

HOUSE BILL No. 6432

September 14, 2010, Introduced by Reps. Rick Jones, Slavens, Ball and Liss and referred to the Committee on Judiciary.

A bill to amend 1949 PA 300, entitled "Michigan vehicle code," by amending sections 319d, 320a, and 625a (MCL 257.319d, 257.320a, and 257.625a), section 319d as amended by 1996 PA 404, section 320a as amended by 2010 PA 58, and section 625a as amended by 2003 PA 61, and by adding section 43a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 **SEC. 43A. "PRELIMINARY CHEMICAL ANALYSIS" MEANS EITHER OF**
2 **THE FOLLOWING:**

3 **(A) A PRELIMINARY CHEMICAL BREATH ANALYSIS. AS USED IN THIS**
4 **SUBDIVISION, "PRELIMINARY CHEMICAL BREATH ANALYSIS" MEANS THE ON-**
5 **SITE TAKING AND ANALYSIS OF A PERSON'S BREATH TO DETERMINE THE**
6 **PRESENCE OF ALCOHOL IN THE PERSON'S BODY.**

7 **(B) PRELIMINARY CHEMICAL ORAL FLUIDS ANALYSIS. AS USED IN**

1 THIS SUBDIVISION:

2 (i) "IMMUNOCHEMICAL ASSAY" MEANS A SCIENTIFIC TECHNIQUE THAT
3 USES SPECIFIC BINDING BETWEEN AN ANTIGEN AND ITS HOMOLOGOUS
4 ANTIBODY TO IDENTIFY AND QUANTIFY A SUBSTANCE IN A SAMPLE.

5 (ii) "PRELIMINARY CHEMICAL ORAL FLUIDS ANALYSIS" MEANS THE
6 ON-SITE TAKING AND ANALYSIS BY IMMUNOCHEMICAL ASSAY OF THE ORAL
7 FLUIDS OF A PERSON FOR THE PURPOSE OF DETECTING THE PRESENCE OF
8 CONTROLLED SUBSTANCES WITHIN THE PERSON'S BODY.

9 Sec. 319d. (1) A person, whether licensed or not, shall not
10 operate a commercial motor vehicle within this state with an
11 alcohol content of 0.015 grams or more per 100 milliliters of
12 blood, per 210 liters of breath, or per 67 milliliters of urine.

13 (2) A peace officer who has reasonable cause to believe that
14 a person was operating a commercial motor vehicle within the
15 state with an alcohol content of 0.015 grams or more per 100
16 milliliters of blood, per 210 liters of breath, or per 67
17 milliliters of urine, as measured by a preliminary chemical
18 ~~breath~~-analysis or a chemical test provided under section 625a,
19 shall order the person out-of-service immediately for 24 hours,
20 which shall begin upon issuance of the order.

21 (3) A peace officer shall immediately order a person who
22 refuses to submit to a preliminary chemical ~~breath~~-analysis
23 requested or a chemical test provided under section 625a out-of-
24 service for 24 hours, which shall begin when the order is issued.

25 (4) A person ordered out-of-service under this section, a
26 local ordinance substantially corresponding to this section, or a
27 law or local ordinance of another state substantially

1 corresponding to this section shall not operate a commercial
2 motor vehicle within this state during the 24-hour out-of-service
3 period.

4 (5) A peace officer who issues an out-of-service order under
5 this section shall provide for the safe and expeditious
6 disposition of a product carried by a commercial motor vehicle
7 that is hazardous or would result in damage to the vehicle, human
8 health, or the environment.

9 (6) Failure to comply with subsection (1) is not a civil
10 infraction or criminal violation of this act.

11 (7) A person who violates subsection (4) is guilty of a
12 misdemeanor punishable by imprisonment for not more than 90 days
13 or a fine of not more than \$100.00, or both.

