



STATE OF MICHIGAN
TERRI LYNN LAND, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

Driver License Appeal Practice Manual

Michigan Department of State

2005

Driver's License Appeal and Restoration Lawyers
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(Not endorsed or employed by MDOS)

MICHIGAN DEPARTMENT OF STATE DRIVER LICENSE APPEAL PRACTICE MANUAL

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This manual is intended to assist defense attorneys, prosecutors, judges, and other interested parties involved in the driver license appeal process as well as with other licensing actions. These materials contain statutory references, case law summaries, Department rules and forms, statistics, charts, and other information. If you have any questions concerning the materials in this manual, please feel free to contact the Driver Assessment and Appeal Division, (DAAD), at 1-888-SOS-MICH (888-767-6424).

I. Background

The Michigan Department of State, (the Department), is the government agency that is responsible for promoting traffic safety and regulating driving activity. The Michigan Legislature vests the Department with this authority through the Michigan Vehicle Code, 1949 PA 300, as amended; MCL 257.1 *et seq.*

The vast majority of traffic injuries and deaths are caused by a small number of high-risk drivers with multiple offenses on their driving histories. In 2002 there were 1,279 traffic fatalities in the State of Michigan, a reduction of 3.7% from the year before. Reductions in fatalities have been a continuing trend in Michigan since the early 1990s. Nationally, fatalities increased by 0.7% in 2002. According to the University of Michigan Transportation Research Institute, [UMTRI], 43.9% of all alcohol-related crashes in 2002 resulted in injury or death, and 32.7% of all fatal crashes were alcohol related.

Since 1991, the Michigan Legislature has demonstrated a commitment to reduce the incidence of drunk driving and to remove other high-risk drivers from our roads. In January 1992, the Legislature enacted a series of bills that increased minimum sanctions for drunk drivers, created two new felony drunk driving crimes, set consistent licensing sanctions, and eliminated hardship appeals for habitual offenders.

A follow-up UMTRI study found that the January 1992 changes to the Vehicle Code helped reduce traffic fatalities by as much as 25%. However, the study also demonstrated that an estimated 30-70% of these drivers continued to drive at least some of the time during their licensing sanction. By the year 2000, one driver had accrued 16 alcohol-related convictions. Another driver had accrued a series of license revocations through the year 2183.

In 1998, the Legislature passed the Repeat Offender Legislation to address these ongoing concerns. Because there continued to be substantial inconsistencies in court sanctions, the Legislature removed certain licensing actions from the courts and consolidated these responsibilities within the Department. Since October 1, 1999, the Department must impose a defined licensing sanction when an abstract of conviction is received from a court. As in the past, the courts continue to determine responsibility or guilt for a driving offense. However, most licensing sanctions are now imposed by the Department. The Department has no discretion to waive or amend a licensing sanction once an abstract of conviction has been received, nor will the Department backdate mandatory licensing sanctions based on untimely abstracting of a conviction. Another substantial change since October 1999 is the Ignition Interlock program. The Legislature charged the

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Department with the responsibility of administering the Ignition Interlock program. An interlock device is an added condition to a restricted license that prevents a habitual drunk driver from driving after consuming alcohol. MCL 257.322(6)

II. Responsibilities for Traffic Safety within the Department

Office of Traffic Safety

The Office of Traffic Safety provides the primary traffic safety focus for the Department of State. This focus includes the Department's Traffic Safety Initiatives supported by Secretary of State Terri Lynn Land, and oversight of the *Motorcycle Rider & Safety Education Program* and *Driver Education Program*. The Office of Traffic Safety represents Secretary Land on the Governor's Traffic Safety Advisory Commission and various traffic safety committees throughout the state. Speaking engagements are provided by staff in the Office of Traffic Safety, updating the public on the modernization and new initiatives undertaken throughout the Department of State. Traffic safety analysis is also performed and reports are prepared that summarize findings.

Bureau of Branch Office Services (BBOS)

In April 2004 Secretary of State Terri Lynn Land initiated the Branch Office Optimization Plan, reducing the number of branch offices and creating several Super!Centers and Plus Offices that provide increased services. In addition to extended or expanded service hours, additional services at these branch offices will allow customers to purchase copies of their driving records, apply for instant titles, take mechanic tests, and use a Discover credit card to pay for transactions. Some of these offices may also include the ability to hold Driver Assessment reexaminations or Driver License Appeal hearings.

A prospective driver will initially make application for licensure at a branch office, and with compliance of all of the licensing requirements, the Department will issue a driver license. However, the Bureau of Branch Office Services (BBOS) representatives may also deny a prospective driver's license request at a branch office based on a person's medical condition or other statutory reasons found in MCL 257.303(1)(d). A written application denial is presented to an applicant and explains the reason(s) for denial. An application denial also includes an explanation of the right to appeal to License Appeals or to Circuit Court in the county where the driver lives.

Driver Assessment Reexaminations

Driver Assessment (DA) analysts hold reexaminations in several locations around the state. MCL 257.10d and MCL 257.320. The most common reasons for conducting Section 320 reexaminations are:

- A driver accrues 12 or more points on their license within a two-year period.
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- The Department receives notice that a driver may have a serious medical condition or is otherwise unable to operate a vehicle in a safe manner.
- Traffic fatalities.
- Violations of restricted licenses.
- Incurring three at-fault crashes within a two-year period.

After a reexamination, the Department has the authority to restrict, suspend, or revoke a license. The main goal of these actions is not to punish drivers for unsafe driving, but to motivate improvement and to protect other drivers.

The Probationary Driver program is based on Section 310d and is premised on the theory that good young drivers make good adult drivers. The minimum period for probationary drivers extends for three years. If a probationary driver demonstrates unsafe driving behaviors, the Department does not need to wait until a driver incurs 12 points to take action. A probationary driver may be reexamined for incurring one traffic violation in their first year of driving. Reasons that allow for a Section 310d reexamination after the first year of probationary driving include:

- Incurring a 4-point offense.
- Incurring three traffic offenses.
- Incurring six or more points in total.

The probationary term will be extended beyond three years for moving violations, negligent or alcohol indicated crashes, or license suspensions during the last ten months of probation. At the reexamination, DA analysts may warn or counsel young drivers, or may impose other licensing sanctions such as restrictions or a suspension. The goal of the program is not to punish young drivers, but to motivate improvement and to protect other drivers.

In addition to the probationary driver program, young drivers between the ages of 14 and 17 are also subject to the Graduated Driver License (GDL) program. The GDL program was enacted in 1997 pursuant to MCL 257.310e, and is described in more detail later in this manual. The GDL program is designed to help young drivers learn their skills with adult supervision by requiring a specific number of hours of supervised driving. Young drivers graduate through three phases of their license as they develop their skills.

DA analysts must notify a driver of any action taken following a reexamination, and will present the driver with a written Order of Action. Appeal rights are included in the Order of Action. A person whose driving privilege has been restricted, suspended, or revoked may request a Driver License Appeal hearing or appeal to the Circuit Court in the county where the driver resides.

Michigan law authorizes the Department of State to reexamine a driver when there is reason to believe the driver may be unable to operate a motor vehicle safely. The Department relies on information from law enforcement, medical personnel, Secretary of State branch office staff, and concerned citizens (including family members) to identify unsafe drivers.

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There are many conditions that can affect a person's ability to drive safely. Some examples are:

- Loss of consciousness.
- Convulsive disorders.
- Deteriorating muscular coordination resulting from conditions such as Huntington Chorea, muscular dystrophy, multiple sclerosis, and cerebral palsy.
- Impaired sensory, mental, and physical functions due to usage of drugs.
- Impaired or deteriorating vision.

Further information regarding conditions that may affect a person's ability to drive safely may be found by reviewing the Department's physical standards or vision standards.

You may request a review of an individual's driving skills by completing a Request for Evaluation form (OC-88). Specific information, as descriptive as possible, of an incident or pattern of behavior must be provided to clearly support scheduling a driver assessment reexamination. You will be required to provide your name, address, telephone number and signature before your request can be processed. Reports submitted by family members, friends, neighbors, employers, etc. are kept confidential pursuant to appropriate exemptions within the Freedom of Information Act. However, reports submitted by public officials, such as police officers, court personnel, probation officers, or Department of State personnel may be subject to disclosure.

DRIVER ASSESSMENT LICENSE SANCTIONS BY REEXAMINATION TYPE												
	Probationary Reexaminations			12+ Points Reexaminations			Medical Reexaminations			Other*		
	2002	2003	2004	2002	2003	2004	2002	2003	2004	2002	2003	2004
Instructions/Warning	15	15	16	8	3	3	3,601	3,789	4,382	1,242	1,024	948
Terms and Conditions	28	17	10	77	52	50	0	0	0	143	137	105
Restrictions	591	8,434	7,430	1,904	1,642	1,567	1,047	1,306	1,443	274	322	206
Suspension	2,813	2,610	2,890	4,489	3,747	3,368	3,904	4,688	5,319	3,602	3,287	3,382
Suspension Followed by Restrictions	6,520	6,856	4,306	1,675	1,360	1,095	3	0	2	1,752	2,401	2,847
Revocation	0	0	0	154	75	62	104	134	147	39	40	36
Other	474	698	439	572	549	401	1,295	1,461	1,677	666	851	687
Totals:	10,441	18,630	15,091	8,879	7,428	6,546	9,954	11,378	12,870	7,718	8,062	8,211

*Other includes reexaminations for negligent or fatal crashes, as well as violation of license restrictions.

License Appeal Hearings

Drivers who are aggrieved by a final decision of the Department may request a Driver License Appeal hearing. Administrative Law Examiners (Hearing Officers) conduct hearings throughout the state as authorized by MCL 257.322. Many hearings are conducted via videoconference equipment in accordance with Administrative Rule 257.304. Approximately 20,000 license appeal hearings were scheduled in 2004. Hearing Officers preside over the following:

- Appeals from branch office application denials.
- Driver Assessment actions.
- Implied-consent hearings.
- Appeals for license reinstatement following a revocation for being a habitual offender with multiple substance-abuse convictions.
- Appeals for license reinstatement following a revocation for being a habitual criminal involving a motor vehicle.
- Appeals for license reinstatement following a conviction of murder, manslaughter, or negligent homicide with a motor vehicle.
- Appeals for license reinstatement following a conviction of causing the death or serious injury of another person while intoxicated or impaired by alcohol and/or drugs.

Following a License Appeal hearing, a petitioner receives a written Order by mail. Orders specify the reasons(s) why a licensing action was upheld, amended, or denied. On appeals involving the Implied-consent law, the Order will indicate whether the appeal was granted or denied, and if denied, the dates of the Implied-consent suspension. In some cases the Hearing Officer may provide a decision at the end of the hearing, with a written Order to follow by mail. An adverse determination by the Hearing Officer is appealable to the Circuit Court in the county where the driver resides, or in the case of an Implied-consent appeal, in the county of arrest. MCL 257.323

III. An Overview of the 0.08 Legislation

In October 2000, the Federal government required that all states lower the legal threshold for Operating While Intoxicated (OWI) to a 0.08 blood alcohol content (BAC) level or risk losing millions of dollars in Federal Transportation Highway funds. The National Highway Traffic Safety Administration (NHTSA) has concluded that the vast majority of drivers are significantly impaired at 0.08 levels with regard to critical driving tasks. According to the National Institute on Alcohol Abuse and Alcoholism, driving skills can be affected at BAC levels as low as 0.02.

NHTSA estimates that the United States would save 400 to 600 lives each year if all states adopted the 0.08 BAC limit. With Federal Transportation funding at stake, Michigan became the 44th state to adopt the 0.08 Legislation when Governor Granholm signed the Bill into law. The law took effect on September 30, 2003. (2003 PA 61)

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Before 0.08, a driver was presumed to be driving in an impaired state if they were found operating a vehicle with a BAC level greater than 0.07, but less than 0.10 BAC limit. A driver was presumed to be operating under the influence of intoxicating liquor if they demonstrated a BAC level of 0.10 or higher. Under the new law, a driver is presumed to have been Operating While Intoxicated (MCL 257.625(1)) if they have a BAC level of 0.08 or higher. A person may be convicted of Operating While Intoxicated in four ways:

- Operating Under the Influence of Alcoholic Liquor.
- Operating Under the Influence of a Controlled Substance.
- Operating Under the Influence of Alcoholic Liquor and Controlled Substance.
- Operating With a BAC level of 0.08 or higher.

The new law replaced the term “intoxicating” liquor with “alcoholic” liquor. The offense of Operating While Intoxicated has a sunset clause and is effective until October 1, 2013. The 0.08 Legislation created a new offense of Operating With Any Presence of Drugs, (OWPD), MCL 257.625(8). A conviction for this offense may result from having any amount of cocaine or any Schedule 1 drugs in the person’s body, regardless if a driver is intoxicated at the time of operating a motor vehicle. Schedule 1 drugs are defined in the Public Health Code, 1978 PA 368, MCL 333.7214, and include opiates, hallucinogens, date rape drugs, and marijuana.

The 0.08 Legislation also did away with the presumption that a driver is not impaired or intoxicated if they have a BAC level below the legal limit. Operating While Visibly Impaired, (OWVI), may result in a drinking and driving conviction for having a BAC level that is below the 0.08 limit if a driver is visibly impaired, MCL 257.625(3).

The Zero Tolerance BAC limit for drivers less than 21 years of age is now 0.02 or more, but less than 0.08. The BAC limit was changed for Commercial Driver Licenses, (CDL), and is now 0.04 or more, but less than 0.08. Both the Zero Tolerance and CDL changes have a sunset clause and are effective until October 1, 2013.

The chemical test presumptions that were present in the law before September 30, 2003, were stricken. The new law creates a presumption that the results of breath, blood, or urine tests are the same as when the arrested driver was driving.

Implied-consent penalties have increased. Under the old law, a first Implied-consent refusal resulted in a six-month suspension, and a second Implied-consent refusal within seven years of a prior refusal resulted in a one-year suspension. Effective September 30, 2003, a first refusal results in a one-year suspension. A second refusal within seven years results in a two-year suspension.

The Legislature is expected to lower the legal thresholds for snowmobiles, watercraft, and recreational vehicles to the 0.08 level in the near future.

Criminal Sentencing/Administrative Consequences of HB 4247 (Alcohol Convictions)

Effective 09/30/2003, removes references to "intoxicating liquor" and adds new definition for "alcoholic liquor" under 257.1d, adds 257.625(8) to Alcohol Audit. Provides a one-year suspension for a first implied consent refusal, and a two-year suspension for a second or subsequent implied consent refusal within seven years.

