

2-1-2000

CHARTER TOWNSHIP OF HAMPTON ORDINANCE NO. 34-4

An ordinance to amend the Charter Township of Hampton Traffic Ordinance, being the Charter Township of Hampton Ordinance No. 34-2 and as amended by Ordinance 34-3.

THE CHARTER TOWNSHIP OF HAMPTON, BAY COUNTY, MICHIGAN,
ORDAINS:

SECTION 1. SHORT TITLE

This ordinance shall be known as the "Second Amendment to the Hampton Township Traffic Ordinance 34-2".

SECTION 2. AMENDMENTS TO ORDINANCES NO. 34-2 AND 34-3

The following sections and subsections of the Charter Township of Hampton Traffic Ordinance and first amendment thereto, being the Charter Township of Hampton Ordinances No. 34-2 and 34-3, respectively, are hereby amended or deleted as set forth in additional sections and subsections, and additional sections and subsections are added as indicated. Subsequent section numbers used in this ordinance shall refer to the like numbered sections of the Charter Township of Hampton Traffic Ordinance (being the Uniform Traffic Code, adopted by reference).

Sections 5.15, 5.15(a), 5.15(b), 5.15(c), 5.15(d), 5.15(e), 5.15(f), 5.15(g), and 5.15(h) in Ordinances 34-2 and 34-3 are repealed and replaced with the following:

Sec. 5.15. Operating motor vehicle while under the influence of intoxicating liquor or controlled substance; operating motor vehicle when visibly impaired; operating of motor vehicles by person less than 21 years of age; sanctions; costs; enhanced sentence; guilty plea or nolo contendere; establishment of prior convictions; special verdict; public record; burden of proving religious service or ceremony.

(1) A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this township if either of the following applies:

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

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

(2) The owner of a vehicle or a person in charge or in control of a vehicle shall not authorize or knowingly permit the vehicle to be operated upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of motor vehicles, within this township by a person who is under the influence or intoxicating liquor or a controlled substance, or a combination of intoxicating liquor and a controlled substance, or who has a blood alcohol content of 0.10% or more by weight of alcohol, or whose ability to operate the motor vehicle is visibly impaired due to the consumption of intoxicating liquor, a controlled substance, or a combination of intoxicating liquor and a controlled substance.

(3) A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles within this township when, due to the consumption of an intoxicating liquor, a controlled substance, or a combination of an intoxicating liquor and a controlled substance, the person's ability to operate the vehicle is visibly impaired. If a person is charged with violating subsection (1) a finding of guilty under this subsection may be rendered.

(4) A person who is less than 21 years of age, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this township if the person has any bodily alcohol content. As used in this subsection, "any bodily alcohol content" means either of the following:

- (a) An alcohol content of not less than 0.02 grams or more than 0.07 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.
- (b) Any presence of alcohol within a person's body resulting from the consumption of intoxicating liquor, other than consumption of intoxicating liquor as a part of a generally recognized religious service or ceremony.

(5) If a person is convicted of violating subsection (1), the following shall apply:

- (a) Except as otherwise provided in subdivision (b) the person is guilty of a misdemeanor, and may be punished by 1 or more of the following:
 - (i) Community service for a period of not more than 45 days.
 - (ii) Imprisonment for not more than 93 days.

- (iii) A fine of not less than \$100.00 or more than \$500.00.
- (b) If the violation occurs within 7 years of a prior conviction, the person shall be sentenced to pay a fine of not less than \$200.00 or more than \$1,000.00 and 1 or more of the following:
 - (i) Imprisonment for not less than 5 days or more than 1 year. Not less than 48 hours of the term of imprisonment imposed under this subsection shall be served consecutively.
 - (ii) Community service for not less than 30 days or more than 90 days.
- (c) A term of imprisonment imposed under subdivision (b)(i) shall not be suspended.
- (d) In the judgment of sentence under subdivision (a), the court may order vehicle immobilization as provided in MCL 257.904d. In the judgment of sentence under subdivision (b), the court shall, unless the vehicle is forfeited under section 5.15i, order vehicle immobilization as provided in MCL 257.904d.
- (e) In the judgment of sentence under subdivision (b), the court may impose the sanction permitted under section 5.15i.
- (6) A person who is convicted of violating subsection (2) is guilty of a misdemeanor punishable by imprisonment for not more than 93 days, or a fine of not less than \$100.00 or more than \$500.00, or both.
- (7) If a person is convicted of violating subsection (3), all of the following shall apply:
 - (a) Except as otherwise provided in subsection (b), the person is guilty of a misdemeanor punishable by one or more of the following:
 - (i) Community service for not more than 45 days.
 - (ii) Imprisonment for not more than 93 days.
 - (iii) A fine of not more than \$300.00.
 - (b) If the violation occurs within 7 years of 1 prior conviction, the person shall be sentenced to pay a fine of not less than \$200.00 or more than \$1,000.00 and 1 or more of the following:

- (i) Imprisonment for not less than 5 days or more than 1 year. Not less than 48 hours of the term of imprisonment imposed under this subparagraph shall be served consecutively.
 - (ii) Community service for not less than 30 days or more than 90 days.
 - (c) A term of imprisonment imposed under subdivision (b) shall not be suspended.
 - (d) In the judgment of sentence under subdivision (a), the court may order vehicle immobilization as provided in section 5.62d. In the judgment of sentence under subdivision (b), the court shall, unless the vehicle is ordered forfeited under 5.15i, order the vehicle immobilization as provided in section 5.62d.
 - (e) In the judgment of sentence under subdivision (b), the court may impose the sanctions permitted under section 5.15i.
- (8) In addition to imposing the sanctions provided under this section, the court may order the person to pay the cost of prosecution under the code of criminal procedure, 1927 PA 175, MCL 760.1 to 776.22.
- (9) A person sentenced to perform community service under this section shall not receive compensation and shall reimburse the township or appropriate local unit of government for the cost of supervision incurred by the state or local unit of government as a result of the person's activities in that service.
- (10) If the township attorney intends to seek an enhanced sentence under this section or a sanction under section 5.15i or 5.62d based upon the defendant having 1 or more prior convictions, the township attorney shall include on the complaint or amended complaint filed in the district court a statement listing the defendant's prior convictions.
- (11) A prior conviction shall be established at sentencing by 1 or more of the following:
- (a) An abstract of conviction.
 - (b) A copy of the defendant's driving record.
 - (c) An admission by the defendant.
- (12) Except as otherwise provided in subsection (14), if a person is charged with operating a vehicle while under the influence of a controlled substance or a combination of intoxicating liquor and a controlled substance in violation of subsection (1), the court shall require the jury to return a special verdict in the form of a written finding or, if the court convicts the person without a jury or accepts a plea of guilty or nolo contendere, the court shall make a finding as to whether the person was under the

influence of a controlled substance or a combination of intoxicating liquor and a controlled substance at the time of the violation.

(13) Except as otherwise provided in subsection (14), if a person is charged with operating a vehicle while his or her ability to operate the vehicle was visibly impaired due to his or her consumption of a controlled substance or a combination of intoxicating liquor and a controlled substance in violation of subsection (3), the court shall require the jury to return a special verdict in the form of a written finding or, if the court convicts the person without a jury or accepts a plea of guilty or nolo contendere, the court shall make a finding as to whether, due to the consumption of a controlled substance or a combination of intoxicating liquor and a controlled substance, the person's ability to operate a motor vehicle was visibly impaired at the time of the violation.