14 Sec. 320a. (1) The secretary of state shall record the date
15 of conviction, civil infraction determination, or probate court
16 disposition, and the number of points for each, based on the
17 following formula, except as otherwise provided in this section
18 and section 629c:

19 (a) Manslaughter, negligent homicide, or a
20 felony resulting from the operation of a motor
21 vehicle, ORV, or snowmobile.....6 points

22 (b) A violation of section 601b(2) or (3),
23 601c(1) or (2), or 653a(3) or (4) or, beginning
24 October 31, 2010, a violation of section 601d.....6 points

25 (c) A violation of section 625(1), (4), (5),
26 (7), or (8), section 81134 or 82127(1) of the
27 natural resources and environmental protection act,
28 1994 PA 451, MCL 324.81134 and 324.82127, or a law or

1 ordinance substantially corresponding to section
2 625(1), (4), (5), (7), or (8), or section 81134
3 or 82127(1) of the natural resources and
4 environmental protection act, 1994 PA 451,
5 MCL 324.81134 and 324.82127.....6 points
6 (d) Failing to stop and disclose identity
7 at the scene of an accident when required by law.....6 points
8 (e) Operating a motor vehicle in violation
9 of section 626.....6 points
10 (f) Fleeing or eluding an officer.....6 points
11 (g) A violation of section 627(9) pertaining
12 to speed in a work zone described in that section
13 by exceeding the lawful maximum by more than
14 15 miles per hour.....5 points
15 (h) A violation of any law other than the
16 law described in subdivision (g) or ordinance
17 pertaining to speed by exceeding the lawful
18 maximum by more than 15 miles per hour.....4 points
19 (i) A violation of section 625(3) or (6),
20 section 81135 or 82127(3) of the natural
21 resources and environmental protection act,
22 1994 PA 451, MCL 324.81135 and 324.82127,
23 or a law or ordinance substantially corresponding
24 to section 625(3) or (6) or section 81135
25 or 82127(3) of the natural resources and
26 environmental protection act, 1994 PA 451,
27 MCL 324.81135 and 324.82127.....4 points
28 (j) A violation of section 626a or a law
29 or ordinance substantially corresponding to
30 section 626a.....4 points
31 (k) A violation of section 653a(2).....4 points

- 1 (l) 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 more than 10
- 4 but not more than 15 miles per hour.....4 points
- 5 (m) Beginning October 31, 2010, a
- 6 moving violation resulting in an at-fault
- 7 collision with another vehicle, a person,
- 8 or any other object.....4 points
- 9 (n) A violation of any law other than the
- 10 law described in subdivision (l) or ordinance
- 11 pertaining to speed by exceeding the lawful
- 12 maximum by more than 10 but not more than 15
- 13 miles per hour or careless driving in violation
- 14 of section 626b or a law or ordinance substantially
- 15 corresponding to section 626b.....3 points
- 16 (o) A violation of section 627(9) pertaining
- 17 to speed in a work zone described in that section
- 18 by exceeding the lawful maximum by 10 miles per
- 19 hour or less.....3 points
- 20 (p) A violation of any law other than the law
- 21 described in subdivision (o) or ordinance
- 22 pertaining to speed by exceeding the lawful maximum
- 23 by 10 miles per hour or less.....2 points
- 24 (q) Disobeying a traffic signal or stop sign,
- 25 or improper passing.....3 points
- 26 (r) A violation of section 624a, 624b, or
- 27 a law or ordinance substantially corresponding to
- 28 section 624a or 624b.....2 points
- 29 (s) A violation of section 310e(4) or (6) or
- 30 a law or ordinance substantially corresponding to
- 31 section 310e(4) or (6).....2 points

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

4 (u) A refusal by a person less than 21 years of
5 age to submit to a preliminary ~~breath test~~
6 **CHEMICAL ANALYSIS** required by a peace officer
7 under section 625a.....2 points

8 (2) Points shall not be entered for a violation of section
9 310e(14), 311, 602b, 625m, 658, **710D**, 717, 719, 719a, or 723.

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

11 (4) Points shall not be entered for overweight loads or for
12 defective equipment.

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

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

23 (7) If a person violates a speed restriction established by
24 an executive order issued during a state of energy emergency as
25 provided by 1982 PA 191, MCL 10.81 to 10.89, the secretary of
26 state shall enter points for the violation pursuant to subsection
27 (1).

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

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

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

16 (a) The peace officer has reasonable cause to believe the
17 person was, at the time of an accident in this state, the
18 operator of a vehicle involved in the accident and was operating
19 the vehicle in violation of section 625 or a local ordinance
20 substantially corresponding to section 625.

