

Chapter 41

TRAFFIC AND MOTOR VEHICLES*

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ARTICLE I. IN GENERAL

Sec. 41-1. Mandatory child restraints.

- (a) Except as provided in this section, or as otherwise provided by law, a rule promulgated pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24-201 to 24-315 of the Michigan Compiled Laws, or federal regulation, each driver transporting a child in a motor vehicle shall properly secure each child in a child restraint system as follows:

- (1) Any child less than one year of age in a child restraint system which meets the standards prescribed in 49 Code of Federal Regulations 571.213.

*Cross references – Ordinances prescribing specific parking restrictions, no parking zones, specific speed zones, parking meter zones and specific stop or yield intersections saved from repeal, § 1-5(12); distribution of handbills on vehicles, § 3-19; vehicular rules and regulations at airport, § 5-106 et seq.; possession of alcoholic liquors in motor vehicle by minors, § 6-34; obedience to traffic laws, ordinances and regulations by ambulances, § 7-9; litter thrown by persons in vehicles, § 18-54; litter caused by truck loads, § 18-55; unlawful noise from horns and warning devices, § 24-2; unlawful noise from defeat in vehicle or load, § 24-7; unlawful noise from screeching of tires, § 24-11; offenses, miscellaneous provisions, Ch. 26; vehicles in parks, § 28-9; police, Ch. 32; railroads, Ch. 33; streets, sidewalks and other public places, Ch. 37; vehicles for hire, Ch. 46; watercraft, § 47-18 et. seq.
State law references – Michigan Vehicle Code, MCL § 257-1 et seq., MSA § 9.1801 et seq.; regulation by local authorities, MCL §§ 257.605, 257.606, 251.610.

- (2) Any child one year of age or more but less than four (4) years of age, when transported in the front seat, in a child restraint system which meets the standards prescribed in 49 Code of Federal Regulations 571.213.
 - (3) Any child one year of age or more but less than four(4) years of age, when transported in the rear seat, in a child restraint system which meets the standards prescribed in 49 Code of Federal Regulations 571-213, unless the child is secured by a safety belt provided in the motor vehicle.
 - (b) This section does not apply to a nonresident driver transporting a child in this state or to any child being nursed.
 - (c) 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 section 710b of the Michigan Motor Vehicle Code or federal law or regulations.
 - (d) A person who violates this section is responsible for a civil infraction.

(e) Points shall not be assessed for a violation of this section.

(f) The secretary of state may exempt by rules promulgated pursuant to Act No. 306 of the Public Acts of 1969, as amended, 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 (a) 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.

(Ord. No. 507-83, 4-21-83)

Secs. 41-2 – 41-15. Reserved.

ARTICLE II. UNIFORM TRAFFIC CODE

Sec. 41.16. Adoption of Uniform Traffic Code.

Pursuant to the authority granted the City of Benton Harbor by MCL 257.951, the Uniform Traffic Code for Cities, Townships, and Villages promulgated by the Director of the Michigan Department of State Police and made effective October 30, 2002, and all future amendments or revisions to the Uniform Traffic Code when they are promulgated and effective in this state, including the penalties provided in that Uniform Traffic Code, is adopted by reference and made a part of this chapter. References in the Uniform Traffic Code to a "governmental unit" shall mean the City of Benton Harbor.

The purpose of the Uniform Traffic Code is to provide for the regulation of motor vehicle and other traffic within the City of Benton Harbor, consistent with and supplementary to the Michigan Vehicle Code previously adopted by the city, and to provide for the enforcement of the code and penalties and sanctions for violations of the code. Complete printed copies of the Uniform Traffic Code shall be kept at the office of the city clerk, available for inspection by the public. The Uniform Traffic Code has its own numbering system, and all citations for violations issued by the police or other departments of the city shall refer to the appropriate section number of the Uniform Traffic Code.

Sec. 41-17. Adoption of Michigan Vehicle Code.

Pursuant to the authority granted the City of Benton Harbor by MCL 117.3, as amended, the Michigan Vehicle Code (MCL 257.1 through and including MCL 257.923, as may be amended from time to time by the State of Michigan) is adopted by reference and made part of this chapter as if fully set forth herein.

The purpose of the Michigan Vehicle Code is to provide for the registration, titling, sale, transfer, and regulation of certain vehicles operated upon the public highways of this state or any other place open to the general public or generally accessible to motor vehicles and distressed vehicles; to provide for the examination, licensing, and control of operators and chauffeurs; to provide for the giving of proof of financial responsibility and security by owners and operators of vehicles; to provide for the regulation and use of streets and highways; to provide penalties and sanctions for a violation of the code; to provide for civil liability of owners and operators of vehicles; to provide for the enforcement of the code; and to provide for the creation of and to prescribe the powers and duties of certain state and local agencies.

Complete printed copies of the Michigan Vehicle Code shall be kept at the office of the city clerk, available for inspection by and distribution to the public at all times. References in the Michigan Vehicle Code to "state" shall mean the City of Benton Harbor. Section numbers of the Michigan Vehicle Code shall also apply to violations of this city ordinance, except that city ordinance violations shall bear the prefix "B41" instead of "257."

Sec. 41-18. Repealed

Sec. 41-19. Amendments.

The following sections and subsections of the Uniform Traffic Code are hereby amended, deleted or added as indicated. Subsequent section numbers used in this article shall refer to the like numbered sections of the Uniform Traffic Code:

Sec. 2.56 is added to read:

“Sec. 2.56. Junk vehicles prohibited on private property; exceptions. No person in charge or control of any property within the city, whether as owner, tenant, occupant, lessee, or otherwise, shall allow any partially dismantled, nonoperating, wrecked, junked or discarded vehicle to remain on such property longer than forty-eight (48) hours; and no person shall leave any such vehicle on any property within the city for a longer time than forty-eight (48) hours; except that this section shall not apply with regard to a vehicle in an enclosed building; a vehicle on the premises of a business enterprise operated in a lawful place and manner, when necessary to the operation of such business enterprise; or a vehicle in an appropriate storage place or depository maintained in a lawful place and manner by the city. Junk vehicles in violation of this section shall be impounded by the police department and disposed of as provided in section 252 of the act. The City of Benton Harbor may recover and keep all salvage proceeds from sale of impounded vehicles.

Sec. 2.59 is added to read:

“Sec. 2.59. Current regulations. All intersection stops and yield right-of-way requirements, regulations on stopping, standing or parking; prima facie speed limits; one-way streets, roadways and alleys; crosswalks; restricted turns; through streets; play streets; angle parking zones; all-night parking restrictions; curb loading zones; public carrier stands; parking meter zones and spaces; weight restrictions; no passing zones; traffic control devices heretofore established and effective on the effective date of this Code, shall be deemed established hereunder and shall remain effective until rescinded or modified as herein provided.”

Sec. 8.24 is amended to read:

“Sec. 8.24. Parking signs required and separate offense for designated time periods.

- (a) Whenever by this or any other ordinance of this governmental unit any parking time limit is imposed or parking prohibited on designated streets, no such regulations shall be effective unless appropriate signs given notice thereof are erected and in place at the time of any alleged offense; except that no such signs need be erected to make effective ordinances regulating the stopping, standing, or parking of vehicles when these ordinances do not differ from the provisions of Act. No. 300, Public Acts of 1949 [MCL § 257.1 et seq., MSA § 9.1801 et. seq.], as amended.
- (b) When a parking time limit is imposed, it shall be a separate offense for each period of time beyond such imposed time limit as the vehicle remains in such parking space. When a parking time limit is not imposed, but parking is prohibited, it shall be a separate offense for each fifteen (15) minute period of time a vehicle remains in such place.”

Sec. 8.25 is added to read:

“Sec. 8.25. All night parking restrictions. No person, except physicians on emergency calls, shall park a vehicle for a period longer than thirty (30) minutes between the hours of 2:00 a.m. and 6:00 a.m., except Saturday and Sunday, on any street within the city.
If application of this section would result in manifest harm to businesses open and operating during such hours, the traffic engineer, by appropriate traffic control order, may for the benefit of such businesses and in the interests of accommodating the general public, designate areas with the areas where parking between such hours shall be permissible.
Signs approximately three (3) feet by four (4) feet sufficiently legible as to be seen by an ordinarily observant person giving notice of this parking restriction shall be posted on highways and major access routes at the corporate limits of the city.”

Sec. 8.26 is added to read:

“Sec. 8.26. All night parking permitted. Parking on all other streets not restricted above in section 8.25 or prohibited or restricted by another section of this ordinance shall be permitted for a period not in excess of twenty-four (24) hours on one side of the street designated by the traffic engineer.”

Sec. 8.27 is added to read:

“Sec. 8.27. Parking prohibited for snow removal and street cleaning. Notwithstanding anything contained herein the traffic engineer may temporarily prohibit parking on any street in the city for the purpose of snow removal or street cleaning or for any other traffic control purpose or emergency designated by the traffic engineer for a period not in excess of fourteen (14) days.”

Sec. 8.28 is added to read:

“Sec. 8.28. Trespass by parking. It shall be unlawful for any person to park any motor vehicle on any private property without the express or implied consent, authorization, or ratification of the owner, holder, occupant, lessee, agent or trustee of such property. Complaint for the violation of this section shall be made by the owner, holder, occupant, lessee, agent or trustee of such property.”

Sec. 8.29 is added to read:

“Sec. 8.29. Parking violations bureau.

