

Legislative Analysis



INTERLOCK IGNITION DEVICES

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House Bill 4289 (Substitute H-4)
Sponsor: Rep. Bob Constan

House Bill 4920 (Substitute H-3)
Sponsor: Rep. Marc Corriveau

House Bill 4921 as introduced
Sponsor: Rep. Daniel Acciavatti
Committee: Judiciary

First Analysis (10-8-07)

BRIEF SUMMARY: The bills would amend the Michigan Vehicle Code to revise provisions pertaining to drunk driving, including stricter sanctions for drivers with a high BAC, and to require greater use of ignition interlock devices for drunk driving convictions.

FISCAL IMPACT: The bills would have an indeterminate fiscal impact on state and local governmental units. See below for a more detailed fiscal analysis.

THE APPARENT PROBLEM:

Despite efforts to reduce, and possibly eliminate, injuries and fatalities caused by drivers operating motor vehicles while intoxicated or under the influence of drugs or alcohol, traffic fatalities related to alcohol and drug use have continued to rise. The latest statistics released by the National Highway Traffic Safety Administration show that although overall traffic fatalities in Michigan dropped from 1,129 in 2005 to 1,084 in 2006, the deaths that were alcohol related increased from 408 to 440. In addition to the numbers of people killed by drunk drivers, many more people were injured, some who will be affected for the rest of their lives.

Some believe that greater use of ignition interlock devices, which prevent a vehicle from starting if the operator has a bodily alcohol content (BAC) greater than 0.025, would be an effective measure to reduce repeat drunken driving incidents. In addition, some feel that persons who drive with a BAC of 0.15 or more, generally referred to as "super drunk" or "extreme drunk" drivers, should face more severe penalties and license sanctions—although these drivers represent only about one percent of drunk drivers, they account for over half of alcohol-related traffic fatalities.

Legislation has been offered to address these concerns.

THE CONTENT OF THE BILLS:

The bills would amend various sections of the Michigan Vehicle Code pertaining to drunk driving offenses, license sanctions for drunk driving offenses, and use of an ignition interlock device.

House Bill 4289 would amend the code (MCL 257.625k et al.) to prohibit a person allowed only to drive a vehicle equipped with an ignition interlock device from driving any other vehicle, establish penalties for violations of the bill, revise the criteria for a manufacturer of a device to be on a list that the Secretary of State (SOS) provides to persons ordered to have one installed in their vehicles, require law enforcement officers to immediately impound any vehicle not containing a device if the driver is required to have one, and require the SOS to review the ignition interlock program every five years.

House Bill 4920 would amend the code (MCL 257.20b et al.) to revise the definition of "ignition interlock system," create a high BAC level or "super drunk driving" category, require installation of an ignition interlock device in the vehicle of a person convicted of the high BAC level, make failure to install the device contempt of court, prohibit removal of the device without an order by the SOS, and require completion of a rehabilitative program for a first offense for a high BAC.

House Bill 4921 would amend the code (MCL 257.20b et al.) to revise the definition of "ignition interlock system" and require license suspensions, longer restricted licenses, and mandatory use of ignition interlock devices by repeat drunk drivers in lieu of mandatory license revocation.

All three of the bills would clarify that if the conditions of a restricted license included installation of an ignition interlock device, then the device would have to be properly installed and functioning. House Bill 4289 and House Bill 4920 are tie-barred to each other, meaning that neither bill could take effect unless both were enacted. The effective date for all of the bills is October 1, 2008. Specifics of each bill are as follows:

House Bill 4289

General revisions

The bill would amend the code to prohibit a person who is only permitted to drive a motor vehicle equipped with an ignition interlock device from operating a vehicle on which a device is not properly installed.

A person permitted to only drive a vehicle on which a device has been properly installed could not legally operate any other vehicle if it did not have such a device. Failure to comply would be a misdemeanor punishable by imprisonment for not more than six months and/or a fine of not more than \$5,000 (this same penalty currently applies to a person who asks another to blow into his or her device, an individual who blows into another person's device, and a person who tampers with or circumvents an ignition

interlock device). In addition, upon a conviction, the court would order the vehicle immobilized for not less than 90 days or more than 180 days. The immobilization order would be suspended by the court if the person obtained a restricted driver's license and an ignition interlock device was installed properly in the vehicle. However, the immobilization order could be reinstated if the device was tampered with, circumvented, or disabled or if the person's restricted driver's license was suspended or revoked.

Additionally, the SOS would have to convene a panel to review current technology and investigate program improvements beginning December 31, 2011 and by December 31 every fourth year thereafter.

