

SUBSTITUTE FOR
SENATE BILL NO. 892

A bill to amend 1949 PA 300, entitled
"Michigan vehicle code,"
by amending section 625k (MCL 257.625k), as amended by 2016 PA 32,
and by adding section 62b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 62B. "STARTUP OPERATED BREATH ENGINE RESTRICTOR" OR
2 "SOBER" MEANS AN ALCOHOL CONCENTRATION MEASURING DEVICE THAT
3 PREVENTS A MOTOR VEHICLE FROM BEING STARTED AT ANY TIME WITHOUT
4 FIRST DETERMINING THROUGH A DEEP LUNG SAMPLE THE OPERATOR'S ALCOHOL
5 LEVEL, CALIBRATED SO THAT THE MOTOR VEHICLE CANNOT BE STARTED IF
6 THE BREATH ALCOHOL LEVEL OF THE OPERATOR, AS MEASURED BY THE TEST,
7 REACHES A LEVEL OF 0.025 GRAMS PER 210 LITERS OF BREATH, AND TO
8 WHICH ALL OF THE FOLLOWING APPLY:

9 (A) THE DEVICE IS VOLUNTARILY INSTALLED IN THE MOTOR VEHICLE

1 BY THE VEHICLE OWNER.

2 (B) THE DEVICE UTILIZES ALCOHOL-SPECIFIC ELECTROCHEMICAL FUEL
3 SENSOR TECHNOLOGY.

4 (C) AS ITS ANTICIRCUMVENTION METHOD, THE DEVICE INSTALLATION
5 USES A POSITIVE-NEGATIVE-POSITIVE AIR PRESSURE TEST REQUIREMENT, A
6 MIDTEST HUM TONE REQUIREMENT, OR ANY OTHER ANTICIRCUMVENTION METHOD
7 OR TECHNOLOGY THAT FIRST BECOMES COMMERCIALY AVAILABLE AFTER JULY
8 31, 2007.

9 (D) THE DEVICE IS DISTINGUISHED SO AS NOT TO BE VISUALLY
10 CONFUSED WITH A BREATH ALCOHOL IGNITION INTERLOCK DEVICE.

11 (E) THE DEVICE IS NOT A BREATH ALCOHOL IGNITION INTERLOCK
12 DEVICE.

13 Sec. 625k. (1) An ignition interlock device (BAIID)
14 manufacturer seeking certification of a device in this state shall
15 do all of the following:

16 (a) Complete an application to the department for
17 certification of the BAIID.

18 (b) Submit a report from a department-approved or National
19 Highway Traffic Safety Administration-approved laboratory
20 certifying that the BAIID meets or exceeds the model specifications
21 for BAIIDs, 78 FR 26849 - 26867 (May 8, 2013), or any subsequent
22 version. Subject to subsection (5), the department shall provide a
23 list of all manufacturers of approved certified devices to each
24 person who is approved to be issued a restricted license that
25 permits the person to drive a vehicle only if equipped with a
26 BAIID. The department shall rotate the order of the providers with
27 each list provided under this subsection. Any model of an ignition

1 interlock device certified by a department-approved laboratory as
2 complying with the model specifications for breath alcohol ignition
3 interlock devices (BAIIDs), 57 FR 11772-11787 (April 7, 1992), that
4 was installed in a vehicle before ~~the effective date of the~~
5 ~~amendatory act that added this subdivision~~ **JUNE 6, 2016** may be used
6 in this state ~~for the 24 months after the effective date of the~~
7 ~~amendatory act that added this subdivision~~ **THROUGH JUNE 6, 2018.**

8 (c) Ensure that a BAIID is capable of recording a digital
9 image of the individual providing the sample, and record the time
10 and date the sample was provided on or logically associated with
11 the digital image. A BAIID presented to the department for
12 certification may include additional technological features,
13 including, but not limited to, the ability to remotely report
14 information collected by the device.

