

HOUSE BILL No. 5483

December 6, 2005, Introduced by Reps. Pearce, Jones, Ball, Schuitmaker, Accavitti, LaJoy, Kooiman, Hildenbrand, Gaffney, Mortimer and David Law and referred to the Committee on Judiciary.

A bill to amend 1949 PA 300, entitled "Michigan vehicle code," by amending sections 320a and 907 (MCL 257.320a and 257.907), section 320a as amended by 2004 PA 495 and section 907 as amended by 2005 PA 1, and by adding section 602b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 320a. (1) Until October 1, 2005, within 10 days after the
2 receipt of a properly prepared abstract from this state or another
3 state, or, beginning October 1, 2005, within 5 days after the
4 receipt of a properly prepared abstract from this state or another
5 state, the secretary of state shall record the date of conviction,
6 civil infraction determination, or probate court disposition, and
7 the number of points for each, based on the following formula,
8 except as otherwise provided in this section and section 629c:

- 1 (a) Manslaughter, negligent homicide, or a felony
2 resulting from the operation of a motor vehicle, ORV, or
3 snowmobile 6 points
- 4 (b) A violation of section 601b(2) or (3), 601c(1) or
5 (2), or 653a(3) or (4) 6 points
- 6 (c) A violation of section 625(1), (4), (5), (7), or
7 (8), section 81134 or 82127(1) of the natural resources
8 and environmental protection act, 1994 PA 451,
9 MCL 324.81134 and 324.82127, or a law or ordinance
10 substantially corresponding to section 625(1), (4), (5),
11 (7), or (8) or section 81134 or 82127(1) of the natural
12 resources and environmental protection act, 1994 PA 451,
13 MCL 324.81134 and 324.82127 6 points
- 14 (d) Failing to stop and disclose identity at the scene
15 of an accident when required by law 6 points
- 16 (e) Operating a motor vehicle in violation of section
17 626 6 points
- 18 (f) Fleeing or eluding an officer 6 points
- 19 (g) A violation of section 627(9) pertaining to speed
20 in a work zone described in that section by exceeding the
21 lawful maximum by more than 15 miles per hour 5 points
- 22 (h) A violation of any law other than the law described
23 in subdivision (g) or ordinance pertaining to speed by
24 exceeding the lawful maximum by more than 15 miles per
25 hour 4 points
- 26 (i) A violation of section 625(3) or (6), section 81135
27 or 82127(3) of the natural resources and environmental

- 1 protection act, 1994 PA 451, MCL 324.81135 and 324.82127,
- 2 or a law or ordinance substantially corresponding to
- 3 section 625(3) or (6) or section 81135 or 82127(3) of the
- 4 natural resources and environmental protection act, 1994
- 5 PA 451, MCL 324.81135 and 324.82127 4 points
- 6 (j) A violation of section 626a or a law or ordinance
- 7 substantially corresponding to section 626a 4 points
- 8 (k) A violation of section 653a(2) 4 points
- 9 (l) A violation of section 627(9) pertaining to speed
- 10 in a work zone described in that section by exceeding the
- 11 lawful maximum by more than 10 but not more than 15 miles
- 12 per hour 4 points
- 13 (m) A violation of any law other than the law described
- 14 in subdivision (l) or ordinance pertaining to speed by
- 15 exceeding the lawful maximum by more than 10 but not more
- 16 than 15 miles per hour or careless driving in violation
- 17 of section 626b or a law or ordinance substantially
- 18 corresponding to section 626b 3 points
- 19 (n) A violation of section 627(9) pertaining to speed
- 20 in a work zone described in that section by exceeding the
- 21 lawful maximum by 10 miles per hour or less 3 points
- 22 (o) A violation of any law other than the law described
- 23 in subdivision (n) or ordinance pertaining to speed by
- 24 exceeding the lawful maximum by 10 miles per hour or less . 2 points
- 25 (p) Disobeying a traffic signal or stop sign, or
- 26 improper passing 3 points
- 27 (q) A violation of section 624a, 624b, or a law or

1 ordinance substantially corresponding to section 624a
2 or 624b 2 points

3 (r) A violation of section 310e(4) or (6) or a law or
4 ordinance substantially corresponding to section 310e(4)
5 or (6) 2 points

6 (s) All other moving violations pertaining to the
7 operation of motor vehicles reported under this section ... 2 points

8 (t) A refusal by a person less than 21 years of age to
9 submit to a preliminary breath test required by a peace
10 officer under section 625a 2 points

11 **(2) THE SECRETARY OF STATE SHALL ADD 1 POINT TO EACH**
12 **CONVICTION, CIVIL INFRACTION DETERMINATION, OR PROBATE COURT**
13 **DISPOSITION IF THE CITATION INDICATES THAT THE USE OF A CELLULAR**
14 **TELEPHONE CONTRIBUTED TO THE CAUSE OF THE VIOLATION.**

15 (3) ~~-(2)-~~ Points shall not be entered for a violation of
16 section 310e(14), 311, 625m, 658, 717, 719, 719a, or 723.

17 (4) ~~-(3)-~~ Points shall not be entered for bond forfeitures.

18 (5) ~~-(4)-~~ Points shall not be entered for overweight loads or
19 for defective equipment.

20 (6) ~~-(5)-~~ If more than 1 conviction, civil infraction
21 determination, or probate court disposition results from the same
22 incident, points shall be entered only for the violation that
23 receives the highest number of points under this section.

24 (7) ~~-(6)-~~ If a person has accumulated 9 points as provided in
25 this section, the secretary of state may call the person in for an
26 interview as to the person's driving ability and record after due
27 notice as to time and place of the interview. If the person fails

1 to appear as provided in this subsection, the secretary of state
2 shall add 3 points to the person's record.

