

HOUSE BILL No. 4212

February 15, 2017, Introduced by Rep. Lucido and referred to the Committee on Law and Justice.

A bill to amend 1949 PA 300, entitled
"Michigan vehicle code,"
by amending sections 320a and 625a (MCL 257.320a and 257.625a),
section 320a as amended by 2016 PA 448 and section 625a as
amended by 2015 PA 11.

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:

- 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
 11 or 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(6) 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 or ordinance
 26 pertaining to speed by exceeding the lawful
 27 maximum by more than 15 miles per hour.....4 points
- 28 (i) A violation of section 625(3) or (6) ~~7~~**OR**
 29 ~~section 81135 or 82127(3)~~ **OR FORMER SECTION 81135** of

1 the natural resources and environmental protection act,
 2 1994 PA 451, ~~MCL 324.81135~~ and **MCL 324.82127**,
 3 or a law or ordinance substantially corresponding
 4 to section 625(3) or (6) or section ~~81135~~
 5 ~~or 82127(3)~~ **OR FORMER SECTION 81135** of the natural
 6 resources and environmental protection act, 1994 PA 451,
 7 ~~MCL 324.81135~~ and **MCL 324.82127**.....4 points
 8 (j) A violation of section 626a or a law
 9 or ordinance substantially corresponding to
 10 section 626a.....4 points
 11 (k) A violation of section 653a(2).....4 points
 12 (l) A violation of section 627(6) pertaining
 13 to speed in a work zone described in that section
 14 by exceeding the lawful maximum by more than 10
 15 but not more than 15 miles per hour.....4 points
 16 (m) Beginning October 31, 2010, a moving
 17 violation resulting in an at-fault collision with
 18 another vehicle, a person, or any other object.....4 points
 19 (n) Careless driving in violation of section
 20 626b or a law or ordinance substantially
 21 corresponding to section 626b.....3 points
 22 (o) A violation of any law or ordinance
 23 pertaining to speed by exceeding the lawful
 24 maximum by more than 10 miles per hour but not
 25 more than 15 miles per hour.....3 points
 26 (p) A violation of any law or ordinance
 27 pertaining to speed by exceeding the lawful
 28 maximum by more than 5 miles per hour but not
 29 more than 10 miles per hour2 points

1 (q) A violation of any law or ordinance
 2 pertaining to speed by exceeding the lawful
 3 maximum by more than 1 mile per hour but not
 4 more than 5 miles per hour.....1 point

5 (r) Disobeying a traffic signal or stop sign,
 6 or improper passing.....3 points

7 (s) A violation of section 624a, 624b, or
 8 a law or ordinance substantially corresponding to
 9 section 624a or 624b.....2 points

10 (t) A violation of section 310e(4) or (6) or
 11 a law or ordinance substantially corresponding
 12 to section 310e(4) or (6).....2 points

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

16 ~~—— (v) A refusal by a person less than 21 years~~
 17 ~~of age to submit to a preliminary breath test~~
 18 ~~required by a peace officer under section 625a.....2 points~~

19 (V) ~~(w)~~ A violation of section 627(6) pertaining
 20 to speed in a work zone described in that
 21 section by exceeding the lawful maximum by
 22 10 miles per hour or less.....3 points

23 (2) Points ~~shall~~ **MUST** not be entered for a violation of
 24 section 310e(14), 311, 602b(1), 602c, 625m, 658, 710d, 717, 719,
 25 719a, or 723.

26 (3) Points ~~shall~~ **MUST** not be entered for bond forfeitures.

27 (4) Points ~~shall~~ **MUST** not be entered for overweight loads or
 28 for defective equipment.

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

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

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

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

21 (9) If a Michigan driver commits a violation in another
22 state that would be a civil infraction if committed in Michigan,
23 and a conviction results solely because of the failure of the
24 Michigan driver to appear in that state to contest the violation,
25 upon receipt of the abstract of conviction by the secretary of
26 state, the violation shall be noted on the driver's record, but
27 no points shall be assessed against his or her driver's license.

1 Sec. 625a. (1) A peace officer may arrest a person without a
2 warrant under either of the following circumstances:

3 (a) The peace officer has reasonable cause to believe the
4 person was, at the time of an accident in this state, the
5 operator of a vehicle involved in the accident and was operating
6 the vehicle in violation of section 625 or a local ordinance
7 substantially corresponding to section 625.