	OWI 257.625(1) ≥ .08 Until Oct. 1, 2013 (a) OUIL/OUID (b) UBAC – Per se	OWVI 257.625(3)	Operating With Presence of Drugs 333.7212, 7214(a)(iv) (OWPD) 257.625(8)	OWI/OWVI Death/Injury 257.625(4) & (5)	Zero Tolerance 257.625(6) – (.02<.08) .08 Until Oct. 1, 2013	Child Endangerment 257.625(7) In violation of 625(1), (3), (4), (5) or (6)	.04 - <CDL 257.625m(1) – (.04<.08) .08 Until Oct. 1, 2013
1 st Offense (no prior 625 crime)	Misdemeanor <u>Fine/Jail/Comm Svc:</u> 1 or more of following: Up to 93 days jail; \$100-\$500 fine or; up to 360 hours comm. svc. <u>Licensing:</u> 30/150 susp/rest 6 points Court-ordered Ignition Interlock permissive 625(24) <u>Plate conf:</u> None <u>Immob:</u> Permissive up to 180 days <u>Reg Deny:</u> None <u>Forf:</u> None	Misdemeanor <u>Fine/Jail/Comm Svc:</u> 1 or more of following: Up to 93 days jail; \$300 fine or; up to 360 hours comm. svc <u>Licensing:</u> 90-day rest 180-day rest w/OWID 4 points <u>Plate conf:</u> None <u>Immob:</u> Permissive up to 180 days <u>Reg Deny:</u> None <u>Forf:</u> None	Misdemeanor <u>Fine/Jail/Comm Svc:</u> 1 or more of following: Up to 93 days jail; \$100-\$500 fine or; up to 360 hours comm. svc <u>Licensing:</u> 30/150 susp/rest 6 points Court-ordered Ignition Interlock permissive 625(24) <u>Plate Conf:</u> None <u>Immob:</u> Permissive up to 180 days Reg Deny: None <u>Forf:</u> None	Felony <u>Fine/Jail/Comm Svc:</u> Death-prison up to 15 years OR \$2,500 - \$10,000 fine, or both. Injury-prison up to 5 years OR \$1,000-\$5,000 fine OR both Emer. Responder Death: prison up to 20 years OR \$2,500 to \$10,000 fine, or both <u>Licensing:</u> Minimum 1 year revocation/denial 6 points <u>Plate conf:</u> Required <u>Immob:</u> Required up to 180 days <u>Reg Deny:</u> None <u>Forf:</u> Permissive	Misdemeanor <u>Fine/Jail/Comm Svc:</u> Up to \$250 fine OR up to 360 hours comm. svc, or both. <u>Licensing:</u> 30 days rest 4 points <u>Pate Conf:</u> None <u>Immob:</u> None <u>Reg Deny:</u> None <u>Forf:</u> None	Misdemeanor <u>Fine/Jail/Comm Svc:</u> \$200-\$1,000 fine AND one or more of the following: 5 days to 1 year jail; 30-90 days comm. svc. <u>Licensing:</u> 90/90 susp/rest 6 points <u>Plate conf:</u> None <u>Immob:</u> Permissive up to 180 days <u>Reg Deny:</u> None <u>Forf:</u> Permissive	Misdemeanor <u>Fine/Jail/Comm Svc:</u> Up to \$300 fine OR up to 93 days jail, or both. <u>Licensing:</u> CDL-1 yr susp, OPR 90 day rest., HAZ-3 yr susp. 0 points <u>Plate Conf:</u> None <u>Immob:</u> Permissive up to 180 days <u>Reg Deny:</u> None <u>Forf:</u> None
2 nd Offense or any prior 625 crime within 7 years	Misdemeanor <u>Fine/Jail/Comm Svc:</u> \$200-\$1,000 fine AND one or more of the following: 5 days to 1-year jail; 30-90 days comm. svc. <u>Licensing:</u> minimum 1 year revocation/denial <u>Plate conf:</u> Required <u>Immob:</u> Required 90 to 180 days unless forfeited <u>Reg Deny:</u> None <u>Forf:</u> Permissive	Misdemeanor <u>Fine/Jail/Comm Svc:</u> \$200-\$1,000 fine AND one or more of the following: 5 days to 1-year jail; 30-90 days comm. svc. <u>Licensing:</u> minimum 1-year revocation/denial <u>Plate conf:</u> Required <u>Immob:</u> Required 90 to 180 days unless forfeited <u>Reg Deny:</u> None <u>Forf:</u> Permissive	Misdemeanor <u>Fine/Jail/Comm Svc:</u> \$200-\$1,000 fine AND one or more of the following: 5 days to 1-year jail; 30-90 days comm. svc. <u>Licensing:</u> minimum 1-year revocation/denial <u>Plate Conf:</u> Required <u>Immob:</u> Required 90 to 180 days unless forfeited <u>Reg Deny:</u> None <u>Forf:</u> Permissive	Felony <u>Fine/Jail/Comm Svc:</u> Death – prison up to 15 years OR \$2,500 - \$10,000 fine OR both. Injury – prison up to 5 years OR \$1,000-\$5,000 fine OR both. Emer Responder Death – prison up to 20 years OR \$2,500 to \$10,000 fine, or both <u>Licensing:</u> minimum 5 yr revocation/denial <u>Plate Conf:</u> Required <u>Immob:</u> Required 90 to 180 days unless forfeited <u>Reg Deny:</u> None <u>Forf:</u> Permissive	Misdemeanor <u>Fine/Jail/Comm Svc:</u> One or more of the following: up to 60 days comm. svc; up to \$500 fine; up to 93 days jail. <u>Licensing:</u> 90 day susp OR if prior 625 then minimum 1 year revocation/denial <u>Plate Conf:</u> None <u>Immob:</u> None <u>Reg Deny:</u> None <u>Forf:</u> None	Felony <u>Fine/Jail/Comm Svc:</u> \$500-\$5,000 fine AND either of the following: 1-5 years prison; probation with 30 days to 1-year jail AND 60-180 days comm. svc. <u>Licensing:</u> minimum 1 year revocation/denial <u>Plate Conf:</u> Required <u>Immob:</u> Required 90 to 180 days unless forfeited <u>Reg Deny:</u> None <u>Forf:</u> Permissive	Misdemeanor <u>Fine/Jail/Comm Svc:</u> Up to \$1,000 fine OR up to 1-year prison, or both. <u>Licensing:</u> CDL-minimum 10 yr rev, OPR 1 yr rev/denial <u>Plate Conf:</u> Required <u>Immob:</u> Required 90 to 180 days <u>Reg Deny:</u> None <u>Forf:</u> None
3 rd Offense or 2 prior 625 crimes within 10 years	Felony <u>Fine/Jail/Comm Svc:</u> \$500-\$5,000 fine AND either of the following: 1-5 years prison; probation with 30 days to 1 yr jail AND 60-180 days comm. svc. <u>Licensing:</u> minimum 1 to 5 years re/denial <u>Plate Conf:</u> Required <u>Immob:</u> Required 1 to 3 years unless forfeited <u>Reg Deny:</u> Required <u>Forf:</u> Permissive	Felony <u>Fine/Jail/Comm Svc:</u> \$500-\$5,000 fine AND either of the following: 1-5 yrs prison; probation with 30 days to 1-year jail AND 60-180 days comm. svc. <u>Licensing:</u> min 1 to 5 yr rev/denial <u>Plate Conf:</u> Required <u>Immob:</u> Required 1-3 yrs unless forfeited <u>Reg Deny:</u> Required <u>Forf:</u> Permissive	Felony <u>Fine/Jail/Comm Svc:</u> \$500-\$5,000 fine AND either of the following: 1-5 yrs prison; probation with 30 days to 1 yr jail AND 60-180 days comm. svc. <u>Licensing:</u> minimum 1-5 year rev/denial <u>Plate Conf:</u> Required <u>Immob:</u> Required 1-3 years unless forfeited <u>Reg Deny:</u> Required <u>Forf:</u> Permissive	Felony <u>Fine/Jail/Comm Svc:</u> Death – prison up to 15 years OR \$2,500-\$10,000 fine OR both. Injury – prison up to 5 years OR \$1,000-\$5,000 fine OR both. Emer Responder Death – prison up to 20 years OR \$2,500-\$10,000 fine, OR both. <u>Licensing:</u> min 1 to 5 yr rev/denial <u>Plate Conf:</u> Required <u>Immob:</u> Required 1-3 years unless forfeited <u>Reg Deny:</u> Required <u>Forf:</u> Permissive		Endangerment – Zero Tolerance w/occupant <16 Misdemeanor <u>Fine/Jail/Comm Svc:</u> 1 st – One or more of the following: up to 60 days comm. svc; up to \$500 fine; up to 93 days jail <u>Licensing:</u> 1 st – 90/90 susp/rest 2 nd – revoke <u>Plate Conf:</u> See 1 st , 2 nd offense <u>Immob:</u> See 1 st & 2 nd <u>Reg Deny:</u> None <u>Forf:</u> Permissive	Felony <u>Fine/Jail/Comm Svc:</u> \$500-\$5,000 fine and either of the following: prison from 1-5 years; probation with 30 days to 1 year jail AND 60-180 days comm. svc. <u>Licensing:</u> CDL – rev for LIFE—if prior approval, OPR- minimum 5 yr rev/denial <u>Plate Conf:</u> Required <u>Immob:</u> Required 1 to 3 years <u>Reg Denied:</u> Required <u>Forf:</u> None

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Criminal Sentencing/Administrative Consequences – Repeat Offender (Driving While Suspended Convictions)

	DWLS 257.904(1)	Knowing Allowed Someone to DWLS 257.904(2)	DWLS Causing Death 257.904(4)	DWLS Causing Serious Injury 257.904(5)	Knowingly Allowed Someone to DWLS Causing Death 257.904(7)	Knowingly Allowed Someone to DWLS Causing Serious Injury 257.904(7)
1 st Offense (no "priors")	Misdemeanor <u>Fine/Jail/Comm Svc:</u> Up to 93 days jail; up to \$500 fine, or both. <u>Licensing:</u> Mandatory additional under 257.904(10), (11) and (12) <u>Plate Conf:</u> None (Cancel upon notice by officer) <u>Immob:</u> Permissive up to 180 days <u>Reg Deny:</u> None <u>Forf:</u> None	Misdemeanor <u>Fine/Jail/Comm Svc:</u> Up to 93 days jail; up to \$500 fine, or both. <u>Licensing:</u> Mandatory additional under 257.904(10), (11) and (12) <u>Plate Conf:</u> None (Cancel upon notice by officer) <u>Immob:</u> None <u>Reg Deny:</u> None <u>Forf:</u> None	Felony <u>Fine/Jail/Comm Svc:</u> Prison up to 15 years; \$2,500-\$10,000 fine, or both <u>Licensing:</u> minimum 1 year revocation/denial <u>Plate Conf:</u> Required <u>Immob:</u> Required up to 180 days, unless forfeited <u>Reg Deny:</u> None <u>Forf:</u> Permissive	Felony <u>Fine/Jail/Comm Svc:</u> Prison up to 5 years; \$1,000-\$5,000 fine, or both <u>Licensing:</u> minimum 1 year revocation/denial <u>Plate Conf:</u> Required <u>Immob:</u> Required up to 180 days, unless forfeited <u>Reg Deny:</u> None <u>Forf:</u> Permissive	Felony <u>Fine/Jail/Comm Svc:</u> Prison up to 5 years; \$1,000-\$5,000 fine, or both <u>Licensing:</u> None <u>Plate Conf:</u> None <u>Immob:</u> None <u>Reg Deny:</u> None <u>Forf:</u> None	Felony <u>Fine/Jail/Comm Svc:</u> Prison up to 2 years; \$1,000-\$5,000 fine, or both. <u>Licensing:</u> None <u>Plate Conf:</u> None <u>Immob:</u> None <u>Reg Deny:</u> None <u>Forf:</u> None
2 nd Offense or 1 *prior 904 susp within 7 years	Misdemeanor <u>Fine/Jail/Comm Svc:</u> Up to 1 year jail; up to \$1,000 fine, or both <u>Licensing:</u> Mandatory additional under 904(10), (11) and (12) <u>Plate Conf:</u> None (Cancel upon notice by officer) <u>Immob:</u> Permissive up to 180 days <u>Reg Deny:</u> None <u>Forf:</u> None	Misdemeanor <u>Fine/Jail/Comm Svc:</u> Up to 1 year jail; up to \$1,000 fine, or both. <u>Licensing:</u> Mandatory additional under 904(10), (11) and (12) <u>Plate Conf:</u> None (Cancel upon notice by officer) <u>Immob:</u> Permissive up to 180 days <u>Reg Deny:</u> None <u>Forf:</u> None	Felony <u>Fine/Jail/Comm Svc:</u> Prison up to 15 years; \$2,500-\$10,000 fine, or both <u>Licensing:</u> minimum 5 year revocation/denial <u>Plate Conf:</u> Required <u>Immob:</u> Required up to 180 days unless forfeited <u>Reg Deny:</u> None <u>Forf:</u> Permissive	Felony <u>Fine/Jail/Comm Svc:</u> Prison up to 5 years; \$1,000-\$5,000 fine, or both. <u>Licensing:</u> minimum 5 year revocation/denial <u>Plate Conf:</u> Required <u>Immob:</u> Required up to 180 days, unless forfeited. <u>Reg Deny:</u> None <u>Forf:</u> Permissive	Felony Same as 1 st offense.	Felony Same as 1 st offense.
3 rd Offense or 2 *prior 904 susp within 7 years	Misdemeanor Criminal-Same <u>Licensing:</u> Mandatory additional under 904(10), (11) and (12) <u>Plate Conf:</u> Required <u>Immob:</u> 90 to 180 days <u>Reg Deny:</u> None <u>Forf:</u> None	Misdemeanor Criminal-Same <u>Licensing:</u> Mandatory additional under 904(10), (11) and (12) <u>Plate Conf:</u> Required <u>Immob:</u> 90 to 180 days <u>Reg Deny:</u> None <u>Forf:</u> None	Felony Criminal-Same <u>Licensing:</u> minimum 5 year revocation/denial <u>Plate Conf:</u> Required <u>Immob:</u> 90 to 180 days, unless forfeited. <u>Reg Deny:</u> None <u>Forf:</u> Permissive	Felony Criminal-Same <u>Licensing:</u> minimum 5 year revocation/denial <u>Plate Conf:</u> Required <u>Immob:</u> 90 to 180 days, unless forfeited. <u>Reg Deny:</u> None <u>Forf:</u> Permissive	Felony Same as 1 st offense.	Felony Same as 1 st offense.
4 th Offense or 3 *prior 904 susp within 7 years	Misdemeanor Criminal-Same <u>Licensing:</u> Mandatory additional under 904(10), (11) and (12) <u>Plate Conf:</u> Required <u>Immob:</u> 90 to 180 days <u>Reg Deny:</u> Required <u>Forf:</u> None	Misdemeanor Criminal –Same <u>Licensing:</u> Mandatory additional under 904(10), (11) and (12) <u>Plate Conf:</u> Required <u>Immob:</u> 90 to 180 days <u>Reg Deny:</u> Required <u>Forf:</u> None	Felony Criminal-Same <u>Licensing:</u> minimum 5 year revocation/denial <u>Plate Conf:</u> Required <u>Immob:</u> 90 to 180 days, unless forfeited. <u>Reg Deny:</u> Required <u>Forf:</u> Permissive	Felony Criminal-Same <u>Licensing:</u> minimum 5 year revocation/denial <u>Plate Conf:</u> Required <u>Immob:</u> 90 to 180 days, unless forfeited. <u>Reg Deny:</u> Required <u>Forf:</u> Permissive		
5 th Offense or 4 *prior 904 susp within 7 years	Misdemeanor Criminal-Same <u>Licensing:</u> Mandatory additional under 904(10), (11) and (12) <u>Plate Conf:</u> Required <u>Immob:</u> 1-3 years <u>Forf:</u> None	Misdemeanor Criminal-Same <u>Licensing:</u> Mandatory additional under 904(10), (11) and (12) <u>Plate Conf:</u> Required <u>Immob:</u> 1-3 years <u>Forf:</u> None	Felony Criminal-Same <u>Licensing:</u> minimum 5 year revocation/denial <u>Plate Conf:</u> Required <u>Immob:</u> 1-3 years, unless forfeited <u>Reg Deny:</u> Required <u>Forf:</u> Permissive	Felony Criminal-Same <u>Licensing:</u> minimum 5 year revocation/denial <u>Plate Conf:</u> Required <u>Immob:</u> 1-3 years, unless forfeited <u>Reg Deny:</u> Required <u>Forf:</u> Permissive		

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*For purposes of immobilization, priors are defined as prior mandatory additional suspensions/revocations imposed pursuant to 257.904(10), (11) or(12); not prior convictions of DWLS.

Glossary of Often Used Terms

- BAC:** Bodily Alcohol Content – This information is obtained by a blood or breath test.
- Ignition Interlock:** This device prevents the vehicle from being started until the person passes a breath test. If the driver has any measurable bodily alcohol content, the car will not start. Random tests are required while operating the vehicle. These devices are mandatory for repeat offenders who are granted restricted licenses after serving a period of revocation. Ignition interlocks are installed at the offender's expense.
- Immobilization:** Immobilization of the offending vehicle is court-ordered for repeat offenders. Drivers must have immobilization devices installed at their expense and show proof of installation to the court. Technologies include: ignition interlock, steering column club, wheel boot, or driver tether. Immobilization is ordered if offender owns, co-owns, leases, or co-leases the vehicle.
- Plate Confiscation:** At time of arrest for a multiple offender, officers confiscate the vehicle's metal plate regardless of ownership, destroy the plate, and replace it with a paper plate that expires when the case is finally decided.
- Registration Denial:** Offenders cannot register a vehicle in which they hold an ownership interest until they are relicensed. This applies only to repeat offenders with three or more alcohol convictions or four or more driving while suspended violations.
- Restrictions:** This means limited driving privileges such as driving to and from work.
- Revocation:** This means the permanent loss of the driver license and privilege to operate a motor vehicle. After the minimum period of revocation, (one year or five years) drivers may re-apply for a license and try to prove they will be safe drivers in the future. The agency may deny the license or grant a restricted license.
- Suspension:** This means the temporary loss of a driver license for an established period of time. Upon expiration of the suspension period and payment of a \$125 reinstatement fee, the license will be returned.
- Vehicle Forfeiture:** The court orders the vehicle sold. Monies from the sale will be distributed according to the priorities defined by statute, first to pay secured interests and then to others.

IV. Driver Responsibility Act

Government is forced to expend huge sums of money each year policing the roads, prosecuting dangerous drivers, preventing high-risk drivers from violating their licensing sanctions, and determining when these drivers present a low or minimal risk to return to the roads. On October 1, 2003, Michigan adopted the [Driver Responsibility Act](#), which now shifts these costs onto those who pose the risks, MCL 257.732a. The Legislature has determined that high-risk drivers should help pay the costs to make our roads a safer place for all Michigan drivers. New Jersey introduced a driver responsibility program in the mid-1980s, and Texas began its own program in 2003.

