

SUBSTITUTE FOR
SENATE BILL NO. 207

A bill to amend 1949 PA 300, entitled
"Michigan vehicle code,"
(MCL 257.1 to 257.923) by adding sections 16a, 625r, and 625s.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 16A. "STANDARDIZED FIELD SOBRIETY TEST" MEANS 1 OF THE
2 STANDARDIZED TESTS APPROVED BY THE NATIONAL HIGHWAY TRAFFIC SAFETY
3 ADMINISTRATION TO ASSESS DRIVER IMPAIRMENT AFTER AN ENFORCEMENT
4 STOP HAS BEEN MADE. A FIELD SOBRIETY TEST IS CONSIDERED A
5 STANDARDIZED FIELD SOBRIETY TEST UNDER THIS SECTION IF IT IS
6 ADMINISTERED AND SCORED IN THE STANDARDIZED MANNER PRESCRIBED BY
7 THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION.

8 SEC. 625R. (1) IF THE DEPARTMENT OF STATE POLICE ESTABLISHES A
9 PILOT PROGRAM FOR ROADSIDE DRUG TESTING UNDER SECTION 625Q, A PEACE
10 OFFICER WHO IS CERTIFIED AS A DRUG RECOGNITION EXPERT AS THAT TERM
11 IS DEFINED IN SECTION 625Q IN A COUNTY PARTICIPATING IN THE

1 ROADSIDE DRUG TESTING PILOT PROGRAM UNDER SECTION 625Q MAY ARREST A
2 PERSON WITHOUT A WARRANT UNDER EITHER OF THE FOLLOWING
3 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 AS A RESULT OF CONSUMING A CONTROLLED
9 SUBSTANCE.

10 (B) THE PERSON IS FOUND IN THE DRIVER'S SEAT OF A VEHICLE
11 PARKED OR STOPPED ON A HIGHWAY OR STREET WITHIN THIS STATE IF ANY
12 PART OF THE VEHICLE INTRUDES INTO THE ROADWAY AND THE PEACE OFFICER
13 HAS REASONABLE CAUSE TO BELIEVE THE PERSON WAS OPERATING THE
14 VEHICLE IN VIOLATION OF SECTION 625 OR A LOCAL ORDINANCE
15 SUBSTANTIALLY CORRESPONDING TO SECTION 625 AS A RESULT OF CONSUMING
16 A CONTROLLED SUBSTANCE.

17 (2) A PEACE OFFICER WHO IS CERTIFIED AS A DRUG RECOGNITION
18 EXPERT AS THAT TERM IS DEFINED IN SECTION 625Q IN A COUNTY
19 PARTICIPATING IN THE ROADSIDE DRUG TESTING PILOT PROGRAM UNDER
20 SECTION 625Q WHO HAS REASONABLE CAUSE TO BELIEVE THAT A PERSON WAS
21 OPERATING A VEHICLE UPON A HIGHWAY OR OTHER PLACE OPEN TO THE
22 PUBLIC OR GENERALLY ACCESSIBLE TO MOTOR VEHICLES, INCLUDING AN AREA
23 DESIGNATED FOR THE PARKING OF VEHICLES, WITHIN THIS STATE AND THAT
24 THE PERSON BY THE CONSUMPTION OF A CONTROLLED SUBSTANCE, MAY HAVE
25 AFFECTED HIS OR HER ABILITY TO OPERATE A VEHICLE, OR REASONABLE
26 CAUSE TO BELIEVE THAT A PERSON WAS OPERATING A COMMERCIAL MOTOR
27 VEHICLE WITHIN THE STATE WHILE THE PERSON'S ORAL FLUID CONTAINED

1 ANY MEASURABLE AMOUNT OF A CONTROLLED SUBSTANCE MAY REQUIRE THE
2 PERSON TO SUBMIT TO A PRELIMINARY ORAL FLUID ANALYSIS ADMINISTERED
3 UNDER THIS SUBSECTION.