- (a) Pursuant to Act 154 of the Public Acts of 1968 of the State of Michigan [MCL § 600.8391, MSA § 27A.8391], a parking violations bureau for the purpose of handling alleged parking violations within the city, is hereby established. The parking violations bureau shall be under the supervision and control of the city treasurer.
- (b) The authority of the parking violations bureau shall be limited to the disposition of violations of the parking ordinance provisions of this chapter in the manner provided in this section. The fact that a particular violation is within the scope of such authority shall not entitle an alleged violator to disposition of the violation at the bureau, and the person in charge of the bureau shall refuse to dispose of any parking violation in which all of the provisions of this section are not complied with.
- (c) If, after investigation, any police officer assigned to this duty by the police chief shall certify that because of an improper or missing sign, stolen vehicle, or that if all material facts had been known at the time, the parking violation should not have been issued; or, that the violation notice is incomplete in a material detail, erroneous, issued to a vehicle licensed out of state, is the responsibility of a nonresident of the state, or that it will not be feasible to determine for whom a warrant should be issued, the violation may be disposed of by the bureau without penalty and the certificate shall be attached to the notice.
- (d) No violation may be settled at the parking violations bureau except at the specific request of the alleged violator. No penalty for any violation shall be accepted from any person who denies having committed the offense and in no case shall the person who is in charge of the bureau determine, or attempt to determine, the truth or falsity of any fact or matter relating to such alleged violation. No person shall be required to dispose of a parking violation at the parking violations bureau, and all persons shall be entitled to have any such violation processed before a court having jurisdiction thereof if they so desire. The unwillingness of any person to dispose of any violation at the parking violations bureau shall not prejudice him or in any way diminish the rights, privileges and protection accorded to him by law.
- (e) The issuance of a notice of parking violation shall be deemed an allegation of a violation of an ordinance provision of the city relating to the parking of vehicles. Such notice of violation shall indicate the nature of the violation, the address of the parking violations bureau, the hours during which the bureau is open, the amount of the penalty scheduled for the offense for which the notice was issued and advise that fines for parking violations not disposed of within forty-eight (48) hours, Saturdays, Sundays and holidays excepted, will be increased as hereinafter set forth.

- (f) The schedule of penalties for parking violations shall be as follows:
 - (1) If disposed of a parking violations bureau within forty-eight (48) hours of issuance of notice, Saturdays, Sundays and holidays excepted:
 - Overtime parking violations.....\$1.00
 - All other parking violations.....2.00
 - (2) If disposed of at parking violations bureau after forty-eight (48) hours from time of issuance of notice, Saturdays, Sundays and holidays excepted:
 - Overtime parking violations.....\$3.00
 - All other parking violations.....4.00
- (g) If a violator of the restrictions on parking under the traffic code of this city shall not appear in response to a notice affixed to such vehicle within fifteen (15) days, the parking violations bureau shall send to the owner of the motor vehicle to which the notice was affixed a notice informing him of the violation and warning him he will be held responsible for the appearance of the offender and that in the event such notice is disregarded for a period of five (5) days a complaint will be filed in a court having jurisdiction.
- (h) In the event any person fails to comply with any notice to appear as provided in this code, or fails to make an appearance before the parking violations bureau within the time permitted by this code, a complaint may be forthwith filed against such person in a court having jurisdiction. After such a complaint has been filed in a court having jurisdiction, the parking violations bureau shall not accept any fine or fines for such person for such alleged offense, but shall consider such person entirely under the jurisdiction of such court.” (Gen. Code 1946, Ch. 3, § 119.4; Ord. of 5-17-71, § 5; Code 1972, §§ 9.94, 10.4; Ord. of 5-29-73)

41-20. Civil infractions.

Any provision of the Uniform Traffic Code for Cities, Townships and Villages, or any provisions of the Code of Ordinances for the city which constitute a civil infraction under the Michigan Vehicle Code, Act 300, Public Acts of 1949 [MCL 257.1 et seq.], as amended, shall be deemed a civil infraction only, subject to a civil fine of not more than \$100.00 and costs, in accordance with Section 907 of the Michigan Vehicle Code. Violation of other provisions of the Uniform Traffic Code or the Code of Ordinances of the city which are not civil infractions shall be punishable by a fine of not more than \$500.00 and costs of prosecution, or by imprisonment in the county jail for not more than 90 days, or by both such fine and imprisonment, as set forth in Section 1-8.

Secs. 41-21 – 41-30. Reserved.

ARTICLE III. BICYCLES*

DIVISION 1. GENERALLY

Sec. 41-31. Driver regulations applicable.

Every person riding a bicycle upon a street or highway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle under this chapter, except as to those provisions which by their nature can have no application. (Code 1972, § 10.31)

Secs. 41-32 – 41-38. Reserved.

DIVISION 2. LICENSE

Sec. 41-39. Required.

It shall be unlawful for any person to operate or use a bicycle, propelled wholly or in part by muscular power, upon any of the streets, alleys or public highways of the city without first having obtained a license therefor. (Code 1972, § 10.32)

Sec. 41-40. Application.

Written application for a bicycle license shall be made to the chief of police, which application shall state the name and address of the owner of such bicycle, the character and description of the bicycle to be licensed, and the serial number thereof, and such other information as may be required. (Code 1972, § 10.33)

Sec. 41-41. Fee.

Upon receipt of an application and upon the payment of the sum of five dollars (\$5.00) the chief of police shall issue a license to the applicant, which license shall be attached to the bicycle so licensed and shall be permanent license for such bicycle as long as the bicycle is owned by the applicant for the license and the applicant resides and uses the bicycle in the city. (Code 1972, § 10.34; Ord. No. 564-87, 5-26-87; Ord. No. 572-87, 6-8-87)

Secs. 41-42 – 41-52. Reserved.

ARTICLE IV. MUNICIPAL PARKING LOTS

Sec. 41-53. Defined.

The words “municipal parking lots,” when used in this article, shall mean all city-owned, city-leased or city-operated off-street parking spaces.

Cross reference – Definitions and rules of construction generally, § 1-2.

Sec. 41-54. Responsibility of manager; promulgation of rules and regulations.

The city manager shall be responsible for the regulation, supervision and condition of all municipal parking lots. He shall, subject to the approval of the city commission, promulgate rules and regulations governing the regulations, restrictions and fees on the parking spaces, and such rules and regulations not in conflict with this Code shall be considered a part of this Code and enforceable as such.

(Gen. Code 1946, Ch. 5, § 1001.1)

Sec. 41-55. Designation of uses for spaces.

The city manager shall have the authority to designate the use of spaces in municipal parking lots, whether for passenger cars or trucks, to designate and reserve spaces for particular use or official purposes or to designate rental spaces or parking meter spaces approved by the city commission. (Gen. Code 1946, Ch. 5, § 1001.2)

Sec. 41-56. Compliance with signs.

It shall be unlawful for any person to disregard the signs designating the use of spaces in municipal parking lots or to use rental spaces without the consent of the lessee thereof. Any car illegally parked in a reserved space may be summarily removed from such space by direction of the chief of police. (Gen. Code 1946, Ch. 5, § 1001.3)

Sec. 41-57. Owner’s risk.

All parking in municipal parking lots shall be at the owner’s risk and the city shall not be responsible for articles left in cars or damage to cars while parked in the parking lots. (Gen. Code 1946, ch. 5, § 1002.1)

Sec. 41-58. Purpose of lots.

Downtown resident automobile owners shall not use any parking space on any municipal parking lot in lieu of a private garage or a private parking space. The intent of these parking regulations being that the parking lots should provide off-street parking for those persons driving into the business area for shopping or for business or employment purposes.

(Gen. Code 1946, Ch. 5, § 1002.2)

Sec. 41-59. Sales unlawful.

No marketing or sales enterprises shall be permitted on municipal parking lots. (Gen. Code 1946, Ch. 5, § 1002.2)

Sec. 41-60. Dealer auto storage.

It shall be unlawful for any trucking company or any dealer in automobiles, either new or secondhand, to use any municipal parking lot for storage of automobiles. (Gen. Code 1946, Ch. 5, § 1002.3)

Sec. 41-61. Loading operations.

It shall be unlawful for any person or any trucking firm to use any municipal parking lot for the purpose of loading or unloading vehicles. (Gen. Code 1946, Ch. 5, § 1002.4)

Sec. 41-62. Trailer disconnection.

No trailers shall be disconnected from tractors where this is prohibited by signs in municipal parking lots. (Gen. Code 1946, Ch. 5, § 1002.6)

Sec. 41-63. Parking time limit.

No car or truck shall remain parked continuously over seventy-two (72) hours in a municipal parking lot. (Gen. Code 1946, Ch. 5, § 1002.6)

Sec. 41-64. City hall lot.

The space surrounding the city hall shall not be considered as an off-street parking lot for the use of the public because of the fact that the drive-way is essential for the entrance and exit of police cars and for the fueling of fire trucks and police cars, and such space must be reserved for the use of city employees. If there is any excess space, it shall be designated as deemed advisable by the city manager. It shall be unlawful for any person to park in any space on the city hall site except in compliance with the designation of such space as indicated by signs. (Gen. Code 1946, Ch. 5, § 1002.7)

Sec. 41-65. Obstructing a driveway entrance or exit.

- (a) No vehicles of any kind may park within five (5) feet of any driveway entrance or exit, on either side.
- (b) A driveway entrance shall apply to any legally registered curb cut for the sole purpose of use by an owner or guests to have access to a legally registered driveway adjacent to or near a home or place of business.
- (c) A driveway exit shall apply to any legally registered curb cut for the sole purpose of use by an owner or guests to have access from a legally registered driveway adjacent to or near a home or place of business. (Ord. of 4-2-79)

Sec. 41-66. Defrauding municipal parking lots.