The Driver Responsibility Act applies only to traffic offenses committed on or after October 1, 2003. The Act requires drivers to pay specified fees for two consecutive years for accumulating seven or more qualifying points on their driver license in a two-year period, or for being convicted of certain qualifying offenses. Drivers who accrue seven points must pay \$100 per year for two years, and the fee increases by \$50 for each additional point. Any points accrued before October 1, 2003, do not count toward the seven-point total. Points for qualifying offenses also do not count toward the seven-point total. For example, a driver who is convicted of Reckless Driving or Operating While Intoxicated must pay \$1,000 per year for two years if the offense occurred on or after October 1, 2003, but the points are not included as part of the seven-point total. Out-of-state tickets will count toward the seven-point total. Qualifying offenses such as Reckless Driving committed in another state will also be assessed a qualifying offense fee.

A notice will be sent by regular mail to the address on file with the Secretary of State that payment of the Driver Responsibility Fee is due within 30 days. If payment is not received within 30 days, a second notice is sent. If payment is not received after 60 days, the driving privileges are suspended until the fee is paid in full. A license suspension for failing to pay an assessed fee requires an additional reinstatement fee of \$125 to become re-licensed. The Department of Treasury is responsible for collecting Driver Responsibility fees. Drivers who have accumulated fees of \$500 or more may enter into an Installment Agreement with the Department of Treasury for a period that cannot exceed 12 months.

Sine the approval of the Driver Responsibility Act, effective May 1, 2004, the Legislature has amended the law with regard to individuals who are charged with No Proof of Insurance violations. If prior to the court hearing, the person submits proof that the vehicle had insurance at the time of the stop then the court shall not submit and the Secretary of State shall not enter on the driving record a No Proof of Insurance conviction. This exception, however, does not apply for insurance obtained after the date of the violation. MCL 257.732(15)(f)

V. The Emergency Responder Act

Drivers must move into another lane of traffic, if possible, and drive with due care and caution when a patrol car or other emergency vehicle is stopped along a

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highway with its lights activated (MCL 257.653a). Effective June 2, 2004, drivers are now required to give the same benefit to tow trucks whose lights are activated. Tow trucks are defined in MCL 257.2 as “road service vehicles.”

VI. Person Under 21 Purchase/Consume/Possess Liquor

Effective September 1, 2004, significant changes have been made to the Person Under 21 Purchase/Consume/Possess Liquor (Minor in Possession (MIP)) law. The changes were made in response to *People v Rutlege*, 250 Mich App 1 (2002), which indicated that once a minor drank alcohol, it was no longer alcohol, and the minor could not be charged with being in possession or consuming alcohol. The new law prohibits “any bodily alcohol content” in a minor. This is the same language that is used in the Person Under 21 With BAC, which is the Zero Tolerance Law for minors driving a motor vehicle. In addition, the Statute provides that if a minor drank alcohol legally, either in Canada or Wisconsin, that fact may be used as an affirmative defense during trial. It should be noted that the affirmative language provision does not affect violations for Person Under 21 With BAC. It is still in violation of the law for a minor to drive with a blood alcohol level of .02 or above.

The new law also provides for the possibility of diversion for a first MIP conviction, whether under or over age 17. (The minor is considered an adult in criminal courts at age 17.) If diversion is granted and the conditions ordered by the court are fulfilled, the minor can claim that he or she does not have a conviction. However, to ensure that this provision is only used once, the courts shall send all convictions for MIP to the Secretary of State to maintain a record of such convictions. Law enforcement officers and prosecutors will have access to these records.

Finally, the new MIP law provides for jail when the minor is convicted for the second or third time and fails to complete treatment, screening, or community service activities ordered by the court, or if the minor fails to pay court fines. For a second MIP conviction (not including a first conviction that resulted in diversion) the court may order a jail term of up to 30 days, and for a third or subsequent conviction, a jail term of 60 days.

VII. Repeat Offender Procedures

Law Enforcement – Stop and Arrest

Status Check, Arrest, and Issuance of Paper Plate:

If an operator has one prior alcohol conviction or two prior additional suspension/revocation violations, plate confiscation is required when an officer is arresting the operator for a subsequent offense. An officer’s LEIN check will provide the information to determine whether plate confiscation is required. The LEIN response shows the number of prior Section 625 crimes and Section 904 actions for this driver. Officers are required to take and destroy the plate from the offending vehicles regardless of ownership with the following exceptions: dealer,

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manufacturer, out-of-state, rental, trailer, tribal, US government, or apportioned (IRP) plates. MCL 257.904c

The officer issues a paper plate, places it in the rear window of the vehicle, and destroys the metal plate. While the paper plate is on the offending vehicle:

- A licensed and sober driver may drive on the paper plate without restrictions.
- The paper plate expires on the same date as the underlying metal plate and must be renewed for issuance of another paper plate.
- The vehicle may be sold to anyone but a family member without a court order.
- The operator may purchase and register a new vehicle in his/her name.
- The paper plate is valid until the criminal case is finally adjudicated.

Paper Plate Clearance:

Upon adjudication, drivers may take a form, the Notice of Adjudication (NOA), to any Secretary of State branch office to obtain a metal plate. If the person was convicted of a Section 625 crime, the Section 625g permit will continue in effect until the Department imposes a licensing action, the person is acquitted, or the case is dismissed. Courts may still issue a Court Ordered Restricted Driver License (CORDL) for crimes with arrests prior to October 1, 1999, or for drug crimes.

The Court – Immobilization

If a driver is convicted of a Section 625 crime or an offense resulting in a Section 904 licensing action, courts may be required to order vehicle immobilization. The Statute requires that periods of immobilization start after imprisonment. Immobilization is permissive for first offenses and mandatory as more convictions are accumulated. See **Appendix D**.

If the driver is not an owner of the vehicle and an owner did not knowingly permit the driver to Operate While Intoxicated or DWLS, i.e., they are an “innocent owner,” no immobilization/forfeiture may be ordered. However, prosecutors may attempt to prove that the owner “knowingly allowed” the offender to operate in such a manner and then the vehicle may be ordered immobilized. Co-owners may not be considered “innocent owners” for purposes of avoiding immobilization.

Once the case is adjudicated, abstracts shall be submitted to the Department. Sentencing documents shall follow.

Immobilization is privatized. Courts must approve the method of immobilization. These methods may include a boot, steering column lock, or impoundment.

Courts may order drivers to obtain proof of immobilization within a time period such as two weeks prior to submitting the sentence-abstract information to the Department. Courts may use sanctions such as contempt, probation violations, etc., to enforce these orders.

When officers stop vehicles that are subject to immobilization, the plate status shows that the vehicle was ordered immobilized, the from and through dates of immobilization, and the driver license number (DLN) of the offender. Officers may impound the vehicle if it is being illegally operated during a period of immobilization.

The Secretary of State Registration Denial

If an individual's driving privilege is currently suspended or revoked for three or more alcohol-related convictions or has four or more additional driving while suspended/revoked actions, the driver is subject to registration-denial. Neither the driver, nor any co-owner, may register any vehicles in his or her name until the offender is re-licensed. Persons who are subject to registration-denial may only transfer or assign their vehicles to a person exempt from Use Tax Act requirements with a Circuit Court order, MCL 257.233(4).

The University of Michigan Transportation Research Institute conducted a three-year study to determine the progress of the Repeat Offender Legislation of October 1999. The results were published in September 2002 and are encouraging. Since October 1999, the State has demonstrated a 39% reduction in the number of traffic crashes involving substance abuse-related repeat offenders. The crash rate for drivers with suspensions or revocations decreased by 37%. The number of drivers with two or more alcohol-related convictions dropped 5%, and the number of drivers with three or more alcohol-related convictions dropped by 17%.

VIII. Mandatory Licensing Actions

Types of Licensing Actions

Licensing actions range from restrictions to revocations. The most serious action is a revocation, defined in MCL 257.52 as the termination of the operator's license and privilege to operate a motor vehicle. The driver is only eligible to reapply to the Department for license restoration after the expiration of five years for a subsequent revocation within seven years of a prior revocation. There is no guarantee that the license will be returned after the minimum period of revocation. The pivotal issue is whether the person can be considered a safe driver based upon documentary evidence and testimony.

A suspension is for a definite period and carries a "from" and "through" date. When the "through" date is reached, the driver merely needs to appear at a branch office and pay the reinstatement fee for relicensure. MCL 257.320e (That is, if no additional violations occur during the period of suspension. MCL 257.904(2))

A restricted license allows limited driving privileges. Since October 1, 1999, these privileges are generated automatically pursuant to MCL 257.319, based upon receipt of conviction information. The Department exercises no discretion but will issue the sanction as prescribed by law. It is important that operators carry proof of destination and hours when operating a vehicle. Proof is required so that law

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enforcement officers can insure compliance with the restrictions authorized. Restrictions include:

- a. In the course of the person's employment or occupation.
- b. To and from any combination of the following:
 - The person's residence.
 - The person's work location.
 - An alcohol or drug education or treatment program as ordered by the court.
 - The court-ordered probation department.
 - A court-ordered community service program.
 - An educational institution at which the person is enrolled as a student.
 - A place of regularly occurring medical treatment for a serious condition for the person or a member of the person's household or immediate family.

Section 319 suspensions will be for a definite period of time with "from" and "through" dates. When a "through" date is reached, the driver need merely pay the reinstatement fee to obtain a full license, if there are no other open licensing actions. If no fee is paid, the driver is on an "invalid" license status.

However, restrictions or suspensions may also be "indefinite" in nature, and will not terminate until approved for relicensure by the Department or a court. For example, if an indefinite suspension is imposed by a Department analyst for a medical reason, the driver must submit a favorable medical statement for evaluation before relicensure is authorized.

The branch office generally imposes license denial. When a license is denied, the person does not have a license and is not eligible for renewal. Reasons for denial could be the inability to pass a road test or because of some health problem which prevents the person from operating a motor vehicle safely.

Department analysts may also impose terms and conditions on licensure. These are generally a part of the probationary program. For example, the number of passengers in a vehicle operated by a young driver may be limited.

Trial Court Ordered Licensing Sanctions

Courts are no longer required to impose licensing actions except for drug crimes, no proof of insurance, non-support, watercraft, snowmobiles, ORVs, and for offenses with arrest dates prior to October 1, 1999. All licensing sanctions are imposed by the Department based upon receipt of a court conviction. It is very important that abstracts be submitted to the Department within 14 days of plea to reduce delays in imposing licensing actions.

Courts submit conviction and sentence information to the Department on abstracts of conviction. These are often submitted electronically. Amended sentence

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information must be submitted to the department on an amended form. Licensing sanctions that are part of the terms of probation are not placed on driving records. Civil restoration appeals should be submitted on State Court Administrator form orders. (See Restoration Appeal Process.)

Determination of how prior drunk driving convictions are counted for court-ordered licensing actions versus administrative actions, was addressed in a recent decision, *People v Vezina*, 217 Mich App 148; 550 NW2d 613 (1996). *Vezina* clarifies that a court-ordered enhancement for a subsequent drunk driving conviction is based upon the violation date rather than the conviction date while the administrative action is based upon the conviction date of the subsequent drunk driving event.

Department Licensing Actions and Authority

After October 1, 1999, “attempt” language was consolidated into one section, MCL 257.204b. The section provides that all attempted offenses are to be treated as though completed for assessing points and imposing licensing sanctions and by courts for imposing punishment.

If a person receives two convictions from a single stop or arrest, these are treated as “same incident” and only the higher set of points is assessed. MCL 257.320(5) In addition, MCL 257.319(18) carries “same incident” language and only one licensing action is imposed.

Some offenses are “non-moving violations” and do not result in mandatory actions pursuant to MCL 257.904 or assessment of points pursuant to MCL 257.320a. (Some offenses do not carry points; however, they do generate mandatory additional actions pursuant to MCL 257.904.)

Non-moving Convictions	
Open Intoxicants – Passenger	Gave False Info to Police Officer
Transport/Possess Alcohol – Passenger	False Certification Under Vehicle Code (Perjury)
Preliminary Breath Test Refusal in CMV	Registration and/or Plate Violation
Preliminary Breath Test Refusal in non-CMV	Alter/Forge/Falsify Vehicle Document or License Plate
Person Under 21 Used Fraudulent ID to Purchase Liquor	Fraudulent Change of Address
Allowed Person Under Influence Alcohol/Controlled Substance to Operate	6 or More Unpaid Parking Tickets
Allowed Person Suspended/Revoked to Operate	2 or More Unpaid Handicapper Parking Tickets
Allowed Person Suspended/Revoked to Operate Causing Serious Injury	Ignition Interlock Device Violations
Allowed Person Suspended/Revoked to Operate Causing Death	Immobilization Violations
Allowed Person Under Influence Alcohol/Controlled Substance to Operate Causing Death	Obtaining Vehicle to Circumvent Immobilization
Allowed Person Under Influence Alcohol/Controlled Substance to Operate Causing Serious Injury	Transfer to Avoid Forfeiture
Person Under 21 Purchase/Consume/Possess Liquor	Subject to temporary Registration – Transfer to Person Not Subject to Use Tax
Unlawful Use or Display of License	New Registration Applications by Holder of Assigned Plates
Altered Driver License	Illegally Acquired Vehicle While Subject to Registration Denial
Fraud in Obtaining License	Drug Crime
Allowed Person to Drive in Violation of Vehicle Code	Bomb Threat (School)

