

HOUSE BILL No. 5538

April 17, 2012, Introduced by Rep. Lori and referred to the Committee on Transportation.

A bill to amend 1949 PA 300, entitled "Michigan vehicle code," by amending sections 320a and 732 (MCL 257.320a and 257.732), as amended by 2011 PA 159, and by adding section 602c.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

7 (a) Manslaughter, negligent homicide, or a
8 felony resulting from the operation of a motor
9 vehicle, ORV, or snowmobile.....6 points

- 1 (b) A violation of section 601b(2) or (3),
- 2 601c(1) or (2), or 653a(3) or (4) or, beginning
- 3 October 31, 2010, a violation of section 601d.....6 points
- 4 (c) A violation of section 625(1), (4), (5),
- 5 (7), or (8), section 81134 or 82127(1) of the
- 6 natural resources and environmental protection act,
- 7 1994 PA 451, MCL 324.81134 and 324.82127, or a law or
- 8 ordinance substantially corresponding to section
- 9 625(1), (4), (5), (7), or (8), or section 81134
- 10 or 82127(1) of the natural resources and
- 11 environmental protection act, 1994 PA 451,
- 12 MCL 324.81134 and 324.82127.....6 points
- 13 (d) Failing to stop and disclose identity
- 14 at the scene of an accident when required by law.....6 points
- 15 (e) Operating a motor vehicle in violation
- 16 of section 626.....6 points
- 17 (f) Fleeing or eluding an officer.....6 points
- 18 (g) A violation of section 627(9) pertaining
- 19 to speed in a work zone described in that section
- 20 by exceeding the lawful maximum by more than
- 21 15 miles per hour.....5 points
- 22 (h) A violation of any law other than the
- 23 law described in subdivision (g) or ordinance
- 24 pertaining to speed by exceeding the lawful
- 25 maximum by more than 15 miles per hour.....4 points
- 26 (i) A violation of section 625(3) or (6),
- 27 section 81135 or 82127(3) of the natural
- 28 resources and environmental protection act,
- 29 1994 PA 451, MCL 324.81135 and 324.82127,
- 30 or a law or ordinance substantially corresponding
- 31 to section 625(3) or (6) or section 81135

1 or 82127(3) of the natural resources and
2 environmental protection act, 1994 PA 451,
3 MCL 324.81135 and 324.82127.....4 points
4 (j) A violation of section 626a or a law
5 or ordinance substantially corresponding to
6 section 626a.....4 points
7 (k) A violation of section 653a(2).....4 points
8 (l) A violation of section 627(9) pertaining
9 to speed in a work zone described in that section
10 by exceeding the lawful maximum by more than 10
11 but not more than 15 miles per hour.....4 points
12 (m) Beginning October 31, 2010, a
13 moving violation resulting in an at-fault
14 collision with another vehicle, a person,
15 or any other object.....4 points
16 (n) A violation of any law other than the
17 law described in subdivision (l) or ordinance
18 pertaining to speed by exceeding the lawful
19 maximum by more than 10 but not more than 15
20 miles per hour or careless driving in violation
21 of section 626b or a law or ordinance substantially
22 corresponding to section 626b.....3 points
23 (o) A violation of section 627(9) pertaining
24 to speed in a work zone described in that section
25 by exceeding the lawful maximum by 10 miles per
26 hour or less.....3 points
27 (p) A violation of any law other than the law
28 described in subdivision (o) or ordinance
29 pertaining to speed by exceeding the lawful maximum
30 by 10 miles per hour or less.....2 points
31 (q) Disobeying a traffic signal or stop sign,

1 or improper passing.....3 points

2 (r) A violation of section 624a, 624b, or
3 a law or ordinance substantially corresponding to
4 section 624a or 624b.....2 points

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

8 (t) All other moving violations pertaining to
9 the operation of motor vehicles reported under
10 this section.....2 points

11 (u) A refusal by a person less than 21 years of
12 age to submit to a preliminary breath test required
13 by a peace officer under section 625a.....2 points

14 (2) Points shall not be entered for a violation of section
15 310e(14), 311, 602b(1), **602C**, 625m, 658, 710d, 717, 719, 719a, or
16 723.