(14) A special verdict described in subsections (12) and (13) is not required if a jury is instructed to make a finding solely as to either of the following:

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

(15) If a jury or court finds under subsection (12), (13), or (14) that the defendant operated a motor vehicle under the influence of or while impaired due to the consumption of a controlled substance or a combination of a controlled substance and an intoxicating liquor, the court shall do both of the following:

- (a) Report the finding to the secretary of state.
- (b) On a form or forms prescribed by the state court administrator, forward to the Department of State Police a record that specifies the penalties imposed by the court, including any term of imprisonment, and any sanction imposed under section 5.15i or 5.62d.

(16) Except as otherwise provided by law, a record described in subsection (15)(b) is a public record and the Department of State Police shall retain the information contained on that record for not less than 7 years.

(17) Subject to subsection (18), as used in this section, "prior conviction" means a conviction for any of the following, whether under a law of this state, a local ordinance substantially corresponding to a law of this state, or a law of another state substantially corresponding to a law of this state:

- (a) A violation or attempted violation of MCL 257.625(1), (3), (4), (5), (6), or (7), MCLA 257.625m, former MCLA 257.625(1) or (2), or former MCL 257.625b.
- (b) Negligent homicide, manslaughter, or murder resulting from the operation of a vehicle or an attempt to commit any of those crimes.

(18) If 2 or more convictions described in subsection (17) are convictions or violations arising out of the same transaction, only one conviction shall be used to determine whether the person has a prior conviction.

Sec. 5.15a. Arrest without warrant; circumstances; preliminary chemical breath analysis; operator ordered out-of-service; refusal of commercial motor vehicle operator to submit to breath analysis as misdemeanor; provisions applicable to chemical tests and analysis; evidence; availability of test results; presumptions; admissibility of refusal to submit to chemical test.

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

- (a) The peace officer has reasonable cause to believe the person was, at the time of an accident in this township, the operator of a vehicle involved in the accident and was operating the vehicle in violation of section 5.15.
- (b) The person is found in the driver's seat of a vehicle parked or stopped on a highway or street within this township if any part of the vehicle intrudes into the roadway and the peace officer has reasonable cause to believe the person was operating the vehicle in violation of section 5.15.

(2) A peace officer who has reasonable cause to believe that a person was operating a vehicle upon a public highway or other place open to the public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this township and that the person, by the consumption of intoxicating liquor, may have affected his or her ability to operate a vehicle, or reasonable cause to believe that a person was operating a commercial motor vehicle within the township while the person's blood, breath, or urine contained any measurable amount of alcohol or while the person had any detectable presence of intoxicating liquor, or reasonable cause to believe that a person who is less than 21 years of age was operating a vehicle upon a public highway or other place open to the public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within the township while the person had any bodily alcohol content as that term is defined in section 5.15(4), may require the person to submit the preliminary chemical breath analysis. The following provisions apply with respect to a preliminary chemical breath analysis administered under this subsection.

- (a) A peace officer may arrest a person based in whole or in part upon the results of a preliminary chemical breath analysis.
- (b) The results of a preliminary chemical breath analysis are admissible in a criminal prosecution for a crime enumerated in section 5.15c(1) or in an administrative hearing for 1 or more of the following purposes:
 - (i) To assist the court or hearing officer in determining a challenge to the validity of an arrest. The subparagraph does not limit the introduction of other competent evidence offered to establish the validity of an arrest.
 - (ii) As evidence of the defendant's breath alcohol content, if offered by the defendant to rebut testimony elicited on cross-examination of a defense witness that the defendant's breath alcohol content was higher at the time of the charged offense than when a chemical test was administered under subsection (6).
 - (iii) As evidence of the defendant's breath alcohol content, if offered by the township attorney to rebut testimony elicited on cross-examination of a prosecution witness that the defendant's breath alcohol content was lower at the time of the charged offense than when a chemical test was administered under subsection (6).
- (c) A person who submits to a preliminary chemical breath analysis remains subject to the requirements of sections 5.15c, 5.15d, 5.15e and 5.15f for purposes of chemical tests described in those sections
- (d) Except as provided in subsection (5), a person who refuses to submit to a preliminary chemical breath analysis upon a lawful request by a peace officer is responsible for a civil infraction.

(3) A peace officer shall use the results of a preliminary chemical breath analysis conducted pursuant to this section to determine whether to order a person out-of-service under MCL 257.319d. A peace officer shall order out-of-service as required under MCL 257.319d a person who was operating a commercial motor vehicle and who refuses to submit to a preliminary chemical breath analysis as provided in this section. This section does not limit use of other competent evidence by the peace officer to determine whether to order a person out-of-service under MCL 257.319d.

(4) A person who was operating a commercial motor vehicle and who is requested to submit to a preliminary chemical breath analysis under this section shall be advised that refusing a peace officer's request to take a test described in this section is a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$100.00, or both, and will result in the issuance of a 24-hour out-of-service order.

(5) A person who was operating a commercial motor vehicle and who refuses to submit to a preliminary chemical breath analysis upon a peace officer's lawful request is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$100.00, or both.

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

- (a) The amount of alcohol or presence of a controlled substance or both in a driver's blood at the time alleged as shown by chemical analysis of the person's blood, urine, or breath is admissible into evidence in any civil or criminal proceeding.
- (b) A person arrested for a crime described in section 5.15c(1) shall be advised of all of the following:
 - (i) If he or she takes a chemical test of his or her blood, urine or breath administered at the request of a peace officer, he or she has the right to demand that a person of his or her own choosing administer 1 of the chemical tests.
 - (ii) The results of the test are admissible in a judicial proceeding as provided under this ordinance and will be considered with other admissible evidence in determining the defendant's innocence or guilt.
 - (iii) He or she is responsible for obtaining a chemical analysis of a test sample obtained pursuant to his or her own request.
 - (iv) If he or she refuses the request of a peace officer to take a test described in subparagraph (i), a test shall not be given without a court order, but the peace officer may seek to obtain a court order.
 - (v) Refusing a peace officer's request to take a test described in subparagraph (i) will result in suspension of his or her operator's or chauffeur's license and vehicle group designation or operating privilege and in the addition of 6 points to his or her driver record.
- (c) A sample or specimen of urine or breath shall be taken and collected in a reasonable manner. Only a licensed physician, or an individual operating under the delegation of a licensed physician under section 16215 of the public health code, 1978 PA 368, MCL 333.16215, qualified to withdraw blood and acting in a medical environment, may withdraw blood at a peace officer's request to determine the amount of alcohol or presence of a controlled substance or both in the person's blood, as provided in this

subsection. Liability for a crime or civil damages predicated on the act of withdrawing or analyzing blood and related procedures does not attach to a licensed physician or individual operating under the delegation of a licensed physician who withdraws or analyzes blood or assists in the withdrawal or analysis in accordance with this act unless the withdrawal or analysis is performed in a negligent manner.

