



**Senate Fiscal Agency**  
P. O. Box 30036  
Lansing, Michigan 48909-7536

BILL



ANALYSIS

**Telephone: (517) 373-5383**  
**Fax: (517) 373-1986**

Senate Bill 207 (Substitute S-1 as reported)  
Senate Bill 434 (Substitute S-3 as reported)  
Sponsor: Senator Rick Jones (S.B. 207)  
Senator Tom Casperson (S.B. 434)  
Committee: Judiciary

## **CONTENT**

Senate Bills 207 (S-1) and 434 (S-3) would amend the Michigan Vehicle Code to provide for the implementation of a roadside drug testing pilot program, which would include authority for peace officers who are drug recognition experts to make warrantless arrests and require drivers to submit to a preliminary oral fluid analysis. Senate Bill 207 (S-1) also would require that certain witnesses be allowed to testify on the issue of impairment, relating to the results of a standardized field sobriety test.

The bills are tie-barred and would take effect 90 days after their enactment. Senate Bill 434 (S-3) would be known as the "Barbara J. and Thomas J. Swift Law".

Senate Bill 434 (S-3) would authorize the Michigan Department of State Police (MSP) to establish a one-year pilot program in three counties for roadside drug testing to determine whether an individual was operating a vehicle while under the influence of a controlled substance. The funding of the pilot program would be subject to appropriation.

The MSP would have to select three counties in which to implement the pilot program. A county would be eligible to participate if it had a law enforcement agency within its boundary that employed at least one law enforcement officer who was a certified drug recognition expert. The MSP would have to develop a written policy for the implementation of the pilot program and the administration of roadside drug testing. The MSP could promulgate rules to implement the pilot program.

Within 90 days after the program's conclusion, the MSP would have to report to the committees of the Senate and House of Representatives with primary responsibility for judicial and criminal justice issues on the selection of participant counties; participating law enforcement agencies; statistical data from the performance of the pilot project; and convictions resulting from arrests made as a result of roadside drug tests.

Senate Bill 207 (S-1) would authorize a peace officer who was certified as a drug recognition expert in a county that participated in the pilot program to arrest a person without a warrant if the officer had reasonable cause to believe the person was operating a vehicle while impaired by or under the influence of a controlled substance or while he or she had any amount of a Schedule 1 controlled substance or cocaine in his or her body. The arrest could be made either at the time of an accident or when the officer found the person in the driver's seat of a vehicle stopped or parked on a highway or street, if any part of the vehicle intruded into the roadway.

A peace officer certified as a drug recognition expert in a participating county also could require a vehicle operator to submit to a preliminary oral fluid analysis if the officer had reasonable cause to believe that the person's ability to operate the vehicle was affected by the consumption of a controlled substance. For the operator of a commercial motor vehicle,

this authorization would apply if the officer had reasonable cause to believe that the person was operating the vehicle while his or her oral fluid contained any measurable amount of a controlled substance. The officer could arrest the person based in whole or in part upon the results of a preliminary oral fluid analysis. Results of the analysis would be admissible in a criminal prosecution or administrative hearing.

A person who submitted to a preliminary oral fluid analysis would remain subject to other requirements of drunk driving laws for the purposes of chemical tests. A person who refused to submit to a preliminary oral fluid analysis would be responsible for a civil infraction. A commercial motor vehicle operator's refusal would be a misdemeanor punishable by up to 93 days' imprisonment and/or a maximum fine of \$100.

In addition, the bill specifies that, if qualified by knowledge, skill, experience, training, or education, a witness would have to be allowed to testify solely on the issue of impairment, but not on the issue of specific alcohol concentration level, relating to the results of any standardized field sobriety test including the horizontal gaze nystagmus test administered by a person who had completed training in standardized field sobriety testing. This provision would not preclude the admissibility of a nonstandardized field sobriety test if it complied with the Michigan Rules of Evidence.

Proposed MCL 257.16a et al. (S.B. 207)  
Proposed MCL 257.43b & 257.625q (S.B. 434)

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

If implemented, the proposed one-year, three-county roadside pilot drug testing program could cost local and State law enforcement agencies combined a total of between \$20,000 and \$30,000. Under the pilot program as it is being proposed, law enforcement officers could call certain law enforcement personnel who are specially trained as drug recognition experts (of whom there are 84 located statewide working for various law enforcement jurisdictions) to a roadside stop situation where a driver was suspected of being under the influence of a controlled substance -- just as they do now -- but, under the pilot program, according to the MSP, the drug recognition expert would be armed with a swab-based drug detection kit designed to identify the presence of six different controlled substances within saliva.

A major cost of the pilot project would be the purchase of the swab-based drug detection kits, which can range individually in price from \$250 to \$700. Neither the kit manufacturers nor the three counties that would be part of the proposed pilot program have been identified, but if the counties chosen had a total of 30 drug recognition experts, a supply of kits costing \$20,000 or more could be required. The MSP would bear additional costs to provide a report to the Legislature on the pilot program's results and to create policies and rules. No funds have yet been identified for funding these provisions.

It is not clear whether the provisions of the bills would result in increased convictions. An increase in misdemeanor and felony arrests could place incremental resource demands on local court systems, law enforcement, and jails. For any new felony convictions that resulted in the offender being sent to prison, in the short term, the marginal cost to State government would be approximately \$4,100 per additional prisoner per year. In the long term, the marginal cost to State government would be approximately \$31,100 per additional prisoner per year. Any associated increase in fine revenue would be dedicated to public libraries.

Date Completed: 10-9-15

Fiscal Analyst: Bruce Baker  
Ryan Bergan

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.