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

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

20 (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 (6) If a person has accumulated 9 points as provided in this
25 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
28 to appear as provided in this subsection, the secretary of state

1 shall add 3 points to the person's record.

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

7 (8) The secretary of state shall enter 6 points upon the
8 record of a person whose license is suspended or denied ~~pursuant~~
9 ~~to~~ **UNDER** 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
12 entered.

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

20 **SEC. 602C. (1) EXCEPT AS PROVIDED IN THIS SECTION, AN**
21 **INDIVIDUAL ISSUED A LEVEL 2 GRADUATED LICENSE UNDER SECTION 310E**
22 **SHALL NOT USE A CELLULAR TELEPHONE WHILE OPERATING A MOTOR**
23 **VEHICLE UPON A HIGHWAY OR STREET. FOR PURPOSES OF THIS**
24 **SUBSECTION, "USE" MEANS TO INITIATE A CALL; ANSWER A CALL; OR**
25 **LISTEN TO OR ENGAGE IN VERBAL COMMUNICATION THROUGH THE CELLULAR**
26 **TELEPHONE.**

27 (2) SUBSECTION (1) DOES NOT APPLY TO AN INDIVIDUAL WHO IS

1 USING A CELLULAR TELEPHONE TO DO ANY OF THE FOLLOWING:

2 (A) REPORT A TRAFFIC ACCIDENT, MEDICAL EMERGENCY, OR SERIOUS
3 ROAD HAZARD.

4 (B) REPORT A SITUATION IN WHICH THE PERSON BELIEVES HIS OR
5 HER PERSONAL SAFETY IS IN JEOPARDY.

6 (C) REPORT OR AVERT THE PERPETRATION OR POTENTIAL
7 PERPETRATION OF A CRIMINAL ACT AGAINST THE INDIVIDUAL OR ANOTHER
8 PERSON.

9 (D) CARRY OUT OFFICIAL DUTIES AS A POLICE OFFICER, LAW
10 ENFORCEMENT OFFICIAL, MEMBER OF A PAID OR VOLUNTEER FIRE
11 DEPARTMENT, OR OPERATOR OF AN EMERGENCY VEHICLE.

12 (3) ENFORCEMENT OF THIS SECTION BY STATE OR LOCAL LAW
13 ENFORCEMENT AGENCIES SHALL BE ACCOMPLISHED ONLY AS A SECONDARY
14 ACTION WHEN THE OPERATOR OF THE MOTOR VEHICLE HAS BEEN DETAINED
15 FOR A SUSPECTED VIOLATION OF ANOTHER SECTION OF THIS ACT OR THE
16 MOTOR VEHICLE HAS BEEN INVOLVED IN A COLLISION WITH ANY VEHICLE,
17 PERSON, OR OBJECT.

18 (4) AN INDIVIDUAL WHO VIOLATES THIS SECTION IS RESPONSIBLE
19 FOR A CIVIL INFRACTION.

20 (5) THIS SECTION SUPERSEDES ALL LOCAL ORDINANCES REGULATING
21 THE USE OF A COMMUNICATIONS DEVICE WHILE OPERATING A MOTOR
22 VEHICLE IN MOTION ON A HIGHWAY OR STREET, EXCEPT THAT A UNIT OF
23 LOCAL GOVERNMENT MAY ADOPT AN ORDINANCE OR ENFORCE AN EXISTING
24 ORDINANCE SUBSTANTIALLY CORRESPONDING TO THIS SECTION.

25 Sec. 732. (1) Each municipal judge and each clerk of a court
26 of record shall keep a full record of every case in which a
27 person is charged with or cited for a violation of this act or a

1 local ordinance substantially corresponding to this act
2 regulating the operation of vehicles on highways and with those
3 offenses pertaining to the operation of ORVs or snowmobiles for
4 which points are assessed under section 320a(1)(c) or (i). Except
5 as provided in subsection (16), the municipal judge or clerk of
6 the court of record shall prepare and forward to the secretary of
7 state an abstract of the court record as follows:

8 (a) Not more than 5 days after a conviction, forfeiture of
9 bail, or entry of a civil infraction determination or default
10 judgment upon a charge of or citation for violating or attempting
11 to violate this act or a local ordinance substantially
12 corresponding to this act regulating the operation of vehicles on
13 highways.

