

**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 62a, 625r, and 625s.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 **SEC. 62A. "STANDARDIZED FIELD SOBRIETY TEST" MEANS 1 OF THE**
2 **STANDARDIZED TESTS VALIDATED BY THE NATIONAL HIGHWAY TRAFFIC SAFETY**
3 **ADMINISTRATION. A FIELD SOBRIETY TEST IS CONSIDERED A STANDARDIZED**
4 **FIELD SOBRIETY TEST UNDER THIS SECTION IF IT IS ADMINISTERED IN**
5 **SUBSTANTIAL COMPLIANCE WITH THE STANDARDS PRESCRIBED BY THE**
6 **NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION.**

7 **SEC. 625R. (1) A PEACE OFFICER WHO IS CERTIFIED AS A DRUG**
8 **RECOGNITION EXPERT AS THAT TERM IS DEFINED IN SECTION 625Q IN A**
9 **COUNTY PARTICIPATING IN THE ROADSIDE DRUG TESTING PILOT PROGRAM**

1 UNDER SECTION 625Q WHO HAS REASONABLE CAUSE TO BELIEVE THAT A
2 PERSON WAS OPERATING A VEHICLE UPON A HIGHWAY OR OTHER PLACE OPEN
3 TO THE PUBLIC OR GENERALLY ACCESSIBLE TO MOTOR VEHICLES, INCLUDING
4 AN AREA DESIGNATED FOR THE PARKING OF VEHICLES, WITHIN THIS STATE
5 AND THAT THE PERSON BY THE CONSUMPTION OF A CONTROLLED SUBSTANCE,
6 MAY HAVE AFFECTED HIS OR HER ABILITY TO OPERATE A VEHICLE, OR
7 REASONABLE CAUSE TO BELIEVE THAT A PERSON HAD IN HIS OR HER BODY
8 ANY AMOUNT OF A CONTROLLED SUBSTANCE LISTED IN SCHEDULE 1 UNDER
9 SECTION 7212 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.7212,
10 OR A RULE PROMULGATED UNDER THAT SECTION, OR OF A CONTROLLED
11 SUBSTANCE DESCRIBED IN SECTION 7214 (A) (iv) OF THE PUBLIC HEALTH
12 CODE, 1978 PA 368, MCL 333.7214, MAY REQUIRE THE PERSON TO SUBMIT
13 TO A PRELIMINARY ORAL FLUID ANALYSIS ADMINISTERED UNDER THIS
14 SUBSECTION.

15 (2) A PEACE OFFICER WHO IS CERTIFIED AS A DRUG RECOGNITION
16 EXPERT AS THAT TERM IS DEFINED IN SECTION 625Q IN A COUNTY
17 PARTICIPATING IN THE ROADSIDE DRUG TESTING PILOT PROGRAM UNDER
18 SECTION 625Q MAY ARREST A PERSON IN WHOLE OR IN PART UPON THE
19 RESULTS OF A PRELIMINARY ORAL FLUID ANALYSIS.

20 (3) THE RESULTS OF A PRELIMINARY ORAL FLUID ANALYSIS ARE
21 ADMISSIBLE IN A CRIMINAL PROSECUTION FOR A CRIME ENUMERATED IN
22 SECTION 625C(1) OR IN AN ADMINISTRATIVE HEARING FOR 1 OR MORE OF
23 THE FOLLOWING PURPOSES:

24 (A) TO ASSIST THE COURT OR HEARING OFFICER IN DETERMINING A
25 CHALLENGE TO THE VALIDITY OF AN ARREST. THIS SUBDIVISION DOES NOT
26 LIMIT THE INTRODUCTION OF OTHER COMPETENT EVIDENCE OFFERED TO
27 ESTABLISH THE VALIDITY OF AN ARREST.

1 (B) AS EVIDENCE OF THE PRESENCE OR NONPRESENCE OF A CONTROLLED
2 SUBSTANCE IN THE DEFENDANT'S ORAL FLUID IF OFFERED BY THE DEFENDANT
3 TO REBUT TESTIMONY ELICITED ON CROSS-EXAMINATION OF A DEFENSE
4 WITNESS THAT A PRELIMINARY ORAL FLUID ANALYSIS OF THE DEFENDANT'S
5 ORAL FLUID SHOWED THE PRESENCE OF A CONTROLLED SUBSTANCE THAT WAS
6 NOT FOUND TO BE PRESENT WHEN A CHEMICAL TEST OF THE DEFENDANT'S
7 BLOOD OR URINE WAS ADMINISTERED UNDER SECTION 625A.