- (d) A chemical test described in this subsection shall be administered at the request of a peace officer having reasonable grounds to believe the person has committed a crime described in section 5.15c(1). A person who takes a chemical test administered at the request of a peace officer, as provided in this section, shall be given a reasonable opportunity to have a person of his or her own choosing administer one of the chemical tests described in this subsection within a reasonable time after his or her detention. The test results are admissible and shall be considered with other admissible evidence in determining the defendant's innocence or guilt. If the person charged is administered a chemical test by a person of his or her own choosing, the person charged is responsible for obtaining a chemical analysis of the test sample.
- (e) If, after an accident, the driver of a vehicle involved in the accident is transported to a medical facility and a sample of the driver's blood is withdrawn at that time for medical treatment, the results of a chemical analysis of that sample shall be admissible in any civil or criminal proceeding to show the amount of alcohol or presence of a controlled substance or both in the person's blood at the time alleged, regardless of whether the person had been offered or had refused a chemical test. The medical facility or person performing the chemical analysis shall disclose the results of the analysis to a township attorney who requests the results for use in a criminal prosecution as provided in this subdivision. A medical facility or person disclosing information in compliance with this subsection is not civilly or criminally liable for making the disclosure.
- (f) If, after the accident, the driver of a vehicle involved in the accident is deceased, a sample of the decedent's blood shall be withdrawn in a manner directed by the medical examiner to determine the amount of alcohol or the presence of a controlled substance, or both, in the decedent's blood. The medical examiner shall give the results of the chemical analysis of the sample to the law enforcement agency investigating the accident, and that agency shall forward the results to the department of state police.

(7) The provisions of subsection (6) relating to chemical testing do not limit the introduction of any other admissible evidence bearing upon the question of whether a person was impaired by, or under the influence of, intoxicating liquor or a controlled substance, or a combination of intoxicating liquor and a controlled substance, or

whether the person had an alcohol content of 0.10 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, or if the person is less than 21 years of age, whether the person had any bodily alcohol content within his or her body. As used in this section, "any bodily alcohol content" means either of the following:

- (a) An alcohol content of not less than 0.02 grams or more than 0.07 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.
- (b) Any presence of alcohol within a person's body resulting from the consumption of intoxicating liquor, other than consumption of intoxicating liquor as a part of a generally recognized religious service or ceremony.

(8) If a chemical test described in subsection (6) is administered, the test results shall be made available to the person charged or the person's attorney upon written request to the township attorney, with a copy of the request filed with the court. The township attorney shall furnish the results at least two days before the day of the trial. The township attorney shall offer the test results as evidence in that trial. Failure to fully comply with the request bars the admission of the results into evidence by the township attorney.

(9) Except in a prosecution relating solely to a violation of section 5.15(1)(b) or (4), the amount of alcohol in the driver's blood, breath, or urine at the time alleged as shown by chemical analysis of the person's blood, breath, or urine gives rise to the following presumptions:

- (a) If there were at the time 0.07 grams or less of alcohol per 100 milliliters of the defendant's blood, per 210 liters of the defendant's breath, or per 67 milliliters of the defendant's urine, it is presumed that the defendant's ability to operate a motor vehicle was not impaired due to the consumption of intoxicating liquor and that the defendant was not under the influence of intoxicating liquor.
- (b) If there were at the time more than 0.07 grams but less than 0.10 grams of alcohol per 100 milliliters of the defendant's blood, per 210 liters of the defendant's breath, or per 67 milliliters of the defendant's urine, it is presumed that the defendant's ability to operate a vehicle was impaired within the provision of section 5.15(3) due to the consumption of intoxicating liquor.
- (c) If there were at the time 0.10 grams or more of alcohol per 100 milliliters of the defendant's blood, per 210 liters of the defendant's breath, or per 67 milliliters of the defendant's urine, it is presumed that the defendant was under the influence of intoxicating liquor.

(10) A person's refusal to submit to a chemical test as provided in subsection (6) is admissible in a criminal prosecution for a crime described in section 5.15c(1) only to show that a test was offered to the defendant, but not as evidence in determining the defendant's innocence or guilt. The jury shall be instructed accordingly.

Sec. 5.15b. Arraignment of person arrested for misdemeanor violation; pretrial conference; advising accused of maximum penalty for acceptance of plea; screening, assessment, and rehabilitative services; action by secretary of state pending appeal.

(1) A person arrested for a misdemeanor violation of section 5.15(1), (3) or (4) or section 5.15h, shall be arraigned on the citation, complaint, or warrant not more than 14 days after the arrest for the violation or, if an arrest warrant is issued or reissued, not more than 14 days after the issued or reissued arrest warrant is served, whichever is later. The court shall not dismiss a case or impose any other sanction for a failure to comply with this time limit.

(2) The court shall schedule a pretrial conference between the township attorney, the defendant, and the defendant's attorney in each case in which the defendant is charged with a misdemeanor violation of section 5.15(1), (3) or (4), or section 5.15h. The pretrial conference shall be held not more than 35 days after the person's arrest for the violation or, if an arrest warrant is issued or reissued, not more than 35 days after the date the issued or reissued arrest warrant is served, whichever is later. If the court has only 1 judge who sits in more than 1 location in that district, the pretrial conference shall be held not more than 42 days after the person's arrest for the violation or, if an arrest warrant is issued or reissued, not more than 42 days after the date the issued or reissued arrest warrant is served, whichever is later. The court shall not dismiss a case or impose any other sanction for a failure to comply with the applicable time limit. The court shall order the defendant to attend the pretrial conference and may accept a plea by the defendant at the conclusion of the pretrial conference. The court may adjourn the pretrial conference upon the motion of a party for good cause shown. Not more than 1 adjournment shall be granted to a party, and the length of an adjournment shall not exceed 14 days:

(3) Except for delay attributable to the unavailability of the defendant, a witness, or material evidence, or due to an interlocutory appeal or exceptional circumstances, but not a delay caused by docket congestion, the court shall finally adjudicate, by a plea of guilty or nolo contendere, entry of a verdict, or other final disposition, a case in which the defendant is charged with a misdemeanor violation of section 5.15(1), (3) or (4) or section 5.15h within 77 days after the person is arrested for the violation or, if an arrest warrant is issued or reissued, not more than 77 days after the date the issued or reissued arrest warrant is served, whichever is later. The court shall not dismiss a case or impose any other sanction for a failure to comply with this time limit.

(4) Before accepting a plea of guilty or nolo contendere under section 5.15, the court shall advise the accused of the maximum possible term of imprisonment and the maximum possible fine that may be imposed for the violation and shall advise the defendant that the maximum possible license sanctions that may be imposed will be based upon the master driving record maintained by the secretary of state under MCL 257.204a.

(5) Before imposing sentence for a violation of section 5.15(1), (3) or (4), the court shall order the person to undergo screening and assessment by a person or agency designated by the office of substance abuse services to determine whether the person is likely to benefit from rehabilitative services, including alcohol or drug education and alcohol or drug treatment programs. Except as otherwise provided in this subsection, the court may order the person to participate in and successfully complete 1 or more appropriate rehabilitative programs as part of the sentence. If the person has 1 or more prior convictions, the court shall order the person to participate in and successfully complete 1 or more appropriate rehabilitative programs as part of the sentence. The person shall pay for the costs of the screening, assessment, and rehabilitative services.

(6) If the judgment and sentence are appealed to circuit court, the court may ex parte order the secretary of state to stay the suspension, revocation, or restricted license issued by the secretary of state pending the outcome of the appeal.

Sec. 5.15c. Consent to chemical tests; exceptions; administration of tests.

