

HOUSE BILL No. 4997

October 15, 2015, Introduced by Rep. Lucido and referred to the Committee on Criminal Justice.

A bill to amend 1949 PA 300, entitled
"Michigan vehicle code,"
by amending sections 602b and 907 (MCL 257.602b and 257.907),
section 602b as amended by 2013 PA 231 and section 907 as amended
by 2015 PA 126.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 602b. (1) Except as otherwise provided in this section, a
2 person shall not read, manually type, ~~or~~ send a text message, **OR**
3 **HANDLE A GPS UNIT OR USE A GPS APPLICATION** on a wireless 2-way
4 communication device that is located in the person's hand or in the
5 person's lap, including a wireless telephone used in cellular
6 telephone service or personal communication service, while
7 operating a motor vehicle that is moving on a highway or street in
8 this state. ~~As used in this subsection, a wireless 2-way~~
9 ~~communication device does not include a global positioning or~~

~~navigation system that is affixed to the motor vehicle.~~ Beginning October 28, 2013, this subsection does not apply to a person operating a commercial vehicle.

(2) Except as otherwise provided in this section, a person shall not read, manually type, ~~or~~ send a text message, **OR HANDLE A GPS UNIT OR USE A GPS APPLICATION** on a wireless 2-way communication device that is located in the person's hand or in the person's lap, including a wireless telephone used in cellular telephone service or personal communication service, while operating a commercial motor vehicle or a school bus on a highway or street in this state. ~~As used in this subsection, a wireless 2-way communication device does not include a global positioning or navigation system that is affixed to the commercial motor vehicle or school bus.~~ This subsection applies beginning October 28, 2013.

(3) Except as otherwise provided in this section, a person shall not use a hand-held mobile telephone to conduct a voice communication while operating a commercial motor vehicle or a school bus on a highway, including while temporarily stationary due to traffic, a traffic control device, or other momentary delays. This subsection does not apply if the operator of the commercial vehicle or school bus has moved the vehicle to the side of, or off, a highway and has stopped in a location where the vehicle can safely remain stationary. As used in this subsection, "mobile telephone" does not include a 2-way radio service or citizens band radio service. This subsection applies beginning October 28, 2013. As used in this subsection, "use a hand-held mobile telephone" means 1 or more of the following:

1 (a) Using at least 1 hand to hold a mobile telephone to
2 conduct a voice communication.

3 (b) Dialing or answering a mobile telephone by pressing more
4 than a single button.

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

10 (4) Subsections (1), (2), and (3) do not apply to an
11 individual who is using a device described in subsection (1) or (3)
12 to do any of the following:

13 (a) Report a traffic accident, medical emergency, or serious
14 road hazard.

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

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

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

22 (e) Operate or program the operation of an automated motor
23 vehicle while testing the automated motor vehicle in compliance
24 with section 665, if that automated motor vehicle displays a
25 special plate issued under section 224(3) in the manner required
26 under section 225.

27 **(5) THIS SECTION DOES NOT PROHIBIT ANY OF THE FOLLOWING:**

1 (A) USE OF HANDS-FREE TECHNOLOGY, INCLUDING, BUT NOT LIMITED
2 TO, BLUETOOTH OR A VERBAL INTERACTION PROGRAM.

3 (B) USE OF 1 BUTTON ON A WIRELESS 2-WAY COMMUNICATION DEVICE
4 TO ANSWER AN INCOMING CALL.

5 (6) ~~(5) An~~ EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (7), AN
6 individual who violates this section is responsible for a civil
7 infraction and shall be ordered to pay a civil fine as follows:

8 (a) For a ~~first~~ violation OF SUBSECTION (1), \$100.00.

9 (b) For a ~~second or subsequent~~ violation OF SUBSECTION (2) OR
10 (3), \$200.00.

11 (7) AN INDIVIDUAL WHO COMMITS A SECOND OR SUBSEQUENT VIOLATION
12 OF THIS SECTION IS RESPONSIBLE FOR A CRIME AS FOLLOWS:

13 (A) FOR A SECOND VIOLATION OF SUBSECTION (1), THE INDIVIDUAL
14 IS GUILTY OF A MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE
15 THAN 93 DAYS OR A FINE OF NOT MORE THAN \$500.00, OR BOTH.

16 (B) FOR A SECOND VIOLATION OF SUBSECTION (2) OR (3), THE
17 INDIVIDUAL IS GUILTY OF A MISDEMEANOR PUNISHABLE BY IMPRISONMENT
18 FOR NOT MORE THAN 93 DAYS OR A FINE OF NOT MORE THAN \$1,000.00, OR
19 BOTH.

