

HOUSE BILL No. 5191

October 21, 2003, Introduced by Rep. Nitz and referred to the Committee on Criminal Justice.

A bill to amend 1949 PA 300, entitled "Michigan vehicle code," by amending sections 320a and 732 (MCL 257.320a and 257.732), section 320a as amended by 2003 PA 61 and section 732 as amended by 2002 PA 534.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 320a. (1) The secretary of state, within 10 days after
2 the receipt of a properly prepared abstract from this or another
3 state, shall record the date of conviction, civil infraction
4 determination, or probate court disposition, and the number of
5 points for each, based on the following formula, except as
6 otherwise provided in this section and section 629c:
7 (a) Manslaughter, negligent homicide, or a felony
8 resulting from the operation of a motor vehicle, ORV, or
9 snowmobile..... 6 points

- 1 (b) A violation of section 601b(2) or (3), 601c(1) or
2 (2), or 653a(3) or (4)..... 6 points

- 3 (c) A violation of section 625(1), (4), (5), (7), or (8),
4 section **80176(3)**, 81134, or 82127(1) of the natural
5 resources and environmental protection act, 1994 PA 451,
6 MCL **324.80176**, 324.81134, and 324.82127, or a law or
7 ordinance substantially corresponding to section 625(1),
8 (4), (5), (7), or (8) — or section **80176(3)**, 81134, or
9 82127(1) of the natural resources and environmental
10 protection act, 1994 PA 451, MCL **324.80176**, 324.81134, and
11 324.82127..... 6 points

- 12 (d) Failing to stop and disclose identity at the scene of
13 an accident when required by law..... 6 points

- 14 (e) Operating a motor vehicle in violation of section 626 points

- 15 (f) Fleeing or eluding an officer..... 6 points

- 16 (g) Violation of section 627(9) pertaining to speed in a
17 designated work area by exceeding the lawful maximum by
18 more than 15 miles per hour..... 5 points

- 19 (h) Violation of any law other than the law described in
20 subdivision (g) or ordinance pertaining to speed by
21 exceeding the lawful maximum by more than 15 miles per

1 hour..... 4 points

2 (i) Violation of section 625(3) or (6), section **80176(3)**,
3 81135, or 82127(3) of the natural resources and
4 environmental protection act, 1994 PA 451, MCL **324.80176**,
5 324.81135, and 324.82127, or a law or ordinance
6 substantially corresponding to section 625(3) or (6) or
7 section **80176(3)**, 81135, or 82127(3) of the natural
8 resources and environmental protection act, 1994 PA 451,
9 MCL **324.80176**, 324.81135, and 324.82127..... 4 points

10 (j) Violation of section 626a or a law or ordinance
11 substantially corresponding to section 626a..... 4 points

12 (k) Violation of section 653a(2)..... 4 points

13 (l) Violation of section 627(9) pertaining to speed in a
14 designated work area by exceeding the lawful maximum by
15 more than 10 but not more than 15 miles per hour..... 4 points

16 (m) Violation of any law other than the law described in
17 subdivision (l) or ordinance pertaining to speed by
18 exceeding the lawful maximum by more than 10 but not more
19 than 15 miles per hour or careless driving in violation of
20 section 626b or a law or ordinance substantially
21 corresponding to section 626b..... 3 points

22 (n) Violation of section 627(9) pertaining to speed in a

- 1 designated work area by exceeding the lawful maximum by 10
- 2 miles per hour or less..... 3 points

- 3 (o) Violation of any law other than the law described in
- 4 subdivision (n) or ordinance pertaining to speed by
- 5 exceeding the lawful maximum by 10 miles per hour or less 2 points

- 6 (p) Disobeying a traffic signal or stop sign, or improper
- 7 passing..... 3 points

- 8 (q) Violation of section 624a, 624b, or a law or
- 9 ordinance substantially corresponding to section 624a or
- 10 624b..... 2 points

- 11 (r) Violation of section 310e(4) or (6) or a law or
- 12 ordinance substantially corresponding to section 310e(4)
- 13 or (6)..... 2 points

- 14 (s) All other moving violations pertaining to the
- 15 operation of motor vehicles reported under this section 2 points

- 16 (t) A refusal by a person less than 21 years of age to
- 17 submit to a preliminary breath test required by a peace
- 18 officer under section 625a..... 2 points
- 19 (2) Points shall not be entered for a violation of section
- 20 310e(14), 311, 625m, 658, 717, 719, 719a, or 723.
- 21 (3) Points shall not be entered for bond forfeitures.