Revoked/Denied Section 303	Mandatory Suspension Section 319
<p>(1) SOS shall not issue license to:</p> <ul style="list-style-type: none"> (a) &(b) persons less than 18 years of age, except as otherwise provided. (c) a driver whose license is suspended in any state (d) mental/physical disability or disease-no reasonable/ordinary control (e) no understanding of English highway signs (f) unable to pass knowledge/skill test (g) 2 convictions 3 years prior to application (h) a non-resident (i) a person who would be suspended under Section 321a (j) a person who would be suspended under Sections 319, 324, or 904 (k) a person who would be suspended under Section 319e (l) a person who would be suspended under Sections 624a, 624b, MCL 436.1703(1) <p>(2) SOS shall revoke for:</p> <ul style="list-style-type: none"> (a) any combination of 2 w/in 7 years of reckless Section 626 (b) any combination of 2 w/in 7 years for any of the following: <ul style="list-style-type: none"> (i) a felony in which a motor vehicle is used (ii) Violation or attempted violation of Section 601b(2)(3), 601c(1)(2), 602a(4)(5), 617, 653a(3)(4) or 904(4)(5) (iii) Neg hom, Mansl, Murder with vehicle (iv) Violation or attempted violation of MCL 750.479a(4)(5) (c) any combination of 2 w/in 7 years for any of the following or a combination of 1 conviction for a violation of a Section 625(6) and 1 conviction for any of the following w/in 7 years: <ul style="list-style-type: none"> (i) Section 625 except 625(2) (ii) Section 625m (iii) Former Section 625b (d) one conviction Sectoins 315(5), 601b(3), 601c(2), 602a(4) or (5), 617, 625(4), or (5), 653a(4) or 904(4) or (5) (e) one conviction Neg Hom, Mansl, or Murder with Vehicle (f) one conviction under MCL 750.479a(4) or (5) (g) any combination of 3 w/in 10 years for any of the following or a combination of 1 conviction for a violation of Section 625(6) and 2 convictions for any of the following w/in 10 years: <ul style="list-style-type: none"> (i) Section 625 except 625(2) (ii) Section 625m (iii) Former Section 625b <p>(3) Do this notwithstanding a court order</p> <p>(4) SOS shall not issue to person denied/revoked under 303(2) until all of the following:</p> <ul style="list-style-type: none"> (a) the later of the following: <ul style="list-style-type: none"> (i) minimum 1 year; (ii) minimum 5 years for 2nd revocation w/in 7 years of prior (b) person rebuts by clear and convincing evidence (c) meets requirements of the Department <p>(5) May not issue for Section 750.41 1a(2)</p> <p>(6) SOS shall not issue group designation when disqualified by US Secretary of Transportation</p> <p>(7) Same incident language</p> <p>(8) Definition of "Felony Auto Used"</p>	<p>(1) SOS shall suspend for Michigan, out of state, or local ordinance conviction</p> <p>(2) SOS shall suspend for 1 year for:</p> <ul style="list-style-type: none"> (a) alter/forging vehicle document – Section 257 (b) UDAA – MCL 750.413 (c) Felonious driving – MCL 752.191 or 626c (d) Felony in which a motor vehicle was used (e) Fleeing and Eluding – MCL 257.602a(2) or (3) or MCL 750.479a(2) or (3) <p>(3) SOS shall suspend for 90 days for any of the following crimes:</p> <ul style="list-style-type: none"> (a) leaving scene of accident resulting in serious injury – Section 617a (b) reckless driving – 626 or emergency responder injury-653a(3), failure to yield to construction worker-601b(2), implement of husbandry-601c(1) (c) malicious destruction-Section 382(1)(b), (c), or (d) (d) under 21 fraudulent use of ID – MCL 346.1703(2) <p>(4) SOS shall suspend for 30 days for malicious destruction under MCL 750.382(1)(a)</p> <p>(5) For perjury to SOS or Section 324(1), suspend as follows:</p> <ul style="list-style-type: none"> (a) no priors w/in 7 years-90 day suspension (b) 1 or more priors w/in 7 years-1 year suspension <p>(6) For joy riding – MCL 750.414, suspend as follows:</p> <ul style="list-style-type: none"> (a) no prior w/in 7 years – 90 day suspension (b) 1 or more priors w/in 7 years – 1 year suspension <p>(7) For a violation of Section 624a or 624b or MCL 436.1703(1), suspend as follows:</p> <ul style="list-style-type: none"> (a) 1 prior in this subsection or a Section 33b(1)-30 day susp/60 day rest (b) 2 or more priors-60 day susp/305 day rest <p>(8) For a violation of Section 625 or 625m, suspend as follows:</p> <ul style="list-style-type: none"> (a) Section 625(1)(8) – 30 day susp/150 day rest (b) Section 625(3) – 90 day restricted; controlled substance – 180 day restricted (c) Section 625(6) – 30 day restricted (d) Section 625(6) with 1 or more priors – 90 day restricted (e) Section 625(7) – 90 day susp/90 day rest (f) Section 625m – 90 day restricted <p>(9) For theft of motor vehicle fuel MCL 750.367c:</p> <ul style="list-style-type: none"> (a) no priors – 180 day suspension (b) subsequent – 1 year <p>(10) For fraudulent change of address – MCL 257.315(4)</p> <ul style="list-style-type: none"> (a) no priors – 180 day suspension (b) subsequent – revocation <p>(11) For false school bomb threat Section 750.411a(2) 14-21 years – 1 year susp/2 year rest</p> <p>(12) Do this notwithstanding court order</p> <p>(13) Same incident language</p> <p>(14) SOS may waive suspension or grant restrictions if served out-of-state</p> <p>(15) SOS shall not issue a restricted license unless it is authorized under this section and the person is eligible.</p> <p>(16) No restricted license to transport hazardous material</p> <p>(17) A restricted license permits driving as follows:</p> <ul style="list-style-type: none"> (a)(b) "MAY DRIVE TO AND FROM RESIDENCE AND PLACE OF EMPLOYMENT AND IN THE COURSE OF EMPLOYMENT, TO ABUSE TREATMENT PROGRAM AND/OR SUPPORT GROUP MEETINGS, TO REGULARLY SCHEDULED TREATMENT FOR SERIOUS MEDICAL CONDITION FOR THE DRIVER, A MEMBER OF THE PERSON'S HOUSEHOLD OR IMMEDIATE FAMILY, TO COURT PROBATION OFFICE AND COMMUNITY SERVICE AND EDUCATIONAL INSTITUTION, MUST CARRY PROOF OF DESTINATION AND HOURS" <p>(18) Person shall carry proof of destination and hours and display upon request</p> <p>(19) Definition of "prior"</p> <p>(20) Only Qualifier of Section 625(6) may be used as a prior conviction</p> <p>(21) Same incident language</p>

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REQUIRED SOS LICENSING ACTION AUTHORITY – PAGE 2

Probationary Driver - Section 310d	Driver Assessment - Section 320	Illegal Use of License - Section 324
1 st conviction – correspondence letter 2 nd conviction – warning letter 3 rd conviction – diagnostic re-exam 4 th conviction – probationary re-exam	(1) One of the below and (2) (a) incompetent (infirmity/disability) (b) one fatal accident (c) 3 hazardous crashes (d) 12 points/2 years (e) violated restrictions, terms, or conditions (2) Good Cause	Unlawful use of license 1 st = 90 days 2 nd within 7 years = 1 year
Implied Consent – Section 625f	Mandatory Additional – Section 904	Drug Law – Section 319e
1 st IC suspension = 1 year 2 nd IC suspension within 7 years = 2 years	(10) Upon receiving record of a person’s conviction for moving violations while license is susp/rev, impose an additional like period of susp/rev (11) Upon receiving record of a person’s conviction for moving violations while license is indefinitely suspended or whose application for a license has been denied, impose a 30-day additional period of susp/den (12) Upon receiving record of conviction for a moving violation in a commercial motor vehicle while designation is suspended pursuant to Sections 319a or 319b, or revoked, impose an additional like period of susp/rev	(1) Suspend for conviction, attempt, conspiracy or violation of part 74 or Section 17766a of Health Code per court order (2) Suspend for out-of-state conviction or federal drug act violation for: (a) 6 months if no priors (b) 1 year if 1 prior within 7 years (3) SOS may waive or grant restrictions if served 1 year imprisonment or licensing action (4) Not applicable if sentenced to life imprisonment or over 1 year
Commercial Driver License (CDL) – Sections 312f, 319a, 319b – Prior to October 1, 2005		
Section 319a SOS shall suspend a CDL as required in Section 319b (1) 319b(1) Suspend or revoke a CDL for convictions or IC refusal for: (a) 60 days susp for 2 serious traffic violations while in CMV from separate incidents within 36 months (b) 120 days for 3 serious traffic violations in CMV from separate incidents within 36 months (c) 1 year if convicted of: (i) Viol of 625(1), (3), (4), (5), (6), or (7), or (8), 625m in CMV from separate incidents within 36 months (ii) Leaving scene of accident in CMV (iii) Felony in which CMV was used (iv) IC refusal in CMV (v) 6-point violation in CMV (vi) Any combination of 3 violations of (1)(a) in CMV (d) Suspend 3 years if (c)(i)-(v) in CMV with hazardous material (e) Revoke for 10 years until approved if convicted of: (i) Any combination of 2 viols in Section 625(1), (3), (4), (5), (6), (7), (8), 625m in CMV (ii) 2 viols of leaving scene of accident in CMV (iii) 2 viols of felony with CMV (iv) 2 IC’s in CMV (v) 2 – 6 point violations in CMV (vi) 2 viols of (c)(i), (ii), (iii), or (iv) arising from separate incidents	(f) Revoke for life if convicted of: (i) 1 viol of felony in CMV with drug mfg/distribution (ii) Conviction of any offense in (c) or (d) after having been approved for an issuance under (e) (iii) Conviction under MCL 750.543a – 750.543z (2) Deny/cancel/revoke hazardous material endorsement upon Federal notification of security risk (3) Suspend CDL for a violation of Section 319d(4) or 319f out of service or disqualified (4) Definition of “felony”, “serious traffic violation” (5) Bond forfeiture is considered a conviction (6) Do this “notwithstanding” other action or court order (7) Only consider violations after 1/1/90 (8) Incident to incident date	Section 312f Application Denials – CDL (4) SOS shall not issue CDL to: (a) Person suspended, revoked, other than for Section 321a, within 36 months preceding application unless medical or failure to appear at re-exam (b) Applicant convicted of 6-point viol in 24 months preceding application or a Section 625(3) in CDL (c) Applicant on NDR or CIDLIS as disqualified or as suspended, revoked, canceled, or denied (d) Applicant on NDR or CIDLIS as disqualified or as suspended, revoked, canceled, or denied within 36 months of application if licensed in Michigan (e) Applicant would have been denied for Section 319b (f) Disqualified under Title XII or CDL suspended, revoked, denied or canceled within 36 months of application

REQUIRED SOS LICENSING ACTION AUTHORITY – PAGE 3

Commercial Driver License (CDL) – Sections 312f, 319a 319b – Effective October 1, 2005

<p>Section 319a SOS shall suspend a CDL as required in Section 319b</p> <p>(1) 319b(1) Suspend or revoke a CDL for convictions or IC refusal for:</p> <p>(a) 60 days susp for 2 serious traffic violations while in CMV from separate incidents within 36 months</p> <p>(b) 120 days for 3 serious traffic violations in CMV from separate incidents within 36 months</p> <p>(c) 1 year if convicted of:</p> <p>(i) Viol of Sections 625(1), (3), (4), (5), (6), or (7), or (8), 625m in CMV</p> <p>(ii) Leaving scene of accident in CMV</p> <p>(iii) Felony in which CMV was used</p> <p>(iv) IC refusal in CMV</p> <p>(v) CMV violation of DWLS if suspension for CMV conviction</p> <p>(vi) CMV violation causing death</p> <p>(vii) 6-point violation in CMV</p> <p>(viii) any combination of 3 violations of (1)(a) in CMV</p> <p>(d) Suspend 3 years if (c)(i)-(v) in CMV with hazardous material</p> <p>(e) Revoke for 10 years until approved if convicted of:</p> <p>(i) Any combination of 2 viols in Sections 625(1), (3), (4), (5), (6), (7), or (8), 625m in CMV</p> <p>(ii) 2 viols of leaving scene of accident in CMV</p> <p>(iii) 2 viols of felony with CMV</p> <p>(iv) 2 IC's in CMV</p> <p>(v) 2 viols of DWLS with CMV</p> <p>(vi) 2 CMV violations causing death</p> <p>(vii) 2- 6 point violations in CMV</p> <p>(viii) 2 viols of (c) (i), (ii), (iii), or (iv), arising from separate incidents</p>	<p>(f) Revoke for life if convicted of:</p> <p>(i) 1 viol of felony in CMV with drug mfg/distribution</p> <p>(ii) Conviction of any offense in (c) or (d) after having been approved for an issuance under (e)</p> <p>(iii) Conviction under MCL 750.543a – 750.543z</p> <p>(2) Deny/cancel/revoke hazardous material endorsement upon Federal notification of security risk</p> <p>(3) Suspend CDL for a violation of Section 319d(4) or 319f out of service or disqualified</p> <p>(4) Definition of “felony”, “serious traffic violation”</p> <p>(5) Bond forfeiture is considered a conviction</p> <p>(6) Do this “notwithstanding” other action or court order</p> <p>(7) Non commercial vehicles treated as a CMV</p> <p>(8) Only consider violations after 1/1/90</p> <p>(9) Incident to incident date</p>	<p>Section 312f Application Denials – CDL</p> <p>(5) SOS shall not issue CDL to:</p> <p>(a) Person suspended, revoked, other than for Section 321a, within 36 months preceding application unless medical or failure to appear at a re-exam</p> <p>(b) Applicant convicted of 6-point viol in 24 months preceding application or Section 625(3) in CDL</p> <p>(c) Applicant on NDR or CIDLIS as disqualified or as suspended, revoked, canceled, or denied</p> <p>(d) Applicant on NDR or CIDLIS as disqualified or as suspended, revoked, canceled, or denied within 36 months of application if licensed in Michigan</p> <p>(e) Applicant would have been denied for Section 319b</p> <p>(f) Disqualified under Title XII or CDL suspended, revoked, denied or canceled within 36 months of application</p>
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License Actions Imposed By Secretary of State

Offense Code	Offense MCL 257.319	Repeat Offender Licensing Actions
Substance Abuse Offenses		
Prior to 9/30/2003		
1000	Operated Under Influence of Liquor (OUIL)- Section 625(1)	(1) 30 susp/150 rest (2) Denial/revocation
1010	Unlawful Blood Alcohol Content (UBAC)- Section 625(1)	(3) Denial/revocation
1100	Operated Under Influence of Drugs (OUID)-	
1110/1020	Section 625(1) Combined OUIL/UBAC/OUID	
Prior to 9/30/2003		
1200	Operating While Impaired (OWI) – Section 625(3)	(1) 90 rest (2) Denial/revocation (3) Denial/revocation
As of 9/30/2003		
1200	Operating While Visibly Impaired (OWVI)	
1220	Combined Operated While Impaired by Liquor and Controlled Substance (OWI/OWPD) – Section 625(3)	(1) 180 rest (2) Denial/revocation (3) Denial/revocation
1030 (1120) 1035	OUIL/OWI – Death – Section 625(4) (OUID/OWID) OUIL/OWI – Death of Emergency Responder – Section 625(4)	Denial/revocation
1040 (1130)	OUIL/OWI – Injury – Section 625(5) (OUID/OWID)	Denial/revocation
1210	Operated While Impaired by Controlled Substance – Section 625(3)	(1) 180 rest (2) Denial/revocation – misdemeanor (3) Denial/revocation - felony
1150	Child Endangerment	(1) 90 susp/90 rest (2) Denial/revocation
As of 9/30/2003		
1025	Operated While Intoxicated (OWI) – Section 625(1)	(1) 30 susp/150 rest (2) Denial/revocation – misdemeanor (3) Denial/revocation – felony
1105	Operating With Presence of Drugs (OWPD) Schedule 1 – Section 625(8)	
Commercial Driver License Offenses		
1230	CDL - .04 BAC – Commercial License	(1) 1 yr susp Hazardous Endorsement – 3 yr susp (2) Revocation for 10 yrs
1230	CDL - .04 BAC – Operator’s License	(1) 90 rest (2) Denial/revocation
Juvenile Offenses		
1300 1306	Open Intoxicants – Section 624a	(1) None (2) 30 susp/60 rest (3) 60 susp/305 rest
1307 1308	Transport/Possess – Section 624b	(1) None (2) 30 susp/60 rest (3) 60 susp/305 rest
1330	Fraudulent ID Purchase MCL 436.33b(2)	90 susp
1240	Under 21 BAC – Section 625(6) Zero Tolerance	(1) 30 rest (2) 90 susp
1360	MIP MCL 436.33b(1)	(1) None (2) 30 susp/60 rest (3) 60 susp/305 rest
1510	Joyriding MCL 750.414	(1) 90 susp (2) 1 yr susp

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Felony Offenses		
1500	UDAA MCL 750.413	(1) 1 yr susp (2) Denial/revocation
1706, 1707	Fleeing & Eluding MCL 750.179a – 1 st and 2 nd degree	Denial/revocation
1708, 1709	Fleeing & Eluding – 602a – 3 rd and 4 th degree	1 year susp
1450	Felonious Driving MCL 750.191	(1) 1 yr susp (2) Denial/revocation
1430	Felony Auto Used	(1) 1 yr susp (2) Denial/revocation
1600	Failed to Stop or Identify after P.I. Accident Causing Serious Impairment of a Body Function – Section 617	Denial/revocation
1605	Failed to Stop or Identify after P.I. Accident Causing Death – Section 617	Denial/revocation
1802	Failure to Use Due Care and Caution Causing Death of a Construction Worker, Maintenance or Utility work activities – Section 601b(3)	Denial/revocation
1804	Fail to Use Care Causing Death of Person Operating Implement of Husbandry – Section 601c(2)	Denial/revocation
3235	Drove While License Susp/Revoked or Denied Causing Death – Section 904(4)	Denial/revocation
3245	Drove While License Susp/Revoked or Denied Causing Serious Injury – Section 904(5)	Denial/revocation
1807	Failure to Yield to Emergency Responder Causing Injury – Section 653a(3)	90 susp
1808	Failure to Yield to Emergency Responder Causing Death – Section 653a(4)	Denial/revocation
1400	Manslaughter MCL 750.321/91	Denial/revocation
1410	Negligent Homicide MCL 750.324	Denial/revocation
1420	Murder MCL 750.391	Denial/revocation
Other Offenses		
1610	Leaving Scene of Accident Misdemeanor – Section 617a	90 susp
1840	Theft of Vehicle Fuel MCL 750.367c	(1) 90 susp
3250	Unlawful Use of License – Section 324	(1) 90 susp (2) 1 yr susp
1800	Reckless – Section 626	(1) 90 susp (2) Denial/revocation
3600	Alter/Forge Documents – Section 257	1 year susp
3630	Fraudulent Change of Address – Section 319	(1) 180 susp (2) Denial/revocation
3320	Perjury to SOS – Section 903 (False Certification)	(1) 90 susp (2) 1 yr susp
1825	Malicious Destruction MCL 750.382(1)(b)(c)(d)	30 susp for damage <200
1830	Malicious Destruction MCL 750.382	90 susp for damage >200
9200	Drug Crime – Section 319c	(1) Court ordered – 30 susp/150 rest (2) Court ordered – 60 susp/305 rest

Preliminary Breath Test (PBT) consequences vary considerably. See the following chart:

PRELIMINARY BREATH TEST (PBT)

MCL	Offense Code	Title	Type	Points	Abstract	FAC/FCJ
257.625a(2)	1310	PBT Refusal in CMV	M	0	Yes	FAC
257.625a(1)	1320	PBT Refusal in Non-CMV	CI	0	No	FCJ
257.625a(2)	1350	Person Under 21 Refused PBT (Operating a Vehicle)	CI	2	Yes	FCJ
436.1703(5)	9300	Person Under 21 Refused PBT (Non-Operating)	State CI	0	No	FCJ
324.80180	9300	PBT Refusal – Watercraft	State CI	0	No	FCJ
324.81141	9300	PBT Refusal – ORV	State CI	0	No	FCJ
324.82136	None	PBT Refusal Snowmobile	M	0	No	None

M = Misdemeanor

CI = Civil Infraction

IX. Implied-Consent Hearings

Implied-consent actions stem from an arrest for drunk driving or any other crime described in MCL 257.625c(1). Implied-consent hearings involve drivers who have allegedly refused to take the chemical test of a law enforcement officer's choosing, without legal excuse. Prior to the request for the chemical test, the officer must establish reasonable grounds to believe that the driver committed a crime described in Section 625c(1) of the Michigan Vehicle Code, and that the officer arrested the driver for one of the appropriate violations, and advised the driver of the chemical test rights. When an officer has determined that a driver has refused a chemical test, the officer files a LEIN report of refusal, confiscates the driver's license, and issues a temporary paper license to the driver. The license is also confiscated if the driver agrees to the breath test and has test results above the legal limit, or if the request is for a blood test, pending the results of the test.