14 (b) Immediately for each case charging a violation of
15 section 625(1), (3), (4), (5), (6), (7), or (8) or section 625m
16 or a local ordinance substantially corresponding to section
17 625(1), (3), (6), or (8) or section 625m in which the charge is
18 dismissed or the defendant is acquitted.

19 (c) Immediately for each case charging a violation of
20 section 82127(1) or (3), 81134, or 81135 of the natural resources
21 and environmental protection act, 1994 PA 451, MCL 324.82127,
22 324.81134, and 324.81135, or a local ordinance substantially
23 corresponding to those sections.

24 (2) If a city or village department, bureau, or person is
25 authorized to accept a payment of money as a settlement for a
26 violation of a local ordinance substantially corresponding to
27 this act, the city or village department, bureau, or person shall

1 send a full report of each case in which a person pays any amount
2 of money to the city or village department, bureau, or person to
3 the secretary of state upon a form prescribed by the secretary of
4 state.

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

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

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

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

16 (d) The type of vehicle driven at the time of the violation
17 and, if the vehicle is a commercial motor vehicle, that vehicle's
18 group designation.

19 (e) The date of the conviction, finding, forfeiture,
20 judgment, or civil infraction determination.

21 (f) Whether bail was forfeited.

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

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

26 (i) Other information considered necessary to the secretary
27 of state.

1 (4) The clerk of the court also shall forward an abstract of
2 the court record to the secretary of state upon a person's
3 conviction involving any of the following:

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

6 (b) A violation of section 1 of former 1931 PA 214.

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

9 (d) A violation of sections 701(1) and 703 of the Michigan
10 liquor control code of 1998, 1998 PA 58, MCL 436.1701 and
11 436.1703, or a local ordinance substantially corresponding to
12 those sections.

13 (e) A violation of section 411a(2) of the Michigan penal
14 code, 1931 PA 328, MCL 750.411a.

15 (f) A violation of motor carrier safety regulations 49 CFR
16 392.10 or 392.11 as adopted by section 1a of the motor carrier
17 safety act of 1963, 1963 PA 181, MCL 480.11a.

18 (g) A violation of section 57 of the pupil transportation
19 act, 1990 PA 187, MCL 257.1857.

20 (h) A violation of motor carrier safety regulations 49 CFR
21 392.10 or 392.11 as adopted by section 31 of the motor bus
22 transportation act, 1982 PA 432, MCL 474.131.

23 (i) An attempt to violate, a conspiracy to violate, or a
24 violation of part 74 of the public health code, 1978 PA 368, MCL
25 333.7401 to 333.7461, or a local ordinance that prohibits conduct
26 prohibited under part 74 of the public health code, 1978 PA 368,
27 MCL 333.7401 to 333.7461, unless the convicted person is

1 sentenced to life imprisonment or a minimum term of imprisonment
2 that exceeds 1 year for the offense.

3 (j) An attempt to commit an offense described in
4 subdivisions (a) to (h).

5 (k) A violation of chapter LXXXVIII-A of the Michigan penal
6 code, 1931 PA 328, MCL 750.543a to 750.543z.

7 (l) A violation of section 3101, 3102(1), or 3103 of the
8 insurance code of 1956, 1956 PA 218, MCL 500.3101, 500.3102, and
9 500.3103.

10 (m) A violation listed as a disqualifying offense under 49
11 CFR 383.51.

12 (5) The clerk of the court shall also forward an abstract of
13 the court record to the secretary of state if a person has pled
14 guilty to, or offered a plea of admission in a juvenile
15 proceeding for, a violation of section 703 of the Michigan liquor
16 control code of 1998, 1998 PA 58, MCL 436.1703, or a local
17 ordinance substantially corresponding to that section, and has
18 had further proceedings deferred under that section. If the
19 person is sentenced to a term of probation and terms and
20 conditions of probation are fulfilled and the court discharges
21 the individual and dismisses the proceedings, the court shall
22 also report the dismissal to the secretary of state.

23 (6) As used in subsections (7) to (9), "felony in which a
24 motor vehicle was used" means a felony during the commission of
25 which the person operated a motor vehicle and while operating the
26 vehicle presented real or potential harm to persons or property
27 and 1 or more of the following circumstances existed:

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

2 (b) The vehicle was used to transport a victim of the
3 felony.

