

HOUSE BILL No. 5867

September 13, 2016, Introduced by Rep. Howrylak and referred to the Committee on Criminal Justice.

A bill to amend 1949 PA 300, entitled
"Michigan vehicle code,"
by amending sections 320a and 602b (MCL 257.320a and 257.602b),
section 320a as amended by 2012 PA 592 and section 602b as amended
by 2013 PA 231.

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, the
3 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:

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

- 1 maximum by more than 15 miles per hour.....4 points
- 2 (i) A violation of section 625(3) or (6),
- 3 section 81135 or 82127(3) of the natural
- 4 resources and environmental protection act,
- 5 1994 PA 451, MCL 324.81135 and 324.82127,
- 6 or a law or ordinance substantially corresponding
- 7 to section 625(3) or (6) or section 81135
- 8 or 82127(3) of the natural resources and
- 9 environmental protection act, 1994 PA 451,
- 10 MCL 324.81135 and 324.82127.....4 points
- 11 (j) A violation of section 626a or a law
- 12 or ordinance substantially corresponding to
- 13 section 626a.....4 points
- 14 (k) A violation of section 653a(2).....4 points
- 15 (l) A violation of section 627(9) pertaining
- 16 to speed in a work zone described in that section
- 17 by exceeding the lawful maximum by more than 10
- 18 but not more than 15 miles per hour.....4 points
- 19 (m) Beginning October 31, 2010, a
- 20 moving violation resulting in an at-fault
- 21 collision with another vehicle, a person,
- 22 or any other object.....4 points
- 23 (n) A violation of any law other than the
- 24 law described in subdivision (l) or ordinance
- 25 pertaining to speed by exceeding the lawful
- 26 maximum by more than 10 but not more than 15
- 27 miles per hour or careless driving in violation

- 1 of section 626b or a law or ordinance substantially
- 2 corresponding to section 626b.....3 points
- 3 (o) A violation of section 627(9) pertaining
- 4 to speed in a work zone described in that section
- 5 by exceeding the lawful maximum by 10 miles per
- 6 hour or less.....3 points
- 7 (p) A violation of any law other than the law
- 8 described in subdivision (o) or ordinance
- 9 pertaining to speed by exceeding the lawful maximum
- 10 by 10 miles per hour or less.....2 points
- 11 (q) Disobeying a traffic signal or stop sign,
- 12 or improper passing.....3 points
- 13 (r) A violation of section 624a, 624b, or
- 14 a law or ordinance substantially corresponding to
- 15 section 624a or 624b.....2 points
- 16 (s) A violation of section 310e(4) or (6) or
- 17 a law or ordinance substantially corresponding to
- 18 section 310e(4) or (6).....2 points
- 19 (t) All other moving violations pertaining to
- 20 the operation of motor vehicles reported under
- 21 this section.....2 points
- 22 (u) A refusal by a person less than 21 years of
- 23 age to submit to a preliminary breath test required
- 24 by a peace officer under section 625a.....2 points
- 25 **(V) A THIRD OR SUBSEQUENT VIOLATION OF**
- 26 **SECTION 602B(1).....2 POINTS**
- 27 **(W) A SECOND VIOLATION OF SECTION 602B(1)1 POINT**

1 (2) Points shall not be entered for a violation of section
2 310e(14), 311, ~~602b(1)~~, 602c, 625m, 658, 710d, 717, 719, 719a, or
3 723.

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

5 (4) Points shall not be entered for overweight loads or for
6 defective equipment.

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

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

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

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

26 (9) If a Michigan driver commits a violation in another state
27 that would be a civil infraction if committed in Michigan, and a

1 conviction results solely because of the failure of the Michigan
2 driver to appear in that state to contest the violation, upon
3 receipt of the abstract of conviction by the secretary of state,
4 the violation shall be noted on the driver's record, but no points
5 shall be assessed against his or her driver's license.

