

PRELIMINARY BREATH TEST REQUIREMENTS

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House Bills 4212 and 4213 as introduced

Sponsor: Rep. Peter J. Lucido

Committee: Law and Justice

Complete to 3-13-17

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 4212 requires a peace officer to obtain a person's consent or a court order before administering a preliminary breath test (also known as a breathalyzer test or PBT), eliminates the civil infraction penalty for refusing to submit to a PBT, and eliminates the points on a driver license added for a minor who refuses to submit to a PBT.

House Bill 4213 clarifies that a PBT cannot be administered without the consent of a minor (under 21 years of age) or a court order and that a peace officer may seek to obtain a court order.

The bills would take effect 90 days after enactment.

Currently, under provisions of the Michigan Vehicle Code, a peace officer may require a person suspected of driving under the influence of alcohol to take a PBT. Refusing to do so may result in a civil infraction and a fine up to \$150. A person under 21 years of age who refuses a PBT has two points added to his or her driving record. A person who refuses a PBT can still be arrested if the officer has probable cause to believe the person was driving under the influence. Under the Code's "implied consent" law, if arrested for certain drunk or drugged related offenses, a person is considered to have consented to a chemical test of blood, urine, or breath to determine the person's bodily alcohol content (BAC) or any presence of drugs. If a person still refuses, the officer may seek a search warrant to compel the person to undergo testing. Refusing to submit to the chemical test can also result in driver license consequences separate from, and in addition to, license sanctions and criminal penalties resulting from a conviction for drunk or drugged driving.

House Bill 4212 amends the Michigan Vehicle Code (MCL 320a and 257.625a) to do the following:

- ❖ Eliminate a peace officer's authority to require a person to submit to a PBT and instead allow the officer to request the person submit to the test.
- ❖ Prohibit a peace officer from administering a PBT without a court order if the person does not consent to the test. (The bill maintains current law pertaining to operators of commercial motor vehicles and clarifies that officers may still require them to submit to a PBT without a warrant.)

- ❖ Eliminate the civil infraction penalty for refusing to submit to a PBT upon a lawful request by an officer.
- ❖ Eliminate the provision requiring two points be added to the driving record of a minor if the minor refused to submit to a PBT.
- ❖ Specify that a person who submits to a PBT, whether consensually or after a court order was obtained, is still subject to the requirements of Sections 625c, 625d, 625e, and 625f for purposes of chemical tests described in those sections. (Currently anyone who submits to a PBT is subject to the requirements of those provisions.)
- ❖ Make numerous changes of a technical or editorial nature for accuracy or clarity.

House Bill 4213 amends the minor in possession law (MIP) within the Michigan Liquor Control Code (MCL 436.1703). Among other things, Public Act 357 of 2016 eliminated a provision that made it a state civil infraction for a minor to refuse to submit to a PBT. Instead, the act allowed a peace officer who had reasonable cause to believe a minor has consumed alcohol or has any bodily alcohol content to request the minor to submit to a PBT.

The bill specifies that if a minor does not consent to a PBT, the test may not be administered without a court order, but a peace officer could seek to obtain a court order.

FISCAL IMPACT:

House Bills 4212 and 4213 would likely have no fiscal impact on the Department of State Police or local law enforcement agencies.

The fiscal impact of the bills on the judiciary and local court funding units is indeterminate and would depend on how provisions of the bills affect court caseloads and related administrative costs.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.