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Senate Bill 207 (as introduced 3-12-15)  
Sponsor: Senator Rick Jones  
Committee: Judiciary

Date Completed: 3-16-15

### **CONTENT**

**The bill would amend the Michigan Vehicle Code to replace provisions for a "preliminary roadside analysis" with provisions for a "preliminary chemical breath analysis", and delete reference to a field sobriety test in the applicable definition.**

The bill would take effect 90 days after its enactment.

#### Submission to Preliminary Chemical Breath Analysis

Currently, a peace officer may require a person to submit to a preliminary roadside analysis if the officer has reasonable cause to believe that the person was operating a motor vehicle upon a public highway or other place open to the public or generally accessible to motor vehicles, and that the person might have affected his or her ability to operate a vehicle by the consumption of alcoholic liquor, a controlled substance, or other intoxicating substance, or a combination of those substances; reasonable cause to believe that a person was operating a commercial motor vehicle while his or her blood, breath, or urine contained any measurable amount of alcohol, a controlled substance or any other intoxicating substance or while he or she had any detectable presence of alcoholic liquor, a controlled substance, or any other intoxicating substance; or reasonable cause to believe that a person under 21 years old was operating a vehicle upon a public highway or other place open to the public or generally accessible to motor vehicles while he or she had any bodily alcohol content (as defined in the Vehicle Code).

The bill retains these provisions but refers to a "preliminary chemical breath analysis" rather than a "preliminary roadside analysis".

The Code defines "preliminary roadside analysis" as the on-site taking of a preliminary breath test from the breath of a person or the performance and observation of a field sobriety test for the purpose of detecting the presence of any of the following within the person's body:

- Alcoholic liquor.
- A controlled substance, as defined in Section 7104 of the Public Health Code.
- Any other intoxicating substance, as defined in Section 625 of the Vehicle Code.
- Any combination of the substances listed above.

The bill would change the term to "preliminary chemical breath analysis" and would delete "or the performance and observation of a field sobriety test" from the definition.

The Code also allows a peace officer to arrest a person based on the results of a preliminary roadside analysis, and specifies that the results of a preliminary roadside analysis are

admissible in a criminal prosecution for operating while intoxicated, under the influence, or visibly impaired, or with any amount of a Schedule 1 controlled substance in the person's body.

#### Other Applicable Provisions

Under the bill, provisions that currently apply to a preliminary roadside analysis would apply to a preliminary chemical breath analysis. These include provisions that do the following:

- Specify that the results are admissible for certain purposes in an administrative hearing.
- Require a peace officer to use the results of an analysis to determine whether to order a commercial driver out-of-service.
- Specify that a person who submits to an analysis remains subject to other requirements for purposes of chemical tests.
- Specify that, except as otherwise provided, a person who refuses to submit to a preliminary analysis upon a lawful request by a peace officer is responsible for a civil infraction.
- Specify that a person who was operating a commercial motor vehicle and refuses to submit to a preliminary analysis upon a peace officer's lawful request is guilty of a misdemeanor punishable by up to 93 days' imprisonment and/or a maximum fine of \$100.

#### Other Chemical Test

Various provisions dealing with the administration of chemical tests, and the admissibility of results of those tests, apply with respect to chemical tests and analysis of a person's blood, urine, or breath other than a preliminary roadside analysis. Under the bill, these provisions would apply with respect to chemical tests and analysis other than a preliminary chemical breath analysis.

Under these provisions, the Department of State Police must promulgate uniform rules for the administration of chemical tests. The Code specifies that an instrument used for a preliminary roadside analysis may be used for a chemical test if approved under rules promulgated by the Department. The bill would refer to an instrument used for a preliminary chemical breath analysis.

MCL 257.43a & 257.625a

Legislative Analyst: Patrick Affholter

#### **FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Bruce Baker

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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.