

HOUSE BILL No. 5101

September 25, 2001, Introduced by Rep. DeWeese and referred to the Committee on Transportation.

A bill to amend 1949 PA 300, entitled "Michigan vehicle code," by amending sections 622a, 732, and 743 (MCL 257.622a, 257.732, and 257.743), section 622a as added by 1998 PA 340, section 732 as amended by 2001 PA 103, and section 743 as amended by 1988 PA 346.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 622a. (1) The crash report form required by this chap-
2 ter shall include, when applicable, whether an ignition interlock
3 device was installed in a vehicle involved in a crash OR WHETHER
4 A CELLULAR PHONE WAS IN USE BY 1 OR MORE OF THE DRIVERS AT THE
5 TIME OF THE CRASH.

6 (2) THE DEPARTMENT OF STATE POLICE SHALL BE RESPONSIBLE FOR
7 COMPILING SEPARATE STATISTICS ON THE AMOUNT OF CELLULAR PHONE

1 USAGE OF DRIVERS UNDER THIS SECTION AND FROM THE CITATION FORM
2 ISSUED BY POLICE OFFICERS UNDER SECTION 743.

3 Sec. 732. (1) Each municipal judge and each clerk of a
4 court of record shall keep a full record of every case in which a
5 person is charged with or cited for a violation of this act or a
6 local ordinance substantially corresponding to this act regulat-
7 ing the operation of vehicles on highways and with those offenses
8 pertaining to the operation of ORVs or snowmobiles for which
9 points are assessed under section 320a(1)(c) or (h). Except as
10 provided in subsection (15), the municipal judge or clerk of the
11 court of record shall prepare and forward to the secretary of
12 state an abstract of the court record as follows:

13 (a) Within 14 days after a conviction, forfeiture of bail,
14 or entry of a civil infraction determination or default judgment
15 upon a charge of or citation for violating or attempting to vio-
16 late this act or a local ordinance substantially corresponding to
17 this act regulating the operation of vehicles on highways.

18 (b) Immediately for each case charging a violation of
19 section 625(1), (3), (4), (5), (6), or (7) or section 625m or a
20 local ordinance substantially corresponding to section 625(1),
21 (3), or (6) or section 625m in which the charge is dismissed or
22 the defendant is acquitted.

23 (c) Immediately for each case charging a violation of sec-
24 tion 82127(1) or (3), 81134, or 81135 of the natural resources
25 and environmental protection act, 1994 PA 451, MCL 324.82127,
26 324.81134, and 324.81135, or a local ordinance substantially
27 corresponding to those sections.

1 (2) If a city or village department, bureau, or person is
2 authorized to accept a payment of money as a settlement for a
3 violation of a local ordinance substantially corresponding to
4 this act, the city or village department, bureau, or person shall
5 send a full report of each case in which a person pays any amount
6 of money to the city or village department, bureau, or person to
7 the secretary of state upon a form prescribed by the secretary of
8 state.

9 (3) The abstract or report required under this section shall
10 be made upon a form furnished by the secretary of state. An
11 abstract shall be certified by signature, stamp, or facsimile
12 signature of the person required to prepare the abstract as
13 correct. An abstract or report shall include all of the
14 following:

15 (a) The name, address, and date of birth of the person
16 charged or cited.

17 (b) The number of the person's operator's or chauffeur's
18 license, if any.

19 (c) The date and nature of the violation.

20 (d) The type of vehicle driven at the time of the violation
21 and, if the vehicle is a commercial motor vehicle, that vehicle's
22 group designation and indorsement classification.

23 (e) The date of the conviction, finding, forfeiture, judg-
24 ment, or civil infraction determination.

25 (f) Whether bail was forfeited.

26 (g) Any license restriction, suspension, or denial ordered
27 by the court as provided by law.

1 (h) The vehicle identification number and registration plate
2 number of all vehicles that are ordered immobilized or
3 forfeited.

4 (i) Other information considered necessary to the secretary
5 of state.

