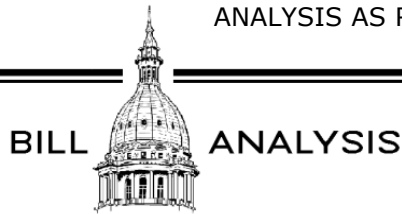




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Senate Bill 637 (Substitute S-1 as reported)
Senate Bills 638 and 639 (as reported without amendment)
Sponsor: Senator Tonya Schuitmaker
Committee: Judiciary

Date Completed: 8-28-14

RATIONALE

Since the late 1980s, the Michigan Vehicle Code has authorized courts to prohibit convicted drunk drivers from operating a motor vehicle unless it is equipped with an ignition interlock device. Called a Breath Alcohol Ignition Interlock Device (BAIID), this equipment is connected to a vehicle's ignition and other control systems. When a driver provides a breath sample by blowing into it, the device measures the level of his or her bodily alcohol content and prevents the vehicle from starting if the level exceeds a preset limit; additional breath samples then are required after certain intervals while the vehicle is being driven. Over the years, amendments to the Code have revised and expanded these provisions, which include requirements pertaining to the devices themselves and their manufacturers. Currently, a BAIID must be certified by a Department of State-approved laboratory as complying with particular model specifications. Manufacturers that want to install BAIIDs in Michigan must meet various requirements, as well as agree to monitor installed devices periodically and notify the Department when a device has been tampered with or circumvented. Individuals who are prohibited from driving vehicles without a BAIID must use a vendor and a device that have been approved by the Department, and are required to present proof of installation at the Secretary of State office. Despite these requirements, the law does not regulate the actual installation of the devices. Unless a person voluntarily goes to a licensed motor vehicle repair facility to have a BAIID installed, the equipment may be installed by virtually anyone, who may or may not be a trained mechanic. As a result, a BAIID might be improperly installed and malfunction, and the Department has no authority over unlicensed installers.

At the same time, it is likely that the use of BAIIDs will increase. In 2010, legislation amended the Revised Judicature Act (RJA) to create a pilot project that enables a repeat drunk driving offender to receive a restricted license if he or she meets certain conditions, including admission to a sobriety court program and having a BAIID installed on each vehicle he or she owns or operates. This pilot project began on January 1, 2011, and was scheduled to continue for three years. Public Act 227 of 2013 amended the RJA to extend the pilot project for one year and, beginning January 1, 2015, create a permanent program with the same requirements.

To ensure that BAIIDS are properly installed, and that those who install them can be held accountable, it has been suggested that the law should require the devices to be installed and serviced only in licensed facilities and only by certified mechanics.

CONTENT

Senate Bill 637 (S-1) would amend the Michigan Vehicle Code to do the following:

- Allow breath alcohol ignition interlock devices to be installed, serviced, or removed only in a motor vehicle repair facility.**

- Provide that only service centers that were manufacturer/vendors could service BAIIDs approved for use in the State.
- Provide that the Department of State would be responsible for approving BAIID service centers in Michigan, and establish criteria for approval.
- Prohibit a person from performing BAIID-related service in Michigan without approval from the Department, and require a BAIID mechanic to give a customer verification of BAIID installation.
- Require a manufacturer to ensure that BAIID mechanics met requirements prescribed in the bill.
- Establish requirements for a person to be certified as a BAIID mechanic.
- Preclude a mechanic convicted of a felony or alcohol-related driving offense within the previous five years from BAIID approval eligibility.
- Authorize the Secretary of State (SOS) to investigate a BAIID mechanic's compliance with the Code, and require the SOS to suspend, revoke, or deny BAIID certification under certain circumstances.
- Revise provisions regarding certification by the Department of BAIIDs.
- Revise requirements that a BAIID manufacturer must comply with in order to be included on the Department's list of approved manufacturers.
- Allow the Department to conduct compliance inspections of a manufacturer or service center, at the manufacturer's expense.
- Authorize the SOS to summarily suspend the certification of a manufacturer and its BAIID due to noncompliance with the Code or administrative rules.
- Require a manufacturer, upon request, to give the Department model certified BAIIDs and install them in vehicles at no cost to the State for demonstration and training purposes.
- Require a BAIID provider to train Department employees at no cost to the State, and provide a detailed description of the device and complete technical specifications upon request.
- Require a manufacturer to reapply for approval annually.
- Delete provisions exempting the State, the Department of State, or a court, as well as officers, agents, and employees of those entities, from liability regarding damage to people or property resulting from a BAIID manufacturer's, installer's, or servicing agent's act or omission.
- Revise liability insurance provisions for a BAIID manufacturer and provider.
- Provide that a required period of suspension or restriction due to a drunk driving conviction would not be subject to appeal to the SOS.
- Authorize the SOS to provide any notice required under the Code or another law regulating vehicle operation by electronic means.