4 (3) A PEACE OFFICER WHO IS CERTIFIED AS A DRUG RECOGNITION
5 EXPERT AS THAT TERM IS DEFINED IN SECTION 625Q IN A COUNTY
6 PARTICIPATING IN THE ROADSIDE DRUG TESTING PILOT PROGRAM UNDER
7 SECTION 625Q MAY ARREST A PERSON IN WHOLE OR IN PART UPON THE
8 RESULTS OF A PRELIMINARY ORAL FLUID ANALYSIS.

9 (4) THE RESULTS OF A PRELIMINARY ORAL FLUID ANALYSIS ARE
10 ADMISSIBLE IN A CRIMINAL PROSECUTION FOR A CRIME ENUMERATED IN
11 SECTION 625C(1) OR IN AN ADMINISTRATIVE HEARING FOR 1 OR MORE OF
12 THE FOLLOWING PURPOSES:

13 (A) TO ASSIST THE COURT OR HEARING OFFICER IN DETERMINING A
14 CHALLENGE TO THE VALIDITY OF AN ARREST. THIS SUBDIVISION DOES NOT
15 LIMIT THE INTRODUCTION OF OTHER COMPETENT EVIDENCE OFFERED TO
16 ESTABLISH THE VALIDITY OF AN ARREST.

17 (B) AS EVIDENCE OF THE PRESENCE OR NONPRESENCE OF A CONTROLLED
18 SUBSTANCE IN THE DEFENDANT'S ORAL FLUID IF OFFERED BY THE DEFENDANT
19 TO REBUT TESTIMONY ELICITED ON CROSS-EXAMINATION OF A DEFENSE
20 WITNESS THAT A PRELIMINARY ORAL FLUID ANALYSIS OF THE DEFENDANT'S
21 ORAL FLUID SHOWED THE PRESENCE OF A CONTROLLED SUBSTANCE THAT WAS
22 NOT FOUND TO BE PRESENT WHEN A CHEMICAL TEST OF THE DEFENDANT'S
23 BLOOD OR URINE WAS ADMINISTERED UNDER SECTION 625A.

24 (C) AS EVIDENCE OF THE PRESENCE OR NONPRESENCE OF A CONTROLLED
25 SUBSTANCE IN THE DEFENDANT'S ORAL FLUID IF OFFERED BY THE
26 PROSECUTION TO REBUT TESTIMONY ELICITED ON CROSS-EXAMINATION OF A
27 PROSECUTION WITNESS THAT A PRELIMINARY ORAL FLUID ANALYSIS OF THE

1 DEFENDANT'S ORAL FLUID SHOWED NO PRESENCE OF A CONTROLLED SUBSTANCE
2 THAT WAS FOUND TO BE PRESENT WHEN A CHEMICAL TEST OF THE
3 DEFENDANT'S BLOOD OR URINE WAS ADMINISTERED UNDER SECTION 625A.

4 (5) A PERSON WHO SUBMITS TO A PRELIMINARY ORAL FLUID ANALYSIS
5 REMAINS SUBJECT TO THE REQUIREMENTS OF SECTIONS 625C, 625D, 625E,
6 AND 625F FOR PURPOSES OF CHEMICAL TESTS DESCRIBED IN THOSE
7 SECTIONS.

8 (6) EXCEPT AS PROVIDED IN SUBSECTION (10), A PERSON WHO
9 REFUSES TO SUBMIT TO A PRELIMINARY ORAL FLUID ANALYSIS UPON A
10 LAWFUL REQUEST BY A PEACE OFFICER IS RESPONSIBLE FOR A CIVIL
11 INFRACTION.

12 (7) A PEACE OFFICER WHO IS CERTIFIED AS A DRUG RECOGNITION
13 EXPERT AS THAT TERM IS DEFINED IN SECTION 625Q IN A COUNTY
14 PARTICIPATING IN THE ROADSIDE DRUG TESTING PILOT PROGRAM UNDER
15 SECTION 625Q SHALL USE THE RESULTS OF A PRELIMINARY ORAL FLUID
16 ANALYSIS CONDUCTED UNDER THIS SECTION TO DETERMINE WHETHER TO ORDER
17 A PERSON OUT OF SERVICE UNDER SECTION 319D.