6 (4) The clerk of the court also shall forward an abstract of
7 the court record to the secretary of state upon a person's con-
8 viction involving any of the following:

9 (a) A violation of section 413, 414, or 479a of the Michigan
10 penal code, 1931 PA 328, MCL 750.413, 750.414, and 750.479a.

11 (b) A violation of section 1 of 1931 PA 214, MCL 752.191.

12 (c) Negligent homicide, manslaughter, or murder resulting
13 from the operation of a vehicle.

14 (d) A violation of section 703 of the Michigan liquor con-
15 trol code of 1998, 1998 PA 58, MCL 436.1703, or a local ordinance
16 substantially corresponding to that section.

17 (e) An attempt to violate, a conspiracy to violate, or a
18 violation of part 74 or section 17766a of the public health code,
19 1978 PA 368, MCL 333.7401 to 333.7461 and 333.17766a, or a local
20 ordinance that prohibits conduct prohibited under part 74 or sec-
21 tion 17766a of the public health code, 1978 PA 368, MCL 333.7401
22 to 333.7461 and 333.17766a, unless the convicted person is sen-
23 tenced to life imprisonment or a minimum term of imprisonment
24 that exceeds 1 year for the offense.

25 (f) An attempt to commit an offense described in subdivi-
26 sions (a) to (d).

1 (5) As used in subsections (6) to (8), "felony in which a
2 motor vehicle was used" means a felony during the commission of
3 which the person operated a motor vehicle and while operating the
4 vehicle presented real or potential harm to persons or property
5 and 1 or more of the following circumstances existed:

6 (a) The vehicle was used as an instrument of the felony.

7 (b) The vehicle was used to transport a victim of the
8 felony.

9 (c) The vehicle was used to flee the scene of the felony.

10 (d) The vehicle was necessary for the commission of the
11 felony.

12 (6) If a person is charged with a felony in which a motor
13 vehicle was used, other than a felony specified in subsection (4)
14 or section 319, the prosecuting attorney shall include the fol-
15 lowing statement on the complaint and information filed in dis-
16 trict or circuit court:

17 "You are charged with the commission of a felony in which a
18 motor vehicle was used. If you are convicted and the judge finds
19 that the conviction is for a felony in which a motor vehicle was
20 used, as defined in section 319 of the Michigan vehicle code,
21 1949 PA 300, MCL 257.319, your driver's license shall be sus-
22 pended by the secretary of state."

23 (7) If a juvenile is accused of an act, the nature of which
24 constitutes a felony in which a motor vehicle was used, other
25 than a felony specified in subsection (4) or section 319, the
26 prosecuting attorney or family division of circuit court shall

1 include the following statement on the petition filed in the
2 court:

3 "You are accused of an act the nature of which constitutes a
4 felony in which a motor vehicle was used. If the accusation is
5 found to be true and the judge or referee finds that the nature
6 of the act constitutes a felony in which a motor vehicle was
7 used, as defined in section 319 of the Michigan vehicle code,
8 1949 PA 300, MCL 257.319, your driver's license shall be sus-
9 pended by the secretary of state.".

10 (8) If the court determines as part of the sentence or dis-
11 position that the felony for which the person was convicted or
12 adjudicated and with respect to which notice was given under sub-
13 section (6) or (7) is a felony in which a motor vehicle was used,
14 the clerk of the court shall forward an abstract of the court
15 record of that conviction to the secretary of state.

16 (9) As used in subsections (10) and (11), "felony in which a
17 commercial motor vehicle was used" means a felony during the com-
18 mission of which the person operated a commercial motor vehicle
19 and while the person was operating the vehicle 1 or more of the
20 following circumstances existed:

21 (a) The vehicle was used as an instrument of the felony.

22 (b) The vehicle was used to transport a victim of the
23 felony.

24 (c) The vehicle was used to flee the scene of the felony.

25 (d) The vehicle was necessary for the commission of the
26 felony.