Senate Bill 638 would amend the sentencing guidelines in the Code of Criminal Procedure to revise references to sections of the Vehicle Code that Senate Bill 637 (S-1) would amend.

Senate Bill 639 would amend the Motor Vehicle Service and Repair Act to include a BAIID service center in the definition of "motor vehicle repair facility".

Senate Bills 638 and 639 are tie-barred to Senate Bill 637. Senate Bills 637 (S-1) and 639 are described below in further detail.

Senate Bill 637 (S-1)

Installation; Service Centers

Currently, an ignition interlock device must be serviced according to the manufacturer's standards. Service includes physical inspection of the device and vehicle for tampering, calibration of the device, and monitoring of the data contained within its memory. Only authorized employees of the manufacturer or the Department may observe the installation of a device. Reasonable security measures must be taken to prevent the customer from observing the installation or obtaining access to installation materials. The bill would delete these provisions.

Under the bill, the Department would be responsible for approving BAIID service centers for operation in Michigan. All of the requirements described below would apply for approval.

Only service centers that were manufacturer/vendors could service BAIIDS approved for use in this State. A BAIID could be installed, serviced, or removed only in a motor vehicle repair facility. ("Motor vehicle repair facility" would have the same definition as under Section 2 of the Motor Vehicle Service and Repair Act, which Senate Bill 639 would amend.)

A service center would have to be located in a fixed facility within the State. Service centers would have to make the addresses of their locations available to the Department for the area in which the center was located.

Each service center would have to do the following:

- Have at least one licensed mechanic with a BAIID certification who was properly trained by the manufacturer for which the center was a vendor as its technician to service the device.
- Maintain and make available for inspection records proving that each BAIID mechanic working at the center was properly trained by the manufacturer to service the device for which the center was a vendor.
- Provide a designated waiting area for customers that was separate from the area in which the devices were installed or serviced.

Only BAIID mechanics and representatives of the manufacturer or the Department of State could be allowed to observe the installation or removal of a device. Adequate security measures would have to be taken to ensure that unauthorized personnel could not gain access to proprietary materials or files of participants.

Manufacturer service centers would have to install, maintain, calibrate, and remove all BAIIDs handled by the service centers and perform any other services determined necessary by the Department for people using those BAIIDs in Michigan.

A service center would have to inform the Department of a change in its business address 15 days before relocating.

Devices approved for use in Michigan could be serviced only by service centers located within Michigan, unless a customer had a permanent residence in another state, or was unable to return to Michigan for service because of a significant personal hardship. If a BAIID were serviced by a center outside the State, the BAIID provider would have to ensure that the device operated using the same firmware used for devices in Michigan; and that the data recorded in the device would remain intact for later retrieval by a Michigan service center, or were transferred to a service center database within the State for review.

Devices for use in Michigan would have to be installed and could be removed only in an approved service center. Each application for approval would have to be for a single service center. Separate applications would be required for additional centers. Before issuing approval, the Department could require an on-site evaluation to ensure compliance with the Code. Approval of a service center would be for one year. The renewal process would be the same as the approval process.