Furthermore, it is against the law to operate a vehicle on a suspended or revoked driver's license or registration certificate and for an individual to allow such a person to operate a vehicle owned by the individual. The penalties for a violation range from a misdemeanor up to a 15-year felony, with enhanced sentences available for prior convictions. Currently, to establish a prior conviction, an abstract of conviction, a copy of the defendant's driving record, and/or an admission by the defendant is needed. The bill would add to this list a copy of a judgment of conviction; a transcript of a prior trial, plea, or sentencing; and information contained in a presentence report.

List of approved manufacturers of ignition interlock devices

Currently, the office of Secretary of State (SOS) must publish a list of all manufacturers of approved certified devices. The bill would require the SOS to provide a list of ignition interlock device manufacturers to each person issued a restrictive license that permitted the person to drive a vehicle only if it had been equipped with a device. The SOS would have to rotate the order of the providers with each distribution.

To be included on the list currently, a manufacturer must meet specific criteria. The bill would revise some, but not all, of the criteria that a manufacturer must meet in order to be on the list as follows:

** Currently, a manufacturer is required to agree to provide a device at no cost to eligible low income persons. The person is required to pay a maximum maintenance fee to the installer that is capped at \$1 per day. The bill would increase the maximum for the fee to \$2 per day.

** Current law requires an affidavit to be filed with the SOS that the device met certain conditions. The conditions would be revised and a device would now have to:

- Meet the definition of "ignition interlock system" added to the vehicle code by House Bill 4920; and,
- be set to periodically take samples while the vehicle was in operation and to do both (instead of one or both) of the following when the device detects an alcohol content of 0.025 grams or more per 210 liters of breath in the person who offers a

breath sample or if a breath sample is not given within the allotted time
(highlighted portion indicates new language added by the bill):

- (1) emit a visible or audible warning signal; and,
- (2) render the vehicle inoperable as soon as the vehicle is no longer being operated.
(Under current law, the vehicle must be rendered inoperable if the device detects an alcohol content of 0.04 grams or more per 210 liters of breath.)

** Currently, manufacturers must agree to periodically monitor installed devices and communicate to the SOS or the court if the device had been tampered with. The bill would allow them to communicate incidents of tampering to both the SOS and the court.

** A requirement that manufacturers comply with reporting requirements of the Secretary of State (SOS) would be added.

Impounding of vehicles

If a person restricted to operating only a vehicle on which an ignition interlock device has been installed were detained by a law enforcement officer for violating a state law or local ordinance, the officer would be required to impound the vehicle if it did not have a device. If the person owned the vehicle, jointly or individually, the officer would have to immediately confiscate the vehicle's registration plate and destroy it; issue a temporary plate as prescribed by the SOS; place the temporary plate on the vehicle; and notify the SOS via the Law Enforcement Information Network (LEIN). The temporary plate would be valid until such time as the charges were dismissed, the person pled guilty or no contest, or the person was acquitted or found guilty of the charge. (This procedure is similar to that in place for repeat offenders.)

If the person did not own the vehicle, the officer would have to impound the vehicle by contacting a local towing agency. Only the registered owner could redeem the vehicle.

The owner of a vehicle impounded under the bill would be liable for all expenses incurred in the removal and storage of the vehicle whether or not the vehicle was returned to him or her, but could not redeem the vehicle if these costs were not paid. Any vehicles not redeemed or returned to the owner would be considered an abandoned vehicle and disposed of under Section 252a of the code.

House Bill 4920

The bill would create a "high BAC" or "super drunk" level of operating a vehicle while intoxicated of 0.15 grams or more. A person convicted of the high BAC offense would be prohibited by court order from operating a motor vehicle unless it was equipped with an approved ignition interlock device. Upon conviction or a plea of guilty or no contest, a court would have to order, orally and in writing, that every vehicle registered individually or jointly by that person be equipped with a device before the sentencing

date. A person who failed to comply with the court order would be guilty of contempt of court.

The definition of "ignition interlock system" would be moved to a new section (Sec. 20b). It would be substantially the same as it is currently, but a device now would have to meet or exceed federal specifications; utilize alcohol-specific electrochemical fuel sensor technology; and have an anticircumvention method as specified in the bill. (Currently, a device must be able prevent a vehicle from being started if the operator's breath alcohol level was 0.025 grams per 210 liters of breath. This would remain the same.)

License sanctions

For a high BAC offense with no prior convictions within the previous seven years, a license would be suspended for at least one year or until the person equipped his or her vehicle with an ignition interlock device, whichever was longer. A restricted license could not be issued for a high BAC offense unless the vehicle had been equipped with a device; but, if the device were installed, could be issued after 45 days. The device could not be removed until after the minimum period for the restricted license expired and the person documented that he or she had operated the vehicle in the proceeding six months without reaching or exceeding a BAC of 0.025 grams.