A driver has 14 days to appeal an Implied-consent refusal. If an appeal is not requested in a timely manner, the suspension begins automatically. If a timely request for hearing is made, the suspension is "stayed" until the matter can be reviewed at a Driver License Appeal hearing. The elements of an Implied-consent refusal are outlined in MCL 257.625f(4). The burden of proof is on the police officer party by a preponderance of the evidence, Administrative Rule 257.310(8) and (9). Drivers have the burden of proof for any affirmative defenses. License Appeal Hearing Officers have an affirmative duty to assist all unrepresented parties in presenting their case to properly develop a complete record, Rule 257.310(3). Other issues related to Implied-consent hearings, including a permissive hearsay rule, and other evidentiary issues, are addressed in various sections of the Department Administrative Rules. Case law summaries addressing Implied-consent hearings can be found in a later part of this section.

Section 625c(1) encompasses the following crimes: Operating While Intoxicated (OWI) (either the person is under the influence of alcoholic liquor, a controlled substance, or a combination of alcoholic liquor and controlled substances, or the person has a blood alcohol content of 0.08); Operating While Visibly Impaired (OWVI); Operating With Any Presence of Drugs (OWPD); Operating While Intoxicated, Operating While Visibly Impaired or Operating With Any Presence of Drugs Causing Death (OWI, OWVI or OWPD Causing Death); Operating While Intoxicated, Operating While Visibly Impaired or Operating With Any Presence of Drugs Causing Serious Impairment (OWI, OWVI or OWPD Causing Serious Impairment); Person Under 21 with a BAC (Zero Tolerance); Child Endangerment (OWI, OWVI, OWPD, Causing Death and Causing Serious Impairment with Passenger Under 16); Refusal to Submit to Preliminary Breath Test While Operating a Commercial Vehicle (CDL Preliminary Breath Test Refusal); and Operating a Commercial Vehicle with a Blood Alcohol Content of 0.04 to 0.07 (CDL .04 Violation).

Section 625

(1) OWI

This is defined as operating with a BAC of .08 or more. The law now refers to "blood alcohol content" rather than "alcohol level".

Testing is defined in terms of breath, blood, and urine.

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(2) A person shall not knowingly permit another person to operate while OWI.

(3) OWVI

This is defined as operating when, due to the consumption of alcoholic liquor, a controlled substance, or a combination of alcohol and controlled substance, the person's ability to operate a vehicle is visibly impaired.

(4) OWI Causing Death

- (a.) This crime was established in 1991 to provide prosecutors with alternatives to charging manslaughter. This crime was to simplify the proofs required to establish the crime of death resulting from the operation of a motor vehicle. See *People v Lardie*, 207 Mich App 615; 525 NW2d 504 (1995). Upheld in consolidated cases of *People v Lardie* and *People v Hurdick*, 452 Mich 231; 551 NW2d 656 (1996).
- (b.) In HB 6177, as passed by the Senate December 14, 2000, a new crime of OUIL in violation of Section 653a resulting in the death of an emergency responder was established. Section 653a requires operators to yield the right of way by moving into the far lane, or, if no lane is available, to slow down and drive with due care when passing a stationary emergency vehicle. Failure to do so while OWI is a 20-year felony.

(5) OWI Causing Serious Injury

This crime was originally established in 1991. Initially, it was very narrowly defined. In 1994, this definition was expanded considerably. (1994 Pas 448-450)

(6) Zero Tolerance

This crime was established in 1994, effective in November 1995. (1994 PA 211) Officers may arrest persons under the age of 21 for any bodily alcohol content. If the person takes a breath test, the test must register a .02 to .07 for this charge. A BAC above .07 should result in a charge of OWI.

(7) Child Endangerment

This crime was established in 1998, effective October 1, 1999. Persons are guilty of this offense if they commit any Section 625 crime with a passenger under 16 years of age in the vehicle.

(8) OWPD

This crime was established in 2003. A person shall not operate a vehicle with the presence of any schedule 1 controlled substance or cocaine.

(9) Section 625m - .04 CDL

A person may not operate a commercial motor vehicle (CMV) with a BAC of a .04 or more. This is a per se crime established by federal

mandate. It is a national program to provide a uniform standard for CMV operators who travel nation-wide. The BAC level is low due to the duty of care required to operate large trucks sharing the roads with others.

Reasonable ground to believe that the person was operating in violation of one of the offenses described in Section 625c(1) can be determined through observing the persons driving, appearance, and demeanor, along with field sobriety testing and the Preliminary Breath Test.

The Preliminary Breath Test (PBT) has, since its inception, been admissible when the validity of an arrest is subject to challenge. The PBT is now admissible as “evidence of the defendant’s breath alcohol content, if offered by the defendant to rebut testimony elicited on cross-examination of a defense witness that defendant’s breath alcohol content was higher at the time of the charged offense than when a chemical test was administered under Section (6)”, or as “evidence of the defendant’s breath alcohol content, if offered by the prosecution to rebut testimony elicited on cross-examination of a prosecution witness that defendant’s breath alcohol content was lower at the time of the charged offense than when the chemical test was administered under Subsection (6)”, MCL 257.625a(2)(b).

Once the officer has reasonable ground to believe a crime was committed pursuant to MCL 625c(1), the person is placed under arrest.

The officer then advises the person of their “chemical-test-rights.” This may occur at the scene of the traffic stop or at the station where the breathalyzer instrument is located. The rights are contained in MCL 257.625a(6). Best police practice is to submit a copy of the test rights at the Driver License Appeal hearing. However, in an unpublished opinion, *Gross v Secretary of State*, Docket No. 171733, 1995, the Michigan Court of Appeals held that introduction of the chemical-test-rights form into the record is not necessary for the officer to prove that the rights were read. At the end of the rights the officer has the option to request one of three tests, breath, blood, or urine, and depending on the test, the driver is then either transported to the station (if the request is made at the scene) or to a hospital. If the driver complies with the officer’s test, they have the right to demand that a test of their choosing be administered.

Michigan uses infrared breathalyzer instruments, DataMasters, which are generally placed at lock-ups for more ready access. Many officers are trained to administer the tests using this instrument. If a determination is made the driver refused the breath test by not providing a sufficient breath sample, a “technical refusal” is indicated by the breathalyzer operator. It is necessary for the breathalyzer operator to appear at the Implied-consent hearing when a technical refusal is appealed.

In Midland, Circuit Judge Thomas L. Ludington issued a 23-page opinion holding that breath test results from a BAC DataMaster meet the Frye-Davis test and are admissible in evidence. Other counties are adopting this opinion to avoid the lengthy evidentiary hearing necessary to create this record. See *People v Daniel J. Capiyak*, File No. 95-7566-FH, September 28, 1995.

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If an arrested person refuses the request by the officer to submit to a test pursuant to the Implied-consent law, no test shall be given without a court order, but the officer may seek to obtain such an order. A court order compelling a chemical test does not serve to rescind the earlier refusal and the Department may consider the initial refusal as basis to suspend. Attorney General Opinion No. 6328.

Since the 1992 legislation became effective, officers confiscate and destroy driver licenses for a “failure” or “refusal” of a chemical test. This procedure is established in MCL 257.625g, where “failure” is defined. Officers are required to destroy licenses for persons who have a BAC of .08 or above; for CMV operators who reveal a BAC of .04 or above; and for persons under 21 years of age who have a BAC of .02 or above. Officers then give these operators a temporary paper permit, which is as valid a license as the photo license until the criminal case is adjudicated and, if convicted, the offender receives an Order of Action from the Department of State.

Officers do not destroy out-of-state licenses, as Michigan has no jurisdiction over them. However, this information is still entered into the LEIN and the operator’s Michigan privileges may be affected as a result of the adjudication.

To implement this procedure, two forms were created; the “Breath, Blood, Urine Test Report”, DI-177 for “failures”, and the “Officers’ Report of Refusal to Submit to Chemical Test”, DI-93 for “refusals.” Officers now submit the “Written Report of Refusal” by LEIN to the Department of State. In addition, officers enter “failure” data to update arrest and infrared databases.

Both the DI-177 and the DI-93 forms include a temporary permit that is valid until the underlying case is acquitted, dismissed, or a licensing action has been imposed by the agency. The appropriate document is given to the operator. The Chemical Test Rights are included on the back of these permits so that the Department does not have to mail these when a hearing is requested. In addition, the “refusal” form (DI-93) includes the operator’s appeal rights. A second page in this document is entitled, “Request for Hearing.” This, too, is given to the operator to facilitate the appeal process.

If a blood or urine test is requested, officers still take licenses and give the permit to the operator, but they do not destroy the license until the test results are returned to the police. Then the officers send page two of the “failure” form to the operator with the test results. If the operator “passes” the test, the license is returned.

This information is entered into the LEIN, “immediately” so that persons are prohibited from applying for and receiving a photo license at a Secretary of State branch office the next morning. The temporary license or permit provides the operator with the same driving privileges they had at the time of the arrest.

After the person either takes or refuses the test, the case proceeds to court. An acquittal in court does not impact an Implied-consent suspension or vice versa. These are separate actions imposed by different branches of government for different purposes.

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MCL 257.320e provides that a person must be sanctioned under the law in effect at the time of arrest. Therefore, an arrest after October 1, 1999, would trigger application of the new law. At that time, the prior convictions on the record would be used for enhancement. A person may also be denied/revoked for one conviction of:

- Operating Under the Influence Causing Serious Bodily Injury.
- Operating While Impaired Causing Serious Bodily Injury.
- Operating Under the Influence Causing Death.
- Operating While Impaired Causing Death.

When licenses are revoked/denied, it is for a minimum of one year for a first revocation and for a minimum of five years for a subsequent revocation within seven years of a prior revocation. After the minimum period of license revocation, the operator may apply for a hearing before Driver License Appeal for re-licensure. Pursuant to R 257.302(1)(d), a completed substance abuse evaluation must be submitted before a hearing is scheduled. If the hearing is held at a video site, in addition to the evaluation, all letters, documents, and video affidavit must be mailed or faxed before the case is scheduled. A record of this proceeding is made in accordance with Section 322 of the Code for review by the Circuit Court if the Department's decision is appealed as provided by Section 323. Section 303 revocation/denials are not subject to the general 14-day appeal period provided in Section 322(2).

Instructions on how to apply for re-licensure following a revocation are available by web link, telephone, and mail. Petitioners are eligible for one hearing per year. If unprepared for a hearing, petitioners should request it be adjourned rather than fail to appear. A person who fails to report a change of his or her residence address to the Secretary of State is responsible for a civil infraction. MCL 257.315

The Hearing Officer shall not order that a license be issued to a petitioner unless the petitioner rebuts the presumption established by Section 303 of the Code by clear and convincing evidence. In 1997-98, the Kent County Circuit Court issued a series of decisions finding that the Department had promulgated rules which included an incorrect standard of review; i.e., clear and convincing, when the standard should be preponderance of the evidence, and that the Department had the burden of proof in these appeals. This meant that the Department had to show that these operators would continue to drink and drive rather than drivers proving otherwise. The Department appealed these cases. The Court of Appeals denied leave in *Hoebbel v Secretary of State*, Kent Circuit Court Docket No. 97-09102-AL, 1v app den Court of Appeals Docket No. 208154 (2/13/98), but granted leave in *Bunce v Secretary of State*, Court of Appeals Docket No. 209122. On December 30, 1998, the Supreme Court entered an order (No. 111652) reversing the *Hoebbel* decision and remanded the case for appeal, but held it in abeyance pending its decision in *Bunce, supra*. Thereafter, in *Bunce v Secretary of State*, 239 Mich App 204; 607 NW2d 372 (1999), the Court of Appeals reversed the Circuit Court and held that the clear and convincing standard was valid and that the petitioner had the burden of proof.

In addition to appealing these cases, the Legislature amended MCL 257.303 and 322 to clarify that the standard of review for habitual offenders is "clear and

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convincing” and that the burden of proof is on petitioners. These amendments are included in the Repeat Offender legislation effective October 1, 1999.

Evidence relevant to rebuttal of the prima facie case includes:

- That the petitioner’s alcohol or substance abuse problems, if any, are under control and likely to remain under control.
- That the petitioner represents a low or minimal risk of repeating the act of drunk driving or past abusive behavior.
- That the petitioner has the ability and motivation to drive safely and within the law.

The Hearing Officer shall require that the petitioner prove that he or she has completely abstained from the use of alcohol and controlled substances, except for those controlled substances prescribed by a licensed health care professional, for not less than six consecutive months immediately prior to the hearing, unless the evidence considered at the hearing establishes that a longer period of abstinence, at least a year of sobriety, is necessary. Such evidence requiring a longer period of sobriety includes:

- A BAC of not less than 2X greater than the statutory presumption.
- Three or more convictions of substance abuse-related offenses.
- Relapsing after attempting to bring a substance abuse problem under control.
- Being diagnosed by a professional as alcohol or controlled substance dependent.
- Evidence of a prior Order of revocation or denial under Section 303 of the Act.

Evidence such as letters and documentation of sobriety, proof of involvement with a treatment program or support program, etc., are encouraged to assist the Hearing Officer in making a decision whether to authorize restricted or full driving privileges.

Hearing Officers have the final decision-making authority in the Department. There is no intra-Departmental appeal, but petitioners may file a Motion for Reconsideration in the event of newly discovered evidence, or a mistake of law or fact. R 257.315

See **Appendix F** for a copy of the Substance Abuse Evaluation form.

The Department is aware that there is a perception that the agency “never returns a license” in habitual violator appeals. The chart in **Appendix G** shows statistics of Driver License Appeal Hearing Officers where relief has been granted. These statistics are broken down by referral type and whether the petitioner was approved, modified or denied. Please note that modify means the petitioner’s suspension was shortened or restrictions were issued.

When drivers are approved to return to the road, Hearing Officers may authorize a restricted license or full privileges. If a restricted license is granted, Hearing Officers will order a general license, restricted license, or limited license to drive to and from residence and place of employment, and in the course of employment, to

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substance-abuse treatment programs and support group meetings, to regularly scheduled treatment for a serious medical condition, to the court probation office, to community service, and to an educational institution. Operators are required to carry proof of destination and hours with them and to show this to a law-enforcement officer, if stopped. Restriction specifics will no longer be issued and will, therefore, not need updating.

Breath Alcohol Ignition Interlock Device (BAIID)

MCL 257.322 requires that following a hearing held after October 1, 1999, if a Hearing Officer grants a restricted license, it shall include a requirement that an ignition interlock be installed in any vehicle the petitioner intends to drive. The restriction will also be reflected on the master driving record (MDR), as follows:

“MAY ONLY OPERATE VEHICLE EQUIPPED WITH INTERLOCK DEVICE FOR 1-YEAR FROM DATE OF RESTRICTION. ORIGINAL ACTION REINSTATED FOR VIOLATION.”

A list of interlock installers is provided in the Appeal Order. Before the restricted license is issued, petitioners must present the certificate of installation at any Secretary of State branch office.

Any restricted license issued after an appeal hearing October 1, 1999, must include an ignition-interlock restriction. Unless otherwise stated, the restrictions, if granted, are indefinite, but the interlock requirement will automatically expire at the end of one-year from the date the restricted license is issued at the Secretary of State branch office or for a longer period if it is extended for violations. If a petitioner intends to drive a company vehicle, notice will be sent to the employer advising them that an ignition interlock device must be installed on any vehicle the employee drives. A BAIID final report is required at the petitioner’s next Driver License Appeal Hearing.

Violations of the ignition interlock program are divided into “major” and “minor” violations. Minor violations result in a three-month BAIID extension, making persons ineligible for a hearing at the end of the original one-year requirement. Major violations result in a reinstatement of the revoked/denied status, subject to an appeal hearing.