- (a) For the purpose of this section, the words “municipal parking lots” shall mean any parking lot operated by the city or a public governmental entity such as the airport board, which is contained within the corporate limits of the city or on land owned by the city.
- (b) Unless there is an express agreement in writing made with the operator for credit at a municipal lot, no person shall, directly or indirectly, with intent to defraud the attendant, owner, proprietor or keeper of a municipal parking lot, use, hire or occupy any such municipal parking lot, use, hire or occupy any such municipal parking lot as a patron, without paying therefor.
- (c) Refusal or neglect to pay on demand or driving away without paying or offering to pay for such use or facility shall be prima facie evidence of intent to defraud for the purpose of this section.
- (d) Proof that such person refused to pay the prescribed fees for such use of a parking facility or that he absconded without paying or offering to pay for same shall be prima facie evidence of such fraudulent intent.
- (e) It shall be the duty of the owner or keeper of every municipal parking lot to keep a sign in large plain English type saying that “failure to pay will lead to fine and/or jail” or words to that effect, in a prominent or conspicuous place upon such parking lot.
- (f) Any person found guilty of defrauding a municipal parking lot shall be punished as provided in section 1-8 plus be assessed costs of prosecution, in addition, such person shall pay restitution to the operator of the municipal parking lot for parking fees owing. (Ord. of 5-18-81)

Secs. 41-67 – 41-77. Reserved.

ARTICLE V. SNOW EMERGENCY ROUTES

Sec. 41-78. Title.

This article shall be known and may be cited as the “Snow Emergency Ordinance of the City of Benton Harbor.” (Ord. of 10-23-78, § 2.192)

Sec. 41-79. Definitions.

The following definitions shall apply in the interpretation and enforcement of this article:

Designee can be the superintendent of public works, director of highways or city traffic engineer, chief of police or other appropriate representative.

Roadway means that portion of a street or highway improved, designed, or ordinarily used for vehicular travel, exclusive of the shoulder.

Secondary streets are any streets which are not marked "snow emergency routes."

Snow emergency routes are those streets marked as such in accordance with the provisions of this article.

Street or highway means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel. (Ord. of 10-23-78, § 2.193)

Cross reference – Definitions and rules of construction generally, §1-2.

Sec. 41-80. Snow emergency routes designated.

The following streets or portions of streets within the city are hereby designated as snow emergency routes: Main, Pipestone, Britain, Empire, May, Cross, Territorial, Paw Paw, Highland, Fair Avenue, Riverview Drive, Northshore, Klock Road, Market Street, 8th Street and Colfax. (Ord. of 18-23-78, § 2.204)

Sec. 41-81. Parking on snow emergency routes.

- (a) Whenever the city manager or his designee finds, on the basis of falling snow, sleet or freezing rain, or on the basis of a forecast by the U.S. Weather Bureau or other weather service of snow, sleet or freezing rain, that weather conditions will make it necessary that motor vehicle traffic be expedited and that parking on city streets be prohibited or restricted for snow plowing and other purposes, the city manager or his designee shall put into effect a parking prohibition on parts of or all snow emergency routes as necessary by declaring it in a manner prescribed in this article.
- (b) Notwithstanding the provisions of subsection (a) hereof, a parking prohibition shall automatically go into effect on any part of any snow emergency route on which there has been an accumulation of snow or ice of one inch or more for one hour or more between 6:00 a.m. and 11:00 p.m. of any day.
- (c) Once in effect, a prohibition under this section shall remain in effect until terminated by announcement of the city manager or his designee in accordance with this article, except that any street area which has become substantially clear of snow and ice from curb to curb for the length of the entire block shall be automatically excluded therefrom. While the prohibition is in effect, no person shall park or allow to remain parked, any vehicle on any portion of a snow emergency route to which it applies. However, nothing in this section shall be construed to permit parking at any time or place where it is forbidden by any other provisions of law. (Ord. of 10-23-78, § 2.194)

Sec. 41-82. Parking on secondary streets.

- (a) Whenever the city manager or his designee finds, on the basis of falling snow, sleet, freezing rain, or on the basis of a forecast by the U.S. Weather Bureau or other weather service of snow, sleet or freezing rain, that weather conditions will make it necessary that motor vehicle traffic be expedited and that parking on city streets be prohibited and restricted for snow plowing and other purposes, the city manager or his designee shall put into effect a parking prohibition on parts of or all secondary streets as necessary by declaring it in a manner prescribed by this article. The prohibition shall remain in effect until terminated by announcement of the city manager or his designee in accordance with this article except that any street area which has been become substantially clear of snow and ice from curb to median line for the length of the entire block of any street to which it applies during the time from 12:01 a.m. until 8:00 p.m. of any day, except as permitted below:
 - (1) Vehicles may be parked on the even-street-numbers side of the street on even-number dates of each month. (e.g. 2nd, 4th, 6th, etc.)

- (2) Vehicles may be parked on the uneven-street-numbers side of the street on uneven-number dates of each month. (e.g. 1st, 3rd, 5th, etc.)
- (b) However, nothing in this article shall be construed to permit parking at any time or place where it is forbidden by any other provision of law. (Ord. of 10-23-78, § 2.195)

Sec. 41-83. Condition of motor vehicles operated on snow emergency routes.

- (a) No person operating a motor vehicle on a snow emergency route on which there is a covering of snow, sleet or ice shall allow such vehicle to become stalled wholly or partly because the drive wheels thereof are not equipped with effective tires.
- (b) No person operating a motor vehicle on a part of a snow emergency route on which there is a covering of snow, sleet or ice or on which there is a parking prohibition in effect shall allow such vehicle to become stalled because the motor fuel is exhausted or the battery has become inoperative. (Ord. of 10-23-78, § 2.196)

Sec. 41-84. Stalled vehicle on snow emergency route.

- (a) Whenever a vehicle becomes stalled for any reason, whether or not in violation of this article, on any part of a snow emergency route on which there is a covering of snow, sleet or ice or on which there is a parking prohibition in effect, the person operating such vehicle shall take immediate action to have the vehicle towed or pushed off the roadway of such snow emergency route, either into the first cross street which is not a snow route, or onto the public space portion of a nearby driveway. No person shall abandon or leave his vehicle in the roadway of a snow emergency route (regardless of whether he indicates, by raising the hood or otherwise, that the vehicle is stalled), except for the purpose of securing assistance during the actual time necessary to go to a nearby telephone or to a nearby garage, gasoline station, or other place of assistance and return without delay.
- (b) The city manager or his designee may have cars removed at owners expense. (Ord. of 10-23-78, § 2.197)

Sec. 41-85. Declarations of the city manager or his designee.

- (a) The city manager or his designee shall cause each declaration made by him or his designee pursuant to this article to be publicly announced by means of broadcasts or telecasts from a station with a normal operating range covering the city, and he or his designee may cause such declaration to be further announced in newspapers of general circulation when feasible. Each announcement shall describe the action taken by the city manager or his designee, including the time it became or will become effective, and shall specify the streets or areas affected.
- (b) The city manager or his designee shall make or cause to be made a record of each time and date when any declaration is announced to the public in accordance with this section. (Ord. of 10-23-78, § 2.198)

Sec. 41-86. Removal, impounding and return of vehicles.

- (a) Members of the division of police are hereby authorized to remove or have removed, at owner's expense, any vehicle from a street to the nearest garage or other place of safety (including another place on a street), or to a garage designated or maintained by this city, when:
 - (1) The vehicle is parked on a part of a snow emergency route on which a parking prohibition is in effect;
 - (2) The vehicle is stalled on a part of a snow emergency route on which there is a covering of snow, sleet, or ice or on which there is a parking prohibition in effect and the person who was operating such vehicle does not appear to be removing it in accordance with the provisions of this article;
 - (3) The vehicle is parked in violation of any parking ordinance or provision of law and is interfering or about to interfere with snow removal operations.
- (b) No person shall recover any vehicle removed in accordance with this section except as provided herein. Before the owner or person in charge of such vehicle shall be allowed to recover it from the place where it has been placed or impounded, he shall present to a member of the division of police or garage keeper, evidence of his identity and right to possession of the vehicle, shall sign a receipt for its return, and shall pay the cost of removal.
- (c) This section shall be supplemental to other provisions of law granting members of the division of police authority to remove vehicles. (Ord. of 10-23-78, § 2.199)

Sec. 41-87. Termination of parking prohibition by the city manager or his designee.

Whenever the city manager or his designee shall find that some or all of the conditions which give rise to a prohibition in effect pursuant to this article no longer exist, he may declare the prohibition terminated, in whole or in part, in a manner prescribed by this article, effective immediately upon announcement. (Ord. of 10-23-78, § 2.200)

Sec. 41-88. Provisions temporarily effective to take precedence.

Any provision of this article which becomes effective by declaration of the city manager or his designee or upon the occurrence of certain weather conditions shall, while temporarily in effect, take precedence over other conflicting provisions of law normally in effect, except that it shall not take precedence over provisions of law relating to traffic accidents, emergency travel of authorized emergency vehicles or emergency traffic directions by a police officer. (Ord. of 10-23-78, § 2.201)

Sec. 41-89. Signs to mark snow routes.

On each street designated by this article as a snow emergency route, the city manager or his designee shall post special signs at intervals not exceeding five hundred (500) feet with the wording: "Snow Route." These signs shall be distinctive and uniform in appearance and shall be plainly readable to person traveling on the street or highway. (Ord. of 10-23-78, § 2.202)

Sec. 41-90. Evidence with respect to vehicles parked or left in violation of this article.

In any prosecution with regard to a vehicle parked or left in a place or in a condition in violation of any provision of this article, proof that the particular vehicle described in the complaint was parked or left in violation of a provision of this article, together with proof that the defendant named in the complaint was, at the time, the registered owner of such vehicle, shall constitute prima facie evidence that the defendant was the person who parked or left the vehicle in violation of this article. (Ord. of 10-23-78, § 2.203)

Secs. 41-91 – 41-100. Reserved.