The Department could conduct inspections of a manufacturer or service center to ensure compliance with the Code and rules promulgated under it. The manufacturer would have to pay for the actual cost to the Department in conducting an inspection.

The Secretary of State could issue an order summarily suspending the certification of a manufacturer and its device as provided in Section 92 of the Administrative Procedures Act (APA) based on an affidavit by a person familiar with the facts set forth in the affidavit that the manufacturer or service center had failed to comply with the Code or applicable administrative rules. The manufacturer would have to comply immediately, but upon application to the Department would have to be given a hearing within 30 days under the APA. On the basis of the

hearing, the summary order would have to be continued, modified, or held in abeyance, within 30 days after the hearing.

(Under Section 92 of the APA, before the start of proceedings for suspension, revocation, annulment, withdrawal, recall, cancelation, or amendment of a license, an agency must notify the licensee of facts or conduct that warrant the intended action. Except as otherwise provided, the licensee must be given an opportunity to show compliance with all lawful requirements for license retention. If the agency finds that the public health, safety, or welfare requires emergency action and incorporates this finding in its order, the agency may order summary suspension of the license effective on a specified date.)

BAIID Mechanics

The bill would prohibit a person from performing any service related to a BAIID in Michigan without Department approval. All installations would have to be done in a workmanlike manner by a BAIID mechanic at an approved service center and be in accordance with the standards set forth the Code and with the manufacturer's requirements. All installed devices would have to be in working order and perform in accordance with the Code's standards. All connections would have to be soldered and covered with a tamper seal.

When a mechanic finished installing a BAIID, he or she would have to give the customer verification in the form and format designated by the Department.

A manufacturer would have to ensure that BAIID mechanics had the appropriate certification from the Department and met all of the following requirements:

- Possessed and maintained all necessary training and skills required to install, examine, troubleshoot, and verify the proper operation of BAIIDs.
- Possessed the tools, test equipment, and manuals needed to install, inspect, download, calibrate, repair, maintain, service, and remove devices.
- Provided all people who would use the vehicle with written and hands-on training regarding the operation of a vehicle equipped with the BAIID and ensure that each person demonstrated a properly delivered alveolar breath sample and an understanding of how the abort test feature worked.

A mechanic who was convicted of an alcohol-related driving offense or any offense classified as a felony in Michigan or elsewhere within five years before applying for approval as a BAIID mechanic would not be eligible for approval.

A BAIID mechanic would have to be at least 18 years old, have a valid driver license, be a motor vehicle mechanic as defined in the Motor Vehicle Service and Repair Act, and be certified as a BAIID mechanic under the Code. To be certified, the mechanic would have to meet all of the following requirements:

- Possess a specialty certification in electrical systems under the Motor Vehicle Service and Repair Act.
- Properly complete and file a BAIID mechanic application form with the Department.
- Beginning 180 days after the bill took effect, be a licensed mechanic in Michigan with certification in the BAIID mechanic category (which the Department could create for this purpose).
- Submit a criminal history report certified within the preceding 30 days.
- Meet the Department's requirements for certification.

Each application for approval would have to be for a single BAIID mechanic. Separate applications would be required for additional mechanics. Approval of a BAIID mechanic would be for one year, and the renewal process would be the same as the approval process.

The Secretary of State could investigate a BAIID mechanic's compliance with the Code and would have to suspend, revoke, or deny an individual's BAIID certification if the SOS determined that one or more of the following applied:

- The mechanic violated the Code or a rule promulgated under it.
- The mechanic performed improper, careless, or negligent inspection, installation, monitoring, or removal of a BAIID.
- The mechanic made a false statement of a material fact regarding his or her actions in inspecting, installing, monitoring, or removing a BAIID.

BAIID Certification

The Code requires the Department of State to approve an ignition interlock device certified by a Department-approved laboratory as complying with particular model specifications for breath alcohol ignition interlock devices. The bill would delete these provisions.