1 (4) Points shall not be entered for overweight loads or for
2 defective equipment.

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

7 (6) If a person has accumulated 9 points as provided in this
8 section, the secretary of state may call the person in for an
9 interview as to the person's driving ability and record after due
10 notice as to time and place of the interview. If the person
11 fails to appear as provided in this subsection, the secretary of
12 state shall add 3 points to the person's record.

13 (7) If a person violates a speed restriction established by
14 an executive order issued during a state of energy emergency as
15 provided by 1982 PA 191, MCL 10.81 to 10.89, the secretary of
16 state shall enter points for the violation pursuant to subsection
17 (1).

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

24 (9) If a Michigan driver commits a violation in another state
25 that would be a civil infraction if committed in Michigan, and a
26 conviction results solely because of the failure of the Michigan
27 driver to appear in that state to contest the violation, upon

1 receipt of the abstract of conviction by the secretary of state,
2 the violation shall be noted on the driver's record, but no
3 points shall be assessed against his or her driver's license.

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

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

20 (b) Immediately for each case charging a violation of
21 section 625(1), (3), (4), (5), (6), ~~or~~ (7), **or (8)** or section
22 625m or a local ordinance substantially corresponding to
23 section 625(1), (3), ~~or~~ (6), **or (8)** or section 625m in which
24 the charge is dismissed or the defendant is acquitted.

25 (c) Immediately for each case charging a violation of section
26 82127(1) or (3), 81134, or 81135 of the natural resources and
27 environmental protection act, 1994 PA 451, MCL 324.82127,

1 324.81134, and 324.81135, or a local ordinance substantially
2 corresponding to those sections.

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

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

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

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

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

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

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

27 (f) Whether bail was forfeited.

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

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

6 (i) Other information considered necessary to the secretary
7 of state.

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

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

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

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

16 (d) A violation of section 703 of the Michigan liquor control
17 code of 1998, 1998 PA 58, MCL 436.1703, or a local ordinance
18 substantially corresponding to that section.

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

21 (f) A violation of motor carrier safety regulations, 49
22 C.F.R. 392.10 or 392.11, as adopted by section 1a of the motor
23 carrier safety act of 1963, 1963 PA 181, MCL 480.11a.

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

26 (h) A violation of motor carrier safety regulations, 49
27 C.F.R. 392.10 or 392.11, as adopted by section 31 of the motor

1 bus transportation act, 1982 PA 432, MCL 474.131.

2 (i) An attempt to violate, a conspiracy to violate, or a
3 violation of part 74 of the public health code, 1978 PA 368,
4 MCL 333.7401 to 333.7461, or a local ordinance that prohibits
5 conduct prohibited under part 74 of the public health code, 1978
6 PA 368, MCL 333.7401 to 333.7461, unless the convicted person is
7 sentenced to life imprisonment or a minimum term of imprisonment
8 that exceeds 1 year for the offense.

9 (j) An attempt to commit an offense described in subdivisions
10 (a) to (h).

11 (k) A violation of chapter LXXXIII-A of the Michigan penal
12 code, 1931 PA 328, MCL 750.543a to 750.543z.

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

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

19 (b) The vehicle was used to transport a victim of the
20 felony.

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

22 (d) The vehicle was necessary for the commission of the
23 felony.

24 (6) If a person is charged with a felony in which a motor
25 vehicle was used, other than a felony specified in subsection (4)
26 or section 319, the prosecuting attorney shall include the
27 following statement on the complaint and information filed in

1 district or circuit court:

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

8 (7) If a juvenile is accused of an act, the nature of which
9 constitutes a felony in which a motor vehicle was used, other
10 than a felony specified in subsection (4) or section 319, the
11 prosecuting attorney or family division of circuit court shall
12 include the following statement on the petition filed in the
13 court:

14 "You are accused of an act the nature of which constitutes a
15 felony in which a motor vehicle was used. If the accusation is
16 found to be true and the judge or referee finds that the nature
17 of the act constitutes a felony in which a motor vehicle was
18 used, as defined in section 319 of the Michigan vehicle code,
19 1949 PA 300, MCL 257.319, your driver's license shall be
20 suspended by the secretary of state."