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

5 (d) The vehicle was necessary for the commission of the
6 felony.

7 (7) If a person is charged with a felony in which a motor
8 vehicle was used, other than a felony specified in subsection (4)
9 or section 319, the prosecuting attorney shall include the
10 following statement on the complaint and information filed in
11 district or circuit court:

12 "You are charged with the commission of a felony in which a
13 motor vehicle was used. If you are convicted and the judge finds
14 that the conviction is for a felony in which a motor vehicle was
15 used, as defined in section 319 of the Michigan vehicle code,
16 1949 PA 300, MCL 257.319, your driver's license shall be
17 suspended by the secretary of state."

18 (8) If a juvenile is accused of an act, the nature of which
19 constitutes a felony in which a motor vehicle was used, other
20 than a felony specified in subsection (4) or section 319, the
21 prosecuting attorney or family division of circuit court shall
22 include the following statement on the petition filed in the
23 court:

24 "You are accused of an act the nature of which constitutes a
25 felony in which a motor vehicle was used. If the accusation is
26 found to be true and the judge or referee finds that the nature
27 of the act constitutes a felony in which a motor vehicle was

1 used, as defined in section 319 of the Michigan vehicle code,
2 1949 PA 300, MCL 257.319, your driver's license shall be
3 suspended by the secretary of state."

4 (9) If the court determines as part of the sentence or
5 disposition that the felony for which the person was convicted or
6 adjudicated and with respect to which notice was given under
7 subsection (7) or (8) is a felony in which a motor vehicle was
8 used, the clerk of the court shall forward an abstract of the
9 court record of that conviction to the secretary of state.

10 (10) As used in subsections (11) and (12), "felony in which
11 a commercial motor vehicle was used" means a felony during the
12 commission of which the person operated a commercial motor
13 vehicle and while the person was operating the vehicle 1 or more
14 of the following circumstances existed:

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

16 (b) The vehicle was used to transport a victim of the
17 felony.

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

19 (d) The vehicle was necessary for the commission of the
20 felony.

21 (11) If a person is charged with a felony in which a
22 commercial motor vehicle was used and for which a vehicle group
23 designation on a license is subject to suspension or revocation
24 under section 319b(1)(c)(iii), 319b(1)(d), 319b(1)(e)(iii), or
25 319b(1)(f)(i), the prosecuting attorney shall include the
26 following statement on the complaint and information filed in
27 district or circuit court:

1 "You are charged with the commission of a felony in which a
2 commercial motor vehicle was used. If you are convicted and the
3 judge finds that the conviction is for a felony in which a
4 commercial motor vehicle was used, as defined in section 319b of
5 the Michigan vehicle code, 1949 PA 300, MCL 257.319b, all vehicle
6 group designations on your driver's license shall be suspended or
7 revoked by the secretary of state."

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

14 (13) Every person required to forward abstracts to the
15 secretary of state under this section shall certify for the
16 period from January 1 through June 30 and for the period from
17 July 1 through December 31 that all abstracts required to be
18 forwarded during the period have been forwarded. The
19 certification shall be filed with the secretary of state not
20 later than 28 days after the end of the period covered by the
21 certification. The certification shall be made upon a form
22 furnished by the secretary of state and shall include all of the
23 following:

24 (a) The name and title of the person required to forward
25 abstracts.

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

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

1 (d) The following statement:

2 "I certify that all abstracts required by section 732 of the
3 Michigan vehicle code, MCL 257.732; MSA 9.2432, for the period
4 _____ through _____ have been forwarded to
5 the secretary of state."

6 (e) Other information the secretary of state considers
7 necessary.

8 (f) The signature of the person required to forward
9 abstracts.

10 (14) The failure, refusal, or neglect of a person to comply
11 with this section constitutes misconduct in office and is grounds
12 for removal from office.

13 (15) Except as provided in subsection (16), the secretary of
14 state shall keep all abstracts received under this section at the
15 secretary of state's main office and the abstracts shall be open
16 for public inspection during the office's usual business hours.
17 Each abstract shall be entered upon the master driving record of
18 the person to whom it pertains.