20 (C) FOR A THIRD OR SUBSEQUENT VIOLATION OF SUBSECTION (1),
21 (2), OR (3), THE INDIVIDUAL IS GUILTY OF A FELONY PUNISHABLE BY
22 IMPRISONMENT FOR NOT MORE THAN 2 YEARS OR A FINE OF NOT MORE THAN
23 \$5,000.00, OR BOTH.

24 (8) ~~(6)~~ This section supersedes all local ordinances
25 regulating the use of a communications device while operating a
26 motor vehicle in motion on a highway or street, except that a unit
27 of local government may adopt an ordinance or enforce an existing

1 ordinance ~~THAT substantially corresponding~~ **CORRESPONDS** to OR IS
 2 **MORE RESTRICTIVE THAN** this section. **A UNIT OF LOCAL GOVERNMENT**
 3 **SHALL NOT ADOPT AN ORDINANCE OR ENFORCE AN EXISTING ORDINANCE THAT**
 4 **IS LESS RESTRICTIVE THAN THIS SECTION.**

5 Sec. 907. (1) A violation of this act, or a local ordinance
 6 substantially corresponding to a provision of this act, that is
 7 designated a civil infraction shall not be considered a lesser
 8 included offense of a criminal offense.

9 (2) If a person is determined under sections 741 to 750 to be
 10 responsible or responsible "with explanation" for a civil
 11 infraction under this act or a local ordinance substantially
 12 corresponding to a provision of this act, the judge or district
 13 court magistrate may order the person to pay a civil fine of not
 14 more than \$100.00 and costs as provided in subsection (4). However,
 15 if the civil infraction was a moving violation that resulted in an
 16 at-fault collision with another vehicle, a person, or any other
 17 object, the civil fine ordered under this section shall be
 18 increased by \$25.00 but the total civil fine shall not exceed
 19 \$100.00. However, for a **FIRST** violation of section ~~602b, 602B(1),~~
 20 the person shall be ordered to pay costs as provided in subsection
 21 (4) and a civil fine of \$100.00. ~~for a first offense and~~ **FOR A**
 22 **FIRST VIOLATION OF SECTION 602B(2) OR (3), THE PERSON SHALL BE**
 23 **ORDERED TO PAY COSTS AS PROVIDED IN SUBSECTION (4) AND A CIVIL FINE**
 24 **OF \$200.00.** ~~for a second or subsequent offense.~~ For a violation of
 25 section 674(1)(s) or a local ordinance substantially corresponding
 26 to section 674(1)(s), the person shall be ordered to pay costs as
 27 provided in subsection (4) and a civil fine of not less than

1 \$100.00 or more than \$250.00. For a violation of section 676c, the
2 person shall be ordered to pay costs as provided in subsection (4)
3 and a civil fine of \$1,000.00. For a violation of section 328, the
4 civil fine ordered under this subsection shall be not more than
5 \$50.00. For a violation of section 710d, the civil fine ordered
6 under this subsection shall not exceed \$10.00, subject to
7 subsection (12). For a violation of section 710e, the civil fine
8 and court costs ordered under this subsection shall be \$25.00. For
9 a violation of section 682 or a local ordinance substantially
10 corresponding to section 682, the person shall be ordered to pay
11 costs as provided in subsection (4) and a civil fine of not less
12 than \$100.00 or more than \$500.00. For a violation of section 240,
13 the civil fine ordered under this subsection shall be \$15.00. For a
14 violation of section 252a(1), the civil fine ordered under this
15 subsection shall be \$50.00. For a violation of section 676a(3), the
16 civil fine ordered under this section shall be not more than
17 \$10.00. For a first violation of section 319f(1), the civil fine
18 ordered under this section shall be not less than \$2,500.00 or more
19 than \$2,750.00; for a second or subsequent violation, the civil
20 fine shall be not less than \$5,000.00 or more than \$5,500.00. For a
21 violation of section 319g(1)(a), the civil fine ordered under this
22 section shall be not more than \$10,000.00. For a violation of
23 section 319g(1)(g), the civil fine ordered under this section shall
24 be not less than \$2,750.00 or more than \$25,000.00. Permission may
25 be granted for payment of a civil fine and costs to be made within
26 a specified period of time or in specified installments, but unless
27 permission is included in the order or judgment, the civil fine and

1 costs shall be payable immediately.

