

# Legislative Analysis

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## ROADSIDE DRUG TESTING PILOT PROJECT

Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**Senate Bill 207 (S-4) as passed by the Senate**  
**Sponsor: Sen. Rick Jones**

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

**Senate Bill 434 (S-4) as passed by the Senate**  
**Sponsor: Sen. Tom Casperson**

**House Committee: Judiciary**  
**Senate Committee: Judiciary**  
**Complete to 2-8-16**

### SUMMARY:

Senate Bill 434 would allow the Michigan State Police to establish a one-year pilot program in five counties under which a saliva test could be given (in a similar manner as a breathalyzer test for alcohol) to detect if a driver was under the influence of a controlled substance.

Senate Bill 207 would allow peace officers who had completed specialized training to require, with reasonable cause, a driver suspected of driving drugged to take a saliva test, make a warrantless arrest based on the test's outcome, make it a civil infraction for a driver to refuse a saliva test, order a commercial driver out of service for driving drugged or for refusing to submit to the saliva test, and make it a misdemeanor for a commercial driver to refuse a saliva test.

The bills are tie-barred to each other, meaning that one bill cannot take effect unless the bill it is tie-barred to is also enacted. The bills would take effect 90 days after enactment.

The bills are described in more detail below.

Senate Bill 434 adds two new sections to the Michigan Vehicle Code (MCL 43b and 625q). The bill allows the Department of State Police (MSP) to establish a five-county pilot program for roadside drug testing to determine whether an individual is operating a vehicle while under the influence of a controlled substance in violation of the drunk/drugged driving laws. The bill specifies that:

- ❖ The sections added by the bill would be known and could be cited as the Barbara J. and Thomas J. Swift Law.
- ❖ A pilot program would be for one year. Funding would be subject to appropriation.
- ❖ MSP must select five counties in which to implement the pilot program.
- ❖ A county would be eligible to participate in the program if it has a law enforcement agency within its boundary that employs at least one law enforcement officer who is a certified drug recognition expert. This would include, but not be limited to, a state police post, sheriff's department, or municipal police department.

- ❖ MSP must develop a written policy for the program's implementation and the administration of roadside drug testing.
- ❖ MSP could promulgate rules to implement a pilot program.
- ❖ Not more than 90 days after the conclusion of a pilot program, MSP must submit a report to the committees of the Legislature with primary responsibility for judicial and criminal justice issues. The report must cover all of following:
  - How pilot program participant counties were selected.
  - The different types of law enforcement agencies in the pilot program participant counties that engaged in roadside drug testing.
  - Relevant statistical data, including, but not limited to, the number of traffic stops resulting in an arrest for operating under the influence of a controlled substance as a result of roadside drug testing and the number and type of convictions resulting from an arrest made based on a roadside drug testing result.
- ❖ Upon the conclusion of a pilot program, MSP may, subject to appropriation, establish additional pilot programs in eligible counties not part of the original five counties. The duration of a pilot program established under this provision would be one year.

#### Definitions

"Preliminary oral fluid analysis" would mean the on-site taking of a preliminary oral fluid test, performed by a certified drug recognition expert, from the oral fluid of a person for the purpose of detecting the presence of a Schedule 1-5 controlled substance.

"Certified drug recognition expert" would mean a law enforcement officer trained to recognize impairment in a driver under the influence of a controlled substance rather than, or in addition to, alcohol.

Senate Bill 207 adds several sections to the Michigan Vehicle Code (MCL 257.62a, 257.625r, and 257.625s). Briefly, the bill establishes a procedure for suspected drugged drivers similar to that currently in place for drunk drivers who are given a roadside breathalyzer test. The provisions below apply only to a peace officer certified as a drug recognition expert in a county that is participating in the roadside drug testing pilot program created under Senate Bill 434. The bill would do the following:

- ❖ Allow a peace officer to require a person to submit to a preliminary oral fluid analysis (saliva test). An officer must have reasonable cause to believe the driver's ability to operate the vehicle is affected by the consumption of a controlled substance or that the person has any bodily amount of a Schedule 1 controlled substance or cocaine. This applies to vehicles operated upon a highway, other places open to the public or generally accessible to motor vehicles, and parking lots.
- ❖ Allow a certified officer to arrest a person in whole or in part upon the results of the saliva test.

- ❖ Allow the results of the saliva test to be admissible in a criminal prosecution or administrative hearing in the same manner as is current law for results of a preliminary chemical breath analysis (breathalyzer test given to detect a driver's bodily alcohol content).
- ❖ Specify that a person who submits to a saliva test remains subject to other requirements of drunk driving laws for the purposes of chemical tests, similar to persons subjected to a roadside breathalyzer test.
- ❖ Subject the person to a civil infraction for refusing to submit to a saliva test.
- ❖ Allow the results of the saliva test to be used by the certified officer in determining whether to order a commercial driver out of service for 24-hours under Section 319d. If the commercial driver refused to submit to the saliva test, the officer would have to order the person out of service.
- ❖ Require that a commercial driver asked to submit to a saliva test be advised that refusing the saliva test is a misdemeanor punishable by imprisonment for not more than 93 days and/or a fine of not more than \$100, and will result in the 24-hour out-of-service order.
- ❖ Make refusing to submit to a saliva test by a commercial driver a misdemeanor punishable by imprisonment for not more than 93 days and/or a fine of not more than \$100.
- ❖ Allow a person qualified by knowledge, skill, experience, training, or education in the administration of standardized field sobriety tests, including the horizontal gaze nystagmus (HGN) test, to testify subject to showing of a proper foundation of qualification. In addition, this provision would not preclude the admissibility of a nonstandardized field sobriety test if it complies with the Michigan Rules of Evidence.

"Standardized field sobriety test" is defined to mean one of the standardized tests validated by the National Highway Traffic Safety Administration (NHTSA). A test is considered a standardized field sobriety test if it is administered in substantial compliance with the standards prescribed by NHTSA.

## **FISCAL IMPACT:**

### Judiciary/Corrections

The fiscal impact would depend on the number of and types of sentences for people who are held responsible for state civil infractions and found guilty of misdemeanors. Civil infraction penalties would increase revenues going to the state Justice System Fund, which supports various justice-related endeavors in the judicial branch, and the Departments of State Police, Corrections, and Health and Human Services. New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation.

supervision. The costs of local incarceration in a county jail and local misdemeanor probation supervision vary by jurisdiction. Increases in applicable fines would benefit local libraries, which are the constitutionally designated recipients of such revenues. Also, the bill would have an indeterminate fiscal impact on the judiciary and local court funding units. The fiscal impact would depend on how the provisions of the bill affected caseloads in the courts and related administrative costs.

#### Department of State Police

These bills would engender an approximate cost of \$30,000 on the Department of State Police (MSP) for the purchase of five oral fluid drug detection apparatuses (approximately \$6,000 each), and would have an indeterminate fiscal impact on the MSP for the costs of purchasing the oral drug detection kits and the administration of the program.

The MSP reports that each oral drug detection kit would cost approximately \$25. However it is unclear how many kits would need to be purchased over the period of the pilot program. The number of kits required would be dependent upon the counties selected to participate in the program and the assets they have available.

The MSP would be responsible for any costs related to drafting the required reports to the legislature as well as the promulgation of rules and policies.

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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.