19 (16) Except for controlled substance offenses described in
20 subsection (4), the court shall not submit, and the secretary of
21 state shall discard and not enter on the master driving record,
22 an abstract for a conviction or civil infraction determination
23 for any of the following violations:

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

25 (b) A nonmoving violation that is not the basis for the
26 secretary of state's suspension, revocation, or denial of an
27 operator's or chauffeur's license.

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

4 (d) A pedestrian, passenger, or bicycle violation, other
5 than a violation of section 703(1) or (2) of the Michigan liquor
6 control code of 1998, 1998 PA 58, MCL 436.1703, or a local
7 ordinance substantially corresponding to section 703(1) or (2) of
8 the Michigan liquor control code of 1998, 1998 PA 58, MCL
9 436.1703, or section 624a or 624b or a local ordinance
10 substantially corresponding to section 624a or 624b.

11 (e) A violation of section 710e or a local ordinance
12 substantially corresponding to section 710e.

13 (f) A violation of section 328(1) if, before the appearance
14 date on the citation, the person submits proof to the court that
15 the motor vehicle had insurance meeting the requirements of
16 sections 3101 and 3102 of the insurance code of 1956, 1956 PA
17 218, MCL 500.3101 and 500.3102, at the time the citation was
18 issued. Insurance obtained subsequent to the time of the
19 violation does not make the violation an exception under this
20 subsection.

21 (g) A violation described in section 319b(10)(b)(vii) if,
22 before the court appearance date or date fines are to be paid,
23 the person submits proof to the court that he or she held a valid
24 commercial driver license on the date the citation was issued.

25 (h) A violation of section 311 if the person was driving a
26 noncommercial vehicle and, before the court appearance date or
27 the date fines are to be paid, the person submits proof to the

1 court that he or she held a valid driver license on the date the
2 citation was issued.

3 (i) A violation of section 602b(1) **OR 602C**.

4 (17) Except as otherwise provided in this subsection, the
5 secretary of state shall discard and not enter on the master
6 driving record an abstract for a bond forfeiture that occurred
7 outside this state. The secretary of state shall enter on the
8 master driving record an abstract for a conviction as defined in
9 section 8a(b) that occurred outside this state in connection with
10 the operation of a commercial motor vehicle or for a conviction
11 of a person licensed as a commercial motor vehicle driver.

12 (18) The secretary of state shall inform the courts of this
13 state of the nonmoving violations and violations of chapter II
14 that are used by the secretary of state as the basis for the
15 suspension, restriction, revocation, or denial of an operator's
16 or chauffeur's license.

17 (19) If a conviction or civil infraction determination is
18 reversed upon appeal, the person whose conviction or
19 determination has been reversed may serve on the secretary of
20 state a certified copy of the order of reversal. The secretary of
21 state shall enter the order in the proper book or index in
22 connection with the record of the conviction or civil infraction
23 determination.

24 (20) The secretary of state may permit a city or village
25 department, bureau, person, or court to modify the requirement as
26 to the time and manner of reporting a conviction, civil
27 infraction determination, or settlement to the secretary of state

1 if the modification will increase the economy and efficiency of
2 collecting and utilizing the records. If the permitted abstract
3 of court record reporting a conviction, civil infraction
4 determination, or settlement originates as a part of the written
5 notice to appear, authorized in section 728(1) or 742(1), the
6 form of the written notice and report shall be as prescribed by
7 the secretary of state.

8 (21) Notwithstanding any other law of this state, a court
9 shall not take under advisement an offense committed by a person
10 while operating a commercial motor vehicle or by a person
11 licensed to drive a commercial motor vehicle while operating a
12 noncommercial motor vehicle at the time of the offense, for which
13 this act requires a conviction or civil infraction determination
14 to be reported to the secretary of state. A conviction or civil
15 infraction determination that is the subject of this subsection
16 shall not be masked, delayed, diverted, suspended, or suppressed
17 by a court. Upon a conviction or civil infraction determination,
18 the conviction or civil infraction determination shall
19 immediately be reported to the secretary of state in accordance
20 with this section.

21 (22) Except as provided in this act and notwithstanding any
22 other provision of law, a court shall not order expunction of any
23 violation reportable to the secretary of state under this
24 section.