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

- (a) If the person is arrested for violation of section 5.15(1) or (3), or Section 5.15a(5), or section 5.15h, or MCL 257.625(1), (3), (4), (5) or (6), MCL 257.625a(5) or MCL 257.625m.
- (b) If the person is arrested for felonious driving, negligent homicide, manslaughter, or murder resulting from the operation of a motor vehicle, and the peace officer had reasonable grounds to believe the person was operating the vehicle while impaired by or under the influence of intoxicating liquor or a controlled substance or a combination of intoxicating liquor and a controlled substance, or while having an alcohol

content of 0.10 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

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

(3) The tests shall be administered as provided in section 5.15a(6).

Sec. 5.15d. Refusal to submit to chemical tests; report.

(1) If a person refuses the request of a peace officer to submit to a chemical test offered pursuant to section 5.15a(6), a test shall not be given without a court order, but the officer may seek to obtain the court order.

(2) A written report shall immediately be forwarded to the secretary of state by the peace officer. The report shall state that the officer had reasonable grounds to believe that the person had committed a crime described in section 5.15(c)(1), and that the person had refused to submit to the test upon the request of the peace officer and had been advised of the consequences of the refusal. The form of the report shall be prescribed and furnished by the secretary of state.

Sec. 5.15e. Refusal to submit to chemical tests; written notice by officer, form; request for hearing.

(1) If a person refuses to submit to a chemical test pursuant to section 5.15d, the peace officer shall immediately notify the person in writing that within 14 days of the date of the notice the person may request a hearing as provided in section 5.15(f). The form of the notice shall be prescribed and furnished by the secretary of state.

(2) The notice shall specifically state that failure to request a hearing within 14 days will result in the suspension of the person's license or permit to drive. The notice shall also state that there is not a requirement that the person retain counsel for the hearing, though counsel would be permitted to represent the person at the hearing.

Sec. 5.15f. Hearing, record, review.

(1) If a person who refuses to submit to a chemical test pursuant to section 5.15d does not request a hearing within 14 days after the date of notice pursuant to section 5.15e, the secretary of state shall impose the following license sanctions:

(a) If the person was operating a vehicle other than a commercial motor vehicle, suspend or deny the person's operator's or chauffeur's license or permit to drive, or nonresident operating privilege, for 6 months or, for a

second or subsequent refusal within 7 years, for 1 year. If the person is a resident without a license or permit to operate a vehicle in the state, the secretary of state shall not issue the person a license or permit for 6 months or, for a second or subsequent refusal within 7 years, for 1 year.

- (b) If the person was operating a commercial motor vehicle, for the first refusal, suspend all vehicle group designations on the person's operator's or chauffeur's license or permit or nonresident privilege to operate a commercial motor vehicle or, if the person is a resident without a license or permit to operate a commercial motor vehicle in the state, not issue the person an operator's or chauffeur's license with vehicle group designations, for 1 year.
- (c) If the person was operating a commercial motor vehicle, for a second or subsequent refusal that occurred in a separate incident from and within 10 years of a prior refusal, revoke all vehicle group designations on the person's operator's or chauffeur's license or permit or nonresident privilege to operate a permit to operate a commercial motor vehicle in the state, not issue the person an operator's or chauffeur's license with vehicle group designations, for not less than 10 years and until the person is approved for the issuance of a vehicle group designation.
- (d) If the person was operating a commercial motor vehicle and was arrested for an offense enumerated in section 5.15c other than a violation of section 5.15a(5) or 5.15h, impose the license sanction described in subdivision (a) and the license sanction described in subdivision (b) or (c), as applicable.

(2) If a hearing is requested, the secretary of state shall hold the hearing in the same manner and under the same conditions as provided in MCL 257.322. Not less than five days' notice of the hearing shall be mailed to the person requesting the hearing, to the peace officer who filed the report under section 5.15d, and if the township attorney requests receipt of the notice, to the township attorney. The hearing officer may administer oaths, issue subpoenas for the attendance of necessary witnesses, and grant a reasonable request for an adjournment. Not more than one adjournment shall be granted to a party and the length of an adjournment shall not exceed 14 days. A hearing under this subsection shall be scheduled to be held within 45 days after the date of arrest for the violation. The hearing officer shall not impose any sanction for a failure to comply with this time limit.

(3) Except for delay attributable to the unavailability of the defendant, a witness, or material evidence, or due to an interlocutory appeal or exceptional circumstances, but not a delay caused by docket congestion, a hearing shall be finally adjudicated within 77 days after the date of arrest. The hearing officer shall not impose any sanction for a failure to comply with this time limit.

- (4) The hearing shall cover only the following issues:
 - (a) Whether the peace officer had reasonable grounds to believe that the person had committed a crime described in section 5.15c(1).
 - (b) Whether the person was placed under arrest for a crime described in section 5.15c(1).
 - (c) If the person refused to submit to the test upon the request of the officer, whether the refusal was reasonable.
 - (d) Whether the person was advised of the rights under section 5.15a(6).
- (5) A person shall not order a hearing officer to make a particular finding on any issue enumerated in subsection (4)(a) to (d).
- (6) The hearing officer shall make a record of a hearing held pursuant to this section. The record shall be prepared and transcribed in accordance with section 86 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being MCL 24.286. Upon notification of the filing of a petition for judicial review pursuant to MCL 257.323 and not less than ten days before the matter is set for review, the hearing officer shall transmit to the court in which the petition was filed, the original or a certified copy of the official record of the proceedings. Proceedings at which evidence was presented need not be transcribed and transmitted if the sole reason for reviews is to determine whether the court will order the issuance of a restricted license. The parties to the proceedings for judicial review may stipulate that the record be shortened. A party unreasonably refusing to stipulate to a shortened record may be taxed by the court in which the petition is filed for the additional costs. The court may permit subsequent corrections to the record.
- (7) If the person who requested a hearing does not prevail, the secretary of state shall impose the following license sanctions after the hearing.
 - (a) If the person was operating a vehicle other than a commercial motor vehicle, suspend or deny issuance of a license or driving permit or a nonresident, operating privilege of the person for 6 months or, for a second or subsequent refusal within 7 years, for 1 year. If the person is a resident without a license or permit to operate a vehicle in the state, the secretary of state shall not issue the person a license or permit for 6 months, or for a second or subsequent refusal within 7 years, for 1 year. The person may file a petition in the circuit court of the county in which the arrest was made to review the suspension or denial as provided in MCL 257.323.
 - (b) If the person was operating a commercial motor vehicle, impose the sanction prescribed under subsection (1)(b) or (1)(c), as applicable. The person may file a petition in the circuit court of the county in which the

arrest was made to review the suspension or denial as provided in MCL 257.323.

- (c) If the person was operating a commercial motor vehicle and was arrested for an offense enumerated in section 5.15c other than a violation of section 5.15a(5) or 5.15h, impose the license sanctions described in subdivisions (a) and (b).

(8) If the person who requested the hearing prevails, the peace officer who filed the report under section 5.15d may, with the consent of the township attorney, file a petition in the circuit court of the county in which the arrest was made to review the determination of the hearing officer as provided in MCL 257.323.

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

Sec. 5.15g. Chemical tests; results; duties of peace officer; confiscation of license; temporary license.