Major violations include:

- A rolling re-test failure. (This is a random test required while driving.)
- Section 625g permit issued.
- Section 625l convictions. (These are crimes for tampering or circumventing the device.)
- Reports of tampering or attempts to tamper or circumvent without a conviction.
- Three minor violations within a monitoring period.
- Removal of a BAIID except when it is re-installed within seven days.

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Minor violations include:

- Two months after the BAIID is installed, three start-up test failures or lockouts within a monitoring period.
- Failure to report to the installer for monitoring.

The Rules allow Hearing Officers to give credit for time served if there is a break in the one-year requirement period.

Providers shall submit violation reports to the Department. A final report will be prepared by providers and given to the petitioner to take to their Driver License Appeal hearing for review. This is important, as Hearing Officers will be looking for proof that the operator had the BAIID device installed for the minimum year required by Statute.

Out of State Administrative Review/Hearing of Denied/Revoked Licensing Actions for Non-Residents

Individuals who have been denied/revoked under Section 303 and are no longer Michigan residents have two options in seeking to clear their records. They may request an administrative review by the Department, which will be completed only on written documentation, or they may choose to return to Michigan and have a Driver License Appeal hearing. The same rules and requirements described in this Section on habitual appeals will apply to an out-of-state resident if an appeal hearing is held. On a review, the person appealing for clearance will have to submit a substance abuse evaluation, out-of-state affidavit, and notarized supporting letters. If the initial submission is not complete, the person will be given written notification what is required and 30 days to submit the requested proofs. If within 30 days the additional proofs are not received, the file will be closed. With a complete case file, the review will either result in granting a clearance, at which point, upon payment of the reinstatement fee, the driver may apply for a license in their home state. If the review results in a denial, the individual may appeal the decision to Driver License Appeal for a hearing conducted in Michigan.

XI. Relief Available in Circuit Court

The Legislature passed a comprehensive drunk driving reform package in 1991, effective January 1, 1992, limiting appeals to Circuit Court to a review of the record similar to other administrative appeals under the Michigan Administrative Procedures Act (APA). 1969 PA 306, as amended pursuant to MCL 257.323(6), habitual alcohol offender license revocations with an alcohol arrest on or after January 1, 1992, could only be set aside by a Circuit Court if the Departmental action was:

- In violation of the Constitution of the United States, or the State Constitution of Michigan, or of state law.

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- In excess of the statutory authority or jurisdiction of the Secretary of State.
- Made upon unlawful procedure resulting in material prejudice to the petitioner.
- Not supported by substantial, material, and competent evidence on the whole record.
- Arbitrary, capricious, or clearly an abuse or unwarranted exercise of discretion.
- Affected by other substantial and material error of law.

The record subject to appeal was the hearing record created pursuant to Section 322 of the Code. If the operator was ineligible for a Department appeal because the minimum time period of the revocation had not run, then the record subject to review was the driving record created pursuant to Section 204a of the Code. (1991 PA 99 and 100, MCL 257.323(6)) The review was again, limited to the statutory grounds enumerated above. Therefore, the only issues when reviewing the driving record were whether the agency revocation action was illegal.

This concept was expanded in the repeat offender reform, effective October 1, 1999. The Legislature limited review to a review of the record or a legal issue as defined above, for all licensing actions in Circuit Court except for three offenses. These may still be appealed on hardship and include:

- A first implied-consent suspension, Section 625f.
- A Driver Assessment action pursuant to Section 320, Section 303(1)d, and Section 310d.
- A suspension imposed under Section 904(10), or (11). (MCL 257.323(3) and (4))

Note that the review of Driver Assessment actions and Section 904(10) or (11) actions is limited to suspensions and does not include revocations. Revocations are not appealable to Circuit Court on hardship or equity. The word “revocation” was deleted from the statute in the clean-up package. (1999 PA 73, MCL 257.323) *Wilson v Secretary of State*, Court of Appeals File No. 227444 (2000) unpublished, upholds the statute’s prohibition on Circuit Court authority to set aside or modify an additional revocation.

No hardship ex parte license is available pending appeal on the record. (MCL 257.322a(2))

Restricted driving privileges are not available from the Circuit Court. Note Section 323(4) which provides:

“...the court shall confine its consideration to a review of the record prepared pursuant to Section 322 or Section 625f or the driving record created under Section 204a, for statutory legal issue and shall not grant restricted driving privileges. 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:”. (See the statutory standard of review above.)

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The legislative intent was to make offenders “exhaust their administrative remedies” similar to other APA appeals. The court must affirm the action of the agency or grant full license restoration.

Restoration appeals are governed by MCL 257.323. Section 323a addresses ex parte licenses pending appeal; Section 323b addresses cancellation of a minor’s license upon the request of the person who signed the application on behalf of the minor; and Section 323c specifies the restricted relief that is available, if authorized pursuant to Section 323(3), for a first implied-consent violation appeal.

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 one or more of the convictions involved in an administrative licensing sanction is a violation or attempted violation of this act committed or attempted after January 1, 1992, judicial review of that sanction shall be governed by the law in effect after January 1, 1992. (1999 PA 346, MCL 257.320e(6))

Immobilization, vehicle forfeiture and other criminal sanctions are only appealable to Circuit Court by appealing the sentence imposed for the criminal conviction.

See the following chart for a summary of the standard of appeal for all types of offenses, before and after October 1, 1999.

Appeals to Circuit Court

Offense MCL 257._____	Hardship Appeal Availability Prior to 10/01/99	Hardship Appeal Availability Effective 10/01/99	Driver License Sanction
OUIL/UBAC/OWI 625(1)	NO	NO	(1) 30 SUSP/150 REST (2) REVOCATION
OWI/OWVI 625(3)	NO	NO	(1) 90 REST (2) REVOCATION (3) REVOCATION
OUIL/OWI – DEATH 625(4)	NO	NO	REVOCATION
OUIL/OWI – INJURY 625(5)	NO	NO	REVOCATION
UNDER 21 BAC 625(6) (ZERO TOLERANCE)	NO	NO	(1) 30 REST (2) 90 SUSP
CHILD ENDANGERMENT 625(7)	NO	NO	(1) 90 SUSP/90 REST
OPERATING WITH PRESENCE OF SCHEDULE 1 DRUG/COCAINE 625(8)	NO	NO	30 DAY SUSP/150 DAY RESTRICTED
NEGLIGENT HOMICIDE MCL 750.324	NO	NO	REVOCATION
CDL - .04 BAC 625M	NO	NO	(1) 1 YR SUSP OR 3 YR W/HAZ (2) REVOCATION – 10 YEARS
DWLS DEATH/INJURY 904(4) & (5)	NO	NO	REVOCATION
OPEN INTOXICANTS 624A	YES	NO	(1) 0 (2) 30 SUSP/60 REST (3) 60 SUSP/305 REST
FRAUDULENT ID PURCHASE MCL 436.33B(2)	YES	NO	90 SUSP
MIP MCL 436.1703(1)	YES	NO	(1) 0 (2) 30 SUSP/60 REST (3) 60 SUSP/305 REST
TRANSPORT/POSSESS 624B	YES	NO	60 SUSP/305 REST
UNLAWFUL USE LICENSE 324	YES	NO	(1) 90 SUSP (2) 1 YEAR SUSP
UDAA MCL 750.413	YES	NO	(1) 1 YEAR SUSP (2) REVOCATION
JOYRIDING MCL 750.414	YES	NO	(1) 90 SUSP (2) 1 YEAR SUSP
RECKLESS 626	YES	NO	(1) 90 SUSP
LEAVING SCENE OF CRASH – MISDEMEANOR 617A FELONY 617	YES	NO	MISD: 90 SUSP FELONY: 1 YEAR SUSP
ALTER/FORGE DOCUMENTS 257	YES	NO	1 YEAR SUSP
FRAUDULENT CHANGE OF ADDRESS 315(4)	NA	NO	(1) 180 SUSP (2) REVOCATION
PERJURY TO SOS 903 (FALSE CERTIFICATION)	YES	NO	(1) 90 SUSP (2) 1 YEAR SUSP
MALICIOUS DESTRUCTION MCL 750.382	YES	NO	90 SUSP
THEFT OF VEHICLE FUEL MCL 750.367C	YES	NO	(1) 180 SUSP (2) 1 YEAR SUSP
FLEEING & ELUDING MCL 750.479A – 1 ST AND 2 ND DEGREE 602A – 3 RD AND 4 TH DEGREE	YES YES (AFTER 6 MOS.)	NO NO	REVOCATION 1 YEAR SUSP
FELONIOUS DRIVING MCL 750.191	YES	NO	(1) 1 YEAR SUSP (2) REVOCATION
FAILURE TO YIELD TO EMERGENCY RESPONDER/INJURY 653A(3)	NA (EFFECTIVE 4/1/01)	NO	90 SUSP
FAILURE TO YIELD TO EMERGENCY RESPONDER/DEATH 653A(4)	NA (EFFECTIVE 4/1/01)	NO	REVOCATION
FELONY AUTO USED	YES	NO	(1) 1 YEAR SUSP (2) REVOCATION
DRUG CRIME 319E	NO	NO	STILL COURT ORDERED
DRIVER ASSESSMENT ACTIONS/APPLICATION DENIAL BASED ON MEDICAL CONDITION	YES	YES (NOT REVS)	VARIED
HABITUAL APPEALS FROM DAAD	NO	NO	RELIEF APPEAL AFTER REV TO SOS
CHANGE OR REMOVAL RESTS	NO	NO	RELIEF APPEAL AFTER REV TO SOS
REINSTATEMENTS	NO	NO	RELIEF APPEAL AFTER REV TO SOS
IMPLIED CONSENT	1 ST -YES 2 ND – NO	1 ST – YES 2 ND - NO	(1) 1 YEAR (2) 2 YEARS
CONSTRUCTION WORKER – INJURY 601B(2)	NO	NO	(1) 90 SUSP (2) REVOCATION
CONSTRUCTION WORKER – DEATH 601B(3)	NO	NO	REVOCATION
IMPLEMENT OF HUSBANDRY – DEATH 601C(2)	NO	NO	REVOCATION
MANDATORY ADDITIONALS	YES	YES (NOT REVS)	VARIED

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XII. Restoration Appeal Process

Venue and Time Limits:

A person may file a petition with the Circuit Court for relief from a final determination by the Secretary of State in his or her county of residence except for Implied-consent appeals which must be filed in the county where the arrest occurred. Petitions must be filed in Lansing within 63 days after the final determination is made except that for good cause shown, the court may allow filing a petition within 182 days. (*Roberts v Secretary of State*, unpublished Court of Appeals Docket No. 205616 (1999)) The Secretary of State must be notified not less than 20 days before the hearing. If there is a review of the record, 50 days notice must be provided to the Department so that a transcript may be prepared. (MCL 257.323(1))

A peace officer, with the consent of the prosecuting attorney, may appeal a determination of a hearing officer from an Implied-consent hearing. (MCL 257.323(1), MCL 257.625f(8))

Each petition shall include the person's full name, current address, birth date, and driver license number. The order setting the hearing, the petition, and all supporting affidavits shall be filed in the Secretary of State's office located at 430 West Allegan Street, P.O. Box 30196, Lansing, MI 48909-7696.

Requests for Transcripts:

A request for a transcript of a Driver License Appeal hearing should be sent to:

Michigan Department of State
Driver Assessment and Appeal Division
P.O. Box 30196
Lansing, MI 48909-7696
1-888-767-6424

Service of Final Order:

When a final court order is issued, the Petitioner must serve a copy on the Secretary of State within seven days of entry. (MCL 257.323(3)) Prosecutors are required to serve the agency within seven days in order to receive reimbursement for representing the Department. (Even with these requirements, there is a problem with receiving copies of all final orders. Without a copy of the order, the Department cannot post this information to the driving record or send out an Authorization for Licensure.)

Serve these orders *within seven (7) days* on the Driver Assessment and Appeal Division at the address above or by fax to (517) 335-2189 or (517) 335-2190.

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State Court Administrator's Form Orders:

The State Court Administrator's Office provides form orders for restoration appeals. If their form orders are used, mistakes can be minimized. The forms were updated June 1, 2000. See **Appendix J** for samples. In addition, see the SCAO forms for court-ordered plate transfer.

Request to Take Action Form:

Either the local prosecuting attorney or the Attorney General represents the Secretary of State on a restoration appeal, depending on the location. For each appeal, the Department sends the prosecuting attorney or the Attorney General a case file that includes a certified driving record and other necessary documents for the hearing.

If there are jurisdictional issues in a case, a Request to Take Action form is included with the file. See **Appendix K** for copies of these documents. The Driver License Appeal clerical staff analyzes each case and will check-off issues pertaining to the particular case. Prosecutors should read the substance of these paragraphs into the record to ensure that the agency's right to appeal these issues is preserved. Prosecutors should be able to answer whether the court has authority to grant relief. Petitioners should not seek relief that is not authorized.

Clerical staff compiles these documents. They are not attorneys. Consequently, attorneys should independently review the entire case file.

Remands from Circuit Court

Persons who accumulate several licensing actions sometimes drive when their license is suspended or revoked. Any conviction or finding of responsibility during this period of time will result in a mandatory additional licensing action added on to the end of the original action. MCL 257.904(2) Mandatory additional licensing actions after October 1, 1999, will run concurrently.

For mandatory additional suspension/revocations imposed prior to October 1, 1999, the court has jurisdiction to grant restrictions or to set aside a mandatory additional action imposed pursuant to MCL 257.904. However, if the underlying reason for the revocation/denial is because of a Section 303 action, the court may terminate the Section 904 licensing action and then, if relief is granted from that action, remand the matter to the Department to conduct a hearing on the Section 303 revocation/denial. (If there is an arrest for drunk driving on or after January 1, 1992, and if the minimum period of the revocation/denial has not expired, neither Driver License Appeal nor the court may grant relief. In such a case, the petition must be denied and a remand to Driver License Appeal would not be appropriate.)

After October 1, 1999, mandatory revocations will not be appealable to Circuit Court on hardship, nor will the underlying action. Therefore, remands are not appropriate for mandatory additional revocations imposed after October 1, 1999.

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XIII. Key Restoration Appeal Cases

Implied-Consent:

Kester v Secretary of State, 152 Mich App 329; 393 NW2d 623 (1986).

Petitioner's license was suspended for one year for a second Implied-consent suspension. She petitioned the Circuit Court for restricted driving privileges and her petition was granted. Respondent appealed and the Court of Appeals reversed, noting that the Circuit Court lacked jurisdiction to grant restrictions on a second Implied-consent suspension. The standard of review by the Circuit Court is whether the decision of the hearing officer was supported by substantial, material, and competent evidence on the whole record.

McMillan v Secretary of State, 155 Mich App 399; 399 NW2d 538 (1986).

Petitioner failed to appear at the second Implied-consent suspension hearing before Driver License Appeal and his license was suspended for one year. Petitioner appealed to the Circuit Court and was granted a restricted license. Respondent appealed. The Court of Appeals held petitioner's failure to appear resulted in a default judgment not subject to de novo review by the Circuit Court, and that restricted driving privileges could not be granted.

People v Fosnaugh, 248 Mich App 444; 639 NW2d 587 (2001).

After the required 15-minute observation period, Defendant provided a breath sample that resulted in a blood alcohol reading of 0.10. The second test, however, did not result in a numerical reading; instead the instrument indicated "INVALID SAMPLE". No further tests were requested or administered. Defendant moved to suppress the first test result because the second test did not confirm its results and because it was tainted by the presence of mouth alcohol. Defendant also argued that the test was not admissible because the officer did not administer a third test. District court granted Defendant's motion to suppress, which was affirmed by Circuit Court. The Court of Appeals, in reversing the lower courts' decision to suppress, did not find that the first test was tainted by mouth alcohol because the instrument did not invalidate that test as well, and Defendant offered no explanation or evidence why that did not occur. Another reason that the Court set aside the decision to suppress was the determination that under the circumstances of this case, the applicable breath testing rules did not require a third test. Instead of an impermissible variance between the two test results, the second test resulted in a reading of "INVALID SAMPLE", which did not undermine the testing instrument's accuracy. Additionally, the Court found significant the breath testing manual's use of the word "should" with regard to administering another test following an "INVALID SAMPLE" reading, as opposed to the word "shall", in finding that another test was not required. The Court was not persuaded that in this case the word "should" in the rules had an obligatory effect.

People v Parton, Court of Appeals File No. 247464 (2002) unpublished.