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

27 (2) A peace officer who has reasonable cause to believe that

1 a person was operating a vehicle upon a public highway or other
2 place open to the public or generally accessible to motor
3 vehicles, including an area designated for the parking of
4 vehicles, within this state and that the person by the
5 consumption of alcoholic liquor **OR A CONTROLLED SUBSTANCE** may
6 have affected his or her ability to operate a vehicle, or
7 reasonable cause to believe that a person was operating a
8 commercial motor vehicle within the state while the person's
9 blood, breath, or urine contained any measurable amount of
10 alcohol **OR A CONTROLLED SUBSTANCE** or while the person had any
11 detectable presence of alcoholic liquor **OR A CONTROLLED**
12 **SUBSTANCE**, or reasonable cause to believe that a person who is
13 less than 21 years of age was operating a vehicle upon a public
14 highway or other place open to the public or generally accessible
15 to motor vehicles, including an area designated for the parking
16 of vehicles, within this state while the person had any bodily
17 alcohol content as that term is defined in section 625(6), may
18 require the person to submit to a preliminary chemical ~~breath~~
19 analysis. The following provisions apply with respect to a
20 preliminary chemical ~~breath~~-analysis administered under this
21 subsection:

22 (a) A peace officer may arrest a person based in whole or in
23 part upon the results of a preliminary chemical ~~breath~~-analysis.

24 (b) ~~The~~-**SUBJECT TO ADMISSIBILITY UNDER THE MICHIGAN RULES OF**
25 **EVIDENCE, THE** results of a preliminary chemical ~~breath~~-analysis
26 are admissible in a criminal prosecution for a crime enumerated
27 in section 625c(1) or in an administrative hearing for 1 or more

1 of the following purposes:

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

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

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

17 (C) THE RESULTS OF A PRELIMINARY CHEMICAL ORAL FLUIDS
18 ANALYSIS ARE INADMISSIBLE AS EVIDENCE FOR PURPOSES OTHER THAN THE
19 PURPOSES LISTED UNDER SUBDIVISION (B) (i) ONLY IF THE RESULTS OF
20 THE PRELIMINARY CHEMICAL ORAL FLUIDS TEST ARE CONFIRMED BY LIQUID
21 CHROMATOGRAPHY WITH MASS SPECTROMETRY X 2 IN A LABORATORY
22 APPROVED BY THE DEPARTMENT OF STATE POLICE.

23 (D) ~~(e)~~—A person who submits to a preliminary chemical
24 ~~breath~~ analysis remains subject to the requirements of sections
25 625c, 625d, 625e, and 625f for purposes of chemical tests
26 described in those sections.

27 (E) ~~(d)~~—Except as provided in subsection (5), a person who

1 refuses to submit to a preliminary chemical ~~breath~~ analysis upon
2 a lawful request by a peace officer is responsible for a civil
3 infraction.

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

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

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

26 (6) The following provisions apply with respect to chemical
27 tests and analysis of a person's blood, urine, or breath, other

1 than preliminary chemical ~~breath~~ analysis:

2 (a) The amount of alcohol or presence of a controlled
3 substance or both in a driver's blood or urine or the amount of
4 alcohol in a person's breath at the time alleged as shown by
5 chemical analysis of the person's blood, urine, or breath is
6 admissible into evidence in any civil or criminal proceeding and
7 is presumed to be the same as at the time the person operated the
8 vehicle.

9 (b) A person arrested for a crime described in section
10 625c(1) shall be advised of all of the following:

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

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

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

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

25 (v) Refusing a peace officer's request to take a test
26 described in subparagraph (i) will result in the suspension of his
27 or her operator's or chauffeur's license and vehicle group

1 designation or operating privilege and in the addition of 6
2 points to his or her driver record.

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

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

1 innocence or guilt. If the person charged is administered a
2 chemical test by a person of his or her own choosing, the person
3 charged is responsible for obtaining a chemical analysis of the
4 test sample.

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

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

14 (b) Whether the person had an alcohol content of 0.08 grams
15 or more per 100 milliliters of blood, per 210 liters of breath,
16 or per 67 milliliters of urine or, beginning October 1, 2013, the
17 person had an alcohol content of 0.10 grams or more per 100
18 milliliters of blood, per 210 liters of breath, or per 67
19 milliliters of urine.

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

24 (i) An alcohol content of 0.02 grams or more but less than
25 0.08 grams per 100 milliliters of blood, per 210 liters of
26 breath, or per 67 milliliters of urine or, beginning October 1,
27 2013, the person had an alcohol content of 0.02 grams or more but

1 less than 0.10 grams or more per 100 milliliters of blood, per
2 210 liters of breath, or per 67 milliliters of urine.

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

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

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