8 (b) The person is found in the driver's seat of a vehicle
9 parked or stopped on a highway or street within this state if any
10 part of the vehicle intrudes into the roadway and the peace
11 officer has reasonable cause to believe the person was operating
12 the vehicle in violation of section 625 or a local ordinance
13 substantially corresponding to section 625.

14 (2) ~~A-EXCEPT AS TO A PERSON WHO WAS OPERATING A COMMERCIAL~~
15 ~~VEHICLE AS DESCRIBED IN THIS SUBSECTION, A~~ peace officer who has
16 reasonable cause to believe that a person was operating a vehicle
17 upon a public highway or other place open to the public or
18 generally accessible to motor vehicles, including an area
19 designated for the parking of vehicles, within this state and
20 that the person by the consumption of alcoholic liquor, a
21 controlled substance, or other intoxicating substance or a
22 combination of them may have affected his or her ability to
23 operate a vehicle ~~, or reasonable cause to believe that a person~~
24 ~~was operating a commercial motor vehicle within the state while~~
25 ~~the person's blood, breath, or urine contained any measurable~~
26 ~~amount of alcohol, a controlled substance, or any other~~
27 ~~intoxicating substance or while the person had any detectable~~

1 ~~presence of alcoholic liquor, a controlled substance or any other~~
2 ~~intoxicating substance, or any combination of them, or reasonable~~
3 cause to believe that a person who is less than 21 years of age
4 was operating a vehicle upon a public highway or other place open
5 to the public or generally accessible to motor vehicles,
6 including an area designated for the parking of vehicles, within
7 this state while the person had any bodily alcohol content as
8 that term is defined in section 625(6), may ~~require~~ **REQUEST** the
9 person to submit to a preliminary chemical breath analysis. **IF**
10 **THE PERSON DOES NOT CONSENT TO A PRELIMINARY CHEMICAL BREATH**
11 **ANALYSIS, THE ANALYSIS MUST NOT BE ADMINISTERED WITHOUT A COURT**
12 **ORDER, BUT A PEACE OFFICER MAY SEEK TO OBTAIN A COURT ORDER. A**
13 **PEACE OFFICER WHO HAS REASONABLE CAUSE TO BELIEVE THAT A PERSON**
14 **WAS OPERATING A COMMERCIAL MOTOR VEHICLE WITHIN THE STATE WHILE**
15 **THE PERSON'S BLOOD, BREATH, OR URINE CONTAINED ANY MEASURABLE**
16 **AMOUNT OF ALCOHOL, A CONTROLLED SUBSTANCE, OR ANY OTHER**
17 **INTOXICATING SUBSTANCE OR WHILE THE PERSON HAD ANY DETECTABLE**
18 **PRESENCE OF ALCOHOLIC LIQUOR, A CONTROLLED SUBSTANCE OR ANY OTHER**
19 **INTOXICATING SUBSTANCE, OR ANY COMBINATION OF THEM MAY REQUIRE**
20 **THE PERSON TO SUBMIT TO A PRELIMINARY CHEMICAL BREATH ANALYSIS**
21 **WITHOUT OBTAINING A COURT ORDER.** The following provisions apply
22 with respect to a preliminary chemical breath analysis
23 administered under this subsection:

24 (a) A peace officer may arrest a person based in whole or in
25 part upon the results of a preliminary chemical breath analysis.

26 (b) The results of a preliminary chemical breath analysis
27 are admissible in a criminal prosecution for a crime enumerated

1 in section 625c(1) or in an administrative hearing for 1 or more
2 of the following purposes:

3 (i) To assist the court or hearing officer in determining a
4 challenge to the validity of an arrest. This subparagraph does
5 not limit the introduction of other competent evidence offered to
6 establish the validity of an arrest.

7 (ii) As evidence of the defendant's breath alcohol content,
8 if offered by the defendant to rebut testimony elicited on cross-
9 examination of a defense witness that the defendant's breath
10 alcohol content was higher at the time of the charged offense
11 than when a chemical test was administered under subsection (6).

12 (iii) As evidence of the defendant's breath alcohol content,
13 if offered by the prosecution to rebut testimony elicited on
14 cross-examination of a prosecution witness that the defendant's
15 breath alcohol content was lower at the time of the charged
16 offense than when a chemical test was administered under
17 subsection (6).

18 (c) A person who submits to a preliminary chemical breath
19 analysis **EITHER CONSENSUALLY OR AFTER A PEACE OFFICER OBTAINS A**
20 **COURT ORDER REQUIRING A PERSON TO SUBMIT TO A PRELIMINARY**
21 **CHEMICAL BREATH TEST IF AN ORDER IS REQUIRED** remains subject to
22 the requirements of sections 625c, 625d, 625e, and 625f for
23 purposes of chemical tests described in those sections.