Defendant's initial breath test resulted in an invalid sample reading, while on the second test the officer received a positive reading. The trial court denied the motion to admit the test results, based on the officer's failure to conduct a second fifteen-minute observation period. Defendant appealed and the Court of Appeals affirmed, the Circuit Court reversed its decision finding that the administrative rules do not

specifically require another fifteen-minute waiting period if the first sample is invalid, and the breath test training manual indicates only that the officer “should” start a new waiting period. The Court of Appeals referred to *People v Fosnaugh*, 248 Mich App 444, 455; 639 NW2d 587 (2001), in support of its decision. In *Fosnaugh, supra*, the Court of Appeals held that the word “should” in the manual is permissive and expresses a desire or request, while the word “shall” is unambiguous and creates an imperative obligation. The *Parton* court did not find significant the fact that in *Fosnaugh, supra*, it was the second test that resulted in an invalid sample reading, indicating that both cases concern the proper procedure when an invalid sample is obtained. It should be noted, however, that in its decision the Court of Appeals makes it clear that the defendant is still free to argue that the weight of evidence was affected by the lack of a second waiting period.

People v Daugherty, Oakland County Circuit Court File No 2001-177743-FH. Defendant moved to suppress the results of the PBT administered approximately eight minutes after the officer’s initial contact with him, based on the Michigan Administrative Code Rule 35.2655(b). The rule requires the PBT tests be administered “only after it has been determined that the person has not smoked, regurgitated, or placed anything in his or her mouth for at least 15 minutes.” While Defendant stated to the officer during their initial encounter that he had not eaten or drank anything within the last hour, after the officer returned to vehicle, Defendant did consume a large quantity of “Sweet Breath”, a liquid breath freshener that contains alcohol. The PBT was administered a short time later, resulting in test results of 0.10. In finding that there was no violation of the administrative rule, the court indicated that “the officer had determined that Defendant has not ‘smoked, regurgitated, or placed anything in his mouth for at least 15 minutes’ prior to giving the test, as Defendant had stated that he has not eaten or drank anything within the last hour”. Furthermore, the court found that the rule did not require “the officer to ask the Defendant the same question again two minutes later just because the officer stepped away from Defendant’s case, during which time Defendant consumed an excessive amount of the substance”. Another consideration for denying Defendant’s motion to suppress was that he did not claim that the PBT equipment incorrectly measured his alcohol content, but rather that the reading did not correspond to the amount of alcohol in his blood. Thus, there was no claim that the PBT instrument was not working properly.

People v Yamat, ___ Mich App___; ___NW2d___(2004). Defendant was charged with felonious driving when, as a front seat passenger, he grabbed the wheel without the driver’s permission, which in turn caused the vehicle to leave the roadway and strike a jogger. The Court of Appeals affirmed the lower court’s dismissal of the felonious driving charge, finding that Defendant was not operating the vehicle within the meaning of MCL 257.626c. After a review of the statute and an analogous case, *Farm Bureau Gen Ins Co v Riddering*, 172 Mich App 696; 432 NW2d 404 (1998), the Court concluded that Defendant was not in actual physical control of the vehicle, rather, he was interfering with the physical control of the vehicle. The Court found persuasive the determination in *Riddering* that “the operation of a vehicle involved more than simply steering; it includes all functions necessary to make the vehicle operate”.

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Trial Court Licensing Sanctions and Administrative Actions:

Paulson v Secretary of State, 154 Mich App 626; 398 NW2d 477 (1986).

Petitioner received a fourth OUIL conviction and his license was ordered suspended for two years. The Court of Appeals noted that the Petitioner's license should have been revoked. Petitioner sought restricted driving privileges in Circuit Court, and his petition was granted. Respondent appealed. The Court of Appeals reversed, noting that the Circuit Court lacked jurisdiction to set aside a driver licensing sanction issued as part of a sentence for a drunk driving conviction pursuant to Section 323.

Dabrowski v Secretary of State, Nigro v Secretary of State, 201 Mich App 218; 506 NW2d10 (1993).

The licenses of Dabrowski and Nigro were revoked following convictions for OUIL, third offense. They petitioned the Circuit Court for a restricted license within five years of their conviction. Both were granted restricted licenses. The respondent appealed. The cases were consolidated for hearing an appeal.

The Court of Appeals held that where the trial court was required to impose a license revocation as part of a sentence of OUIL, third offense, and where the conviction occurred within ten years of the prior convictions, the Secretary of State could not issue a license to the person. Accordingly, Circuit Courts lack authority to grant restricted licenses by amending sentences.

Dudley v Secretary of State, 204 Mich App 152; 514 NW2d 167 (1993).

Dudley's license was revoked for an OUIL, third offense conviction. This was a second revocation of his license within seven years of a prior revocation, and the Secretary of State would not allow him to apply for re-licensure for a minimum of five years. The Circuit Court ordered restricted driving privileges and respondent appealed.

The Court of Appeals held the Circuit Court did not have jurisdiction to modify the driver license revocation where it was imposed as part of a sentence for drunk driving. The abstract of conviction did not state a minimum time period before Dudley could reapply for a license; however, the respondent was mandated to revoke Dudley's license for not less than five years, which was upheld by the Court of Appeals.

Matheson v Secretary of State, 170 Mich App 216; 428 NW2d 31 (1988); lv den 432 Mich 879 (March 7, 1989).

The court upheld a license revocation under Section 303 even though a prior conviction for OUIL was found to be constitutionally invalid because Matheson was not represented by counsel. The court recognized that the Section 303 sanction was not "punishment", and that it was for the protection of the public and administrative in nature. Attorneys will argue that this case is pre-1992; however, please note that when "constitutionally invalid" language was added to Section 625b for the trial courts, it was not added to Section 303 for the Department. Moreover, if the Legislature had intended that the Department could no longer use such convictions, it would have added the "constitutionally invalid" language to Section 303.

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Broadwell v Secretary of State, 213 Mich App 306; 539 NW2d 585 (1995), lv den 453 Mich (adv) 899 (October 1, 1996).

The court upheld *Matheson, supra*. A trial court determined a prior OUIL conviction was “constitutionally infirm”. The Secretary of State revoked/denied the license using this conviction. The plaintiff appealed and stay was denied. This court affirmed the Secretary’s use of the prior conviction.

The court also rejected the plaintiff’s claim that the agency was bound by the district court’s ruling under the doctrines of res judicata or collateral estoppel.

Rodgers v Secretary of State, 159 Mich App 808; 407 NW2d 80 (1987).

Rodgers was convicted of OUIL twice within seven years. The district court ordered a license revocation. The Secretary of State revoked the license, and Rodgers was ineligible to apply for a license for five years. On appeal, the Circuit Court ordered restricted driving privileges. The Court of Appeals reversed, and held that the Secretary of State was required to revoke Rodgers’ license and could not allow Rodgers to reapply for a license for a minimum of five years, as this was a second revocation within seven years of a prior revocation.

Leone v Secretary of State, Court of Appeals File No. 226282 (2001) unpublished. Secretary of State appealed the Circuit Court order setting aside Petitioner’s Section 303 mandatory five-year revocation. In reversing the Circuit Court’s decision to grant relief, the Court of Appeals found that the time limits set forth in MCL 257.323(1) are jurisdictional, and because Petitioner had not filed a timely appeal of her revocation, the lower court lacked jurisdiction to hear the appeal. Subsection 323(1) provides that the aggrieved person shall file the petition for review within 63 days that the action is taken, except for good cause the court may allow the time limit to be extended to 182 days. In this case Petitioner’s license was revoked on 06/04/1997, yet she did not file an appeal until early 2000.

Johnson v Secretary of State, Court of Appeals File No. 252338 (2004) unpublished.

In a situation where Petitioner was revoked due to a late received abstract, the Court of Appeals reversed the action taken by Circuit Court to backdate the revocation. The Court found that the lower court lacked authority to modify the Secretary of State’s revocation decision, relying on MCL 257.323(4) and *Rodriguez v Secretary of State*, 215 Mich App 481, 482; 546 NW2d 661 (1996).

Habitual Alcohol Offender Appeals:

Bunce v Secretary of State, 239 Mich App 204; 607 NW2d 372 (1999).

The petitioner’s license was revoked and denied under the habitual offender provisions of Section 303. He was denied relief before Driver License Appeal and appealed to the Circuit Court. The Circuit Court granted restricted privileges holding that the department had the burden of proof and had also applied the wrong standard of proof. The Court of Appeals held that, in accordance with Rule 13, an individual who files a petition for reinstatement of driving privileges has the burden to prove by clear and convincing evidence that he is entitled to reinstatement of his driver’s license. Accordingly, they reversed the trial court’s remand order. See **Appendix L** for decision.

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Rodriguez v Secretary of State, 215 Mich App 481; 546 NW2d 661 (1996).
The court held the plaintiff could only appeal the Secretary of State decision to Circuit Court two ways: first, it can only set aside a hearing officer decision; it cannot be modified, and second, a hearing officer decision can only be set aside if one of the statutory criteria is satisfied. No restricted license may be granted. The hearing officer's decision was supported by substantial, material, and competent evidence on the record. See **Appendix L** for decision.

Roman v Secretary of State, 213 Mich App 592; 540 NW2d 474 (1995).
Where there is no evidence on the record that the Circuit Court had a copy of the Driver License Appeal hearing record, the court erred by reviewing the Driver License Appeal decision and by issuing plaintiff a restricted driver's license. Review must be conducted pursuant to Section 323(6).

Berch v Secretary of State, Court of Appeals File No. 204230 (1999) unpublished.
The Circuit Court set aside the hearing officer's decision in an habitual offender appeal, finding that it was arbitrary and capricious. The court found that the hearing officer determined that attendance at AA meetings was the only appropriate method of treating an alcohol problem. The Court of Appeals found that the lower court "grossly misapplied the substantial evidence test to the agency's factual findings." The latter standard is indistinguishable from the clearly erroneous standard of review. *Boyd v Civil Service Comm*, 220 Mich App 226, 234-235; 559 NW2d 342 (1996). A Circuit Court has only limited power to review a decision resulting in a denial or revocation of a license.

The decision that the petitioner had not rebutted the statutory presumption because he had not demonstrated that his alcoholism had been brought under control by participation in an established recovery program was not arbitrary and capricious. The issue was the efficacy of AA versus a less well-known program. The hearing officer's decision was supported by the facts in the record and "the Circuit Court clearly erred by setting aside that decision."

McWilliams v Secretary of State, Court of Appeals File No. 248364 (2004) unpublished.

The hearing officer denied petitioner's appeal, finding he had not met the 12 month abstinence requirement due to his occasional consumption of "O'Doul's" non-alcoholic beer, that his continued attendance at activities at which alcohol was prevalent was deemed as risky behavior in light of his history of relapse, and that his failure to obtain an AA sponsor indicated questionable commitment to the AA program. The Circuit Court reversed the hearing officer's decision, concluding that it was arbitrary and capricious. In reversing the lower court, the Court of Appeals relied on *Kester v Secretary of State*, 152 Mich App 329, 335; 393 NW2d 623 (1996), and *Dignan v Mich Pub Schools Employees Retirement Bd*, 253 Mich App 571; 659 NW2d 629 (2002), in finding that the Circuit Court had substituted its judgment for that of the hearing officer, and misapplied the substantial evidence test. In *Kester, supra*, the court held that the hearing officer's decision should be affirmed if it is supported by the requisite evidence, even if the reviewing court concluded that it would have reached a different decision, while according to *Dignan, supra*, the reviewing court should accord due deference to administrative expertise, and should not invade the administrative fact finding by displacing an agency's choice between two reasonably differing views.

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Riling v Secretary of State, Court of Appeals File No. 248694 (2004) unpublished. Petitioner appealed the decision of the hearing officer to only grant a restricted license, as opposed to full restoration, on his habitual offender appeal. While Circuit Court did not dispute the evidentiary support for the hearing officer's conclusions not to grant full reinstatement, it found the decision as arbitrary and capricious. The lower court implied that Driver License Appeal was prone to relying on habit rather than individualized judgment, and expressed disagreement with its limited role in reviewing such decisions. The Court of Appeals reversed, finding that there was competent, material, and substantial evidence to support the hearing officer's decision. The Court of Appeals reminded the Circuit Court that it must apply specific standards when reviewing the determination of the lower court, and also that the scope of the Circuit Court's review of Driver License Appeal decisions are sharply limited. MCL 257.324(4).

Beaman v Secretary of State, Court of Appeals File No. 245036 (2004) unpublished.

Driver License Appeal denied Petitioner's driver license appeal for full license restoration, based in part on his failure to submit the interlock final report. Petitioner then successfully appealed the action taken by the Department to Circuit Court, resulting in full restoration. On appeal, the Court of Appeals reversed the lower court's decision and upheld the original decision to deny full reinstatement. The court found that "respondent has the rule making authority in this area, and that the final report requirement involving the interlock is mandatory. The fact that the requirement 'makes no sense' to the trial court is not the appropriate inquiry or standard of review". The Court further found that "the issue of the interlock device and any violations is not a matter of form over substance", and that a properly functioning interlock device "was the only objective method for respondent to determine whether petitioner's claim of sobriety was accurate".

Hardship Appeals:

Wilson v Secretary of State, Court of Appeals File No. 227444 (2000) unpublished. The Court of Appeals held that the Circuit Court does not have authority to set aside or modify the additional revocation of an operator's license imposed under MCL 257.904.

Commercial Driver License:

Taylor v Secretary of State, 216 Mich App 333; 548 NW2d 710 (1996). The court reversed the Circuit Court's decision granting petitioner a CDL over a denial issued pursuant to Section 312f. Section 323(8) limits Circuit Court review and petitioner argued this was not applicable because the suspension was accrued prior to enactment of Section 323(8). The court held this was a "protection of the public" issue and that it was not applied *ex post facto* or states would never be able to change laws until after "the death of every living person at the time of enactment."

Bennett v Secretary of State, unpublished Court of Appeals Docket No. 179719 (1995).

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The Department denied Bennett a Commercial Driver License (CDL) pursuant to Section 312f and the Circuit Court ordered the agency to accept his application. In lieu of granting leave to appeal, the Court of Appeals entered a peremptory order reversing the Circuit Court holding that the court lacked jurisdiction to review the agency decision and had no equity powers to order CDL licensure.

Other Relevant Case Law:

People v Schut, ____ Mich App ____; ____ (2005).

Defendant, whose license was revoked, was driving a pick-up with snowplow equipment attached to the front at normal speeds when a snowmobile crossed in front of him. Defendant struck the snowmobile, killing its driver immediately. Defendant failed to stop at the scene or to report the accident. Defendant was charged with second-degree murder, operating a motor vehicle with a revoked license causing death and failing to stop at the scene of an accident involving death or serious bodily injury. The district court found that even though defendant did not cause the accident, the vehicle he was operating did cause the victim's death. The district court dismissed the second-degree murder charge but bound defendant over for trial on the other charges. The Circuit Court declined to quash the bindover on the operating a motor vehicle with a revoked license causing death charge. The Court of Appeals overturned, finding that there must be actual causation, not just involvement. Because there was no causal link between defendant's revoked license and the death of the snowmobile driver, it would be too harsh to impose a penalty on this driver where the revoked license had no bearing on the death that resulted.

Backdating of Abstracts

Prior to October 1999, the Secretary of State and the courts shared responsibility when it came to imposing licensing sanctions on drivers convicted of vehicular offenses. But with the Repeat Offender Legislation of October 1999, the general oversight of licensing sanctions was transferred from the courts to the Secretary of State with exception of four types of offenses. Consequently, sanctions are now imposed by the SOS upon receipt of the abstract of conviction in accordance with Section 302a(1), which provides that the SOS shall record an abstract of conviction to a person's record within 10 days after receipt of the abstract. [MCL 257.310a(1)] Likewise, Section 303 and 319 of the Code [MCL 257.303, 319] provide that the SOS shall impose mandatory licensing actions upon receipt of the abstract of conviction for specified crimes.

At times, and for various reasons, courts fail to submit the abstract of conviction in a timely fashion, which in turn postpones the licensing action. Recognizing its error, the court may contact the SOS and request the Department to "backdate" the licensing sanction. On other occasions, attorneys or drivers have requested the SOS to backdate the licensing sanction. In many instances there is no denial that the licensing action would have already been served, and possibly terminated, if the abstract had been timely submitted. Nonetheless, requests to backdate are typically denied, as there is no basis in the law to honor these requests. The SOS has no statutory authority or equitable jurisdiction to do so.

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While this may seem harsh, it's important to remember that the statutory scheme contemplates that the offender shall serve a period of suspension or license revocation. The fact that the licensing action is delayed does not mean that the action should be waived, or the driver excused from serving the sanction. Additionally, the driving record must be reliable and the integrity of it upheld. To backdate the action alters the licensing status of the driver for a given period of time, which may also affect the reliability that a person places on drivers' record and relationships entered into based upon the provided status. Employers, insurance companies, law enforcement, car rental agencies, etc., must be able to depend on the status of the driver as indicated by the driver record when making administrative decisions. To backdate licensing actions could have a tremendous impact on other individuals and entities taking the driver record at face value.