1 (10) If a person is charged with a felony in which a
2 commercial motor vehicle was used and for which a vehicle group
3 designation on a license is subject to suspension or revocation
4 under section 319b(1)(c)(iii), 319b(1)(d), or 319b(1)(e)(iii), or
5 319b(1)(f)(i), the prosecuting attorney shall include the follow-
6 ing statement on the complaint and information filed in district
7 or circuit court:

8 "You are charged with the commission of a felony in which a
9 commercial motor vehicle was used. If you are convicted and the
10 judge finds that the conviction is for a felony in which a com-
11 mercial motor vehicle was used, as defined in section 319b of the
12 Michigan vehicle code, 1949 PA 300, MCL 257.319b, all vehicle
13 group designations on your driver's license shall be suspended or
14 revoked by the secretary of state."

15 (11) If the judge determines as part of the sentence that
16 the felony for which the defendant was convicted and with respect
17 to which notice was given under subsection (10) is a felony in
18 which a commercial motor vehicle was used, the clerk of the court
19 shall forward an abstract of the court record of that conviction
20 to the secretary of state.

21 (12) Every person required to forward abstracts to the sec-
22 retary of state under this section shall certify for the period
23 from January 1 through June 30 and for the period from July 1
24 through December 31 that all abstracts required to be forwarded
25 during the period have been forwarded. The certification shall
26 be filed with the secretary of state not later than 28 days after
27 the end of the period covered by the certification. The

1 certification shall be made upon a form furnished by the
2 secretary of state and shall include all of the following:

3 (a) The name and title of the person required to forward
4 abstracts.

5 (b) The court for which the certification is filed.

6 (c) The time period covered by the certification.

7 (d) The following statement:

8 "I certify that all abstracts required by section 732 of the
9 Michigan vehicle code, MCL 257.732; MSA 9.2432, for the period
10 _____ through _____ have been forwarded to the secre-
11 tary of state."

12 (e) Other information the secretary of state considers
13 necessary.

14 (f) The signature of the person required to forward
15 abstracts.

16 (13) The failure, refusal, or neglect of a person to comply
17 with this section constitutes misconduct in office and is grounds
18 for removal from office.

19 (14) Except as provided in subsection (15), the secretary of
20 state shall keep all abstracts received under this section at the
21 secretary of state's main office and the abstracts shall be open
22 for public inspection during the office's usual business hours.
23 Each abstract shall be entered upon the master driving record of
24 the person to whom it pertains.

25 (15) Except for controlled substance offenses described in
26 subsection (4), the court shall not submit, and the secretary of
27 state shall discard and not enter on the master driving record,

1 an abstract for a conviction or civil infraction determination
2 for any of the following violations:

3 (a) The parking or standing of a vehicle.

4 (b) A nonmoving violation that is not the basis for the sec-
5 retary of state's suspension, revocation, or denial of an
6 operator's or chauffeur's license.

7 (c) A violation of chapter II that is not the basis for the
8 secretary of state's suspension, revocation, or denial of an
9 operator's or chauffeur's license.

10 (d) A pedestrian, passenger, or bicycle violation, other
11 than a violation of section 703(1) or (2) of the Michigan liquor
12 control code of 1998, 1998 PA 58, MCL 436.1703, or a local ordi-
13 nance substantially corresponding to section 703(1) or (2) of the
14 Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1703,
15 or section 624a or 624b or a local ordinance substantially corre-
16 sponding to section 624a or 624b.

17 (e) A violation of section 710e or a local ordinance sub-
18 stantially corresponding to section 710e.

19 (16) THE CLERK OF THE COURT SHALL ALSO FORWARD AN ABSTRACT
20 OF THE COURT RECORD TO THE DEPARTMENT OF STATE POLICE UPON A
21 PERSON'S CONVICTION FOR A VIOLATION OF THIS ACT FOR WHICH THE
22 CRASH REPORT OR CITATION ISSUED BY A POLICE OFFICER INDICATES
23 THAT THE PERSON WAS USING A CELLULAR PHONE AT THE TIME OF THE
24 VIOLATION.