ARTICLE VI. OPERATING UNDER INFLUENCE OF INTOXICATING LIQUOR OR CONTROLLED SUBSTANCES*

Sec. 41-101. Driving under the influence of intoxicating liquor or a controlled substance.

- (1) A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state if either of the following applies:
 - (a) The person is under the influence of intoxicating liquor or a controlled, substance, or a combination of intoxicating liquor and a controlled substance.
 - (b) The person has a blood alcohol content of 0.10% or more by weight of alcohol.
- (2) The owner of a vehicle or a person in charge or in control of a vehicle shall not authorize or knowingly permit the vehicle to be operated upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of motor vehicles, within this state by a person who is under the influence of intoxicating liquor and a controlled substance or who has a blood alcohol content of 0.10% or more by weight of alcohol.
- (3) A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles within this state when, due to the consumption of an intoxicating liquor, a controlled substance, or a combination of an intoxicating liquor and a controlled substance, the person's ability to operate the vehicle is visibly impaired. If a person is charged with violating subsection (1), a finding of guilty under this subsection may be rendered.
- (4) If a person is convicted of violating subsection (1), the following shall apply:
 - (a) The person is guilty of a misdemeanor, and may be punished by one (1) or more of the following:
 - (i) Service to the community for a period of not more than forty-five (45) days.
 - (ii) Imprisonment for not more than ninety (90) days.
 - (iii) A fine of not less than one hundred dollars (\$100.00) or more than five hundred dollars (\$500.00).

- (b) If the violation occurs within seven (7) years of a prior conviction, the person shall be sentenced to both a fine of not less than two hundred dollars (\$200.00) or more than one thousand dollars (\$1,000.00) and either of the following:
 - (i) Performing service to the community for a period of not less than ten (10) days or more than ninety (90) days and may be imprisoned for not more than one (1) year.
 - (ii) Imprisonment for not less than forty-eight (48) consecutive hours or more than one (1) year; and may be sentenced to service to the community for a period of not more than ninety (90) days.
- (c) A term of imprisonment imposed under subdivision (b) (ii) shall not be suspended.
- (d) A person sentenced to perform service to the community under this subsection shall not receive compensation, and shall reimburse the state or appropriate local unit of government for the cost of supervision incurred by the state or local unit of government as a result of the person's activities in that service.
- (e) As used in this subsection, "prior conviction" means a conviction for a violation of section 5.15(1) or former section 41-101(1) or (2), or a conviction of section 625(1), (4) , or (5) or former section 625(1) or (2) of Act. No. 300 of the Public Acts of 1949, as amended, being section 257.625(1) , (4) or (5) or former 257.625(1) or (2) of the Michigan Compiled Laws, or law of another state substantially corresponding to section 625(a) , (4) or (5) or former section 625(1) or (2) of Act. No. 300 of the Public Acts of 1949, as amended being section 257.625(1), (4) or (5) or former section 257.625(1) or (2) of the Michigan Compiled Laws.
- (5) In addition to imposing the sanctions prescribed under subsection (4), the court may, pursuant to the code of criminal procedure, Act No. 175 of the Public Acts of 1927, being sections 760.1 to 776.21 of the Michigan Compiled Laws, order the person to pay the costs of the prosecution.
- (6) The court shall impose license sanctions pursuant to section 41-103.
- (7) A person who is convicted of violating subsection (2) is guilty of a misdemeanor, punishable by imprisonment for not more than ninety (90) days, or a fine of not less than one hundred dollars (\$100.00) or more than five hundred dollars (\$500.00), or both.
- (8) If a person is convicted of violating subsection (3), the following shall apply:
 - (a) Except as otherwise provided in subdivisions (b) and (c), the person is guilty of a misdemeanor punishable by one or more of the following:
 - (i) Service to the community for a period of not more than forty-five (45) days.
 - (ii) Imprisonment for not more than ninety (90) days.
 - (iii) A fine of not more than three hundred dollars (\$300.00).
 - (b) If the violation occurs within seven (7) years of one (1) prior conviction, the person shall be sentenced to both a fine of not less than two hundred dollars (\$200.00) or more than one thousand dollars (\$1,000.00), and either of the following:
 - (i) Performing service to the community for a period of not less than ten (10) days or more than ninety (90) days and may be sentenced to imprisonment for not more than one (1) year.
 - (ii) Imprisonment for not more than one (1) year and may be sentenced to community service for not more than ninety (90) days.
 - (c) If the violation occurs within ten (10) years of two (2) or more prior convictions, the person shall be sentenced to both a fine of not less than two hundred dollars (\$200.00) or more than one thousand dollars (\$1,000.00), and either of the following:
 - (i) Performing service to the community for a period of not less than ten (10) days or more than ninety (90) days and may be sentenced to imprisonment for not more than one (1) year.
 - (ii) Imprisonment for not more than one (1) year and may be sentenced to community service for not more than ninety (90) days.
 - (d) As used in subdivisions (b) and (c), "prior conviction" means a conviction for a violation of section 4-101(1) or (3), or former section 41.101(1) or (2), or former section 41-103, or a conviction of section 625.(1), (2) or

625b of Act No. 300 of the Public Acts of 1949, as amended, being section 257-625(1), (3), (4), or (5) or former sections 257.625(1), (2), or 257.625b of the Michigan Compiled Laws.

- (e) In addition to imposing the sanctions prescribed in subdivision (a), (b), or (c), the court may, pursuant to the code of criminal procedure, Act No. 175 of the Public Acts of 1927, order the person to pay the costs of the prosecution.
- (f) The court shall order the secretary of state to impose license sanctions pursuant to section 41-103.
- (g) A person sentenced to perform service to the community under this subsection shall not receive compensation, and shall reimburse the state or appropriate local unit of government for the cost of supervision incurred by the state or local unit of government as a result of the person's activities in that service.

(9) If the prosecuting attorney intends to seek an enhanced sentence under subsection (4)(b) or (8)(b) or (c) based upon the defendant having one (1) or more prior convictions, the prosecuting attorney shall include on the complaint and information filed in district court, circuit court, recorder's court, municipal court, or probate court a statement listing the defendant's prior convictions.

(10) A prior conviction shall be established at sentencing by one 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.

(11) A person who is convicted of an attempted violation of subsection (1) or (3) shall be punished as if the offense had been completed.

(12) When assessing points and taking licensing action under this article, the secretary of state and the court shall treat a conviction of an attempted violation of subsection (1) or (3), the same as if the offense had been completed.

(Ord. of 3-16-92, §1)

Sec. 41-102. Criminal prosecutions for driving under influence of intoxicating liquor; tests; admissibility; presumptions; liability for withdrawing blood, refusal to take test; other evidence.

- (1) A peace officer, without a warrant, may arrest a person when the peace officer has reasonable cause to believe that the person was, at the time of an accident, the operator of a vehicle involved in the accident in this state while in violation of section 41-101(1) or (3).
- (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 general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, in this state and that the person by the consumption of intoxicating liquor may have affected his or her ability to operate a vehicle, may require the person to submit to a preliminary chemical breath analysis. The following provisions shall apply with respect to a preliminary chemical breath analysis:
 - (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 41-104(1) or in an administrative hearing solely to assist the court or hearing officer in determining a challenge to the validity of an arrest. This subdivision does not limit the introduction of other competent evidence offered to establish the validity of an arrest.
 - (c) A person who submits to a preliminary chemical breath analysis shall remain subject to the requirements of sections 41-104, 41-105, and 41-106 for the purposes of chemical tests described in those sections.
 - (d) 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) 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 enumerated in section 41-101(1) or (3) shall be advised of all of the following:
 - (i) That 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 one of the chemical tests, that the results of the test are admissible in a judicial proceeding as provided under this act and shall be considered with other competent evidence in determining the innocence or guilt of the defendant; and that he or she is responsible for obtaining a chemical analysis of a test sample obtained pursuant to his or her own request.
 - (ii) That if he or she refuses the request of a peace officer to take a test described in subparagraph (i), the peace officer may seek to obtain such a court order.
 - (iii) That his or her refusal of the request of a peace officer to take a test described in subparagraph (i) shall result in the suspension of his or her operator's or chauffeur's license or operating privilege, and in the addition of six (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 a licensed nurse or medical technician under the direction of a licensed physician and qualified to withdraw blood acting in a medical environment, at the request of a peace officer, may withdraw blood for the purpose of determining 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 shall not attach to a qualified person 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 enumerated in section 41-101(1) or (3). 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, and the results of the test shall be admissible and shall be considered with other competent evidence in determining the innocence or guilt of the defendant. If the person charged is administered a chemical test by a person of his or her own choosing, the person charged shall be 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 the purpose of 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 prosecuting attorney who requests the results for use in a criminal prosecution as provided in this subdivision. A medical facility or person disclosing information in compliance with this subsection shall not be civilly or criminally liable for making the disclosure.
 - (f) If, after an accident, the driver of a vehicle involved in the accident is deceased, a sample of the decedent's blood shall be withdrawn in a manner directed by the medical examiner for the purpose of determining the amount of alcohol or the presence of a controlled substance, or both, in the decedent's blood. The medical examiner shall give the results of the chemical analysis of the sample to the law enforcement agency investigating the accident, and that agency shall forward the results to the department of state police.

