

HOUSE BILL No. 5085

August 10, 2005, Introduced by Reps. Lemmons, III and Lemmons, Jr. and referred to the Committee on Transportation.

A bill to amend 1949 PA 300, entitled "Michigan vehicle code," by amending section 907 (MCL 257.907), as amended by 2005 PA 1, and by adding section 682c.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 **SEC. 682C. (1) A PERSON SHALL NOT SMOKE A TOBACCO PRODUCT**
2 **WHILE OPERATING A MOTOR VEHICLE IF A MINOR IS AN OCCUPANT OF THE**
3 **MOTOR VEHICLE. A PERSON WHO VIOLATES THIS SUBSECTION IS RESPONSIBLE**
4 **FOR A CIVIL INFRACTION.**

5 **(2) A PERSON SHALL NOT EJECT A LIGHTED OR FORMERLY LIGHTED**
6 **TOBACCO PRODUCT FROM A MOTOR VEHICLE. A PERSON WHO VIOLATES THIS**
7 **SUBSECTION IS RESPONSIBLE FOR A CIVIL INFRACTION.**

8 **(3) AS USED IN THIS SECTION:**

1 (A) "MINOR" MEANS AN INDIVIDUAL LESS THAN 18 YEARS OF AGE.

2 (B) "TOBACCO PRODUCT" MEANS A CIGAR, A CIGARETTE, OR PIPE
3 TOBACCO.

4 Sec. 907. (1) A violation of this act, or a local ordinance
5 substantially corresponding to a provision of this act, that is
6 designated a civil infraction shall not be considered a lesser
7 included offense of a criminal offense.

8 (2) If a person is determined pursuant to sections 741 to 750
9 to be responsible or responsible "with explanation" for a civil
10 infraction under this act or a local ordinance substantially
11 corresponding to a provision of this act, the judge or district
12 court magistrate may order the person to pay a civil fine of not
13 more than \$100.00 and costs as provided in subsection (4). However,
14 for a violation of section 674(1)(s) or a local ordinance
15 substantially corresponding to section 674(1)(s), the person shall
16 be ordered to pay costs as provided in subsection (4) and a civil
17 fine of not less than \$100.00 or more than \$250.00. For a violation
18 of section 328, the civil fine ordered under this subsection shall
19 be not more than \$50.00. For a violation of section 710d, the civil
20 fine ordered under this subsection shall not exceed \$10.00. For a
21 violation of section 710e, the civil fine and court costs ordered
22 under this subsection shall be \$25.00. For a violation of section
23 682 or a local ordinance substantially corresponding to section
24 682, the person shall be ordered to pay costs as provided in
25 subsection (4) and a civil fine of not less than \$100.00 or more
26 than \$500.00. For a violation of section 240, the civil fine
27 ordered under this subsection shall be \$15.00. For a violation of

1 section 252a(1), the civil fine ordered under this subsection shall
2 be \$50.00. For a violation of section 676a(3), the civil fine
3 ordered under this section shall be not more than \$10.00. **FOR A**
4 **VIOLATION OF SECTION 682C, THE CIVIL FINE ORDERED UNDER THIS**
5 **SUBSECTION SHALL BE \$800.00.** Permission may be granted for payment
6 of a civil fine and costs to be made within a specified period of
7 time or in specified installments, but unless permission is
8 included in the order or judgment, the civil fine and costs shall
9 be payable immediately.

10 (3) Except as provided in this subsection, if a person is
11 determined to be responsible or responsible "with explanation" for
12 a civil infraction under this act or a local ordinance
13 substantially corresponding to a provision of this act while
14 driving a commercial motor vehicle, he or she shall be ordered to
15 pay costs as provided in subsection (4) and a civil fine of not
16 more than \$250.00. If a person is determined to be responsible or
17 responsible "with explanation" for a civil infraction under section
18 319g or a local ordinance substantially corresponding to section
19 319g, that person shall be ordered to pay costs as provided in
20 subsection (4) and a civil fine of not more than \$10,000.00.

21 (4) If a civil fine is ordered under subsection (2) or (3),
22 the judge or district court magistrate shall summarily tax and
23 determine the costs of the action, which are not limited to the
24 costs taxable in ordinary civil actions, and may include all
25 expenses, direct and indirect, to which the plaintiff has been put
26 in connection with the civil infraction, up to the entry of
27 judgment. Costs shall not be ordered in excess of \$100.00. A civil

1 fine ordered under subsection (2) or (3) shall not be waived unless
2 costs ordered under this subsection are waived. Except as otherwise
3 provided by law, costs are payable to the general fund of the
4 plaintiff.

5 (5) In addition to a civil fine and costs ordered under
6 subsection (2) or (3) and subsection (4) and the justice system
7 assessment ordered under subsection (14), the judge or district
8 court magistrate may order the person to attend and complete a
9 program of treatment, education, or rehabilitation.