A provision allowing a hearing officer to continue the ignition interlock device requirement for any length of time would be deleted; the bill would instead prohibit a person who had been issued a restrictive license requiring a device from removing the device, or causing it to be removed, unless the SOS issued an order authorizing the removal.

In addition, a court would be required to order a person, as part of the sentence for a first conviction of a high BAC offense, to participate in and successfully complete one or more appropriate rehabilitative programs. (Currently, this requirement is reserved for repeat drunk drivers.) The bill would also specify that a person in a rehabilitative program for any drunk driving offense would not be required to successfully complete the program before driving a vehicle that had been equipped with a device on a restricted license.

House Bill 4921

Currently, the SOS must revoke a person's operator's or chauffeur's license and deny issuance of a license to a person upon repeat convictions of drunk driving or driving under the influence of a controlled substance. The bill would exempt repeat drunk and drugged driving convictions from these mandatory license revocation requirements. Instead, the bill would require a person's license to be suspended and the vehicle equipped with an ignition interlock device as follows:

- For one prior conviction within seven years, a suspension would be two years or until certain conditions were satisfied, whichever was longer. A device would have to be installed for at least two years.
- For two prior convictions within ten years, three years or until certain conditions were satisfied, whichever was longer. A device would have to be installed for at least three years.
- For three or more prior convictions, five years or until certain conditions were satisfied, whichever was longer. A device would have to be installed for at least five years.

The bill would revise the definition of "ignition interlock device" in the same way as House Bill 4920, also placing it in a new section (Section 20b). If a license were suspended because of a repeat offense, the SOS would have to issue a restricted license if the suspension was because of a repeat offense, but could not do so for the first 45 days of suspension. A restricted license issued under the above provisions could only permit the person to drive a vehicle to and from the person's place of work, school, and/or alcohol treatment program. The ignition interlock device could be removed after the minimum period for the restricted license expired *if* the person provided documentation that he or she did not reach or exceed a BAC level of 0.025 during the most recent six continuous months.

A provision allowing a hearing officer to continue the ignition interlock device requirement for any length of time would be revised to clarify that the initial period for requiring the device would be at least a year and that after that time period, the device could not be removed until the hearing officer ordered the device removed.

The bill specifies that it could not take effect unless H.R. 1195 of the 110th Congress is also enacted.

[H.R. 1195 would amend the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) to, among other things, modify the repeat intoxicated driver provision to ensure the law permitted the use of ignition interlock devices.]

BACKGROUND INFORMATION:

The website maintained by the Department of State contains a summary of the state's drunk driving laws and information on interlock ignition devices. For more information, see www.michigan.gov/sos, select Driver License and State ID, then select Losing Your Privilege to Drive.

FISCAL INFORMATION:

House Bill 4289:

There will be an indeterminate amount of staff and programming costs to the State for enforcing new penalties, monitoring persons who are convicted and subsequently ordered

to have their vehicles equipped with ignition interlock devices, administering orders for removal of ignition interlock devices, and convening a panel to review technology and investigate program improvements.

House Bill 4920:

There will be an indeterminate amount of staff and programming costs to the State for establishing new offense codes, enforcing new penalties, following new reporting requirements, monitoring persons who are convicted and subsequently ordered to have their vehicles equipped with ignition interlock devices, administering orders for removal of ignition interlock devices, and convening a panel to review technology and investigate program improvements. Also, it is highly unlikely the Department will be able to meet the October 1, 2008 start up date requirement contained in the bill.

House Bill 4921:

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ARGUMENTS:

For:

Deaths from drunk driving accidents continue to rise, despite legislative attempts to reduce incidents through lowering the drunk driving threshold to 0.08 BAC and tougher repeat offense penalties. The bill package under consideration further attempts to reduce drunk driving incidents by targeting specific concerns identified in drunk driving research.

****** The National Transportation Safety Board reports that in 2005, more than 52 percent of alcohol-related fatalities in Michigan involved a hard core drinking driver (defined as someone with a BAC of at least 0.15 or a repeat drunk driver). House Bill 4920 would create a per se "superdrunk driving" category with longer license suspensions, a longer hard suspension (the time period before a restricted license could be issued), and mandatory use of an ignition interlock device for anyone operating a vehicle with a BAC of 0.15 or more. The penalties currently in place for drunk driving would still apply to those with a BAC of less than 0.15.