- (g) The department of state police shall promulgate uniform rules for the administration of chemical tests for the purposes of this section.
- (4) The provisions of subsection (3) relating to chemical testing do not limit the introduction of any other competent evidence bearing upon the question of whether or not 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 a blood alcohol content of 0.10% or more by weight of alcohol.
- (5) If a chemical test described in subsection (3) is administered, the results of the test shall be made available to the person charged or the person's attorney upon written request to the prosecution, with a copy of the request filed with the court. The prosecution shall furnish the results at least two (2) days before the day of the trial. The results of the test shall be offered as evidence by the prosecution in that trial. Failure to fully comply with the request shall bar the admission of the results into evidence by the prosecution.
- (6) Except in a prosecution relating solely to a violation of section 41-101(1) (b), the amount of alcohol in the driver's blood at the time alleged as shown by chemical analysis of the person's blood, urine, or breath shall give rise to the following presumptions:
- (a) If there was the time 0.07% or less by weight of alcohol in the defendant's blood, it shall be 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 was at the time in excess of 0.07% or but less than 0.10% by weight of alcohol in the defendant's blood, it shall be presumed that the defendant's ability to operate a vehicle was impaired within the provisions of section 41-101(3) due to the consumption of intoxicating liquor.
- (c) If there was at the time 0.10% or more by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was under the influence of intoxicating liquor.
- (7) A person's refusal to submit to a chemical test as provided in subsection (3) shall be admissible in a criminal prosecution for a crime enumerated in section 41-101(1) or (3) only for the purpose of showing that a test was offered to the defendant, but not as evidence in determining innocence or guilt of the defendant. The jury shall be instructed accordingly.

(Ord. of 3-16-92, § 2)

Sec. 41-103. Arraignment; pretrial conference; pleas; licensing sanctions; restricted license; surrender and destruction of driver's license or permit.

- (1) A person arrested for a misdemeanor violation of section 41-101(1) or (3) shall be arraigned on the citation, complaint, or warrant not more than fourteen (14) days after the date of arrest or, if an arrest warrant is reissued, not more than fourteen (14) days after the reissued arrest warrant is served.
- (2) The court shall schedule a pretrial conference between the prosecuting attorney, the defendant, and the defendant's attorney in each case in which the defendant is charged with a misdemeanor violation of section 41-101(1) or (3). The pretrial conference shall be held not more than thirty-five (35) days after the date of the person's arrest for the violation or, if an arrest warrant is reissued, not more than thirty-five (35) days after the date the reissued arrest warrant is served, unless the court has only one (1) judge who sits in more than one (1) location in that district in which case the pretrial conference shall be held not more than forty-two (42) days after the date of the person's arrest for the violation or if an arrest warrant is reissued, not more than forty-two (42) days after the date the reissued arrest warrant is served. 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 one adjournment shall be granted to a party, and the length of an adjournment shall not exceed fourteen (14) days. The court shall, 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, finally adjudicate, by a plea of guilty or nolo contendere or, the entry of a verdict, or by other final disposition, a case in which the

defendant is charged with a misdemeanor violation in which the defendant is charged with a misdemeanor violation of section 41-101(1) or (3) within seventy-seven (77) days after the person is arrested for the violation or, if an arrest warrant is reissued, not more than seventy-seven (77) days after the date the reissued arrest warrant is served.

- (3) Before accepting a plea of guilty or nolo contendere under section 41-101, 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 pursuant of MCL 257.625A.
- (4) Before imposing sentence, other than court-ordered license sanctions, for a violation of section 41-101(1) or (3), 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. As part of the sentence, the court may order the person to participate in and successfully complete one or more appropriate rehabilitative programs. The person shall pay for the costs of the screening, assessment, and rehabilitative services.
- (5) Immediately upon acceptance by the court of a plea or guilty or nolo contendere or upon entry of a verdict of guilty for a violation of section 41-101(1) or (3), whether or not the person is eligible to be sentenced as a multiple offender, the court shall consider all prior convictions currently entered upon the Michigan driving record of the person, except those convictions which, upon motion by the defendant, are determined by the court to be constitutionally invalid, and shall impose the following licensing sanctions:

(a) For a conviction under section 41-101(1):

(i) If the court finds that the person has no prior convictions within seven (7) years for violation of section 41-101(1) or (3), MCL 257.625(1), (3), (4), or (5), or former MCL 257.625(1) or (2), or former MCL 257.625(b), a local ordinance substantially corresponding to MCL 257.625(1) or (3), or former MCL 257.625(1) or (2) or former MCL 257.625b, or a law of another state substantially corresponding to MCL 257.625(1), (3), (4) or (5), or former MCL 257.625(1) or (2), or former MCL 257.625b, the court shall order the secretary of the state to suspend the operator's or chauffeur's license of the person for a period of not less than six (6) months or more than two (2) years. The court may order the secretary of state to issue to the person a restricted license during all or a specified portion of the period of suspension, except that a restricted license shall not be issued during the first thirty (30) days of the period of suspension.

(ii) If the court finds that the person has one (1) prior conviction within seven (7) years for a violation of Section 41-101(3), or MCL 257.625(3) or former MCL 257.625b, a local ordinance substantially corresponding to MCL 257.625(3) or former MCL 257.625b, or a law of another state substantially corresponding to MCL 257.625(3) or former MCL 257.625b, the court shall order the secretary of state to suspend the operator's or chauffeur's license of the person for a period of not less than six (6) months or more than two (2) years. The court may order the secretary of state to issue to the person a restricted license during all or any portion of the period of suspension, except that a restricted license shall not be issued during the first sixty (60) days of the period of suspension.

(iii) If the court finds that the person has one or more prior convictions within seven (7) years for a violation of section 41-101(1), or MCL 257.625(1), (4) or (5), or former MCL 257.625(1) or (2), a local ordinance substantially corresponding to MCL 257.625(1) or former MCL 257.625(1) or (2), or a law of another state substantially corresponding to MCL 257.625(1), (4) or (5), or former MCL 257.625(1) or (2), or that the person has two (2) or more prior convictions within ten (10) years for a violation of section 41-101(1) or (3), or MCL 257.625(1) or (3), (4), or (5), or former MCL 257.625(1) or (2) or former MCL 257.625b, a local ordinance substantially corresponding to MCL 257.625(1) or (3), or former MCL 257.625(1) or (2), or former MCL 257.625b, or a law of another state substantially corresponding to MCL 257.625(1) or (2), or former MCL 257.625b, the court shall order the secretary of state to revoke the operator's or chauffeur's license of the person and shall not order the secretary of state to issue a restricted license to the person.

(b) For a conviction under section 41-101(3);

(i) If the court finds that the convicted person has no prior conviction within seven (7) years for a violation of section 41-101(1) or (3), MCL 257.625(1), (3), (4), or (5), or former MCL 257.625(1) or (2), or former MCL 257.625(1) or (2) or former MCL 257.625b, a local ordinance substantially corresponding to MCL 257.625(1) or (3), or former MCL 257.625b, a local ordinance substantially corresponding to MCL 257.625(1) or (3), or former MCL 257.625(1) or (2), or former MCL 257.625(1) or (2), or former MCL 257.625b, or a law of another state substantially corresponding to MCL 257.625(1), (3), (4) or (5), or former MCL 257.625(1) or (2), or MCL 257.625b, the court shall order the secretary of state to suspend the operator's or chauffeur's license of the person for a period of not less than ninety (90) days or more than one (1) year. The court may order the secretary of state to issue to the person a restricted license during all or a specified portion of the period of suspension.

(ii) If the court finds that the person has one (1) prior conviction within seven (7) years for a violation of 41-101(1) or (3), or MCL 257.625(1), (3), (4), or (5), or former MCL 257.625(1) or (2), or former MCL 257.625b, a local ordinance substantially corresponding to MCL 257.625(1) or (3), or former MCL 257.625(1) or (2) or former MCL 257.625b, or a law of another state substantially corresponding to MCL 257.625(1), (3), (4), or (5), or former MCL 257.625(1) or (2), or MCL 257.625b the court shall order the secretary of state to suspend the operator's or chauffeur's license of the person for a period of not less than six (6) months or more than two (2) years. The court may order the secretary of state to issue to the person a restricted license during all or any portion of the suspension period, except that a restricted license shall not be issued during the first sixty (60) days of the period of suspension.

(iii) If the court finds that the person has two (2) or more prior convictions within ten (10) years for a violation of section 41-101(1) or (3), or MCL 257.625(1), (3), (4), or (5), or former MCL 257.625(1) or (2), or former 257.625b, a local ordinance substantially corresponding to MCL 257.625(1) or (3), or former MCL 257.625(1) or (2) or former MCL 257.625(1), (3), (4), or (5), or former MCL 257.625(1) or (2), or former MCL 257.625b, the court shall order the secretary of state to revoke the operator's or chauffeur's license of the person and shall not order the secretary of state to issue a restricted license to the person.

- (6) A restricted license issued pursuant to an order under subsection (5) shall permit the person to whom it is issued to do one or more of the following:
- (a) Drive to and from the person's residence and work location.
 - (b) Drive in the course of the person's employment or occupation.
 - (c) Drive to and from the person's residence and an alcohol or drug education or treatment program as ordered by the court.
 - (d) Drive to and from the person's residence and the court probation department, or a court-ordered community service program, or both.
 - (e) Drive to and from the person's residence and an education institution at which the person is enrolled as student.
- (7) The court may order that the restricted license issued pursuant to subsection (5) include the requirement that the person shall not operate a motor vehicle unless the vehicle is equipped with a functioning ignition interlock device. The device shall be set to render the motor vehicle inoperable if the device detects a blood alcohol content of 0.02% or more by weight of alcohol in the person who offers a breath sample. The court may order installation of an ignition interlock device on any motor vehicle that the person owns or operates, the costs of which shall be borne by the person whose license is restricted.
- (8) The court shall not order the secretary of state under subsection (5) to issue a restricted license that would permit a person to operate a truck or truck tractor, including a trailer, that hauls hazardous materials.
- (9) The court shall not order the secretary of state to issue a restricted license unless the person states under oath, and the court finds pursuant to testimony taken in open court or pursuant to statements contained in a sworn affidavit on a form prescribed by the state court administrator that the person is unable to take public transportation to and

from his or her work location, place of alcohol or drug education treatment, court-ordered community service program, or educational institution, and does not have any family member or other individuals able to provide transportation.

