of the Public~~
14 ~~Acts of 1927, being sections 760.1 to 776.22 of the Michigan~~
15 ~~Compiled Laws 1927 PA 175, MCL 760.1 TO 776.22.~~

16 ~~(12) The court shall impose licensing sanctions pursuant to~~
17 ~~section 625b.~~

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

23 (14) If the prosecuting attorney intends to seek an enhanced
24 sentence under ~~subsection (7)(b) or (d), subsection (9)(b) or~~
25 ~~(c), or subsection (10)(b)~~ THIS SECTION OR A SANCTION UNDER SEC-
26 TION 625N, 904D, OR 904E based upon the defendant having 1 or
27 more prior convictions, the prosecuting attorney shall include on

SB 870, As Passed Senate, March 26, 1998

SB 870 as amended March 26, 1998

19

1 the complaint and information, or an amended complaint and
2 information, filed in district court, circuit court, recorder's
3 court, municipal court, or ~~probate~~ FAMILY DIVISION OF CIRCUIT
4 court, a statement listing the defendant's prior convictions.

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

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

15 (a) An abstract of conviction.

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

17 (c) An admission by the defendant.

18 ~~(17) A person who is convicted of an attempted violation of~~
19 ~~subsection (1), (3), (4), (5), or (6), or a local ordi-~~
20 ~~nance substantially corresponding to subsection (1), (3), or (6)~~
21 ~~shall be punished as if the offense had been completed.~~

22 ~~(18) When assessing points and taking licensing action~~
23 ~~under this act, the secretary of state and the court shall treat~~
24 ~~a conviction of an attempted violation of subsection (1), (3),~~
25 ~~(4), (5), or (6) or a local ordinance substantially corresponding~~
26 ~~to subsection (1), (3), or (6) or a law of another state substan-~~
27 ~~tially corresponding to subsection (1), (3), (4), (5), or (6) the~~
same as if the offense had been completed.

SB 870, As Passed Senate, March 26, 1998

SB 870 as amended March 26, 1998

20

1 (17) ~~(19)~~ Except as otherwise provided in subsection
2 ~~(21)~~ (19), if a person is charged with operating a vehicle
3 while under the influence of a controlled substance or a combina-
4 tion of intoxicating liquor and a controlled substance in viola-
5 tion of subsection (1) or a local ordinance substantially corre-
6 sponding to subsection (1), the court shall require the jury to
7 return a special verdict in the form of a written finding or, if
8 the court convicts the person without a jury or accepts a plea of
9 guilty or nolo contendere, the court shall make a finding as to
10 whether the person was under the influence of a controlled sub-
11 stance or a combination of intoxicating liquor and a controlled
12 substance at the time of the violation.

13 (18) ~~(20)~~ Except as otherwise provided in subsection
14 ~~(21)~~ (19), if a person is charged with operating a vehicle
15 while his or her ability to operate the vehicle was visibly
16 impaired due to his or her consumption of a controlled substance
17 or a combination of intoxicating liquor and a controlled sub-
18 stance in violation of subsection (3) or a local ordinance sub-
19 stantially corresponding to subsection (3), the court shall
20 require the jury to return a special verdict in the form of a
21 written finding or, if the court convicts the person without a
22 jury or accepts a plea of guilty or nolo contendere, the court
23 shall make a finding as to whether, due to the consumption of a
24 controlled substance or a combination of intoxicating liquor and
25 a controlled substance, the person's ability to operate a motor
26 vehicle was visibly impaired at the time of the violation.

SB 870, As Passed Senate, March 26, 1998

SB 870 as amended March 26, 1998

21

1 (19) ~~-(21)-~~ A special verdict described in subsections ~~-(19)-~~
2 ~~and-(20)-~~ (17) AND (18) is not required if a jury is instructed
3 to make a finding solely as to either of the following:

4 (a) Whether the defendant was under the influence of a con-
5 trolled substance or a combination of intoxicating liquor and a
6 controlled substance at the time of the violation.

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

11 (20) ~~-(22)-~~ If a jury or court ~~makes a finding~~ FINDS under
12 subsection ~~-(19), (20), or (21)-~~ (17), (18), OR (19) that the
13 defendant operated a motor vehicle under the influence of or
14 while impaired due to the consumption of a controlled substance
15 or a combination of a controlled substance and an intoxicating
16 liquor, the court shall do both of the following:

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

18 (b) On a form or forms prescribed by the state court admin-
19 istrator, forward to the department of state police a record that
20 specifies the penalties imposed by the court, including any term
21 of imprisonment, ~~any licensing sanction imposed under~~
22 ~~section 625b,~~ and any sanction imposed under section 625n, 904D,
23 OR 904E.

24 (21) ~~-(23)-~~ Except as otherwise provided by law, a record
25 described in subsection ~~-(22)(b)-~~ (20)(B) is a public record and
26 the department of state police shall retain the information
27 contained on that record for not less than 7 years.

SB 870, As Passed Senate, March 26, 1998

SB 870 as amended March 26, 1998

22

1 (22) ~~(24)~~ In a prosecution for a violation of subsection
2 (6), the defendant bears the burden of proving that the consump-
3 tion of intoxicating liquor was a part of a generally recognized
4 religious service or ceremony by a preponderance of the
5 evidence.

6 (23) AS USED IN THIS SECTION, "PRIOR CONVICTION" MEANS A
7 CONVICTION FOR ANY OF THE FOLLOWING, WHETHER UNDER A LAW OF THIS
8 STATE, A LOCAL ORDINANCE SUBSTANTIALLY CORRESPONDING TO A LAW OF
9 THIS STATE, OR A LAW OF ANOTHER STATE SUBSTANTIALLY CORRESPONDING
10 TO A LAW OF THIS STATE:

11 (A) A VIOLATION OR ATTEMPTED VIOLATION OF SUBSECTION (1),
12 (3), (4), (5), OR (7), SECTION 625M, FORMER SECTION 625(1) OR
13 (2), OR FORMER SECTION 625B.