15 (d) Agree to ensure proper record keeping in a format approved
16 by the department and provide testimony relating to any aspect of
17 the installation, service, repair, use, removal, or interpretation
18 of any report or information recorded in the data storage system of
19 a device or performance of any other duties required by this act at
20 no cost on behalf of ~~the~~ **THIS** state or any political subdivision of
21 ~~the~~ **THIS** state.

22 (2) The secretary of state shall promulgate rules to implement
23 this section in compliance with the administrative procedures act
24 of 1969, 1969 PA 306, MCL 24.201 to 24.328.

25 (3) The manufacturer of an ignition interlock device shall
26 bear the cost of that device's certification.

27 (4) A laboratory that certifies an ignition interlock device

1 as provided in this section shall immediately notify the department
2 of that certification.

3 (5) The department shall not include the manufacturer of a
4 certified ignition interlock device on the list of manufacturers
5 published under subsection (1) unless the manufacturer complies
6 with all of the following:

7 (a) The manufacturer has filed copies of all of the following
8 with the department:

9 (i) A bond executed as provided in section 625o or a letter of
10 credit.

11 (ii) Proof of liability insurance issued by an insurance
12 company authorized to do business in this state specifying all of
13 the following:

14 (A) That the policy is current and shall remain valid during
15 the duration of device approval.

16 (B) The name and model number of the device model covered by
17 the policy.

18 (C) That the policy has a minimum coverage of \$1,000,000.00
19 per occurrence and \$3,000,000.00 in the aggregate.

20 (D) That the policy will indemnify the department and any
21 other person injured as a result of any defects in manufacture,
22 materials, design, calibration, installation, or operation of the
23 device.

24 (iii) An affidavit that the ignition interlock device meets or
25 exceeds all of the following conditions:

26 (A) Meets the definition in section 20d.

27 (B) Is set to periodically take samples while the vehicle is

1 in operation. After the vehicle is in operation, the device
2 requires a first retest sample within 5 to 15 minutes of the
3 operator starting the vehicle. The device prompts second and
4 subsequent retests within 15 to 45 minutes of the first retest. The
5 operator of the vehicle is afforded not more than 5 minutes to
6 provide a passing retest sample for each retest prompted by the
7 device. The device accepts multiple attempts to provide a retest
8 sample without initiating a lockout. If the device detects an
9 alcohol content of 0.025 grams or more per 210 liters of breath in
10 the person who offers a breath sample or if a breath sample is not
11 given within the allotted time the device does all of the
12 following:

13 (I) Emits a visible or audible warning signal.

14 (II) Renders the vehicle inoperable as soon as the vehicle is
15 no longer being operated, requiring the operator to provide a
16 breath sample containing a breath alcohol level of less than 0.025
17 grams per 210 liters of breath before the vehicle may be restarted.

18 (III) Disables the free restart as defined by the National
19 Highway Traffic Safety Administration standards.

20 (IV) Activates a violation reset. The device initiates an
21 audible or visual cue that warns the driver that the device will
22 enter a permanent lockout in 5 days.

23 (b) Agrees to have service locations within 50 miles of any
24 location within this state. A manufacturer may request a waiver of
25 this requirement from the secretary of state if the manufacturer is
26 unable to secure an installation facility within 50 miles of any
27 location in this state. Subject to review, the secretary of state

1 may determine whether the manufacturer's waiver request shall be
2 approved. The secretary of state shall only approve a waiver of the
3 50-mile requirement and designate a location not meeting the 50-
4 mile requirement as a service center if the service center employs
5 a BAIID certified installer who shall perform any installation or
6 service to a BAIID at that location. If the secretary of state
7 approves a waiver of the 50-mile requirement, that waiver applies
8 only to the approved location. A manufacturer shall make a separate
9 request for a waiver of the 50-mile requirement for any additional
10 installation facility not meeting the 50-mile requirement.