6 Sec. 602b. (1) Except as otherwise provided in this section, a
7 person shall not ~~read, manually type, or send a text message on a~~
8 ~~wireless 2-way communication~~ **HOLD OR USE A PORTABLE ELECTRONIC**
9 ~~device that is located in the person's hand or in the person's lap,~~
10 ~~including a wireless telephone used in cellular telephone service~~
11 ~~or personal communication service,~~ while operating a motor vehicle
12 that is moving on a highway or street in this state ~~. As used in~~
13 ~~this subsection, a wireless 2-way communication device does not~~
14 ~~include a global positioning or navigation system that is affixed~~
15 ~~to the motor vehicle. Beginning October 28, 2013, this subsection~~
16 ~~does not apply to a person operating a commercial vehicle.~~**OR**
17 **TEMPORARILY STATIONARY DUE TO TRAFFIC, A TRAFFIC CONTROL DEVICE, OR**
18 **OTHER MOMENTARY DELAY. A PERSON MAY USE A PORTABLE ELECTRONIC**
19 **DEVICE WHILE HE OR SHE IS OPERATING A MOTOR VEHICLE IF THE PORTABLE**
20 **ELECTRONIC DEVICE IS MOUNTED ON THE WINDSHIELD, DASHBOARD, OR**
21 **CENTER CONSOLE IN A MANNER THAT DOES NOT HINDER THE PERSON'S VIEW**
22 **OF THE ROAD AND IF THE PERSON'S HAND IS USED TO ACTIVATE OR**
23 **DEACTIVATE A FEATURE OR FUNCTION OF THE PORTABLE ELECTRONIC DEVICE**
24 **WITH A SINGLE SWIPE OR TAP OF THE PERSON'S FINGER. THIS SUBSECTION**
25 **DOES NOT APPLY TO A PERSON WHO USES A PORTABLE ELECTRONIC DEVICE**
26 **WHILE OPERATING A MOTOR VEHICLE IF THE PORTABLE ELECTRONIC DEVICE**
27 **IS SPECIFICALLY DESIGNED AND CONFIGURED TO ALLOW VOICE-OPERATED AND**

1 HANDS-FREE OPERATION AND IS BEING USED IN THAT MANNER BY THE PERSON
2 WHILE OPERATING THE MOTOR VEHICLE. THIS SUBSECTION DOES NOT APPLY
3 TO A PERSON WHO HOLDS OR USES A PORTABLE ELECTRONIC DEVICE WHILE
4 OPERATING A MOTOR VEHICLE IF THE VEHICLE IS STOPPED AT THE SIDE OF
5 OR OFF OF A PUBLIC HIGHWAY IN A LOCATION WHERE THE VEHICLE IS NOT
6 OTHERWISE PROHIBITED FROM STOPPING BY LAW, RULE, REGULATION, OR A
7 LAWFUL ORDER OR DIRECTION OF A POLICE OFFICER.

8 ~~—— (2) Except as otherwise provided in this section, a person~~
9 ~~shall not read, manually type, or send a text message on a wireless~~
10 ~~2-way communication device that is located in the person's hand or~~
11 ~~in the person's lap, including a wireless telephone used in~~
12 ~~cellular telephone service or personal communication service, while~~
13 ~~operating a commercial motor vehicle or a school bus on a highway~~
14 ~~or street in this state. As used in this subsection, a wireless 2-~~
15 ~~way communication device does not include a global positioning or~~
16 ~~navigation system that is affixed to the commercial motor vehicle~~
17 ~~or school bus. This subsection applies beginning October 28, 2013.~~

18 ~~—— (3) Except as otherwise provided in this section, a person~~
19 ~~shall not use a hand-held mobile telephone to conduct a voice~~
20 ~~communication while operating a commercial motor vehicle or a~~
21 ~~school bus on a highway, including while temporarily stationary due~~
22 ~~to traffic, a traffic control device, or other momentary delays.~~
23 ~~This subsection does not apply if the operator of the commercial~~
24 ~~vehicle or school bus has moved the vehicle to the side of, or off,~~
25 ~~a highway and has stopped in a location where the vehicle can~~
26 ~~safely remain stationary. As used in this subsection, "mobile~~
27 ~~telephone" does not include a 2-way radio service or citizens band~~

1 ~~radio service. This subsection applies beginning October 28, 2013.~~

2 ~~As used in this subsection, "use a hand-held mobile telephone"~~

3 ~~means 1 or more of the following:~~

4 ~~—— (a) Using at least 1 hand to hold a mobile telephone to~~
5 ~~conduct a voice communication.~~

6 ~~—— (b) Dialing or answering a mobile telephone by pressing more~~
7 ~~than a single button.~~

8 ~~—— (c) Reaching for a mobile telephone in a manner that requires~~
9 ~~a driver to maneuver so that he or she is no longer in a seated~~
10 ~~driving position, restrained by a seat belt that is installed as~~
11 ~~required by 49 CFR 393.93 and adjusted in accordance with the~~
12 ~~vehicle manufacturer's instructions.~~

13 ~~(2) (4) Subsections~~ **SUBSECTION** (1) ~~, (2), and (3) do~~ **DOES** not
14 apply to an individual who is using a device described in
15 subsection (1) ~~or (3)~~ to do any of the following:

16 (a) Report a traffic accident, medical emergency, or serious
17 road hazard.