24 ~~— (d) Except as provided in subsection (5), a person who~~
25 ~~refuses to submit to a preliminary chemical breath analysis upon~~
26 ~~a lawful request by a peace officer is responsible for a civil~~
27 ~~infraction.~~

1 (3) A peace officer shall use the results of a preliminary
2 chemical breath analysis conducted under this section to
3 determine whether to order a person out-of-service under section
4 319d. A peace officer shall order out-of-service as required
5 under section 319d a person who was operating a commercial motor
6 vehicle and who refuses to submit to a preliminary chemical
7 breath analysis as provided in this section. This section does
8 not limit use of other competent evidence by the peace officer to
9 determine whether to order a person out-of-service under section
10 319d.

11 (4) A person who was operating a commercial motor vehicle
12 and who is requested to submit to a preliminary chemical breath
13 analysis under this section ~~shall~~**MUST** be advised that refusing a
14 peace officer's request to take a test described in this section
15 is a misdemeanor punishable by imprisonment for not more than 93
16 days or a fine of not more than \$100.00, or both, and will result
17 in the issuance of a 24-hour out-of-service order.

18 (5) A person who was operating a commercial motor vehicle
19 and who refuses to submit to a preliminary chemical breath
20 analysis upon a peace officer's lawful request is guilty of a
21 misdemeanor punishable by imprisonment for not more than 93 days
22 or a fine of not more than \$100.00, or both.

23 (6) The following provisions apply with respect to chemical
24 tests and analysis of a person's blood, urine, or breath, other
25 than a preliminary chemical breath analysis:

26 (a) The amount of alcohol or presence of a controlled
27 substance or other intoxicating substance in a driver's blood or

1 urine or the amount of alcohol in a person's breath at the time
2 alleged as shown by chemical analysis of the person's blood,
3 urine, or breath is admissible into evidence in any civil or
4 criminal proceeding and is presumed to be the same as at the time
5 the person operated the vehicle.

6 (b) A person arrested for a crime described in section
7 625c(1) ~~shall~~**MUST** be advised of all of the following:

8 (i) If he or she takes a chemical test of his or her blood,
9 urine, or breath administered at the request of a peace officer,
10 he or she has the right to demand that a person of his or her own
11 choosing administer 1 of the chemical tests.

12 (ii) The results of the test are admissible in a judicial
13 proceeding as provided under this act and will be considered with
14 other admissible evidence in determining the defendant's
15 innocence or guilt.

16 (iii) He or she is responsible for obtaining a chemical
17 analysis of a test sample obtained at his or her own request.

18 (iv) If he or she refuses the request of a peace officer to
19 take a test described in subparagraph (i), a test ~~shall~~**MUST** not
20 be given without a court order, but the peace officer may seek to
21 obtain a court order.

22 (v) Refusing a peace officer's request to take a test
23 described in subparagraph (i) will result in the suspension of his
24 or her operator's or chauffeur's license and vehicle group
25 designation or operating privilege and in the addition of 6
26 points to his or her driver record.

27 (c) A sample or specimen of urine or breath ~~shall~~**MUST** be

1 taken and collected in a reasonable manner. Only a licensed
2 physician, or an individual operating under the delegation of a
3 licensed physician under section 16215 of the public health code,
4 1978 PA 368, MCL 333.16215, qualified to withdraw blood and
5 acting in a medical environment, may withdraw blood at a peace
6 officer's request to determine the amount of alcohol or presence
7 of a controlled substance or other intoxicating substance in the
8 person's blood, as provided in this subsection. Liability for a
9 crime or civil damages predicated on the act of withdrawing or
10 analyzing blood and related procedures does not attach to a
11 licensed physician or individual operating under the delegation
12 of a licensed physician who withdraws or analyzes blood or
13 assists in the withdrawal or analysis in accordance with this act
14 unless the withdrawal or analysis is performed in a negligent
15 manner.

16 (d) A chemical test described in this subsection ~~shall~~**MUST**
17 be administered at the request of a peace officer having
18 reasonable grounds to believe the person has committed a crime
19 described in section 625c(1). A person who takes a chemical test
20 administered at a peace officer's request as provided in this
21 section ~~shall~~**MUST** be given a reasonable opportunity to have a
22 person of his or her own choosing administer 1 of the chemical
23 tests described in this subsection within a reasonable time after
24 his or her detention. The test results are admissible and ~~shall~~
25 **MUST** be considered with other admissible evidence in determining
26 the defendant's innocence or guilt. If the person charged is
27 administered a chemical test by a person of his or her own

1 choosing, the person charged is responsible for obtaining a
2 chemical analysis of the test sample.