2 (3) Except as provided in this subsection, if a person is
3 determined to be responsible or responsible "with explanation" for
4 a civil infraction under this act or a local ordinance
5 substantially corresponding to a provision of this act while
6 driving a commercial motor vehicle, he or she shall be ordered to
7 pay costs as provided in subsection (4) and a civil fine of not
8 more than \$250.00.

9 (4) If a civil fine is ordered under subsection (2) or (3),
10 the judge or district court magistrate shall summarily tax and
11 determine the costs of the action, which are not limited to the
12 costs taxable in ordinary civil actions, and may include all
13 expenses, direct and indirect, to which the plaintiff has been put
14 in connection with the civil infraction, up to the entry of
15 judgment. Costs shall not be ordered in excess of \$100.00. A civil
16 fine ordered under subsection (2) or (3) shall not be waived unless
17 costs ordered under this subsection are waived. Except as otherwise
18 provided by law, costs are payable to the general fund of the
19 plaintiff.

20 (5) In addition to a civil fine and costs ordered under
21 subsection (2) or (3) and subsection (4) and the justice system
22 assessment ordered under subsection (13), the judge or district
23 court magistrate may order the person to attend and complete a
24 program of treatment, education, or rehabilitation.

25 (6) A district court magistrate shall impose the sanctions
26 permitted under subsections (2), (3), and (5) only to the extent
27 expressly authorized by the chief judge or only judge of the

1 district court district.

2 (7) Each district of the district court and each municipal
3 court may establish a schedule of civil fines, costs, and
4 assessments to be imposed for civil infractions that occur within
5 the respective district or city. If a schedule is established, it
6 shall be prominently posted and readily available for public
7 inspection. A schedule need not include all violations that are
8 designated by law or ordinance as civil infractions. A schedule may
9 exclude cases on the basis of a defendant's prior record of civil
10 infractions or traffic offenses, or a combination of civil
11 infractions and traffic offenses.

12 (8) The state court administrator shall annually publish and
13 distribute to each district and court a recommended range of civil
14 fines and costs for first-time civil infractions. This
15 recommendation is not binding upon the courts having jurisdiction
16 over civil infractions but is intended to act as a normative guide
17 for judges and district court magistrates and a basis for public
18 evaluation of disparities in the imposition of civil fines and
19 costs throughout the state.

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

26 (10) A default in the payment of a civil fine or costs ordered
27 under subsection (2), (3), or (4) or a justice system assessment

1 ordered under subsection (13), or an installment of the fine,
2 costs, or assessment, may be collected by a means authorized for
3 the enforcement of a judgment under chapter 40 of the revised
4 judicature act of 1961, 1961 PA 236, MCL 600.4001 to 600.4065, or
5 under chapter 60 of the revised judicature act of 1961, 1961 PA
6 236, MCL 600.6001 to 600.6098.

7 (11) If a person fails to comply with an order or judgment
8 issued under this section within the time prescribed by the court,
9 the driver's license of that person shall be suspended under
10 section 321a until full compliance with that order or judgment
11 occurs. In addition to this suspension, the court may also proceed
12 under section 908.

13 (12) The court may waive any civil fine, cost, or assessment
14 against a person who received a civil infraction citation for a
15 violation of section 710d if the person, before the appearance date
16 on the citation, supplies the court with evidence of acquisition,
17 purchase, or rental of a child seating system meeting the
18 requirements of section 710d.

19 (13) In addition to any civil fines or costs ordered to be
20 paid under this section, the judge or district court magistrate
21 shall order the defendant to pay a justice system assessment of
22 \$40.00 for each civil infraction determination, except for a
23 parking violation or a violation for which the total fine and costs
24 imposed are \$10.00 or less. Upon payment of the assessment, the
25 clerk of the court shall transmit the assessment collected to the
26 state treasury to be deposited into the justice system fund created
27 in section 181 of the revised judicature act of 1961, 1961 PA 236,

1 MCL 600.181. An assessment levied under this subsection is not a
2 civil fine for purposes of section 909.

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

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

19 (16) If a person is determined to be responsible or
20 responsible "with explanation" for a civil infraction under this
21 act or a local ordinance substantially corresponding to a provision
22 of this act and the civil infraction arises out of the ownership or
23 operation of a commercial quadricycle, he or she shall be ordered
24 to pay costs as provided in subsection (4) and a civil fine of not
25 more than \$500.00.

26 (17) As used in this section, "moving violation" means an act
27 or omission prohibited under this act or a local ordinance

1 substantially corresponding to this act that involves the operation
2 of a motor vehicle and for which a fine may be assessed.

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