(10) The court order issued under subsection (5) and the restricted license shall indicate the permitted destination of the person, the approved route or routes if specified by the court, and the times of travel.

(11) As used in this section, “work location” means, as applicable, either the specific place or places of employment, or the territory or territories regularly visited by the person in pursuance of the person’s occupation, or both.

(12) Immediately upon acceptance by the court of a plea of guilty or nolo contendere or upon entry of a verdict of guilty for a violation of section 41-101(1) or (3), the person shall surrender to the court his or her operator’s or chauffeur’s license or permit. The court shall immediately destroy the license or permit and forward an abstract of conviction with court-ordered license sanctions to the secretary of state. Upon receipt of, and pursuant to the abstract of conviction with court-ordered license sanctions the secretary of state shall suspend or revoke the person’s license and, if ordered by the court and the person is otherwise eligible for a license, issue to the person a restricted license stating the limited driving privileges indicated on the abstract. If the judgment and sentence is appealed to circuit court, the court may, *ex parte*, order the secretary of state to stay the suspension, revocation, or restricted license issued pursuant to this section pending the outcome of the appeal. (Ord. of 3-16-92, § 3)

Sec. 41-104. Implied consent.

(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 state 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 pursuant to section 625c of Act No. 300 of the Public Acts of 1949, as amended, being section 625c of the Michigan Compiled Laws.

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

(3) The test shall be administered as provided in section 41-102(3). (Ord. of 3-16-92, § 4)

Sec. 41-105. Right to refuse chemical tests.

(1) If a person refuses the request of a peace officer to submit to a chemical test offered pursuant to section 41-102(3), 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 be immediately 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 enumerated in 41-101(1) or (3) and that the person had refused to submit to the test upon the request of the peace officer and had been advised on the consequences of the refusal. The form of the report shall be as prescribed and furnished by the secretary of state. (Ord. of 3-16-92, § 5)

Sec. 41-106. Chemical test refused; hearing; failure to request.

(1) If a person refuses to submit to a chemical test pursuant to section 41-105, the peace officer shall immediately notify the person in writing that within fourteen (14) days of the date of the notice the person may request a hearing as provided in section 625f of Act. No. 300 of the Public Acts of 1949, as amended, being section

257.625f of the Michigan Compiled Laws. 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 fourteen (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 hearing. (Ord. of 3-16-92, § 6)

Sec. 41-107. Hearing; failure to request; suspension, revocation, or denial of license, permit, or operating privilege.

- (1) If a person who refuses to submit to a chemical test pursuant to section 41-105 does not request a hearing within fourteen (14) days of the date of notice pursuant to section 41-106, the secretary of state shall suspend or deny the person's operator's or chauffeur's license or permit to drive, or nonresident operating privilege, for a period of six (6) months, or for a second or subsequent refusal within a period of seven (7) years, for one (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 deny to the person the issuance of a license or permit for a period of six (6) months, or for a second or subsequent refusal within a period of seven (7) years, for one (1) year.
- (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. A person shall not order a hearing officer to make a particular finding on any issue enumerated under subdivisions (a) to (d). Not less than five (5) days notice of the hearing shall be mailed to the person requesting the hearing, to the peace officer who filed the report under section 41-105 and to the prosecuting attorney of the county where the arrest was made. 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 (1) adjournment shall be granted to a party and the length of an adjournment shall not exceed fourteen (14) days. A hearing under this subsection shall be scheduled to be held within forty-five (45) days after the date of arrest and shall, 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, be finally adjudicated within seventy-seven (77) days after the date of arrest. 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 41-104(1).
 - (b) Whether the person was placed under arrest for a crime described in section 41-104(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 41-102(3).
- (3) The hearing officer shall make a record of proceedings held pursuant to subsection (2). 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 section 24.286 of the Michigan Compiled Laws. Upon notification of the filing of a petition for judicial review the court in which the petition was filed, not less than ten (10) days before the matter is set for review, the original or a certified copy of the official record of the proceedings [shall be available]. Proceedings at which evidence was presented need not be transcribed and transmitted if the sole reason for review is to determine whether or not 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.

- (4) After a hearing, if the person who requested the hearing does not prevail, the secretary of state shall suspend or deny issuance of a license or driving permit or a nonresident operating privilege of the person for a period of six (6) months, or for second or subsequent refusal within seven (7) years, for one (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 deny to the person the issuance of a license or permit for a period of six (6) months, or for a second or subsequent refusal within seven (7) years, for one (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 section 323. If after the hearing the person who requested the hearing prevails, the peace officer who filed the report under section 41-105 may, with the consent of the prosecuting 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.
- (5) 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. (Ord. of 3-16-92, § 7)

Sec. 41-108. Chemical test refused; confiscation of driver's license or permit; issuance of temporary license or permit.

- (1) If a person refuses a chemical test offered pursuant to section 41-102(3), or submits to the chemical test and the test reveals a blood alcohol content of 0.10% or more by weight of alcohol, 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 that is valid until the criminal charges against the person are dismissed, or until the person pleads guilty or nolo contendere to or is found guilty of those charges. 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 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) Except as provided in subsection (2), destroy the person's driver's license or permit.
- (2) If a person submits to a chemical test offered pursuant to section 41-102(3) that requires the withdrawal of blood 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, upon receipt, the report reveals a blood alcohol content of 0.10% or more by weight of alcohol, the peace officer who requested the person to submit to the test shall immediately comply with subsection (1)(b). If, upon receipt, the report reveals a blood alcohol content of less than 0.10% by weight of alcohol the peace officer who requested the person to submit to the test shall immediately notify the person of the test results, and return the person's license or permit by first class mail to the address given at the time of arrest. (Ord. of 3-16-92, § 8)

Sec. 41-109. Driving while license suspended; 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 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 designed for the parking of motor vehicles, within this state. 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 designed 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. A person who violates this subsection is guilty of a misdemeanor, punishable as follows:
 - (a) If the person's operator's or chauffeur's license has been suspended under MCL 257.312a because that person has failed to answer a citation or has failed to comply with an order or judgment issued pursuant to MCL 257.907, by imprisonment for not more than ninety (90) days, or a fine of not more than one hundred dollars (\$100.00), or both.
 - (b) For a violation, other than a violation punishable under subdivision (a), by imprisonment for not more than ninety (90) days, or by a fine of not more than five hundred dollars (\$500.00), 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 confiscated.
- (2) The secretary of state, upon receiving a record of the conviction or probate court disposition of a person upon a charge of unlawful operation of a motor vehicle while the license of the person is suspended or revoked or of the conviction civil infraction determination, or probate court disposition of a person for a moving violation of the vehicle laws of this state or a political subdivision of this state while the license of the person is suspended or revoked immediately shall extend the period of the first suspension or revocation for an additional like period. This subsection shall apply only if the violation occurs during a suspension of definite length, or if the violation occurs before the person is approved for a license following a revocation.
- (3) The secretary of state, upon receiving a record of conviction, bond forfeiture, or a civil infraction determination of a person upon a charge of unlawful operation of a motor vehicle requiring a class 1, class 3, or class 3 endorsement of vehicle group designation while the endorsement or designation is suspended pursuant to section 319a or 319b, or revoked, immediately shall extend the period of suspension or revocation for an additional like period. This subsection shall apply only if the violation occurs during a suspension or definite length or if the violation occurs before the person is approved for a license following a revocation, or if the person operates a commercial vehicle while disqualified under title XII of Public Law 99-570, 100 Stat. 3207-170.
- (4) If the secretary of state receives records of more than one (1) conviction, civil infraction determination or probate court disposition resulting from the same incident, all of the convictions, civil infraction determinations, or probate court dispositions shall be treated as a single violation for purposes of extending the period of suspension or revocation under subsection (2) or (3).
- (5) 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 driving record of the person 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.
- (6) This section shall 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 the summoning of prompt aid is essential. (Ord. of 3-16-92, § 9)

Sec. 41-110. Annual drunk driving audit.

- (a) The department of state police shall prepare an annual report which shall be designated the Michigan annual drunk driving audit. The report shall contain for each county in the state all of the following information applicable to the immediately preceding calendar year:
- (1) The number of alcohol related motor vehicle accidents resulting in bodily injury, including a breakdown of the number of those injuries occurring per capita of population and per road mile in the county.
 - (2) The number of alcohol related motor vehicle accidents resulting in death, including the breakdown described in subdivision (1).
 - (3) The number of alcohol related motor vehicle accidents, other than those described in subdivisions (1) and (2), including the breakdown described in subdivision (1).
 - (4) The number of arrests made for a violation of subsections 41-101(a) or (b), a local ordinance, or a law of this state substantially corresponding to subsections 41-101(a) or (b).
 - (5) The number of arrests made for a violation of section 41-103, a local ordinance, or a law of this state substantially corresponding to section 41-103.
 - (6) The number of operator's or chauffeur's licenses suspended pursuant to section 41-107 for refusal to submit to a chemical test.
 - (7) The number of convictions of crimes enumerated in subdivisions (4)j and (5).
 - (8) The number of licenses suspended or revoked as a result of convictions of crimes enumerated in subdivisions (4) and (5).
 - (9) The number of restricted licenses issued as a result of convictions of crimes enumerated in subdivisions (4) and (5).
 - (10) The average fine, length of imprisonment, and period of license suspension imposed as part of the sentence for each crime enumerated in subdivisions (4) and (5).
- (b) The secretary of state and the circuit courts, district courts, and local units of government in the state shall cooperate with the department of state police to provide information necessary for the preparation of the report.
- (c) A copy of the report required under this section shall be submitted to the governor, to the secretary of the senate, and to the clerk of the house of representatives on June 1 of each year. (Ord. of 4-25-83)

Secs. 41-111 – 41-120. Reserved.

