



Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536

BILL



ANALYSIS

Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

Senate Bill 1134 (as enacted)  
House Bill 4289 (as enacted)  
Sponsor: Senator Alan L. