

HOUSE BILL No. 5795

August 3, 2016, Introduced by Rep. Lucido and referred to the Committee on Judiciary.

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 2012 PA 592 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, 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:

7 (a) Manslaughter, negligent homicide, or a
8 felony resulting from the operation of a motor

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

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

1 (o) A violation of section 627(9) pertaining
2 to speed in a work zone described in that section
3 by exceeding the lawful maximum by 10 miles per
4 hour or less.....3 points

5 (p) A violation of any law other than the law
6 described in subdivision (o) or ordinance
7 pertaining to speed by exceeding the lawful maximum
8 by 10 miles per hour or less.....2 points

9 (q) Disobeying a traffic signal or stop sign,
10 or improper passing.....3 points

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

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

17 (t) All other moving violations pertaining to
18 the operation of motor vehicles reported under
19 this section.....2 points

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

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

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

27 (4) Points shall not be entered for overweight loads or for

1 defective equipment.

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

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

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

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

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

1 shall be assessed against his or her driver's license.

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

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

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

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

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

1 section 625c(1) or in an administrative hearing for 1 or more of
2 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 not
5 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, if
8 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 than
11 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 cross-
14 examination of a prosecution witness that the defendant's breath
15 alcohol content was lower at the time of the charged offense than
16 when a chemical test was administered under subsection (6).

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

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

26 (3) A peace officer shall use the results of a preliminary
27 chemical breath analysis conducted under this section to determine

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

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

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

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

23 (a) The amount of alcohol or presence of a controlled
24 substance or other intoxicating substance in a driver's blood or
25 urine or the amount of alcohol in a person's breath at the time
26 alleged as shown by chemical analysis of the person's blood, urine,
27 or breath is admissible into evidence in any civil or criminal

1 proceeding and is presumed to be the same as at the time the person
2 operated the vehicle.

3 (b) A person arrested for a crime described in section 625c(1)
4 shall be advised of all of the following:

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

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

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

15 (iv) If he or she refuses the request of a peace officer to
16 take a test described in subparagraph (i), a test shall not be
17 given without a court order, but the peace officer may seek to
18 obtain a court order.

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

24 (c) A sample or specimen of urine or breath shall be taken and
25 collected in a reasonable manner. Only a licensed physician, or an
26 individual operating under the delegation of a licensed physician
27 under section 16215 of the public health code, 1978 PA 368, MCL

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

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

25 (e) If, after an accident, the driver of a vehicle involved in
26 the accident is transported to a medical facility and a sample of
27 the driver's blood is withdrawn at that time for medical treatment,

1 the results of a chemical analysis of that sample are admissible in
2 any civil or criminal proceeding to show the amount of alcohol or
3 presence of a controlled substance or other intoxicating substance
4 in the person's blood at the time alleged, regardless of whether
5 the person had been offered or had refused a chemical test. The
6 medical facility or person performing the chemical analysis shall
7 disclose the results of the analysis to a prosecuting attorney who
8 requests the results for use in a criminal prosecution as provided
9 in this subdivision. A medical facility or person disclosing
10 information in compliance with this subsection is not civilly or
11 criminally liable for making the disclosure.

12 (f) If, after an accident, the driver of a vehicle involved in
13 the accident is deceased, a sample of the decedent's blood shall be
14 withdrawn in a manner directed by the medical examiner to determine
15 the amount of alcohol or the presence of a controlled substance or
16 other intoxicating substance, or any combination of them, in the
17 decedent's blood. The medical examiner shall give the results of
18 the chemical analysis of the sample to the law enforcement agency
19 investigating the accident and that agency shall forward the
20 results to the department of state police.

21 (g) The department of state police shall promulgate uniform
22 rules in compliance with the administrative procedures act of 1969,
23 1969 PA 306, MCL 24.201 to 24.328, for the administration of
24 chemical tests for the purposes of this section. An instrument used
25 for a preliminary chemical breath analysis may be used for a
26 chemical test described in this subsection if approved under rules
27 promulgated by the department of state police.

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

4 (a) Whether the person was impaired by, or under the influence
5 of, alcoholic liquor, a controlled substance or other intoxicating
6 substance, or a combination of alcoholic liquor, a controlled
7 substance, or other intoxicating substance.

8 (b) Whether the person had an alcohol content of 0.08 grams or
9 more per 100 milliliters of blood, per 210 liters of breath, or per
10 67 milliliters of urine or, beginning October 1, 2018, the person
11 had an alcohol content of 0.10 grams or more per 100 milliliters of
12 blood, per 210 liters of breath, or per 67 milliliters of urine.

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

17 (i) An alcohol content of 0.02 grams or more but less than
18 0.08 grams per 100 milliliters of blood, per 210 liters of breath,
19 or per 67 milliliters of urine or, beginning October 1, 2018, the
20 person had an alcohol content of 0.02 grams or more but less than
21 0.10 grams or more per 100 milliliters of blood, per 210 liters of
22 breath, or per 67 milliliters of urine.

23 (ii) Any presence of alcohol within a person's body resulting
24 from the consumption of alcoholic liquor, other than the
25 consumption of alcoholic liquor as a part of a generally recognized
26 religious service or ceremony.

27 (8) If a chemical test described in subsection (6) is

1 administered, the test results shall be made available to the
2 person charged or the person's attorney upon written request to the
3 prosecution, with a copy of the request filed with the court. The
4 prosecution shall furnish the results at least 2 days before the
5 day of the trial. The prosecution shall offer the test results as
6 evidence in that trial. Failure to fully comply with the request
7 bars the admission of the results into evidence by the prosecution.

8 (9) A person's refusal to submit to a chemical test as
9 provided in subsection (6) is admissible in a criminal prosecution
10 for a crime described in section 625c(1) only to show that a test
11 was offered to the defendant, but not as evidence in determining
12 the defendant's innocence or guilt. The jury shall be instructed
13 accordingly.

14 (10) As used in this section:

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

17 (b) "Intoxicating substance" means that term as defined in
18 section 625.

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