3 (e) If, after an accident, the driver of a vehicle involved
4 in the accident is transported to a medical facility and a sample
5 of the driver's blood is withdrawn at that time for medical
6 treatment, the results of a chemical analysis of that sample are
7 admissible in any civil or criminal proceeding to show the amount
8 of alcohol or presence of a controlled substance or other
9 intoxicating substance in the person's blood at the time alleged,
10 regardless of whether the person had been offered or had refused
11 a chemical test. The medical facility or person performing the
12 chemical analysis shall disclose the results of the analysis to a
13 prosecuting attorney who requests the results for use in a
14 criminal prosecution as provided in this subdivision. A medical
15 facility or person disclosing information in compliance with this
16 subsection is not civilly or criminally liable for making the
17 disclosure.

18 (f) If, after an accident, the driver of a vehicle involved
19 in the accident is deceased, a sample of the decedent's blood
20 ~~shall~~ **MUST** be withdrawn in a manner directed by the medical
21 examiner to determine the amount of alcohol or the presence of a
22 controlled substance or other intoxicating substance, or any
23 combination of them, in the decedent's blood. The medical
24 examiner shall give the results of the chemical analysis of the
25 sample to the law enforcement agency investigating the accident
26 and that agency shall forward the results to the department of
27 state police.

1 (g) The department of state police shall promulgate uniform
2 rules in compliance with the administrative procedures act of
3 1969, 1969 PA 306, MCL 24.201 to 24.328, for the administration
4 of chemical tests for the purposes of this section. An instrument
5 used for a preliminary chemical breath analysis may be used for a
6 chemical test described in this subsection if approved under
7 rules promulgated by the department of state police.

8 (7) The provisions of subsection (6) relating to chemical
9 testing do not limit the introduction of any other admissible
10 evidence bearing upon any of the following questions:

11 (a) Whether the person was impaired by, or under the
12 influence of, alcoholic liquor, a controlled substance or other
13 intoxicating substance, or a combination of alcoholic liquor, a
14 controlled substance, or other intoxicating substance.

15 (b) Whether the person had an alcohol content of 0.08 grams
16 or more per 100 milliliters of blood, per 210 liters of breath,
17 or per 67 milliliters of urine or, beginning October 1, 2018, the
18 person had an alcohol content of 0.10 grams or more per 100
19 milliliters of blood, per 210 liters of breath, or per 67
20 milliliters of urine.

21 (c) If the person is less than 21 years of age, whether the
22 person had any bodily alcohol content within his or her body. As
23 used in this subdivision, "any bodily alcohol content" means
24 either of the following:

25 (i) An alcohol content of 0.02 grams or more but less than
26 0.08 grams per 100 milliliters of blood, per 210 liters of
27 breath, or per 67 milliliters of urine or, beginning October 1,

1 2018, the person had an alcohol content of 0.02 grams or more but
2 less than 0.10 grams or more per 100 milliliters of blood, per
3 210 liters of breath, or per 67 milliliters of urine.

4 (ii) Any presence of alcohol within a person's body resulting
5 from the consumption of alcoholic liquor, other than the
6 consumption of alcoholic liquor as a part of a generally
7 recognized religious service or ceremony.

8 (8) If a chemical test described in subsection (6) is
9 administered, the test results ~~shall~~**MUST** be made available to
10 the person charged or the person's attorney upon written request
11 to the prosecution, with a copy of the request filed with the
12 court. The prosecution shall furnish the results at least 2 days
13 before the day of the trial. The prosecution shall offer the test
14 results as evidence in that trial. Failure to fully comply with
15 the request bars the admission of the results into evidence by
16 the prosecution.

17 (9) A person's refusal to submit to a chemical test as
18 provided in subsection (6) is admissible in a criminal
19 prosecution for a crime described in section 625c(1) only to show
20 that a test was offered to the defendant, but not as evidence in
21 determining the defendant's innocence or guilt. The jury ~~shall~~
22 **MUST** be instructed accordingly.

23 (10) As used in this section:

24 (a) "Controlled substance" means that term as defined in
25 section 7104 of the public health code, 1978 PA 368, MCL
26 333.7104.

27 (b) "Intoxicating substance" means that term as defined in

1 section 625.

2 Enacting section 1. This amendatory act takes effect 90 days

3 after the date it is enacted into law.