18 (8) A PEACE OFFICER WHO IS CERTIFIED AS A DRUG RECOGNITION
19 EXPERT AS THAT TERM IS DEFINED IN SECTION 625Q IN A COUNTY
20 PARTICIPATING IN THE ROADSIDE DRUG TESTING PILOT PROGRAM UNDER
21 SECTION 625Q SHALL ORDER OUT OF SERVICE AS REQUIRED UNDER SECTION
22 319D A PERSON WHO WAS OPERATING A COMMERCIAL MOTOR VEHICLE AND WHO
23 REFUSES TO SUBMIT TO A PRELIMINARY ORAL FLUID ANALYSIS AS PROVIDED
24 IN THIS SECTION. THIS SUBSECTION DOES NOT LIMIT USE OF OTHER
25 COMPETENT EVIDENCE BY THE PEACE OFFICER TO DETERMINE WHETHER TO
26 ORDER A PERSON OUT OF SERVICE UNDER SECTION 319D.

27 (9) A PERSON WHO OPERATES A COMMERCIAL MOTOR VEHICLE AND WHO

1 IS REQUESTED TO SUBMIT TO A PRELIMINARY ORAL FLUID ANALYSIS UNDER
2 THIS SECTION BY A PEACE OFFICER WHO IS CERTIFIED AS A DRUG
3 RECOGNITION EXPERT AS THAT TERM IS DEFINED IN SECTION 625Q IN A
4 COUNTY PARTICIPATING IN THE PILOT PROGRAM UNDER SECTION 625Q SHALL
5 BE ADVISED THAT REFUSING THE REQUEST IS A MISDEMEANOR PUNISHABLE BY
6 IMPRISONMENT FOR NOT MORE THAN 93 DAYS OR A FINE OF NOT MORE THAN
7 \$100.00, OR BOTH, AND WILL RESULT IN THE ISSUANCE OF A 24-HOUR OUT-
8 OF-SERVICE ORDER.

9 (10) A PERSON WHO OPERATES A COMMERCIAL MOTOR VEHICLE AND WHO
10 REFUSES TO SUBMIT TO A PRELIMINARY ORAL FLUID ANALYSIS UPON THE
11 REQUEST OF A PEACE OFFICER WHO IS CERTIFIED AS A DRUG RECOGNITION
12 EXPERT AS THAT TERM IS DEFINED IN SECTION 625Q IN A COUNTY
13 PARTICIPATING IN THE PILOT PROGRAM UNDER SECTION 625Q IS GUILTY OF
14 A MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 93 DAYS
15 OR A FINE OF NOT MORE THAN \$100.00, OR BOTH.

16 (11) AS USED IN THIS SECTION, "CONTROLLED SUBSTANCE" MEANS
17 THAT TERM AS DEFINED IN SECTION 7104 OF THE PUBLIC HEALTH CODE,
18 1978 PA 368, MCL 333.7104.

19 SEC. 625S. IF QUALIFIED BY KNOWLEDGE, SKILL, EXPERIENCE,
20 TRAINING, OR EDUCATION, A WITNESS SHALL BE ALLOWED TO TESTIFY IN
21 THE FORM OF AN OPINION OR OTHERWISE SOLELY ON THE ISSUE OF
22 IMPAIRMENT, BUT NOT ON THE ISSUE OF SPECIFIC ALCOHOL CONCENTRATION
23 LEVEL, RELATING TO THE FOLLOWING: THE RESULTS OF ANY STANDARDIZE
24 FIELD SOBRIETY TEST INCLUDING, BUT NOT LIMITED TO, THE HORIZONTAL
25 GAZE NYSTAGMUS (HGN) TEST ADMINISTERED BY A PERSON WHO HAD
26 COMPLETED TRAINING IN STANDARDIZED FIELD SOBRIETY TESTING. THIS
27 SECTION DOES NOT PRECLUDE THE ADMISSIBILITY OF A NONSTANDARDIZED

1 **FIELD SOBRIETY TEST IF IT COMPLIES WITH THE MICHIGAN RULES OF**
2 **EVIDENCE.**

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

5 Enacting section 2. This amendatory act does not take effect
6 unless Senate Bill No. 434 of the 98th Legislature is enacted into
7 law.