****** Hard core, or superdrunk, drivers often have an underlying substance abuse problem; if left untreated, they are likely to resume drinking once sanctions are lifted. House Bill 4920 would mandate successful completion in an appropriate treatment program, even for a first offense. Currently, only repeat offenders are required to complete a rehabilitation program. It is hoped that getting the heavier drinkers into rehab at an earlier stage will increase their chances for recovery as well as improve public safety.

** Some offenders restricted to driving a vehicle equipped with an ignition interlock device circumvent the restriction by driving their vehicles without the device or by borrowing a spouse's or friend's car. Under provisions of House Bill 4289, such conduct would be a misdemeanor and would subject the vehicle to impoundment and/or temporary immobilization. Failing to install a device before sentencing as ordered by the court would be contempt of court under House Bill 4920. The increased penalties should encourage greater compliance with the restrictions, thereby increasing public safety and decreasing drunk driving incidents as well.

** Research studies verify that ignition interlock devices do reduce recidivism rates, but that recidivism rates rise again when the devices are removed. Under House Bills 4920 and 4921, it would be tougher to get authorization from the Secretary of State to have an ignition interlock device removed – a person would have to prove that he or she had not operated the vehicle in the preceding six months without reaching or exceeding a BAC of 0.025. Therefore, by tying the removal of a device to a person's behavior, rather than to a set period of time, the bills would encourage a drunk driver to address his or her underlying substance abuse problem and establish a pattern of sobriety before the device could be removed.

** Currently, a person's driving privileges are revoked upon a repeat drunk or drugged driving conviction. Some believe this approach is ineffective; offenders continue to drive but without licenses, and continue to drive drunk or under the influence of controlled substances. House Bill 4921 would instead issue long license suspensions for repeat drunk and drugged drivers regardless of the level of intoxication, and would increase the hard suspension period. In addition, the restricted license that could be issued to repeat offenders at the end of the hard suspension period would be more limited than a restricted license issued for other driving infractions. A restricted license for a repeat offender would allow the offender to drive only to and from work, school, and/or an alcohol treatment program. The ability to work or complete school are known factors influencing the successful rehabilitation of drunk and drugged drivers, as is successful completion of a treatment program. Allowing repeat offenders to legally drive to activities known to increase their sobriety, rather than stripping them of their ability to drive altogether, will also provide a period of accountability in which healthier choices can become a habit.

In summary, these changes to the drunk driving laws will effectively target the population responsible for causing the most alcohol-related injuries and fatalities, will ensure that the population most likely to have a substance abuse problem will get appropriate treatment at an earlier stage in the disease, will ensure that the population most likely to repeatedly drive drunk or drugged will have an ignition interlock device on their vehicles and face criminal charges if they drive any vehicle without a device, and provide repeat offenders and first time high BAC offenders with a longer period of restricted driving privileges and use of an ignition interlock device whereby a pattern of responsibility can be established.

For:

It is widely held that people who drink and drive do so many times before being apprehended the first time. All too often, however, drunk driving cases are plea-bargained from an operating while intoxicated (OWI – a BAC of at least 0.08) charge to a charge of visibly impaired, which has significantly lower penalties for first and repeat offenses.

By creating a new superdrunk category, House Bill 4920 would create a three-tier system: operating while visibly impaired, operating while intoxicated (a BAC of at least 0.08 grams), and the new superdrunk level (a BAC of at least 0.15 grams). Since the average BAC level for drunk driving arrests in the state is 0.16 BAC, a plea bargain that drops the charge down a level will still result in a significant number of drunk drivers pleading guilty to a drunk driving offense.

For:

Because studies support the contention that ignition interlock devices significantly reduce traffic fatalities caused by repeat offenders (by some estimates, up to a 75 percent reduction in DWI arrests), over 40 states have adopted legislation to increase the use of the devices. New Mexico was first to require that everyone convicted of a drunk driving offense be required to install a device – even for a first conviction. According to data reported in a New Mexico traffic safety publication, several promising results can be seen between January 1, 2003, when the interlock law went into effect, and the end of 2006 ["Interlocks in New Mexico Are Up, Drunk Driving is Down", Dr. Richard Roth (Sept.5, 2007)]. For example, interlocked drivers had a 69 percent lower re-arrest rate than non-interlocked offenders, DWI arrests declined 12 percent in spite of increased enforcement, alcohol-involved crashes decreased by 32 percent, and 15 percent fewer people died as a result of alcohol-involved fatal crashes. And, these stunning results were achieved with only about 35 percent of arrested offenders installing interlocks.

Despite the research, judges do not order the devices in all situations that they could. Expanding the situations that would mandate installation of a device would therefore save lives by keeping drunk drivers from being able to start and continue operating a vehicle.