(1) If a person refuses a chemical test offered pursuant to section 5.15a(6), or submits to the chemical test or a chemical test is performed pursuant to a court order and the test reveals an unlawful alcohol content, the peace officer who requested the person to submit to the test shall do all of the following:

- (a) On behalf of the secretary of state, immediately confiscate the person's license or permit to operate a motor vehicle and, if the person is otherwise eligible for a license or permit, issue a temporary license or permit to the person. The temporary license or permit shall be on a form provided by the secretary of state.
- (b) Except as provided in subsection (2), immediately do all of the following:
 - (i) Forward a copy of the written report of the person's refusal to submit to a chemical test required under section 5.15d to the secretary of state.
 - (ii) Notify the secretary of state by means of the law enforcement information network that a temporary license or permit was issued to the person.
 - (iii) Destroy the person's driver's license or permit.

(2) If a person submits to a chemical test offered pursuant to section 5.15a(6) that requires an analysis of blood or urine and a report of the results of that chemical test is not immediately available, the peace officer who requested the person to submit to the test shall comply with subsection (1)(a) pending receipt of the test report. If the report reveals an unlawful alcohol content, the peace officer who requested the person to submit to the test shall immediately comply with subsection (1)(b). If the report does not reveal an unlawful alcohol content, the peace officer who requested the person to submit to the test shall immediately notify the person of the test results and immediately return the person's license or permit by first-class mail to the address given at the time of arrest.

(3) A temporary license or permit issued under this section is valid for 1 of the following time periods:

- (a) If the case is not prosecuted, for 90 days after issuance or until the person's license or permit is suspended pursuant to section 5.15f, whichever occurs earlier. The township attorney shall notify the secretary of state if a case referred to the township attorney is not prosecuted. The arresting law enforcement agency shall notify the secretary of state if a case is not referred to the township attorney for prosecution.
- (b) If the case is prosecuted, until the criminal charges against the person are dismissed, the person pleads guilty or nolo contendere to or is found guilty of or is acquitted of those charges, or the person's license or permit is suspended, restricted, or revoked pursuant to section 5.15f whichever occurs earlier.

(4) As used in this section, "unlawful alcohol content" means any of the following, as applicable:

- (a) If the person tested was operating a commercial motor vehicle within this state, 0.04 grams or more of alcohol per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.
- (b) If the person tested is not a person described in subdivision (a), 0.10 grams or more of alcohol per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

Sec. 5.15h. Operation of commercial motor vehicle by a person with certain alcohol content; arrest without warrant; violation as misdemeanor; sentence; "prior conviction" defined.

(1) A person, whether licensed or not, who has an alcohol content of 0.04 grams or more but not more than 0.07 grams per 100 milliliters of blood, per 210 liters of

breath, or per 67 milliliters of urine shall not operate a commercial motor vehicle within this township.

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

- (a) The peace officer has reasonable cause to believe that the person was, at the time of an accident, the driver of a commercial motor vehicle involved in the accident and was operating the vehicle in violation of this section.
- (b) The person is found in the driver's seat of a commercial motor vehicle parked or stopped on a highway or street within this township if any part of the vehicle intrudes into the roadway and the peace officer has reasonable cause to believe the person was operating the vehicle in violation of this section.

(3) Except as otherwise provided in subsection (4), a person who is convicted of a violation of this section is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$300.00, or both, together with costs of the prosecution.

(4) A person who violates this section within 7 years of a prior conviction may be sentenced to imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both, together with costs of the prosecution.

(5) A term of imprisonment imposed under subsection (4) shall not be suspended.

(6) Subject to subsection (8), as used in this section, "prior conviction" means a conviction for any of the following, whether under a law of this state, a local ordinance substantially corresponding to a law of this state, or a law of another state substantially corresponding to a law of this state:

- (a) Except as provided in subsection (7), a violation or attempted violation of this section, MCL 257.625(1), (3), (4), (5), (6), or (7), former MCLA 257.625(1) or (2), or former section MCL 257.625b.
- (b) Negligent homicide, manslaughter, or murder resulting from the operation of a vehicle or an attempt to commit any of those crimes.

(7) Only 1 violation or attempted violation of MCL 257.625(6), a local ordinance substantially corresponding to MCL 257.625(6), or a law of another state substantially corresponding to MCL 257.625(6) may be used as a prior conviction.

(8) If 2 or more convictions described in subsection (6) are convictions for violations arising out of the same transaction, only 1 conviction shall be used to determine whether the person has a prior conviction.

Sec. 5.15i. Forfeiture of vehicle or return to lessor.

(1) Except as otherwise provided in this section and in addition to any other penalty provided for in this article, the judgment of sentence for a conviction of section 5.15(1) described in section 5.15(5)(b), a violation of section 5.15(3) described in section 5.15(7)(b), may require 1 of the following with regard to the vehicle used in the offense if the defendant owns the vehicle in whole or in part or leases the vehicle:

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

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

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

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

(4) Within 14 days after the defendant's conviction for a violation described in subsection (1), the township attorney may file a petition with the court for the forfeiture of the vehicle or to have the court order return of a leased vehicle to the lessor. The township attorney shall give notice by first-class mail or other process to the defendant and his or her attorney, to all owners of the vehicle, and to any person holding a security interest in the vehicle that the court may require forfeiture or return of the vehicle.

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

(6) Within 14 days after notice by the township attorney is given under subsection (4), the defendant, an owner, lessee, or holder of a security interest may file a claim of interest in the vehicle with the court within 21 days. After the expiration of the period for filing claims, but before or at sentencing, the court shall hold a hearing to determine the legitimacy of any claim, the extent of any co-owner's equity interest, the liability of the defendant to any co-lessee, and whether to order the vehicle forfeited or returned to the lessor. In considering whether to order forfeiture, the court shall review the defendant's driving record to determine whether the defendant has multiple convictions under MCL 257.625 or a local ordinance substantially corresponding to MCL 257.625, or multiple suspensions, restrictions, or denials under MCL 257.904, or both. If the defendant has multiple convictions under MCL 257.625 or multiple suspensions, restrictions, or denials under MCL 257.904, or both, that factor shall weigh heavily in favor of forfeiture.

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

- (a) Pay any outstanding security interest of a second party who did not have prior knowledge of or consent to the commission of the violation.
- (b) Pay the equity interest of a co-owner who did not have prior knowledge of or consent to the commission of the violation.
- (c) Satisfy any order of restitution entered in the prosecution for the violation.
- (d) Pay the claim of each person who shows that he or she is a victim of the violation to the extent that the claim is not covered by any order of restitution.
- (e) Pay any outstanding lien against the property that has been imposed by a governmental unit.
- (f) Pay the proper expenses of the proceedings for forfeiture and sale, including, but not limited to, expenses incurred during the seizure process and expenses for maintaining custody of the property, advertising, and court costs.
- (g) The balance remaining after the payment of items (a) through (f) shall be distributed by the court having jurisdiction over the forfeiture proceedings to the unit or units of government substantially involved in effecting the forfeiture. Seventy-five percent of the money received by a unit of government under this subsection shall be used to enhance enforcement of the criminal laws and twenty-five percent of the money shall be used to implement the Crime Victim's Rights Act, 1985 PA 87, MCL 780.751 to 780.834. A unit of government receiving money under this subdivision

shall report annually to the Department of Management and Budget the amount of money received under this subdivision that was used to enhance enforcement of the criminal laws and the amount that was used to implement the Crime Victim's Rights Act, 1985 PA 87, MCL 780.751 to 780.834.