14 (B) NEGLIGENT HOMICIDE, MANSLAUGHTER, OR MURDER RESULTING
15 FROM THE OPERATION OF A VEHICLE OR AN ATTEMPT TO COMMIT 1 OF
16 THOSE CRIMES.

17 (C) FOR PURPOSES OF THE ENHANCEMENT DESCRIBED IN SUBSECTION
18 (11)(B) ONLY, A VIOLATION OR ATTEMPTED VIOLATION OF SUBSECTION
19 (6).

20 Sec. 625c. (1) A person who operates a vehicle upon a
21 public highway or other place open to the general public or gen-
22 erally accessible to motor vehicles, including an area designated
23 for the parking of vehicles, within this state is considered to
24 have given consent to chemical tests of his or her blood, breath,
25 or urine for the purpose of determining the amount of alcohol or
26 presence of a controlled substance or both in his or her blood or

SB 870, As Passed Senate, March 26, 1998

Senate Bill No. 870

23

1 urine or the amount of alcohol in his or her breath in all of the
2 following circumstances:

3 (a) If the person is arrested for a violation of section
4 625(1), (3), (4), (5), ~~or~~ (6), OR (7), section 625a(5), or sec-
5 tion 625m ~~—~~ or a local ordinance substantially corresponding to
6 section 625(1), (3), or (6), section 625a(5), or section 625m.

7 (b) If the person is arrested for felonious driving, negli-
8 gent homicide, manslaughter, or murder resulting from the opera-
9 tion of a motor vehicle, and the peace officer had reasonable
10 grounds to believe the person was operating the vehicle while
11 impaired by or under the influence of intoxicating liquor or a
12 controlled substance or a combination of intoxicating liquor and
13 a controlled substance, or while having an alcohol content of
14 0.10 grams or more per 100 milliliters of blood, per 210 liters
15 of breath, or per 67 milliliters of urine, or if the person is
16 less than 21 years of age while having any bodily alcohol
17 content. As used in this subdivision, "any bodily alcohol
18 content" means either of the following:

19 (i) An alcohol content of not less than 0.02 grams or more
20 than 0.07 grams per 100 milliliters of blood, per 210 liters of
21 breath, or per 67 milliliters of urine.

22 (ii) Any presence of alcohol within a person's body result-
23 ing from the consumption of intoxicating liquor, other than con-
24 sumption of intoxicating liquor as part of a generally recognized
25 religious service or ceremony.

26 (2) A person who is afflicted with hemophilia, diabetes, or
27 a condition requiring the use of an anticoagulant under the

SB 870, As Passed Senate, March 26, 1998

Senate Bill No. 870

24

1 direction of a physician is not considered to have given consent
2 to the withdrawal of blood.

3 (3) The tests shall be administered as provided in section
4 625a(6).

5 Sec. 727. If a person is arrested without a warrant in any
6 of the following cases, the arrested person shall, without unrea-
7 sonable delay, be arraigned by the magistrate who is nearest or
8 most accessible within the judicial district as provided in
9 section 13 of chapter IV of the code of criminal procedure, ~~Act~~
10 ~~No. 175 of the Public Acts of 1927, being section 764.13 of the~~
11 ~~Michigan Compiled Laws~~ 1927 PA 175, MCL 764.13, or, if a minor,
12 taken before the ~~probate court~~ FAMILY DIVISION OF CIRCUIT COURT
13 within the county in which the offense charged is alleged to have
14 been committed:

15 (a) The person is arrested upon a charge of negligent
16 homicide.

17 (b) The person is arrested under section 625(1), (3), (4),
18 ~~or~~ (5), OR (7), or an ordinance substantially corresponding to
19 section 625(1) or (3).

20 (c) A person is arrested under section 626 or an ordinance
21 substantially corresponding to that section. If under the exist-
22 ing circumstances it does not appear that releasing the person
23 pending the issuance of a warrant will constitute a public
24 menace, the arresting officer may proceed as provided by
25 section 728.

26 (d) A person arrested does not have in his or her immediate
27 possession a valid operator's or chauffeur's license or the

SB 870, As Passed Senate, March 26, 1998

SB 870 as amended March 26, 1998

25

1 receipt described in section 311a. If the arresting officer
2 otherwise satisfactorily determines the identity of the person
3 and the practicability of subsequent apprehension if the person
4 fails to voluntarily appear before a designated magistrate or
5 ~~probate court~~ THE FAMILY DIVISION OF CIRCUIT COURT as directed,
6 the officer may release the person from custody with instructions
7 to appear in court, given in the form of a citation as prescribed
8 by section 728.

9 Enacting section 1. This amendatory act takes effect 9 months
10 after the date this amendatory act is enacted.

11 Enacting section 2. This amendatory act does not take
12 effect unless all of the following bills of the 89th Legislature
13 are enacted into law:

14 (a) Senate Bill No. 268.

15 (b) Senate Bill No. 269.

16 (c) Senate Bill No. 271.

17 (d) Senate Bill No. 625.

18 (e) Senate Bill No. 626.

19 (f) Senate Bill No. 627.

20 (g) Senate Bill No. 953.

21 (h) Senate Bill No. 989.

22 (i) Senate Bill No. 990.

23 (j) Senate Bill No. 991.

24 [REDACTED]

25 [REDACTED]

26 [REDACTED]