Instead, a manufacturer seeking certification of a BAIID in Michigan would have to do all of the following:

- Complete an application for certification.
- Submit a report from a Department-approved laboratory certifying that the BAIID met or exceeded the model specifications.
- Agree to ensure proper record-keeping and provide testimony relating to any aspect of the installation, service, repair, use, removal, or interpretation of any report or information recorded in the data storage system of a device or performance of any other duties required by the Code at no cost on behalf of the State or any political subdivision of the State.

The Code requires the Department to provide a list of all manufacturers of approved certified devices to each person who is issued a restricted license that permits him or her to drive a vehicle only if it is equipped with a BAIID. The Department may not include a certified BAIID manufacturer on the list unless the manufacturer complies with specific requirements, including filing with the Department a copy of evidence of insurance under Section 625I (which the bill would amend as described below). The bill would eliminate the reference to evidence of insurance under Section 625I, and instead would require the manufacturer to file proof of liability insurance issued by an insurance company authorized to do business in Michigan, specifying all of the following:

- That the policy was current at the time of application.
- The name and model number of the device model covered by the policy.
- That the policy had a minimum coverage of \$1.0 million per occurrence and \$3.0 million in the aggregate.
- That the policy would indemnify the Department of State and any other person injured as a result of any defects in the manufacture, materials, design, calibration, installation, or operation of the device.

Additionally, in order to be included on the list, a BAIID manufacturer must file a copy of an affidavit that the device meets the Code's definition of such a device; and is set to take samples periodically while the vehicle is in operation and, when the device detects an alcohol content of at least 0.025 gram per 210 liters of breath, or if a breath sample is not given within the allotted time, to do the following:

- Emit a visible or audible warning signal.
- Render the vehicle inoperable as soon as the vehicle is no longer being operated, requiring the operator to provide a breath sample containing a breath alcohol level of less than 0.025 gram per 210 liters of breath before the vehicle may be restarted.

Under the bill, the device also would have to disable the free restart and activate a violation reset. The device would have to initiate an audible or visual cue that would warn the driver that the device would enter a permanent lockout in five days.

The bill would delete a requirement that a manufacturer give the SOS a list of installers who are authorized to install and service the manufacturer's device in order to be included on the list given to a person with a restricted license.

BAIID Manufacturers

The bill would require a BAIID manufacturer, upon the request of the Department of State, to give the Department at least two devices for each model certified under the Code for the Department's demonstration and training purposes. The manufacturer would have to provide the devices at no cost to the State.

Also, upon the Department's request, at no cost to the State, the manufacturer would have to install one of each certified device in a vehicle provided by the Department. Any service performed pursuant to this requirement, including installation, maintenance, calibration, or removal, would have to be completed at no cost to the State.

Upon the Department's request, for each Department-approved BAIID model, the provider would have to provide at least 10 hours of training to Department employees at no cost to the State. The training would have to be held at the times and locations within the State designated by the Department. The training would have to be designed to familiarize Department employees with the installation, operation, service, repair, and removal of the devices and include the training and instructions that the providers would give to customers. The BAIID provider also would have to give the Department, upon request, the following information:

- A detailed description of the device, including complete instructions for installation, operation, service, repair, and removal.
- Complete technical specifications, including detailed explanations and definitions of all data log entries.

A manufacturer would have to notify the Department at least 15 days before implementing any modification, upgrade, or alteration to any hardware, software, or firmware of a device certified for use in Michigan. The notification would have to include both of the following:

- A description and explanation of the modification, upgrade, or alteration and proof satisfactory to the Department that the modifications, upgrades, and alterations would not adversely affect the device's ability to satisfy the Code's requirements.
- A comprehensive plan of action for phasing out the use of the current device, approved by the Department before implementation.

Any equipment in the Department's possession that was retained for certification of the device would have to be modified, upgraded, or altered simultaneously with implementation.

Material modifications to a certified device could require recertification under the Code as determined by the Department.