11 (c) Agrees to provide an ignition interlock device without
12 cost to a person whose gross income for the immediately preceding
13 tax year based on his or her state income tax return was less than
14 150% of the official poverty line for that same tax year
15 established in the poverty guidelines issued by the ~~secretary~~
16 **UNITED STATES SECRETARY** of ~~health~~ **HEALTH** and ~~human services~~ **HUMAN**
17 **SERVICES** under 42 USC 9902. A person in whose vehicle an ignition
18 interlock device is installed without cost under this subdivision
19 shall pay a maintenance fee to the installer of not more than \$2.00
20 per day.

21 (d) Agrees to comply with the reporting requirements of the
22 secretary of state.

23 (e) Agrees to periodically monitor installed ignition
24 interlock devices and if monitoring indicates that the device has
25 been circumvented, tampered with, or that a person with a breath
26 alcohol level of 0.025 or more grams per 210 liters of breath has
27 attempted to operate the motor vehicle, or both, to communicate all

1 of the relevant information concerning these facts to the secretary
2 of state, and to the court if appropriate.

3 (6) A manufacturer that has made a filing under subsection (5)
4 shall immediately notify the department if the device no longer
5 meets the requirements of subsection (5).

6 (7) Upon the request of the department, the BAIID manufacturer
7 shall, at no cost to this state, provide the department with not
8 less than 2 BAIIDs for each model that is certified under this
9 section for demonstration and training purposes by the department.

10 (8) Upon the request of the department, the BAIID manufacturer
11 shall, at no cost to this state, install 1 of each device that is
12 certified under this section in a vehicle provided by the
13 department. Any service performed under this subsection, including,
14 but not limited to, installation, maintenance, calibration, or
15 removal, shall be completed at no cost to this state.

16 (9) Upon the request of the department, for each BAIID model
17 approved by the department, the BAIID manufacturer shall provide a
18 total of not less than 10 hours of training to department employees
19 at no cost to this state. This training shall be held at the times
20 and locations within the state designated by the department. The
21 training shall be designed to familiarize department employees with
22 the installation, operation, service, repair, and removal of the
23 BAIIDs and include the training and instructions that a BAIID
24 installer will give to customers. The BAIID manufacturer shall also
25 provide the department, upon request, with the following
26 information:

27 (a) A detailed description of the device, including complete

1 instructions for installation, operation, service, repair, and
2 removal of the BAIID.

3 (b) Complete technical specifications, including detailed
4 explanations and definitions of all data log entries.

5 (10) A BAIID manufacturer shall notify the department not less
6 than 15 days before implementation of any modification, upgrade, or
7 alteration to any hardware, software, or firmware of a device
8 certified for use in this state. The notification shall include
9 both of the following:

10 (a) A description and explanation of the modification,
11 upgrade, or alteration and proof satisfactory to the department
12 that these modifications, upgrades, or alterations do not adversely
13 affect the ability of the device to satisfy the requirements of
14 this section and section 625/.

15 (b) A comprehensive plan of action for the phasing out of the
16 use of the current device. This plan of action must be approved by
17 the department prior to the implementation of the plan of action.

18 (11) Any equipment in the possession of the department that
19 was retained for certification of the device shall be modified,
20 upgraded, or altered simultaneously with the implementation of a
21 plan of action under subsection (10). The department, in its
22 discretion, may retain a BAIID device regardless of whether the
23 device is no longer the current version or model of that device.

24 (12) Material modifications to a certified BAIID device may
25 require recertification under this section as determined by the
26 department.

27 (13) A BAIID manufacturer shall apply to the department

1 annually for recertification of BAIID devices it manufactures.

2 (14) The department is responsible for approving BAIID service
3 centers for operation in this state. The department shall not
4 approve a BAIID service center unless all of the following
5 conditions are satisfied:

6 (a) Only service centers that are BAIID manufacturer and
7 vendor approved shall install, service, or remove BAIIDs approved
8 for use in this state.

9 (b) Except as provided in subdivision (d), beginning July 1,
10 2016, a BAIID shall only be installed, serviced, or removed in a
11 motor vehicle repair facility. As used in this subdivision, "motor
12 vehicle repair facility" means that term as defined in section 2 of
13 the motor vehicle service and repair act, 1974 PA 300, MCL
14 257.1302.