ARTICLE VII. ABANDONED VEHICLES*

Sec. 41-121. Abandoned vehicle procedures generally.

- (a) As used in this section, "abandoned vehicle" means a vehicle which has remained on public property or private property for a period of forty-eight (48) hours after a police agency or other governmental agency designated by the police agency has affixed a written notice to the vehicle.

- (b) If a vehicle has remained on public or private property for a period of time so that it appears to the police agency to be abandoned, the police agency shall do all of the following:
- (1) Determine if the vehicle has been reported stolen.
 - (2) Affix a written notice to the vehicle. The written notice shall contain the following information:
 - (a) The date and time the notice was affixed.
 - (b) The name and address of the police agency taking the action.
 - (c) The name and badge number of the police officer affixing the notice.
 - (d) The date and time the vehicle may be taken into custody and stored at the owner's expense or scrapped if the vehicle is not removed.
 - (e) The year, make, and vehicle identification number of the vehicle, if available.
- (c) If the vehicle is not removed within forty-eight (48) hours after the date the notice was affixed, the vehicle is deemed abandoned and the police agency shall have the vehicle taken into custody.
- (d) A police agency which has a vehicle taken into custody shall do all of the following:
- (1) Recheck to determine if the vehicle has been reported stolen.
 - (2) Within twenty-four (24) hours after taking the vehicle into custody, enter the vehicle as abandoned into the law enforcement information network.
 - (3) Within seven (7) days after taking the vehicle into custody, send to the registered owner and secured party, as shown by the records of the secretary of state, by first-class mail or personal service, notice that the vehicle has been deemed abandoned. The form for the notice shall be furnished by the secretary of state. Each notice form shall contain the following information:
 - a. The year, make and vehicle identification number of the vehicle, if available.
 - b. The location from which the vehicle was taken into custody.
 - c. The date on which the vehicle was taken into custody.
 - d. The name and address of the police agency which had the vehicle taken into custody.
 - e. The business address of the custodian of the vehicle.
 - f. The procedure to redeem the vehicle.
 - g. The procedure to contest the fact that the vehicle has been deemed abandoned or the reasonableness of the towing fees and daily storage fees.
 - h. A form petition which the owner may file in person or by mail with the specified court which requests a hearing on the police agency's action.
 - i. A warning that the failure to redeem the vehicle or to request a hearing within twenty (20) days after the date of the notice may result in the sale of the vehicle and the termination of all rights of the owner and the secured party to the vehicle or the proceeds of the sale.
- (e) The registered owner may contest the fact that the vehicle has been deemed abandoned or the reasonableness of the towing fees and daily storage fees by requesting a hearing. A request for a hearing shall be made by filing a petition with the court specified in the notice within twenty (20) days after the date of the notice. If the owner requests a hearing, the matter shall be resolved after a hearing conducted pursuant to sections 41-126. An owner who requests a hearing may obtain release of the vehicle by posting a towing and storage bond in an amount equal to the accrued towing and storage fees with the court. The owner of a vehicle who requests a hearing may obtain release of the vehicle by paying the towing and storage fees instead of posting the towing and storage bond. If the

court finds that the vehicle was not properly deemed abandoned, the police agency shall reimburse the owner of the vehicle for the accrued towing and storage fees.

- (f) If the owner does not request a hearing, he or she may obtain the release of the vehicle by paying the accrued charges to the custodian of the vehicle.
- (g) If the owner does not redeem the vehicle or request a hearing within twenty (20) days after the date of the notice, the secured party may obtain the release of the vehicle by paying the accrued charges to the custodian of the vehicle and the police agency for its accrued costs.
- (h) Not less than twenty (20) days after the disposition of the hearing described in subsection (e) or, if a hearing is not requested, not less than twenty (20) days after the date of the notice, the police agency shall offer the vehicle for a sale at a public sale pursuant to section 41-127.
- (i) If the ownership of a vehicle which has been deemed abandoned under this section cannot be determined either because of the condition of the vehicle identification numbers or because a check with the records of the secretary of state does not reveal ownership, the police agency may sell the vehicle at public sale pursuant to section 41-127, not less than thirty (30) days after public notice of the sale has been published. (Ord. of 4-21-83)

Sec. 41-122. Abandoned scrap vehicle procedures.

(a) As used in this section:

(1) "Registered abandoned scrap vehicle" means a vehicle which meets all of the following requirements:

- a. Is on public or private property.
- b. Is seven (7) or more years old.
- c. Is apparently inoperable or is extensively damaged, to the extent that that the cost of repairing the vehicle so that it is operational and safe as required by section 5.71 of the Uniform Traffic code would exceed the fair market value of that vehicle.
- d. Is currently registered in the State of Michigan or displays current year registration plates from another state.
- e. Is not removed within forty-eight (48) hours after a written notice as described in subsection 41-121(b)(2) is affixed to the vehicle.

(2) "Unregistered abandoned scrap vehicle" means a vehicle which meets all of the following requirements:

- a. Is on public or private property.
- b. Is seven (7) or more years old.
- c. Is apparently inoperable or is extensively damaged, to the extent that the cost of repairing the vehicle so that it is operational and safe as required by section 5.71 of the Uniform Traffic Code, would exceed the fair market value of that vehicle.
- d. Is not currently registered in this state and does not display current year registration plates from another state.
- e. Is not removed within forty-eight (48) hours after a written notice as described in subsection 41-121(b)(2) is affixed to the vehicle.

(b) A police agency may have an unregistered abandoned scrap vehicle taken into custody, in which case the police agency shall do all of the following:

(1) Determine if the vehicle has been reported stolen.

(2) Take two (2) photographs of the vehicle.

- (3) Make a report to substantiate the vehicle as an unregistered abandoned scrap vehicle. The report shall contain the following information:
 - a. The year, make, and vehicle identification number, if available.
 - b. The date of abandonment.
 - c. The location of abandonment.
 - d. A detailed listing of the damage or the missing equipment.
 - e. The reporting officer's name and title.
 - f. The location where the vehicle is being held.
- (4) Within twenty-four (24) hours after taking the vehicle into custody, enter the vehicle into the law enforcement information network.
- (c) Within twenty-four (24) hours, excluding Saturday, Sunday, and legal holidays, after taking the vehicle into custody, the police agency shall complete a release form and release the vehicle to the towing service or a used vehicle parts dealer or vehicle scrap metal processor, who shall then transmit that release form to the secretary of state and apply for a certificate of the title or a certificate of scrapping. Upon receipt of the release form and application, the secretary of state shall issue a certificate of title or a certificate of scrapping.
- (d) The release form described in subsection (c) shall be furnished by the secretary of state and shall include a certification executed by the applicable police agency when the abandoned scrap vehicle is released. The certification shall state that the police agency has complied with all the requirements of subsections(b)(2) and (3).
- (e) The secretary of state shall retain the records relating to an abandoned scrap vehicle for not less than two (2) years. The two (2) photographs taken pursuant to subsection (b)(2) shall be retained by the police agency for not less than two (2) years. After the certificate of scrapping has been issued, a certificate of title for the vehicle shall not be issued again.
- (f) A police agency may have a registered abandoned scrap vehicle taken into custody, in which case the police agency shall do all of the following:
 - (1) Determine if the vehicle has been stolen.
 - (2) Take two (2) photographs of the vehicle.
- (3) Make a report to substantiate the vehicle as a registered abandoned scrap vehicle. The report shall contain the following information:
 - a. The year, make and vehicle identification number, if available.
 - b. The date of abandonment.
 - c. The location of abandonment.
 - d. A detailed listing of the damage or the missing equipment.
 - e. The reporting officer's name and title.
 - f. The location where the vehicle is being held.
 - g. The procedure to contest the fact that the vehicle has been deemed abandoned or the reasonableness of the towing fees and daily storage fees.
 - h. A form petition which the owner may file in person or by mail with the specified court which requests a hearing on the police agency's action.
 - i. A warning that the failure to redeem the vehicle or to request a hearing within twenty (20) days after the date of the notice may result in the termination of all rights of the owner and the secured party to the vehicle.
- (g) The registered owner of a registered abandoned scrap vehicle may contest the fact that the vehicle has been deemed abandoned or the reasonableness of the towing fees and daily storage fees by requesting a hearing. A request for a hearing shall be made by filing a petition with the court specified in the notice within twenty (20) days after the date of the notice. If the owner requests a hearing, the matter shall be resolve after a hearing

conducted pursuant to section 41-126. An owner who requests a hearing may obtain release of the vehicle by posting a towing and storage bond with the court in an amount as determined by the court. The owner of a vehicle who requests a hearing may obtain release of the vehicle by paying the towing and storage fees instead of posting the towing and storage bond. If the court finds that the vehicle was not properly deemed abandoned, the police agency shall reimburse the owner of the vehicle for the accrued towing and storage fees.

- (h) If the owner does not request a hearing, he or she may obtain the release of the vehicle by paying the accrued charges to the custodian of the vehicle.
- (i) If the owner does not redeem the vehicle or request a hearing within twenty (20) days after the date of the notice, the secured party may obtain the release of the vehicle by paying the accrued charges to the custodian of the vehicle.
- (j) Not less than twenty (20) days after the disposition of the hearing described in subsection (g), or if a hearing is not requested, not less than twenty (20) days after the date of the notice described in subsection (f)(5), the police agency shall follow the procedures established in subsections (c) to (e). (Ord. of 4-21-83)

Sec. 41-123. Vehicle removed from private property.