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

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

(10) A person who knowingly conceals, sells, gives away, or otherwise transfers or disposes of a vehicle with the intent to avoid forfeiture or return of the vehicle to the lessor under this section is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

(11) The failure of the court or township attorney to comply with any time limit specified in this section does not preclude the court from ordering forfeiture of a vehicle or its return to a lessor, unless the court finds that the owner or claimant suffered substantial prejudice as a result of that failure.

(12) The forfeiture proceedings of this section do not preclude the township attorney from pursuing a forfeiture proceeding under any other law of this state substantially corresponding to this section.

Section 5.16(b) in Ordinances 34-2 and 34-3, are repealed and replaced with the following:

Section 5.16(b). R28.1416b, Transporting or possessing liquor within passenger compartments of vehicles.

(1) Except as provided in subsection (2), a person who is an operator or occupant shall not transport or possess alcoholic liquor in a container that is open or uncapped or upon which the seal is broken within the passenger compartment of a vehicle upon a highway, or within the passenger compartment of a moving vehicle in any place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, in this township.

(2) A person may transport or possess alcoholic liquor in a container that is open or uncapped or upon which the seal is broken within the passenger compartment of a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles in this township, if the vehicle does not have a trunk or compartment separate from the passenger compartment, the container is enclosed or encased, and the container is not readily accessible to the occupant of the vehicle.

(3) A person who violates this section is guilty of a misdemeanor. As part of the sentence, the person may be ordered to perform community service and undergo substance abuse screening and assessment at his or her own expense as described in **section 703(1) of the Michigan Liquor Control Code of 1998, PA 58, MCL 496.1703.**

(4) This section does not apply to a passenger in a chartered vehicle authorized to operate by the state transportation department.

Section 5.62a and 5.62b in Ordinances 34-2 and 34-3 are repealed and replaced with the following:

SECTION 5.62a Operating a motor vehicle without a valid license; arrest; court procedures; penalties

(1) A person whose operator's or chauffeur's license or registration certificate has been suspended or revoked and who has been notified as provided in MCL 257.212 of that suspension or revocation, whose application for license has been denied, or who has never applied for a license, shall not operate a motor vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of motor vehicles, within this township.

(2) A person shall not knowingly permit a motor vehicle owned by the person to be operated upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state by a person whose license or registration certificate is suspended or revoked, whose application for license has been denied, or who has never applied for a license, except as permitted under this act.

(3) Except as otherwise provided in this section, a person who violates subsection (1) or (2) is guilty of a misdemeanor punishable as follows: For a first violation, by imprisonment for not more than 93 days or a fine or not more than \$500, or both. Unless the vehicle was stolen or used with the permission of a person who did not knowingly permit an unlicensed driver to operate the vehicle, the registration plates of the vehicle shall be canceled by the secretary of state upon notification by a peace officer.

(4) Before a person is arraigned before a district court magistrate or judge on a charge of violating this section, the arresting officer shall obtain the person's driving record from the secretary of state and shall furnish the record to the court. The driving record of the person may be obtained from the secretary of state's computer information network.

(5) This section does not apply to a person who operates a vehicle solely for the purpose of protecting human life or property if the life or property is endangered and summoning prompt aid is essential.

(6) A person whose vehicle group designation is suspended or revoked and who has been notified as provided in MCL 257.212 of that suspension or revocation, or whose application for a vehicle group designation has been denied as provided in this act, or who has never applied for a vehicle group designation and who operates a commercial motor vehicle within this state, except as permitted under this act, while any of those conditions exist, is guilty of a misdemeanor punishable, except as otherwise provided in this section, by imprisonment for not less than 3 days or more than 93 days or a fine of not more than \$500, or both.

(7) For purposes of this section, a person who never applied for a license includes a person who applied for a license, was denied, and never applied again.

SECTION 5.62aa Inability to show issuance of valid license within preceding three years; penalty for operation of vehicle

Any person, not exempt from license under this act, who shall operate a motor vehicle upon the public streets of the township and who is unable to show that he or she has been issued a license to operate a motor vehicle by any state or foreign country valid within the 3 years preceding is guilty of a misdemeanor, and upon conviction shall be punished by imprisonment for not more than 93 days, or by a fine of not less than \$50.00 nor more than \$100.00, or both. Any person convicted of a second offense under this section shall be punished by imprisonment for not less than 2 nor more than 93 days, or by a fine of \$500.00, or both.

SECTION 5.62b Impounding of motor vehicle; time; impoundment order, execution, content; expenses, removal, storage; disposal upon abandonment

(1) When a person is convicted of an offense punishable under section 5.62a, or 5.62aa, for operating a motor vehicle while his or her license to operate a motor vehicle is suspended, revoked, denied, or never applied for, the court shall order the motor vehicle, if it is owned in whole or in part or leased by that person, impounded for not less than a period the court orders but not more than 120 days from the date of judgment.

(2) When a person is convicted of an offense punishable under section 5.62a, or 5.62aa for operating a motor vehicle while his or her license to operate a motor vehicle is suspended, revoked, denied, or never applied for, the court may order the motor vehicle, if it is owned in whole or in part or leased by that person, impounded for not more than 120 days from the date of judgment.

(3) An order for the impounding of a motor vehicle issued pursuant to this section is valid throughout the state. Any peace officer may execute the impoundment order. The order shall include the implied consent of the owner of the vehicle to the storage for insurance coverage purposes.

(4) The owner of a motor vehicle impounded pursuant to this section is liable for expenses incurred in the removal and storage of the vehicle whether or not the vehicle is returned to him or her. The vehicle shall be returned to the owner only if the owner pays the expenses for removal and storage. If redemption is not made or the vehicle is not returned as provided in this section within 30 days after the time set in the impoundment order for return of the vehicle, the vehicle shall be considered an abandoned vehicle and disposed of as provided in MCL 257.252a.

(5) This section does not affect the rights of a conditional vendor, chattel mortgagee, or lessor of a motor vehicle registered in the name of another person as owner who becomes subject to this act.

SECTION 5.62c Violations; confiscation of registration plate; notice to Secretary of State of confiscation

(1) When a peace officer detains the driver of a motor vehicle for a violation of a law of this state or local ordinance for which vehicle immobilization is required, the peace officer shall do all of the following:

- (a) Immediately confiscate the vehicle's registration plate and destroy it.
- (b) Issue a temporary vehicle registration plate for the vehicle in the same form prescribed by the secretary of state for temporary registration plates issued under MCL 257.226a or .226b.
- (c) Place the temporary vehicle registration plate on the vehicle in the manner required by the secretary of state.
- (d) Notify the secretary of state through the law enforcement information network in a form prescribed by the secretary of state that the registration plate was confiscated and destroyed, and a temporary plate was issued.

(2) A temporary vehicle registration plate issued under this section is valid until the charges against the person are dismissed, the person pleads guilty or nolo contendere to those charges, or the person is found guilty of or is acquitted of those charges.