15 (c) A service center shall be located in a fixed facility
16 within this state.

17 (d) A business that installs, services, or removes a BAIID,
18 including a BAIID manufacturer's corporate office located in this
19 state, that is installing, repairing, or removing BAIID devices on
20 ~~the effective date of the amendatory act that amended this section~~
21 **JUNE 6, 2016** may install, service, and remove BAIIDs in this state
22 without being certified as a motor vehicle repair facility under
23 the motor vehicle service and repair act, 1974 PA 300, MCL 257.1302
24 to 257.1340, if the business employs a certified BAIID installer to
25 perform any installation, service, or removal of a BAIID.

26 (e) Each service center shall have not less than 1 individual
27 who is a mechanic and who possesses a specialty certification in

1 BAIID service under section 10(1)(j) of the motor vehicle service
2 and repair act, 1974 PA 300, MCL 257.1310, and holds a BAIID
3 certification under this section to work as a BAIID installer.

4 (f) Each service center shall maintain and make available for
5 inspection records that prove that each certified BAIID installer
6 working at the service center has been properly trained by the
7 BAIID manufacturer to service the BAIID for which the center is a
8 vendor.

9 (g) Each service center shall provide a designated waiting
10 area for customers that is separate from the area in which BAIIDs
11 are installed or serviced.

12 (h) Only certified BAIID installers and representatives of the
13 BAIID manufacturer or the department shall be allowed to observe
14 the installation or removal of a BAIID.

15 (i) Adequate security measures shall be taken to ensure that
16 unauthorized personnel are not allowed access to proprietary
17 materials of BAIID manufacturers or files of customers.

18 (j) BAIID manufacturer service centers shall install,
19 maintain, service, and remove all BAIIDs handled by that service
20 center and perform any other services determined necessary by the
21 department for using those BAIIDs in this state.

22 (k) The BAIID manufacturer shall inform the department of a
23 change in its service center's business address 15 days prior to
24 the date of any relocation.

25 (l) BAIIDs approved for use in this state shall only be
26 serviced by service centers located within this state, unless the
27 customer is unable to return to this state for service because of a

1 significant personal hardship.

2 (m) If a BAIID is serviced by a service center outside of this
3 state, the BAIID service provider shall ensure that all of the
4 following requirements are met:

5 (i) The BAIID operates using the same firmware that is used
6 for devices in this state.

7 (ii) The data recorded by the BAIID remain intact on the
8 device for later retrieval by a service center in this state or the
9 data are transferred to a BAIID manufacturer database for review.

10 (n) Service centers shall make the addresses of their
11 locations available to the department.

12 (o) BAIIDs for use in this state shall be installed and shall
13 be removed only in a service center approved by the department for
14 installing that device under this subsection.

15 (p) Each application for approval shall be for a single
16 service center. A separate service center application is required
17 for each additional service center.

18 (q) Before issuance of approval, the department may require an
19 on-site evaluation to ensure compliance with the requirements of
20 this section and section 625/.

21 (r) The department's approval of a service center shall be for
22 a period of 1 year. The renewal process shall be the same as the
23 initial service center approval process under this section.

24 (15) The department may conduct inspections of a manufacturer
25 or a BAIID service center to ensure compliance with this act and
26 rules promulgated to implement this act. The manufacturer shall pay
27 for the actual costs to the department in conducting an inspection

1 under this subsection. **MONEY COLLECTED BY THE DEPARTMENT UNDER THIS**
2 **SUBSECTION SHALL BE CREDITED TO THE TRANSPORTATION ADMINISTRATION**
3 **COLLECTION FUND CREATED IN SECTION 810B.**

4 (16) An individual shall not install, service, or remove a
5 BAIID in this state without being certified by the department under
6 this section.

7 (17) All BAIID installations shall be done in a workmanlike
8 manner by a BAIID certified installer at an approved service center
9 and shall be in accordance with the standards set forth in this
10 section and with the requirements of the manufacturer. All BAIIDs
11 installed shall be in working order and shall perform in accordance
12 with the standards set forth in this act. All connections shall be
13 covered with a tamper seal.