A manufacturer would have to reapply for approval annually.

Rescinded Rules

The bill would rescind R 257.1005 and R 257.1006, which do the following:

- Allow the SOS to remove a manufacturer from the approved list of certified BAIID manufacturers, if the manufacturer or its devices, installers, or service providers no longer comply with applicable Code requirements or rules; or the manufacturer or authorized installers and service providers fail to submit required reports in a timely manner.
- Authorize the SOS to conduct inspections of a laboratory or BAIID manufacturer, installer, or service provider to determine compliance with relevant provisions of the Code and rules promulgated under it.
- Allow the SOS to remove from the approved list a manufacturer or laboratory that fails to take necessary corrective action or to come into full compliance with the Code or an applicable rule, or fails to file a written response to a notice of noncompliance within 30 days.

Use of BAIID by Another Person

The Code prohibits a person who has an ignition interlock device installed and whose driving privilege is restricted from requesting or soliciting another person to blow into the device to start the vehicle for the purpose of giving him or her an operable vehicle. The bill also would prohibit the person from allowing another person to blow into the device.

Liability

Under Section 625I, the State of Michigan, or the Department of State, its officers, employees, or agents, or a court, its officers, employees, or agents are not liable in any claim or action that may arise out of any act or omission by a manufacturer, installer, or servicing agent of an ignition interlock device that results in damage to people or property.

Section 625I also prohibits a person from selling, leasing, installing, or monitoring in a vehicle in Michigan an ignition interlock device unless the manufacturer and provider carries liability insurance covering product liability, including insurance to indemnify the Department of State and any person injured as a result of a design defect or the calibration or removal of the device or a misrepresentation about the device. The required insurance must be in an amount of at least \$1.0 million per accident.

The bill would delete all of these provisions.

License Suspension, Restriction, Denial, & Revocation

The Code requires the SOS to suspend a person's license for a violation of Section 625(1) or (3). (Section 625(1) prohibits a person from operating a vehicle while intoxicated. Section 625(3) prohibits a person from operating a vehicle when his or her ability to operate the vehicle is visibly impaired due to the consumption of alcoholic liquor, a controlled substance, and/or other intoxicating substance.) The SOS also must revoke and deny issuance of a person's license for any combination of three convictions for these violations within 10 years.

Except as otherwise provided, the SOS must issue a restricted license to a person whose license was suspended, restricted, revoked, or denied based on either of the following:

- Two or more convictions for violating Section 625(1) or (3) or a substantially corresponding local ordinance.
- One conviction for violating Section 625(1) or (3) or a substantially corresponding local ordinance, preceded by at least one conviction for violating a local ordinance or law of another state substantially corresponding to Section 625(1), (3), or (6), or a substantially corresponding Federal law.

(Section 625(6) prohibits a person younger than 21 from operating a vehicle if he or she has any bodily alcohol content.)

A restricted license may not be issued until after the person's license has been suspended or revoked for 45 days and the judge assigned to a DWI/sobriety court certifies to the SOS that the person has been admitted into a DWI/sobriety court program, and that an approved and certified ignition interlock device has been installed on each vehicle the individual owns and/or operates.

The restricted license must be suspended, revoked, or denied if certain events occur, such as the person operates a vehicle without the required ignition interlock device. The bill provides that any required period of suspension or restriction would not be subject to appeal to the SOS.

Senate Bill 639

The Motor Vehicle Service and Repair Act defines "motor vehicle repair facility" as a place of business that engages in the business of performing or employing people who perform maintenance, diagnosis, vehicle body work, or repair service on a motor vehicle for compensation. The bill would include a BAIID service center in the definition.