18 (b) Report a situation in which the person believes his or her
19 personal safety is in jeopardy.

20 (c) Report or avert the perpetration or potential perpetration
21 of a criminal act against the individual or another person.

22 (d) Carry out official duties as a police officer, law
23 enforcement official, member of a paid or volunteer fire
24 department, or operator of an emergency vehicle.

25 (e) Operate or program the operation of an automated motor
26 vehicle while testing the automated motor vehicle in compliance
27 with section 665, if that automated motor vehicle displays a

1 special plate issued under section 224(3) in the manner required
2 under section 225.

3 ~~(5) An individual who violates this section is responsible for~~
4 ~~a civil infraction and shall be ordered to pay a civil fine as~~
5 ~~follows:~~

6 ~~(a) For a first violation, \$100.00.~~

7 ~~(b) For a second or subsequent violation, \$200.00.~~

8 **(3) AN INDIVIDUAL WHO VIOLATES SUBSECTION (1) IS RESPONSIBLE**
9 **FOR A CIVIL INFRACTION AND SHALL BE ORDERED TO PAY A CIVIL FINE AS**
10 **FOLLOWS:**

11 **(A) FOR A FIRST VIOLATION, \$250.00.**

12 **(B) FOR A SECOND OR SUBSEQUENT VIOLATION, \$500.00.**

13 **(4)** ~~(6)~~ This section supersedes all local ordinances
14 regulating the use of a communications device while operating a
15 motor vehicle in motion on a highway or street, except that a unit
16 of local government may adopt an ordinance or enforce an existing
17 ordinance substantially corresponding to this section.

18 **(5) THIS SECTION DOES NOT AUTHORIZE THE SEIZURE OR FORFEITURE**
19 **OF A PORTABLE ELECTRONIC DEVICE, UNLESS SEIZURE OR FORFEITURE IS**
20 **OTHERWISE REQUIRED BY LAW.**

21 **(6) AS USED IN THIS SECTION:**

22 **(A) "PORTABLE ELECTRONIC DEVICE" MEANS ANY OF THE FOLLOWING:**

23 **(i) A HANDHELD WIRELESS TELEPHONE.**

24 **(ii) AN ELECTRONIC WIRELESS COMMUNICATION DEVICE.**

25 **(iii) A PERSONAL DIGITAL ASSISTANT.**

26 **(iv) A HANDHELD DEVICE THAT HAS MOBILE DATA ACCESS.**

27 **(v) A LAPTOP COMPUTER.**

- 1 (vi) A PAGER.
- 2 (vii) A BROADBAND PERSONAL COMMUNICATION DEVICE.
- 3 (viii) A 2-WAY MESSAGING DEVICE.
- 4 (ix) AN ELECTRONIC GAME.
- 5 (x) A PORTABLE COMPUTING DEVICE.
- 6 (xi) A NAVIGATION DEVICE OR A GPS DEVICE.
- 7 (xii) ANY OTHER ELECTRONIC DEVICE THAT IS USED TO CONDUCT A
- 8 SEARCH OR TO INPUT, WRITE, SEND, RECEIVE, OR READ TEXT FOR PRESENT
- 9 OR FUTURE COMMUNICATION.

10 (B) "USE" MEANS TO HOLD A PORTABLE ELECTRONIC DEVICE WHILE
11 DOING ANY OF THE FOLLOWING:

- 12 (i) CONDUCTING A SEARCH.
- 13 (ii) VIEWING, TAKING, OR TRANSMITTING AN IMAGE OR VIDEO.
- 14 (iii) PLAYING GAMES.
- 15 (iv) FOR THE PURPOSE OF PRESENT OR FUTURE COMMUNICATION, DOING
- 16 1 OR MORE OF THE FOLLOWING:

17 (A) PERFORMING A COMMAND OR REQUEST TO ACCESS AN INTERNET
18 PAGE.

19 (B) COMPOSING, SENDING, READING, VIEWING, ACCESSING, BROWSING,
20 TRANSMITTING, SAVING, OR RETRIEVING AN EMAIL MESSAGE, TEXT MESSAGE,
21 INSTANT MESSAGE, OR OTHER ELECTRONIC DATA.

22 Enacting section 1. This amendatory act takes effect 90 days
23 after the date it is enacted into law.