14 (18) Upon completion of the installation of a BAIID required
15 under this act, the approved BAIID certified installer shall
16 provide the customer with installation verification in the form and
17 format designated by the department.

18 (19) A manufacturer shall ensure that BAIID certified
19 installers meet the following requirements:

20 (a) Possess the appropriate certification from the department
21 under this section.

22 (b) Possess and maintain all necessary training and skills
23 required to install, examine, troubleshoot, and verify the proper
24 operation of BAIIDs.

25 (c) Possess the tools, test equipment, and manuals needed to
26 install, inspect, download, calibrate, repair, maintain, service,
27 and remove BAIID devices.

1 (d) Provide all persons who will use the vehicle with written
2 and hands-on training regarding the operation of a vehicle equipped
3 with the BAIID and ensure that each of those persons demonstrates a
4 properly delivered alveolar breath sample and an understanding of
5 how the abort test feature works.

6 (20) An individual who has been convicted of an alcohol-
7 related driving offense or any offense classified as a felony in
8 this state or elsewhere within 5 years before the date of filing an
9 application for approval as a BAIID certified installer is not
10 eligible for approval as a BAIID certified installer under this
11 act.

12 (21) The following requirements apply to a BAIID certified
13 installer under this act:

14 (a) Be not less than 18 years of age.

15 (b) Possess a valid driver license.

16 (c) Be a motor vehicle mechanic as defined in section 2 of the
17 motor vehicle service and repair act, 1974 PA 300, MCL 257.1302,
18 and possess a specialty certification in BAIID service under
19 section 10(1)(j) of the motor vehicle service and repair act, 1974
20 PA 300, 257.1310.

21 (d) Be certified as a BAIID installer under this section.

22 (22) To be certified as a BAIID installer under this section,
23 the individual shall meet all of the following requirements:

24 (a) Possess a specialty certification in BAIID installation
25 under section 10(1)(j) of the motor vehicle service and repair act,
26 1974 PA 300, MCL 257.1310.

27 (b) Properly complete and file a BAIID installer application

1 form with the department.

2 (c) Beginning ~~180 days after the effective date of the~~
3 ~~amendatory act that added this subdivision,~~ **DECEMBER 3, 2016**, be a
4 mechanic who is certified as a mechanic with a specialty
5 certification in BAIID service under section (10)(1)(j) of the
6 motor vehicle service and repair act, 1974 PA 300, MCL 257.1310,
7 and hold a BAIID certification under this section.

8 (d) Submit a criminal history report certified by the
9 department of state police within the immediately preceding 30
10 days.

11 (e) Meet the requirements of the department for certification
12 under this act.

13 (23) Each application for approval shall be for a single BAIID
14 installer. A separate BAIID installer application is required for
15 each additional BAIID installer.

16 (24) The department's approval of a BAIID installer is for 1
17 year. The renewal process shall be the same as the initial BAIID
18 installer approval process under this section.

19 **(25) THIS ACT DOES NOT PROHIBIT A BAIID MANUFACTURER FROM**
20 **DEVELOPING, MANUFACTURING, OR SELLING A STARTUP OPERATED BREATH**
21 **ENGINE RESTRICTOR (SOBER) IN THIS STATE. A SOBER MAY BE INSTALLED**
22 **ON ANY MOTOR VEHICLE PROPERLY TITLED IN THIS STATE BY THAT MOTOR**
23 **VEHICLE'S OWNER, IF THE MOTOR VEHICLE IS NOT OWNED OR OPERATED BY**
24 **AN INDIVIDUAL WHO IS REQUIRED BY THE DEPARTMENT OR A COURT ORDER TO**
25 **INSTALL A BAIID AS A CONDITION OF OPERATING A MOTOR VEHICLE. AN**
26 **INSTALL CERTIFICATE, REPORT, OR ANY OTHER DOCUMENT BEARING A RAISED**
27 **SEAL SHALL NOT BE ISSUED UPON INSTALLATION OF A SOBER DEVICE.**

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