Courts are encouraged to immediately forward all abstracts of convictions. In the end, it's the driver who will experience the impact of the courts failure to comply with the statutory mandates.

XIV. Commercial Driver License (CDL) and Snowmobiles and Watercraft

Persons who operate commercial motor vehicles (CMVs) must hold a CDL. Legislation was passed pursuant to a Federal mandate so that commercial motor vehicle operators could not obtain driver licenses from several states. CMV operators are held to a higher standard of care due to the nature of their driving responsibilities.

To obtain a CDL, an operator may not have had a license suspension or revocation within 36 months of application, or a 6-point offense in any vehicle within 24 months of application pursuant to MCL 257.312f. In addition, CMV operators may have their CDLs suspended or revoked for unsafe driving in a commercial motor vehicle pursuant to Section 319b. There is no hardship appeal to Driver License Appeal nor is there a hardship appeal to Circuit Court, Section 323(4).

The CDL is dependent upon the operator license. If the underlying operator license is suspended, so is the CDL. However, the CDL may be suspended without affecting the operator license. CDL actions apply only to the CDL but cumulative points may also result in an operator licensing action.

Drunk operation laws are included in the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, for watercraft, MCL 324.80101 – 80199; snowmobiles, MCL 324.82101 – 82159; and ORVs, MCL 324.81101 – 81150. Operation privileges are sanctioned rather than licenses, as no license is necessary to operate these vehicles.

1999 PA 21, effective October 1, 2000, amended the snowmobile and ORV laws to require drunk operation offenses to appear on the master driving record and to carry points. These points may cause a person to be cited into the agency under Section 320 for accumulating 12 or more points within a two-year period. Snowmobile and ORV operation violations may be considered in conjunction with motor vehicle

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operation violations and result in driver licensing sanctions imposed under that section.

Even though these offenses appear on the driving record, mandatory driver licensing sanctions are not imposed under Section 319 and Section 303.

See **Appendix N** for a detailed list of offenses, CDL, snowmobile, and watercraft sanctions, and a summary of the new legislation.

Motor Carrier Safety Improvement Act (MCSIA)

The Governor signed the Michigan legislation (HB5802) in support of Federal MCSIA requirements into law on October 4, 2004, and portions of Public Act 362 of 2004 became effective October 4, 2004. The signing of this legislation brings Michigan in compliance with MCSIA of 1999, thereby avoiding the loss of Federal funds. Such Federal sanctions would have included the withholding of Motor Carrier Safety Assistance Program funds (of which the State receives \$6.7 million) and the withholding of 5% of certain Federal highway apportionments. Second and subsequent years of noncompliance would have resulted in 10% penalties. Based on Fiscal Year 2003-2004 Federal apportionments, the 5% penalty would have equaled \$14.3 million, and the 10% penalty for subsequent years of noncompliance would have been \$28.6 million.

Key changes include a new “S” school bus endorsement, new serious offenses for commercial drivers (49 CFR 383.51(b)(c)), and a requirement for faster updating of Court abstracts of conviction.

The “S” Endorsement For School Bus Drivers (MCL 257.312e(5)(6))

The “S” endorsement is required for all school bus drivers who operate any school bus with a manufacturer’s-rated seating capacity of (16) or more passengers, including the driver. The Department of State began issuing the “S” endorsement on October 1, 2004, and the endorsement fee is \$5, plus applicable renewal or correction fees. To apply for an “S” endorsement, applicants must already have a passenger (“P”) endorsement. Under the new law, a school bus driver’s license will show both the “P” and “S” endorsements. The “S” endorsement will not apply to those buses used as a common carrier, such as buses hired by a county that may transport all types of passengers which may include transporting school-age children from a day care, home, etc., to school and vice versa.

A specific school-bus knowledge test (written test) is mandatory for all school bus drivers. A road skills test in a representative school bus is also required except for certain drivers who can meet the Federal regulation standards to waive the road skills test. The Federal standards require States to take into account an applicant’s employment and driving record in the previous two years from the date the driver applies for the “S” endorsement.

- An applicant’s driving record cannot reflect:
 - Any driver’s license suspensions.
 - A conviction for a traffic violation in connection with any accident.
 - Two or more serious traffic violation convictions as defined by Federal Regulation, Part 383.5, while operating any vehicle.

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Applicants must provide evidence they have been regularly employed for the past two years as a school bus driver.

- Applicants must demonstrate that they operate a school bus for their current employer.
- Applicants must provide to the Department of State a letter certifying their employment. The employer's certification letter must include all of the following:
 - o Written on organization letterhead.
 - o Name of employer.
 - o Name of employee.
 - o Explanation of employee's duties.
 - o Beginning date of employment.
 - o If applicable, end date of employment (for multiple employers).
 - o Signature of school superintendent, business manager, or transportation director.

The waiver opportunity expires September 30, 2005.

More information can be found on the Department of State web site, www.michigan.gov/sos. Click on Driver License & State I.D. to "S" school bus endorsement information. Also, on this site is a "School Bus 'S' Endorsement Frequently Asked Questions" link that may be helpful. The Federal definition for school bus may also be found in Federal Motor Carrier Safety Regulations, FMCSA Part 383.5.

Ten-Year Certification Of History Of Licensure (MCL 257.307(1)(c))

Michigan is further required to capture any prior driver's license activity within the last ten years for an out-of-state driver applying for a Michigan license or for a Michigan commercial licensed driver renewing their CDL for the first time after October 1, 2005. Applicants are now required to certify where they have held a driver's license within the last ten years.

Suspension And Revocation Period (MCL 257.319b)

Under the Code, a person's commercial vehicle driving privileges must be suspended for one (1) year if he or she is convicted of or found responsible for a first offense for certain offenses while operating a commercial vehicle not requiring a hazardous materials endorsement and for three (3) years if he or she is convicted of or found responsible for a first offense for certain offenses while operating a commercial vehicle requiring a hazardous materials placard or any bus. The new law adds to these offenses operating a commercial motor vehicle in violation of a suspension, revocation, denial, or cancellation that was imposed for previous violations committed while operating a commercial motor vehicle or causing a fatality through the negligent or criminal operation of a commercial motor vehicle, including the crimes of motor vehicle manslaughter, motor vehicle homicide, and negligent homicide.

The Legislation requires a person's commercial vehicle driving privileges to be revoked for life, but with eligibility for reinstatement after at least ten (10) years and until the person is approved by the Department of State for the issuance of a

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vehicle group designation if he or she is convicted of or found responsible for certain violations. The following offenses are added to these provisions:

- Operating a commercial motor vehicle in violation of a suspension, revocation, denial, or cancellation that was imposed for previous violations committed while operating a commercial motor vehicle.
- Causing a fatality through the negligent or criminal operation of a commercial motor vehicle, including the crimes of motor vehicle manslaughter, motor vehicle homicide, and negligent homicide.

Serious Traffic Violation (MCL 257.319b)

Under the Code, a person's commercial vehicle driving privileges must be suspended for 120 days if he or she is convicted of or found responsible for certain offenses arising from separate incidents within 36 months while operating a commercial-motor vehicle.

The Bill revises the definition of the term "Serious Traffic Violation," which currently includes a traffic violation that occurs in connection with an accident in which a person died, careless driving, excessive speeding as defined in Federal Regulations, improper lane use, and following too closely, or any other serious traffic violation as defined in 49 CFR 383.5 or as prescribed in the Code. Effective October 1, 2005, the Bill adds to the definition the following:

- Driving a commercial motor vehicle without obtaining any vehicle group designation.
- Driving a commercial motor vehicle without possessing an operator or chauffeur license.
- Driving a commercial motor vehicle while in possession of an operator's or chauffeur's license that had a vehicle group designation, but did not have the appropriate designation or endorsement required for the specific vehicle group being operated or the passengers or type of cargo being transported.

Non-Commercial-Vehicle Offenses Treated As Though In A Commercial Motor Vehicle (MCL 257.319b(7))

Effective October 1, 2005, a conviction, bond forfeiture, or civil infraction determination, or notice that a Court or Administrative Tribunal has found a person responsible while he or she was operating a non-commercial motor vehicle, will count against a commercial driver license holder the same as if he or she had been operating a commercial motor vehicle at the time of the following violations of State law, a substantially corresponding local ordinance, or a substantially corresponding law of another State or out-of-state jurisdiction for any of the following:

- Operating a vehicle while intoxicated or visibly impaired.
- Suspension for refusal to submit to a chemical test of his or her blood, breath, or urine for the purpose of determining the amount of alcohol or the presence of a controlled substance or both in his or her body as required by law or local ordinance of Michigan or another State.
- Leaving the scene of an accident.
- Using a vehicle to commit a felony.

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ORV Exemption

The Bill specifies that, for the purposes of this provision, a non-commercial motor vehicle does not include a recreational vehicle used off-road.

FAC/FCJ Suspensions (MCL 257.321a(13)(14)(15)(16))

Effective October 1, 2005, the Secretary of State shall immediately suspend the operator's and chauffeur's license of a person licensed to operate a commercial motor vehicle, or a person who operated a commercial motor vehicle without a proper license, if he or she failed to answer an out-state citation, or a notice to appear in Court or an authorized Administrative Tribunal for a violation reportable to the Secretary of State, or failed to comply with an Order or Judgment under any of those circumstances, including paying all fines, costs, fees and assessments. The Department of State shall immediately notify the person of the Suspension by regular mail at the person's last known address. The suspension will remain in effect until the SOS is notified by the Court or authorized Administrative Tribunal of the other State that the person has answered that citation or notice to appear or has paid the fine or cost. Upon being informed of the failure of a person to appear or comply, the Department of State shall not issue a license to, or renew a license for, the person until the Court or authorized Administrative Tribunal of the other State informs the Department of State that the person has resolved all outstanding matters regarding the notices, orders, or citations. NOTE: The Department of State shall not suspend the person's license if he or she fails to appear in response to a citation issued for, or failed to comply with, an Order or Judgment involving the parking or standing of a vehicle.

Courts Have Five (5) Days To Submit Abstracts (MCL 257.732(1)(a))

Effective October 1, 2005, the Municipal Judge or Court Clerk shall prepare and forward to the Department of State (SOS) an abstract of the conviction or finding of responsibility within five (5) days after a conviction, forfeiture of bond, or civil infraction determination. The Courts currently have 14 days to do so.

Under Advisement (MCL 257.732(21))

Further, the law prohibits a Court from taking under advisement an offense committed by a person while operating a commercial motor vehicle or by a commercial driver license (CDL) holder while operating a non-commercial motor vehicle, for which the Code requires a conviction or civil infraction determination to be reported to the Secretary of State. A conviction or civil infraction determination shall not be masked, delayed, diverted, suspended, or suppressed by a Court. A conviction or civil infraction determination immediately shall be reported to the SOS in accordance with the Code.

USA Patriot Act – Hazardous Material Endorsement

On October 26, 2001, the United States Congress enacted the USA PATRIOT Act (*Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act*). The law requires drivers to pass a Federal
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Security Threat Assessment, also known as a Background Record Check (BRC), before issuance of an original, renewal, or Out-of State conversion Commercial Driver License (CDL) hazardous material's endorsement. Federal Rules require a BRC at least every five (5) years for hazardous material drivers. The BRC includes checking the applicant's Federal criminal history and collection of fingerprints.

The Federal Transportation Security Administration (TSA) is administering the BRC program. Integrated Biometric Technology (IBT) will coordinate the TSA agents in Michigan, who will conduct the background record checks. Until additional TSA agent locations open, the only Michigan TSA agent to handle all background record checks for hazardous material's endorsements is Examination Management Services Incorporated (EMSI), located at 27260 Haggerty Road, Suite A21, Farmington Hills, MI 48834. Office hours are 8:00 a.m. to 5:00 p.m. Monday through Friday, and Saturdays by appointment. EMSI's telephone number is (248) 324-1700, which is for scheduling Saturday appointments and obtaining directions only. You may obtain more information through the Michigan Department of State's website, www.michigan.gov/sos; IBT's website, www.hazprints.com; or by calling the IBT toll-free help line at (887) 429-7746.

Applicants desiring an original, renewal, or out-of-state conversion of a CDL license with a hazardous material's endorsement must present a Federal Security Threat Assessment. Drivers may want to apply for the BRC 45-60 days in advance of making an application at the Michigan Secretary of State branch office. Applicants must apply in person at EMSI, providing the following information:

- A completed Federal BRC application form.
- Proof the applicant is a qualified driver in their licensing state. The applicant's driver's license is sufficient.
- The driver's fingerprints, which will be collected by the TSA agent.
- Any information required by TSA for a Security Threat Risk assessment requested on the application form.
- Payment of the \$94 BRC fee.

Drivers may pre-register at www.hazprints.com or by calling IBT's Help Desk at their toll-free number (877) 429-7746. Pre-registering allows the driver to provide application information ahead of time, reducing the time needed at the TSA agent's office. Drivers may pre-pay by credit card or electronic check at www.hazprints.com. The driver will still need to appear in person at the TSA agent's office to provide their fingerprints and certain documents.

TSA will notify the SOS of the applicant's approval, as well as the applicant.

XV. Master Driving Record

Driving records can be purchased for \$7.00 and certified records may be purchased for \$8.00. If you do not have an account with the Department of State, you must complete a record request form each time you request a record. This form can be found on line at www.michigan.gov/sos.

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Mail the completed form and payment to:

Michigan Department of State
Record Lookup Unit
7064 Crowner Drive
Lansing, MI 48918-1502

Fax the completed form to: (517) 322-1181
(Faxed requests must be paid for with a Department of State account or with a VISA, Discover Card, or MasterCard.)

Additionally, you can purchase your own certified driving record for a fee of \$8.00 payable by cash, check, or credit card (Discover only) at the Secretary of State PLUS and SUPER!Center branch offices. You may find a list of these offices at www.michigan.gov/sos. Simply show your driver's license (no form required) and walk out with your **own** driving record.

Driving Record Sample

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Request Report

Record Run Date: 08/14/2006
 Transaction Type: See Below #1
 Date of Birth: 05/28/1952
 Gender: F
 Height: 5-04
 Weight: 125
 Eye Color: BLU
 Photo Image on File: IMAGE

County Code of Residence: 48918-0001
 License Type: See Below #2
 Registered to Vote: VOTER
 Restrictions: CORRECTIVE LENS
 Year License Expires: 2008
 Date of Last Application: 05/23/2004

A SOS 3905 08/14/2006 08:10:48 IP 0_28 16_152/SOSMFB25.
 C-200-139-040-254
 ANNE MARIE CARDRIVER
 14566 STATE ST
 LANSING MI 48918-0001

* THIS DRIVER HAS NO PRIOR 904 MANDATORY ADDITIONAL VIOLATIONS OF
 * SUSPENSION / REVOCATION OR 625ALCOHOL RELATED CONVICTIONS WITHIN THE
 * TIME FRAMES REQUIRING PLATE CONFISCATION.

Jurisdiction / Court	Conviction / Action	Vehicle Type	Active Points
09/23/1999 LAPEER	08/19/1999 DISOBEY STOP SIGN - PU	2	
04/01/2002 LAPEER	03/02/2002 SPEED 60/55 - PA		
10/29/2002 STERLING HEIGHTS	09/19/2002 FAILED STOP WITHIN ASSURED CLEAR DISTANCE - PA	2	
	11/22/2002 DRIVER IMPROVEMENT CORRESPONDENCED		
	09/19/2002 FCJ #692421 STERLING HEIGHTS FAILED STOP WITHIN ASSURED CLEAR DISTANCE		
	09/19/2002 731-2621 STERLING HTS PD 4 VEH/UNIT 1 INJ 0 KILLED		

Incident Date: 09/19/2002

***** END OF RECORD HISTORY *****

License Valid to Drive: LICENSE VALID
 DRIVING STATUS: ELIGIBLE - CLEAR RECORD
 Current Record Status

(ELECTRONICALLY CERTIFIED IN COMPLIANCE WITH MCL 257.204A, AS OF RECORD RUN DATE INDICATED ABOVE.)

Note: Insurance companies may calculate "points" in a different way than the Department of State.

#1 Transaction Types:

R = Renewal O = Original D = Duplicate C = Correction

#2 License Types:

O = Operator C = Chauffeur

For more detailed information about interpreting driving records, please visit our Web site at:

http://www.michigan.gov/documents/howtoreaddr_19352_7.pdf

or contact us at 517.322.1460

SOS-407 (01/05)



www.Michigan.gov/sos

See **Appendix O** for information on how to read a master driving record, what types of driving records are available, codes that appear on driving records, etc.

Driver's License Appeal and Restoration Lawyers
LEWIS & DICKSTEIN, P.L.L.C. (248) 263-6800
 (Not endorsed or employed by MDOS)