MCL 257.20d et al. (S.B. 637)
777.12f (S.B. 638)
257.1301 (S.B. 639)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The use of ignition interlock devices is said to be highly effective in preventing repeat drunk driving by offenders. According to the National Highway Transportation Safety Administration, "Research shows that ignition interlocks reduce recidivism among both first-time and repeat...offenders, with reductions in subsequent...arrests ranging from 50 to 90 percent while the interlock is installed on the vehicle..."¹. According to Mothers Against Drunk Driving, "An interlock is more effective than license suspension alone, as 50 to 75 percent of convicted drunk drivers continue to drive on a suspended license."²

The positive results of using BAIIDs cannot be achieved, however, if the devices malfunction due to improper installation. Therefore, it is necessary to provide for oversight and regulation of the individuals who install BAIIDs and the facilities where they are installed, especially with the extension of the sobriety court interlock program and the likelihood that the demand for BAIIDs will increase. Already, according to a representative of the SOS office, more than 8,000 BAIIDs are in use in Michigan.

Currently, anyone can advertise that he or she will install BAIIDs, meet a driver in a parking lot, install a device there, and then virtually disappear. If the device malfunctions, there may be no way for the driver to locate the installer or for the State to hold him or her accountable. An improperly installed device can present safety issues for the driver and for the public, if he or she continues to operate under the influence. A malfunction also can prevent the manufacturer from becoming aware of a violation; in turn, the manufacturer cannot notify the SOS, and the SOS cannot respond appropriately to the violation.

Senate Bill 637 (S-1) would require that BAIIDs be installed only in licensed motor vehicle repair facilities and only by certified, trained mechanics. The bill would make the Department responsible for approving BAIID service centers, which would have to have at least one licensed mechanic who had a BAIID certification and was trained by the manufacturer. The bill also would prohibit any person from performing any service related to a BAIID in Michigan without Department approval. Mechanics would have to meet specific requirements, besides certification, and provide written and hands-on training to people who would use a vehicle equipped with a BAIID.

The bill also would strengthen and broaden the existing regulations in a number of ways. Manufacturers, for example, would have to give the Department of State, upon its request, at least two devices for each model certified under the Code for the Department's demonstration and training purposes. Manufacturers also would have to notify the Department before implementing any modification to any hardware, software, or firmware of a certified device, and material modifications could require recertification. A BAIID provider would have to provide at least 10 hours of training to Department employees to familiarize them with the installation, operation, service, repair, and removal of the devices.

These and other provisions would help ensure that ignition interlock devices were properly and safely installed, and would give the Department the authority that it needs to oversee and regulate the BAIID installation industry. Properly installed equipment also would prevent violations that either occur inadvertently because a device is not functioning or are committed intentionally because the driver is able to circumvent it. Reducing the number of violations would

¹ "Ignition Interlocks – What You Need to Know", National Highway Transportation Safety Administration, November 2009.

² "Ignition Interlocks Save Lives", Mothers Against Drunk Driving.

protect other motorists as well as allow SOS staff to respond in a timely manner to the violations that do occur.

Supporting Argument

By including a BAAID service center as a motor vehicle repair facility under Motor Vehicle Service and Repair Act, Senate Bill 639 would further regulate these businesses and add consumer protections. The Act requires facilities to register with the Secretary of State (SOS); requires a registered facility to employ at least one specialty or master mechanic, certified by the SOS, in each category of repair it provides; requires facilities to be open to inspection by the Secretary of State and law enforcement officials; prescribes record-keeping requirements; permits the SOS to issue cease and desist orders and investigate violations; authorizes the Attorney General and prosecuting attorneys to bring an action for an injunction; and makes it a misdemeanor to violate the Act knowingly. Service centers installing BAIIDs would be subject to these requirements as well as the regulations established under the Michigan Vehicle Code.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

Senate Bill 637 (S-1)

The bill would have no fiscal impact on the Department of State. Given the program currently in place, any costs to the Department associated with the certification of BAIID mechanics, service centers, or BAIIDs themselves would either be reimbursed by the BAIID manufacturer or be covered by the Department's current annual appropriations. Any increases in costs to the Department would be negligible.

Senate Bills 638 and 639

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

Fiscal Analyst: Joe Carrasco

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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.