SECTION 5.62d Enhanced penalties for subsequent violations of Sections 5.15 and 5.62a; mandatory immobilization; exclusions

(1) For a violation of section 5.15, the following apply:

- (a) For a violation of section 5.15(1), (3), (4), or (5);, MCL 257.625(1), (3), (4), (5), or (7) or a local ordinance substantially corresponding to MCL 257.625 (1) or (3), the court may order vehicle immobilization for not more than 180 days.
- (b) For a second violation of section 5.15(1), (3), (4), or (5), MCL 257.625(1), (3), (4), (5), or (7) or a local ordinance substantially corresponding to MCL 257.625 (1) or (3), in any combination arising out of separate incidents, the court shall order vehicle immobilization for not less than 24 days or more than 180 days.

- (c) For a third or subsequent violation of section 5.15(1), (3), (4), or (5), MCL 257.625(1), (3), (4), (5), or (7) or a local ordinance substantially corresponding to MCL 257.625 (1) or (3), in any combination arising out of separate incidents, the court shall order vehicle immobilization for not less than 6 months or more than 3 years.
- (2) For a suspension, revocation, or denial under section 5.15 or MCL 257.904, the following apply:
 - (a) For 1 prior suspension, revocation, or denial under section 5.15 or MCL 257.904 or a local ordinance substantially corresponding to MCL 257.904 within the past 7 years, the court may order vehicle immobilization for not more than 180 days.
 - (b) For any combination of 2 or 3 prior suspensions, revocations, or denials under section 5.62a or MCL 257.904 or a local ordinance substantially corresponding to MCL 257.904 within the past 7 years, the court shall order vehicle immobilization for not less than 90 days or more than 180 days.
 - (c) For any combination of 4 or more prior suspensions, revocations, or denials under section 5.62a or MCL 257.904 or a local ordinance substantially corresponding to MCL 257.904 within the past 7 years, the court shall order vehicle immobilization for not less than 1 year or more than 3 years.
- (3) The defendant shall provide to the court the vehicle identification number and registration plate number of the vehicle involved in the violation.
- (4) The court shall not order vehicle immobilization under this section if the defendant is not the owner or lessee of the vehicle operated during the violation unless the owner or lessee knowingly permitted the vehicle to be operated in violation of section 5.15(2) or section 5.62a(1), regardless of whether a conviction resulted.
- (5) An order required to be issued under this section shall not be suspended.
- (6) If a defendant is ordered imprisoned for the violation for which immobilization is ordered, the period of immobilization shall begin at the end of the period of imprisonment.
- (7) This section does not apply to any of the following:
 - (a) A suspension, revocation, or denial based on a violation of the Support and Parenting Time Enforcement Act, 1982 PA 295, MCL 552.601 to 552.650.

- (b) For a suspension, revocation, or denial under section 5.62a or MCL 257.904, an individual who has no currently effective suspension or denial under MCL 257.321a or who has 1 currently effective suspension or denial under MCL 257.321a but has never violated a condition of that suspension or denial, and who has no other suspensions or revocations or denials under this act.
 - (c) A vehicle that is registered in another state or that is a rental vehicle.
 - (d) Any of the following:
 - (i) A violation of Chapter II of the Michigan Vehicle Code, MCL 257.201 through 257.259.
 - (ii) A violation of Chapter V of the Michigan Vehicle Code, MCL 257.501 through 257.532.
 - (iii) A violation for failure to change address.
 - (iv) A parking violation.
 - (v) A bad check violation.
 - (vi) An equipment violation.
 - (vii) A pedestrian, passenger, or bicycle violation, other than a violation of section 703(1) or (2) of the Michigan Liquor Control Code of 1998, 1998 PA 58, MCL 436.1703, or a local ordinance substantially corresponding to section 703(1) or (2) of the Michigan Liquor Control Code of 1998, 1998 PA 58, MCL 436.1703, or MCL 257.624a or 257.624b or a local ordinance substantially corresponding to MCL 257.624a or 247.624b.
 - (viii) A violation of a local ordinance substantially corresponding to a violation described in subparagraphs (i) to (vii).
- (8) As used in this section, "vehicle immobilization" means requiring the motor vehicle involved in the violation immobilized in a manner provided in section 5.62e or MCL 257.904e.

SECTION 5.62e Prohibition against sale of immobilized vehicle; prohibition against obtaining vehicle during immobilization period; removal, tampering, or bypassing immobilization devices

- (1) A court shall order a vehicle immobilized under Section 5.62d by the use of any available technology approved by the court that locks the ignition, wheels, or steering of the vehicle or otherwise prevents any person from operating the vehicle or that prevents the defendant from operating the vehicle. If a vehicle is immobilized under this code, the court may order the vehicle stored at a location and in a manner considered appropriate by the court. The court may order the person convicted of violating section 5.15 or a suspension, revocation, denial, or having never applied for a license under either section 5.62a or section 5.62aa to pay the cost of immobilizing and storing the vehicle.
- (2) A vehicle subject to immobilization under this code may be sold during the period of immobilization, but shall not be sold to a person who is exempt from paying a use tax under section 3(3)(a) of the Use Tax Act, 1937 PA 94, MCL 205.93, without a court order.
- (3) A defendant who is prohibited from operating a motor vehicle by vehicle immobilization shall not purchase, lease, or otherwise obtain a motor vehicle during this immobilization period.
- (4) A person shall not remove, tamper with, or bypass or attempt to remove, tamper with, or bypass a device that he or she knows or has reason to know has been installed on a vehicle by court order for vehicle immobilization or operate or attempt to operate a vehicle that he or she knows or has reason to know has been ordered immobilized.
- (5) A person who violates this section is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$100.00, or both.
- (6) To the extent that a local ordinance regarding the storage or removal of vehicles conflicts with an order of immobilization issued by the court, the local ordinance is preempted.
- (7) If a peace officer stops a vehicle that is being operated in violation of an immobilization order, the vehicle shall be impounded pending an order of a court of competent jurisdiction.
- (8) The court shall require the defendant or a person who provides immobilization services to the court under this section to certify that a vehicle ordered immobilized by the court is immobilized as required.

**SECTION 5.62f Disclosure by Secretary of State of vehicles assigned
temporary registration plates**

The vehicle registration records of the secretary of state shall disclose which vehicles are assigned a temporary registration plate under section 5.62c or MCL 257.904c or are immobilized under this act.

Section 5.82 of the Uniform Traffic Code in Ordinances 34-2 and 34-3 shall be repealed and replaced with the following:

Section 5.82 Mandatory Child Restraints

- (1) Except as provided in this section, or as otherwise provided by law, a rule promulgated pursuant to the Administrative Procedures Act of 1969, 1969 P.A. 306, MCL 24.201 to 24.328, or federal regulation, each driver transporting a child less than four (4) years of age in a motor vehicle shall properly secure that child in a child restraint system which meets the standards prescribed in 49 C.F.R. 571.213
- (2) This section does not apply to any child being nursed.
- (3) This section does not apply if the motor vehicle being driven is a bus, school bus, taxicab, moped, motorcycle, or other motor vehicle not required to be equipped with safety belts under federal law or regulations.
- (4) A person who violates this section is responsible for a civil infraction.
- (5) Points shall not be assessed under section 320a of the Michigan Motor Vehicle Code for a violation of this section. An abstract required under Section 732 of the Michigan Motor Vehicle Code shall not be submitted to the secretary of state regarding a violation of this section.
- (6) The secretary of state may exempt, by rules promulgated pursuant to the administrative procedures act of 1969, 1969 P.A. 306, MCL 24.201 to 24.328, a class of children from the requirements of this section, if the secretary of state determines that the use of the child restraint system required under subsection (1) is impractical because of physical unfitness, a medical problem, or body size. The secretary of state may specify alternate means of protection for children exempted under this subsection.