- (a) When a vehicle is removed from private property at the direction of a person other than the registered owner of the vehicle or a police agency, the custodian of the vehicle immediately shall notify the police agency from whose jurisdiction the vehicle was towed. The custodian shall supply that information which is necessary for the police agency to enter the vehicle into the law enforcement information network.
- (b) Upon receipt of the notification described in subsection (a), the police agency immediately shall do all of the following:
 - (1) Determine if the vehicle has been reported stolen.
 - (2) Enter the vehicle into the law enforcement information network.
- (c) The owner of the vehicle removed as described in subsection (a) may obtain release of the vehicle by paying the accrued towing and storage fees to the custodian of the vehicle. Upon release of the vehicle, the custodian shall notify the police agency of the disposition of the vehicle.
- (d) If the vehicle described in subsection (a) is not claimed by the owner within seven (7) days after the police agency has been notified by the custodian that it has been taken into custody, the vehicle is deemed abandoned and the procedures prescribed in subsections 41-121(d)(3) to (i) shall apply. (Ord. of 4-21-83)

Sec. 41-124. Vehicle removed by police.

- (a) A police agency or a governmental agency designated by the police agency may provide for the immediate removal of a vehicle from public or private property to a place of safekeeping at the expense of the registered owner of the vehicle in any of the following circumstances:
 - (1) If the vehicle is in such a condition that the continued operation of the vehicle upon the highway would constitute an immediate hazard to the public.
 - (2) If the vehicle is parked or standing upon the highway in such a manner as to create an immediate public hazard or an obstruction of traffic.
 - (3) If a vehicle is parked in a posted tow away zone.
 - (4) If there is reasonable cause to believe that the vehicle or any part of the vehicle is stolen.
 - (5) If the vehicle must be seized to preserve evidence of a crime, or when there is reasonable cause to believe that the vehicle was used in the commission of a crime.

- (6) If removal is necessary in the interest of public safety because of fire, flood, storm, snow, natural or man-made disaster, or other emergency.
 - (7) If the vehicle is hampering the use of private property by the owner or person in charge of that property or is parked in a manner which impedes the movement of another vehicle.
- (b) A police agency which authorizes the removal of a vehicle under subsection (a) shall do all of the following:
- (1) Check to determine if the vehicle has been reported stolen.
 - (2) Within twenty-four (24) hours after removing the vehicle, enter the vehicle into the law enforcement information network if the vehicle has been redeemed. This subdivision does not apply to a vehicle that is removed from the scene of a motor vehicle traffic accident.
 - (3) If the vehicle has not been redeemed within ten (10) days after moving the vehicle, send to the registered owner and the secured party as shown by the records of the secretary of state, by first class mail or personal service a notice that the vehicle has been removed; however, if the police agency informs the owner or operator of the vehicle of the removal and the location of the vehicle within twenty-four (24) hours after the removal, and if the vehicle has not been redeemed within thirty (30) days and upon complaint from the towing service, the police agency shall send the notice within thirty (30) days after the removal. The notice shall be by a form furnished by the secretary of state. The notice form shall contain the following information:
 - a. The year, make, and vehicle identification number.
 - b. The location from which the vehicle was taken into custody.
 - c. The date on which the vehicle was taken into custody.
 - d. The name and address of the police agency which had the vehicle taken into custody.
 - e. The location where the vehicle is being held.
 - f. The procedure to redeem the vehicle.
 - g. The procedure to contest the fact that the vehicle was properly removed or the reasonableness of the towing and daily storage fees.
 - h. A form petition which the owner may file in person or by mail with the specified court which requests a hearing on the police agency's action.
 - i. A warning that the failure to redeem the vehicle or to request a hearing within twenty (20) days after the date of the notice may result in the sale of the vehicle and the termination of all rights of the owner and the secured party to the vehicle or the proceeds of the sale or to both the vehicle and the proceeds.
- (c) The registered owner may contest the fact that the vehicle was properly removed or the reasonableness of the towing fees and daily storage fees by requesting a hearing. A request for a hearing shall be made by filing a petition with the court specified in the notice within twenty (20) days after the date of the notice. If the owner requests a hearing, the matter shall be resolved after a hearing conducted pursuant to section 41-126. An owner who requests a hearing may obtain release of the vehicle by posting a towing and storage bond with the court in an amount equal to the accrued towing and storage fees. The owner of a vehicle who requests a hearing may obtain release of the vehicle by paying the towing and storage fees instead of posting the towing and storage bond. If the court finds that the vehicle was not properly removed, the police agency shall reimburse the owner of the vehicle for the accrued towing and storage fees.
- (d) If the owner does not request a hearing, he or she may obtain the release of the vehicle by paying the accrued charge to the custodian of the vehicle.
- (e) If the owner does not redeem the vehicle or request a hearing within twenty (20) days, the secured party may obtain the release of the vehicle by paying the accrued charges to the custodian of the vehicle prior to the date of the sale.

- (f) Not less than twenty (20) days after the deposition of the hearing described in subsection (c), or if a hearing is not requested, not less than twenty (20) days after the date of the notice described in subsection (b)(3), the police agency shall offer the vehicle for sale at a public sale unless the vehicle is redeemed. The public sale shall be held pursuant to section 41-127.
- (g) If the ownership of the vehicle which has been removed under this section cannot be determined either because of the condition of the vehicle identification numbers or because a check with the records of the secretary of state does not reveal ownership, the police agency may sell the vehicle at public sale pursuant to section 41-127, not less than thirty (30) days after public notice of the sale has been published. (Ord. of 4-21-83)

Sec. 41-125. Jurisdiction of court.

- (a) The following courts shall have jurisdiction to determine if a police agency has acted properly in processing a vehicle under sections 41-121, 41-122(f) to (j), 41-123 or 41-124;
 - (1) The district court.
 - (2) A municipal court.
 - (3) The common pleas court of the City of Detroit.
- (b) The court specified in the notice prescribed in sections 41-121(d)(3), 41-122(f), 41-123(d) or 41-124(b)(3) shall be the court which has territorial jurisdiction at the location from where the vehicle was removed or deemed abandoned. Venue in the district court shall be governed by section 8312 or Act. No. 236 of the Public Acts of 1961, as amended, being section 600.8312 of the Michigan Compiled Laws.
- (c) If the owner fails to pay the accrued towing and storage fees, the towing and storage bond posted with the court to secure release of the vehicle under sections 41-121j through 41-123 or 41-124 shall be used to pay the towing and storage fees. (Ord. of 4-21-83)

Sec. 41-126. Duties of court.

- (a) Upon receipt of a petition prescribed in sections 41-121 through 41-123 or 41-124, signed by the owner of the vehicle which has been taken into custody, the court shall do both of the following:
 - (1) Schedule a hearing within thirty (30) days for the purpose of determining whether the police agency acted properly.
 - (2) Notify the owner and the police agency of the time and place of the hearing.
- (b) At the hearing specified in subsection (a) the police agency shall have the burden of showing by a preponderance of the evidence that it has complied with the requirements of this act in processing the abandoned vehicle or vehicle removed pursuant to section 41-124.
- (c) After the hearing the court shall make a decision which shall include one or more of the following:
 - (1) A finding that the police agency complied with the procedures established for the processing of an abandoned vehicle or a vehicle removed under section 41-124, and an order providing a period of twenty (20) days after the decision for the owner to redeem the vehicle. If the owner does not redeem the vehicle within twenty (20) days, the police agency shall dispose of the vehicle pursuant to section 41-122 or 41-127.
 - (2) A finding that the police agency did not comply with the procedures established for the processing of an abandoned vehicle or a vehicle removed pursuant to section 41-124. After making such a finding, the court shall issue an order directing that the vehicle immediately be released to the owner, and that the police agency is responsible for the accrued towing and storage charges.

- (3) A finding that the towing and daily storage fees were reasonable.
- (4) A finding that the towing and daily storage fees were unreasonable and issue an order directing an appropriate reduction. (Ord. of 4-21-83)

Sec. 41-127. Public sale.

- (a) A public sale for a vehicle which has been deemed abandoned under section 41-121 or 41-123 or removed under section 41-124 shall be conducted in the following manner:
 - (1) It shall be under the control of the agent of the police agency.
 - (2) It shall be open to the public and consist of open auction bidding or bidding by sealed bids. If sealed bids are received, the person submitting the bids shall receive a receipt for the bid from the police agency or agent of the police agency.
 - (3) Except as provided by subsections 41-121(i) and 41-124(g), it shall be held not less than five (5) days after public notice of the sale has been published.
 - (4) The public notice shall be published at least one in a newspaper having a general circulation within the county in which the vehicle was abandoned. The public notice shall give a description of the vehicle for sale and shall state the time, date, and location of the sale.
- (b) The money received from the public sale of the vehicle shall be applied in the following order of priority:
 - (1) Towing and storage charges.
 - (2) Expenses incurred by the police agency.
 - (3) To the secured party, if any, in the amount of the debt outstanding on the vehicle.
 - (4) Remainder to the owner. A reasonable attempt shall be made to mail the remainder to the registered owner. If delivery of the remainder cannot be accomplished, the remainder shall become the property of the unit of government that the police agency represents.
- (c) If there are no bidders on the vehicle, the police agency may do one of the following:
 - (1) Turn the vehicle over to the towing firm to satisfy charges against the vehicle.
 - (2) Obtain title to the vehicle for the police agency or the unit of government the police agency represents, by doing the following:
 - a. Paying the towing and storage charges.
 - b. Applying for title to the vehicle.
 - (3) Hold another public sale pursuant to subsection (a).
- (d) A person who acquires ownership of a vehicle under subsection (a) or (c), which vehicle has been designated as a distressed vehicle, shall make application for a salvage certificate of title within fifteen (15) days after obtaining the vehicle.
- (e) Upon disposition of the vehicle, the police agency shall cancel the entry into the law enforcement information network. (Ord. of 4-21-83)