3 (8) ~~-(7)-~~ If a person violates a speed restriction established
4 by an executive order issued during a state of energy emergency as
5 provided by 1982 PA 191, MCL 10.81 to 10.89, the secretary of state
6 shall enter points for the violation pursuant to subsection (1).

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

12 (10) ~~-(9)-~~ If a Michigan driver commits a violation in another
13 state that would be a civil infraction if committed in Michigan,
14 and a conviction results solely because of the failure of the
15 Michigan driver to appear in that state to contest the violation,
16 upon receipt of the abstract of conviction by the secretary of
17 state, the violation shall be noted on the driver's record, but no
18 points shall be assessed against his or her driver's license.

19 **SEC. 602B. (1) AN INDIVIDUAL WHO IS ISSUED A TEMPORARY**
20 **INSTRUCTION PERMIT OR A LEVEL 1 OR 2 GRADUATED LICENSING STATUS TO**
21 **OPERATE A MOTOR VEHICLE SHALL NOT, WHILE OPERATING A MOTOR VEHICLE,**
22 **USE A HANDHELD CELLULAR TELEPHONE.**

23 **(2) AN INDIVIDUAL WHO VIOLATES SUBSECTION (1) IS RESPONSIBLE**
24 **FOR A CIVIL INFRACTION.**

25 **(3) NOT LATER THAN OCTOBER 1, 2005, THE DEPARTMENT OF STATE**
26 **POLICE SHALL REPORT TO THE SENATE AND HOUSE STANDING COMMITTEES ON**
27 **TRANSPORTATION CONCERNING WHETHER IN THE INTEREST OF PUBLIC SAFETY**

1 IT WOULD BE ADVISABLE TO LIMIT DRIVERS TO THE USE OF HANDS-FREE
2 MODELS OF CELLULAR TELEPHONES WHILE OPERATING A MOTOR VEHICLE ON
3 THE HIGHWAYS OF THIS STATE.

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 **IF IT IS DETERMINED THAT THE USE OF A CELLULAR TELEPHONE**
15 **CONTRIBUTED TO THE CAUSE OF THE VIOLATION, THE CIVIL FINE ORDERED**
16 **UNDER THIS SECTION SHALL BE INCREASED BY \$25.00.** However, for a
17 violation of section 674(1)(s) or a local ordinance substantially
18 corresponding to section 674(1)(s), the person shall be ordered to
19 pay costs as provided in subsection (4) and a civil fine of not
20 less than \$100.00 or more than \$250.00. For a violation of section
21 328, the civil fine ordered under this subsection shall be not more
22 than \$50.00. For a violation of section 710d, the civil fine
23 ordered under this subsection shall not exceed \$10.00. For a
24 violation of section 710e, the civil fine and court costs ordered
25 under this subsection shall be \$25.00. For a violation of section
26 682 or a local ordinance substantially corresponding to section
27 682, the person shall be ordered to pay costs as provided in

1 subsection (4) and a civil fine of not less than \$100.00 or more
2 than \$500.00. For a violation of section 240, the civil fine
3 ordered under this subsection shall be \$15.00. For a violation of
4 section 252a(1), the civil fine ordered under this subsection shall
5 be \$50.00. For a violation of section 676a(3), the civil fine
6 ordered under this section shall be not more than \$10.00.

7 Permission may be granted for payment of a civil fine and costs to
8 be made within a specified period of time or in specified
9 installments, but unless permission is included in the order or
10 judgment, the civil fine and costs shall be payable immediately.

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

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

1 judgment. Costs shall not be ordered in excess of \$100.00. A civil
2 fine ordered under subsection (2) or (3) shall not be waived unless
3 costs ordered under this subsection are waived. Except as otherwise
4 provided by law, costs are payable to the general fund of the
5 plaintiff.

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

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

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

25 (8) The state court administrator shall annually publish and
26 distribute to each district and court a recommended range of civil
27 fines and costs for first-time civil infractions. This

1 recommendation is not binding upon the courts having jurisdiction
2 over civil infractions but is intended to act as a normative guide
3 for judges and district court magistrates and a basis for public
4 evaluation of disparities in the imposition of civil fines and
5 costs throughout the state.

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

12 (10) A default in the payment of a civil fine or costs ordered
13 under subsection (2), (3), or (4) or a justice system assessment
14 ordered under subsection (14), or an installment of the fine,
15 costs, or assessment, may be collected by a means authorized for
16 the enforcement of a judgment under chapter 40 of the revised
17 judicature act of 1961, 1961 PA 236, MCL 600.4001 to 600.4065, or
18 under chapter 60 of the revised judicature act of 1961, 1961 PA
19 236, MCL 600.6001 to 600.6098.

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

26 (12) The court shall waive any civil fine, cost, or assessment
27 against a person who received a civil infraction citation for a

1 violation of section 710d if the person, before the appearance date
2 on the citation, supplies the court with evidence of acquisition,
3 purchase, or rental of a child seating system meeting the
4 requirements of section 710d.

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

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

1 judicature act of 1961, 1961 PA 236, MCL 600.181. An assessment
2 levied under this subsection is not a civil fine for purposes of
3 section 909.

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

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

20 **(17) THE SECRETARY OF STATE, IN CONJUNCTION WITH THE**
21 **DEPARTMENT OF STATE POLICE, SHALL REPORT TO THE SENATE AND HOUSE**
22 **STANDING COMMITTEES ON TRANSPORTATION 2 YEARS AFTER THE EFFECTIVE**
23 **DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBSECTION ON THE NUMBER**
24 **OF CASES IN WHICH A CELLULAR TELEPHONE CONTRIBUTED TO A VIOLATION**
25 **OF THIS ACT FOR WHICH A FINE WAS IMPOSED UNDER THIS SECTION.**