10 (6) A district court magistrate shall impose the sanctions
11 permitted under subsections (2), (3), and (5) only to the extent
12 expressly authorized by the chief judge or only judge of the
13 district court district.

14 (7) Each district of the district court and each municipal
15 court may establish a schedule of civil fines, costs, and
16 assessments to be imposed for civil infractions that occur within
17 the respective district or city. If a schedule is established, it
18 shall be prominently posted and readily available for public
19 inspection. A schedule need not include all violations that are
20 designated by law or ordinance as civil infractions. A schedule may
21 exclude cases on the basis of a defendant's prior record of civil
22 infractions or traffic offenses, or a combination of civil
23 infractions and traffic offenses.

24 (8) The state court administrator shall annually publish and
25 distribute to each district and court a recommended range of civil
26 fines and costs for first-time civil infractions. This
27 recommendation is not binding upon the courts having jurisdiction

1 over civil infractions but is intended to act as a normative guide
2 for judges and district court magistrates and a basis for public
3 evaluation of disparities in the imposition of civil fines and
4 costs throughout the state.

5 (9) If a person has received a civil infraction citation for
6 defective safety equipment on a vehicle under section 683, the
7 court shall waive a civil fine, costs, and assessments upon receipt
8 of certification by a law enforcement agency that repair of the
9 defective equipment was made before the appearance date on the
10 citation.

11 (10) A default in the payment of a civil fine or costs ordered
12 under subsection (2), (3), or (4) or a justice system assessment
13 ordered under subsection (14), or an installment of the fine,
14 costs, or assessment, may be collected by a means authorized for
15 the enforcement of a judgment under chapter 40 of the revised
16 judicature act of 1961, 1961 PA 236, MCL 600.4001 to 600.4065, or
17 under chapter 60 of the revised judicature act of 1961, 1961 PA
18 236, MCL 600.6001 to 600.6098.

19 (11) If a person fails to comply with an order or judgment
20 issued pursuant to this section within the time prescribed by the
21 court, the driver's license of that person shall be suspended
22 pursuant to section 321a until full compliance with that order or
23 judgment occurs. In addition to this suspension, the court may also
24 proceed under section 908.

25 (12) The court shall waive any civil fine, cost, or assessment
26 against a person who received a civil infraction citation for a
27 violation of section 710d if the person, before the appearance date

1 on the citation, supplies the court with evidence of acquisition,
2 purchase, or rental of a child seating system meeting the
3 requirements of section 710d.

4 (13) Until October 1, 2003, in addition to any civil fines and
5 costs ordered to be paid under this section, the judge or district
6 court magistrate shall levy an assessment of \$5.00 for each civil
7 infraction determination, except for a parking violation or a
8 violation for which the total fine and costs imposed are \$10.00 or
9 less. An assessment paid before October 1, 2003 shall be
10 transmitted by the clerk of the court to the state treasurer to be
11 deposited into the Michigan justice training fund. An assessment
12 ordered before October 1, 2003 but collected on or after October 1,
13 2003 shall be transmitted by the clerk of the court to the state
14 treasurer for deposit in the justice system fund created in section
15 181 of the revised judicature act of 1961, 1961 PA 236, MCL
16 600.181. An assessment levied under this subsection is not a civil
17 fine for purposes of section 909.

18 (14) Effective October 1, 2003, in addition to any civil fines
19 or costs ordered to be paid under this section, the judge or
20 district court magistrate shall order the defendant to pay a
21 justice system assessment of \$40.00 for each civil infraction
22 determination, except for a parking violation or a violation for
23 which the total fine and costs imposed are \$10.00 or less. Upon
24 payment of the assessment, the clerk of the court shall transmit
25 the assessment collected to the state treasury to be deposited into
26 the justice system fund created in section 181 of the revised
27 judicature act of 1961, 1961 PA 236, MCL 600.181. An assessment

1 levied under this subsection is not a civil fine for purposes of
2 section 909.

3 (15) If a person has received a citation for a violation of
4 section 223, the court shall waive any civil fine, costs, and
5 assessment, upon receipt of certification by a law enforcement
6 agency that the person, before the appearance date on the citation,
7 produced a valid registration certificate that was valid on the
8 date the violation of section 223 occurred.

9 (16) If a person has received a citation for a violation of
10 section 328(1) for failing to produce a certificate of insurance
11 pursuant to section 328(2), the court may waive the fee described
12 in section 328(3)(c) and shall waive any fine, costs, and any other
13 fee or assessment otherwise authorized under this act upon receipt
14 of verification by the court that the person, before the appearance
15 date on the citation, produced valid proof of insurance that was in
16 effect at the time the violation of section 328(1) occurred.
17 Insurance obtained subsequent to the time of the violation does not
18 make the person eligible for a waiver under this subsection.