25 (17) ~~(16)~~ The secretary of state shall discard and not
26 enter on the master driving record an abstract for a bond
27 forfeiture that occurred outside this state. However, the

1 secretary of state shall retain and enter on the master driving
2 record an abstract of an out-of-state bond forfeiture for an
3 offense that occurred after January 1, 1990 in connection with
4 the operation of a commercial motor vehicle.

5 (18) ~~-(17)-~~ The secretary of state shall inform the courts
6 of this state of the nonmoving violations and violations of chap-
7 ter II that are used by the secretary of state as the basis for
8 the suspension, restriction, revocation, or denial of an
9 operator's or chauffeur's license.

10 (19) ~~-(18)-~~ If a conviction or civil infraction determina-
11 tion is reversed upon appeal, the person whose conviction or
12 determination has been reversed may serve on the secretary of
13 state a certified copy of the order of reversal. The secretary
14 of state shall enter the order in the proper book or index in
15 connection with the record of the conviction or civil infraction
16 determination.

17 (20) ~~-(19)-~~ The secretary of state may permit a city or vil-
18 lage department, bureau, person, or court to modify the require-
19 ment as to the time and manner of reporting a conviction, civil
20 infraction determination, or settlement to the secretary of state
21 if the modification will increase the economy and efficiency of
22 collecting and utilizing the records. If the permitted abstract
23 of court record reporting a conviction, civil infraction determi-
24 nation, or settlement originates as a part of the written notice
25 to appear, authorized in section 728(1) or 742(1), the form of
26 the written notice and report shall be as prescribed by the
27 secretary of state.

1 (21) ~~(20)~~ Except as provided in this act and
2 notwithstanding any other provision of law, a court shall not
3 order expunction of any violation reportable to the secretary of
4 state under this section.

5 Sec. 743. (1) A citation issued pursuant to section 742
6 shall contain the name of the state or political subdivision
7 acting as plaintiff, the name and address of the person to whom
8 the citation is issued, the civil infraction alleged, the place
9 where the person shall appear in court, the telephone number of
10 the court, the time at or by which the appearance shall be made,
11 and the additional information required by this section.

12 (2) The citation shall inform the defendant to the effect
13 that he or she, at or by the time specified for appearance, may:

14 (a) Admit responsibility for the civil infraction in person,
15 by representation, or by mail.

16 (b) Admit responsibility for the civil infraction "with
17 explanation" in person, by representation, or by mail.

18 (c) Deny responsibility for the civil infraction by doing
19 either of the following:

20 (i) Appearing in person for an informal hearing before a
21 district court magistrate ~~, a referee of the recorder's court of~~
22 ~~the city of Detroit--traffic and ordinance division,~~ or a judge,
23 without the opportunity of being represented by an attorney.

24 (ii) Appearing in court for a formal hearing before a judge,
25 with the opportunity of being represented by an attorney.

26 (3) The citation shall inform the defendant that if the
27 person desires to admit responsibility "with explanation" other

1 than by mail or to have an informal hearing or a formal hearing,
2 the person must apply to the court in person, by mail, or by
3 telephone, within the time specified for appearance and obtain a
4 scheduled date and time to appear for a hearing. A hearing date
5 may be specified on the citation.

6 (4) The citation shall contain a notice in boldface type
7 that the failure of a person to appear within the time specified
8 in the citation or at the time scheduled for a hearing or appear-
9 ance will result in entry of a default judgment against the
10 person and in the immediate suspension of the person's operator's
11 or chauffeur's license. Timely application to the court for a
12 hearing or return of the citation with an admission of responsi-
13 bility and with full payment of applicable civil fines and costs
14 constitute a timely appearance.

15 (5) THE CITATION SHALL CONTAIN A SPACE FOR THE POLICE OFFI-
16 CER TO INDICATE WHETHER THE DEFENDANT WAS USING A CELLULAR PHONE
17 AT THE TIME OF THE ALLEGED CIVIL INFRACTION.

18 (6) ~~(5)~~ If the citation is issued to a person who is oper-
19 ating a commercial motor vehicle, the citation shall contain a
20 vehicle group designation and indorsement description of the
21 vehicle, which vehicle is operated by the person at the time of
22 the alleged civil infraction.