Response:

The subtitle to the article quoted above is "Correlation Yes..But Causality is tough to Prove." The author cited prevention programs, publicity, increased enforcement, and forfeiture ordinances as contributing factors to decreasing incidents of, and fatalities caused by, drunk driving. Also, it is well-documented that when the devices are removed, many offenders drink and drive again. There simply are no reliable studies that support the contention that longer use of interlock devices, as the bill package would require, will have a long-term impact on changing the behavior of the offender once the device is removed.

Against:

Since the average BAC level for a drunk driving arrest is 0.16, the new superdrunk category created by House Bill 4920 – a BAC of at least 0.15 – would mean that most of the drivers arrested for drunk driving would be considered superdrunk and required to

install an ignition interlock device and attend rehab. If 0.16 BAC is the average, then the threshold for being superdrunk should be set at a higher level, say 0.18 or 0.20.

Response:

The goal of the legislation is to target the population that causes the greatest number of crashes, injuries, and fatalities that are alcohol related. Research studies and accident data support that drivers with a BAC of 0.15 or higher are responsible for about 60 percent of all alcohol-related traffic accidents. The choice of where to set the threshold for superdrunk driving should be the level at which alcohol makes driving more dangerous; if 0.15 BAC is the state's average level for drunk driving arrests, then the data underscores the need for the legislation.

Against:

Studies show that ignition interlock devices are successful in reducing drunk driving incidents while they are installed in the offenders' vehicles. Once removed, recidivism rates begin to rise. There is no indication that just keeping the devices on longer will have a positive effect on reducing recidivism rates, especially for hard core drunk drivers – those more likely to drive with a high BAC or to repeatedly drive drunk. Unless an offender's underlying alcoholism or substance abuse problem is treated, for example, by participation in a drug court and mandated substance abuse treatment, it is unlikely that deaths and injuries caused by drunk drivers would be significantly reduced by the reforms that this package of legislation would institute.

Response:

House Bill 4920 would require mandatory participation in, and successful completion of, an appropriate rehabilitation program for every high BAC offender, even for a first offense. Currently, only drunk drivers on their third or subsequent offense are court ordered to get counseling. The goal is to identify those drivers who are more likely to be involved in a fatal accident earlier (hopefully, before they cause injury or death to others) and to get them the help they need at an earlier point in their addiction.

Rebuttal:

Some believe that the forms of treatment currently provided in many drug courts are not suited to those classified as hard core drunks. Therefore, the currently available programs may not necessarily be effective. A better approach may be to create better, more effective programs that are specifically suited to alcoholics.

Against:

Rather than enact a series of bills that would be lucrative for some members of a particular industry (certain manufacturers of ignition interlock devices), a better approach would be to encourage judges, when there is the judicial discretion to do so, to voluntarily order installation of the devices when the circumstances of a case warrant it. Also, greater use of drug courts to treat the underlying addiction to alcohol should be emphasized and development of more effective treatment programs for alcoholics should be encouraged and supported.

Against:

House Bill 4289 could double the cost of an ignition interlock device for low-income persons. This would be doubly hard for those in rural areas that lack public

transportation. Without transportation to work, school, or treatment programs, a person who could not afford the cost of a device would be forced to choose between driving illegally or losing his or her employment, dropping out of school, and/or missing important rehab sessions.

POSITIONS:

The following entities indicated support for the legislation:

The Century Council (6-27-07)
National Transportation Safety Board (6-27-07)
MADD Michigan (7-18-07)
Department of State Police (7-18-07)
Michigan Sheriffs' Association (6-27-07)
Michigan Ignition Interlock Providers Association (7-18-07)
Traffic Improvement Association/Michigan (6-27-07)
Consumer Safety Technology (6-27-07)

According to a press release by Anheuser-Busch, the company "supports mandatory use of interlocks as an effective part of a comprehensive sanctioning and intervention plan for those offenders with repeat DWI convictions." (6-19-07)

The Michigan Association of Drug Court Professionals Legislation Committee supports the concept of the bills but has several concerns, including that language pertaining to treatment is too weak and that the legislation lacks any provisions to help indigent persons to pay costs associated with an interlock device. (6-26-07)

The Michigan Association of Substance Abuse Coordinating Agencies has not taken a position on the bills but does believe certain elements of the legislation are very important in reducing drunk driving in the state. (6-27-07)

The Department of State supports the concept of a high BAC, but has administrative concerns regarding the legislation. The department opposes House Bill 4921 as weakening current repeat offender laws. (6-27-07)

The Michigan Licensed Beverage Association opposes the bills. (7-18-07)

The Michigan Restaurant Association opposes the bills. (7-18-17)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.