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

27 (9) As used in subsections (10) and (11), "felony in which a

1 commercial motor vehicle was used" means a felony during the
2 commission of which the person operated a commercial motor
3 vehicle and while the person was operating the vehicle 1 or more
4 of the following circumstances existed:

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

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

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

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

11 (10) If a person is charged with a felony in which a
12 commercial motor vehicle was used and for which a vehicle group
13 designation on a license is subject to suspension or revocation
14 under section 319b(1)(c)(iii), 319b(1)(d), 319b(1)(e)(iii), or
15 319b(1)(f)(i), the prosecuting attorney shall include the
16 following statement on the complaint and information filed in
17 district or circuit court:

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

25 (11) If the judge determines as part of the sentence that the
26 felony for which the defendant was convicted and with respect to
27 which notice was given under subsection (10) is a felony in which

1 a commercial motor vehicle was used, the clerk of the court shall
2 forward an abstract of the court record of that conviction to the
3 secretary of state.

4 (12) Every person required to forward abstracts to the
5 secretary of state under this section shall certify for the
6 period from January 1 through June 30 and for the period from
7 July 1 through December 31 that all abstracts required to be
8 forwarded during the period have been forwarded. The
9 certification shall be filed with the secretary of state not
10 later than 28 days after the end of the period covered by the
11 certification. The certification shall be made upon a form
12 furnished by the secretary of state and shall include all of the
13 following:

14 (a) The name and title of the person required to forward
15 abstracts.

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

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

18 (d) The following statement:

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

23 (e) Other information the secretary of state considers
24 necessary.

25 (f) The signature of the person required to forward
26 abstracts.

27 (13) The failure, refusal, or neglect of a person to comply

1 with this section constitutes misconduct in office and is grounds
2 for removal from office.

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

9 (15) Except for controlled substance offenses described in
10 subsection (4), the court shall not submit, and the secretary of
11 state shall discard and not enter on the master driving record,
12 an abstract for a conviction or civil infraction determination
13 for any of the following violations:

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

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

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

21 (d) A pedestrian, passenger, or bicycle violation, other than
22 a violation of section 703(1) or (2) of the Michigan liquor
23 control code of 1998, 1998 PA 58, MCL 436.1703, or a local
24 ordinance substantially corresponding to section 703(1) or (2) of
25 the Michigan liquor control code of 1998, 1998 PA 58,
26 MCL 436.1703, or section 624a or 624b or a local ordinance
27 substantially corresponding to section 624a or 624b.

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

3 (16) The secretary of state shall discard and not enter on
4 the master driving record an abstract for a bond forfeiture that
5 occurred outside this state. However, the secretary of state
6 shall retain and enter on the master driving record an abstract
7 of an out-of-state bond forfeiture for an offense that occurred
8 in connection with the operation of a commercial motor vehicle.

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

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

21 (19) The secretary of state may permit a city or village
22 department, bureau, person, or court to modify the requirement as
23 to the time and manner of reporting a conviction, civil
24 infraction determination, or settlement to the secretary of state
25 if the modification will increase the economy and efficiency of
26 collecting and utilizing the records. If the permitted abstract
27 of court record reporting a conviction, civil infraction

1 determination, or settlement originates as a part of the written
2 notice to appear, authorized in section 728(1) or 742(1), the
3 form of the written notice and report shall be as prescribed by
4 the secretary of state.

5 (20) Except as provided in this act and notwithstanding any
6 other provision of law, a court shall not order expunction of any
7 violation reportable to the secretary of state under this
8 section.

9 Enacting section 1. This amendatory act does not take
10 effect unless Senate Bill No. _____ or House Bill No. 5192
11 (request no. 04464'03 a) of the 92nd Legislature is enacted into
12 law.