8 (C) AS EVIDENCE OF THE PRESENCE OR NONPRESENCE OF A CONTROLLED
9 SUBSTANCE IN THE DEFENDANT'S ORAL FLUID IF OFFERED BY THE
10 PROSECUTION TO REBUT TESTIMONY ELICITED ON CROSS-EXAMINATION OF A
11 PROSECUTION WITNESS THAT A PRELIMINARY ORAL FLUID ANALYSIS OF THE
12 DEFENDANT'S ORAL FLUID SHOWED NO PRESENCE OF A CONTROLLED SUBSTANCE
13 THAT WAS FOUND TO BE PRESENT WHEN A CHEMICAL TEST OF THE
14 DEFENDANT'S BLOOD OR URINE WAS ADMINISTERED UNDER SECTION 625A.

15 (4) A PERSON WHO SUBMITS TO A PRELIMINARY ORAL FLUID ANALYSIS
16 REMAINS SUBJECT TO THE REQUIREMENTS OF SECTIONS 625A, 625C, 625D,
17 625E, AND 625F FOR PURPOSES OF CHEMICAL TESTS DESCRIBED IN THOSE
18 SECTIONS.

19 (5) EXCEPT AS PROVIDED IN SUBSECTION (9), A PERSON WHO REFUSES
20 TO SUBMIT TO A PRELIMINARY ORAL FLUID ANALYSIS UPON A LAWFUL
21 REQUEST BY A PEACE OFFICER IS RESPONSIBLE FOR A CIVIL INFRACTION.

22 (6) A PEACE OFFICER WHO IS CERTIFIED AS A DRUG RECOGNITION
23 EXPERT AS THAT TERM IS DEFINED IN SECTION 625Q IN A COUNTY
24 PARTICIPATING IN THE ROADSIDE DRUG TESTING PILOT PROGRAM UNDER
25 SECTION 625Q SHALL USE THE RESULTS OF A PRELIMINARY ORAL FLUID
26 ANALYSIS CONDUCTED UNDER THIS SECTION TO DETERMINE WHETHER TO ORDER
27 A PERSON OUT OF SERVICE UNDER SECTION 319D.

1 (7) A PEACE OFFICER WHO IS CERTIFIED AS A DRUG RECOGNITION
2 EXPERT AS THAT TERM IS DEFINED IN SECTION 625Q IN A COUNTY
3 PARTICIPATING IN THE ROADSIDE DRUG TESTING PILOT PROGRAM UNDER
4 SECTION 625Q SHALL ORDER OUT OF SERVICE AS REQUIRED UNDER SECTION
5 319D A PERSON WHO WAS OPERATING A COMMERCIAL MOTOR VEHICLE AND WHO
6 REFUSES TO SUBMIT TO A PRELIMINARY ORAL FLUID ANALYSIS AS PROVIDED
7 IN THIS SECTION. THIS SUBSECTION DOES NOT LIMIT USE OF OTHER
8 COMPETENT EVIDENCE BY THE PEACE OFFICER TO DETERMINE WHETHER TO
9 ORDER A PERSON OUT OF SERVICE UNDER SECTION 319D.

10 (8) A PERSON WHO OPERATES A COMMERCIAL MOTOR VEHICLE AND WHO
11 IS REQUESTED TO SUBMIT TO A PRELIMINARY ORAL FLUID ANALYSIS UNDER
12 THIS SECTION BY A PEACE OFFICER WHO IS CERTIFIED AS A DRUG
13 RECOGNITION EXPERT AS THAT TERM IS DEFINED IN SECTION 625Q IN A
14 COUNTY PARTICIPATING IN THE PILOT PROGRAM UNDER SECTION 625Q SHALL
15 BE ADVISED THAT REFUSING THE REQUEST IS A MISDEMEANOR PUNISHABLE BY
16 IMPRISONMENT FOR NOT MORE THAN 93 DAYS OR A FINE OF NOT MORE THAN
17 \$100.00, OR BOTH, AND WILL RESULT IN THE ISSUANCE OF A 24-HOUR OUT-
18 OF-SERVICE ORDER.

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

26 SEC. 625S. A PERSON WHO IS QUALIFIED BY KNOWLEDGE, SKILL,
27 EXPERIENCE, TRAINING, OR EDUCATION, IN THE ADMINISTRATION OF

1 STANDARDIZED FIELD SOBRIETY TESTS, INCLUDING THE HORIZONTAL GAZE
2 NYSTAGMUS (HGN) TEST, SHALL BE ALLOWED TO TESTIFY SUBJECT TO
3 SHOWING OF A PROPER FOUNDATION OF QUALIFICATIONS. THIS SECTION DOES
4 NOT PRECLUDE THE ADMISSIBILITY OF A NONSTANDARDIZED FIELD SOBRIETY
5 TEST IF IT COMPLIES WITH THE MICHIGAN RULES OF EVIDENCE.

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

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