Section 5.83 of the Uniform Traffic Code in Ordinances 34-2 and 34-3 shall be repealed and replaced with the following:

Section 5.83 Safety Belt Required; Enforcement

- (1) This section does not apply to a driver or passenger of any of the following:
 - (a) A motor vehicle manufactured before January 1, 1965.
 - (b) A bus.
 - (c) A motorcycle.
 - (d) A moped.
 - (e) A motor vehicle if the driver or passenger possesses a written verification from a physician that the driver or passenger is unable to wear a safety belt for physical or medical reasons.
 - (f) A motor vehicle that is not required to be equipped with safety belts under federal law.
 - (g) A commercial or United States postal service vehicle that makes frequent stops for the purpose of pickup or delivery of goods or services.
 - (h) A motor vehicle operated by a rural carrier of the United States postal service while serving his or her rural postal route.
- (2) This section does not apply to a passenger of a school bus.
- (3) Each driver and front seat passenger of a motor vehicle operated on a street or highway in this state shall wear a properly adjusted and fastened safety belt, except that a child less than four (4) years of age shall be protected as required by Section 7.10d of the Michigan Motor Vehicle Code or Section 5.82 of this ordinance. If there are more passengers than safety belts available for use, and all safety belts in the motor vehicle are being utilized in compliance with this section, the driver of the motor vehicle is in compliance with this section.
- (4) Each driver of a motor vehicle transporting a child four (4) years of age or more but less than sixteen (16) years of age in a motor vehicle shall secure the child in a properly adjusted and fastened safety belt. If the motor vehicle is transporting more children than there are safety belts available for use, all safety belts available in the motor vehicle are being utilized in compliance with this section, and the driver and all front seat passengers comply with subsection (3), then the driver of a motor vehicle transporting a child four (4) years of age or more but less than sixteen (16) years of age for which there is not an available safety belt is in compliance with this subsection, if that child is seated in other than the front seat of the motor vehicle. However, if that motor vehicle is a pickup truck without an extended cab or jump seats, and all safety belts in the front seat are being used, the driver may transport such a child in the front seat without a safety belt.

(5) If, after December 31, 2005, the Office of Highway Safety Planning certifies that there has been less than eighty (80) per cent compliance with the safety belt requirements of this section during the preceding year, then enforcement of this section shall be accomplished only as a secondary action when a driver of a motor vehicle has been detained for a suspected violation of another section of this act.

(6) Failure to wear a safety belt in violation of this section may be considered evidence of negligence and may reduce the recovery for damages arising out of the ownership, maintenance, or operation of a motor vehicle. However, such negligence shall not reduce the recovery for damages by more than five (5) per cent.

(7) A person who violates this section is responsible for a civil infraction.

(8) A law enforcement agency shall conduct an investigation for all reports of police harassment that result from the enforcement of this section.

(9) Points shall not be assessed under Section 320a of the Michigan Motor Vehicle Code for a violation of this section.

Section 5.90(a) in Ordinances 34-2 and 34-3 are repealed and replaced with the following:

**Section 5.90(a) Operation of Vehicle with Unnecessary Noise Prohibited;
Violation is Civil Infraction.**

(1) A person shall not operate a motor vehicle or radio, disc player, tape deck or other musical device within a motor vehicle which creates unnecessary noise and shall not start, move, or turn a motor vehicle or apply the brakes or the power on a motor vehicle or in any manner operate the vehicle or device within the vehicle so as to cause the tires to squeal or create any unnecessary noise or cause the tires or vehicle to make any noise not usually connected with the operation of the motor vehicle, except in the case of an emergency. In addition to squealing tires, excessive noise shall include but not be limited to noise which annoys, disturbs, injures or endangers the comfort, repose, health, peace, or safety of others within the limits of the township, including playing of any radio or other mechanical or musical device in such a manner or with such volume at any time or place as to annoy or disturb the quiet, comfort or repose of persons in any office, dwelling, hotel, or other type of residence or any person in the vicinity, including those within other motor vehicles.

(2) A person who violates this section is responsible for a civil infraction.

Section 5.97 of the Uniform Traffic Code in Ordinances 34-2 and 34-3 shall be repealed and replaced with the following:

Section 5.97 School Buses; Overtaking, Meeting, or Passing

(1) The driver of a vehicle overtaking or meeting a school bus which has stopped and is displaying two (2) alternating flashing red lights located at the same level shall bring the vehicle to a full stop not less than twenty (20) feet from the school bus and shall not proceed until the school bus resumes motion or the visual signals are no longer actuated. At an intersection where traffic is controlled by an officer or a traffic stop and go signal, a vehicle need not be brought to a full stop before passing a stopped school bus, but may proceed not greater than ten (10) miles an hour and with due caution for the safety of passengers being received or discharged from the school bus. The driver of a vehicle who fails to stop for a school bus as required by this subsection, who passes a school bus in violation of this subsection, or who fails to stop for a school bus in violation of an ordinance that complies with this subsection, is responsible for a civil infraction.

(2) The driver of a vehicle upon a highway which has been divided into two (2) roadways by leaving an intervening space, or by a physical barrier, or clearly indicated dividing sections so constructed as to impede vehicular traffic, need not stop upon meeting a school bus which has stopped across the dividing space, barrier, or section.

(3) In a proceeding for a violation of subsection (1), proof that the particular vehicle described in the citation was in violation of subsection (1), together with proof that the defendant named in the citation was, at the time of the violation, the registered owner of the vehicle, shall constitute in evidence a presumption that the registered owner of the vehicle was the driver of the vehicle at the time of the violation.

(4) In addition to the civil fine and costs provided for a civil infraction, the judge, district court referee, or district court magistrate may order a person who violates this section to perform not to exceed one hundred (100) hours of community service at a school.

Section 5.100 is hereby added to the Charter Township of Hampton Traffic Ordinance as follows:

Section 5.100. Production of evidence of insurance.

The owner or operator of a motor vehicle who operates or permits its operation upon the highways of the township shall produce, upon the request of a police officer, evidence that the vehicle is an insured motor vehicle under Chapter 31 of Act No. 218 of Public Acts of Michigan of 1956 (MCLA 500.3101, et seq., MSA 25.13101, et seq.), as amended. An owner or operator of a motor vehicle who fails to produce evidence under this section when requested to produce the evidence is responsible for a civil infraction.

SECTION 3

PENALTY

The penalty for violation of this ordinance, unless otherwise specifically stated, shall be the same as set forth in Chapter XXV of the Charter Township of Hampton's Traffic Ordinance, No. 34-2, as amended.

SECTION 4

PUBLICATION AND EFFECTIVE DATE

After adoption by the Township Board, this ordinance shall be published in a newspaper circulated within the Township of Hampton, Bay County, Michigan, and shall take effect on the 7th day after the date of such publication.

SECTION 5

REPEAL

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 6

SEVERABILITY AND SAVING CLAUSE

Should any section, clause or provision of this ordinance be declared by the courts to be invalid, the same shall not affect the validity of this ordinance as a whole or any part thereof, other than the part declared to be invalid.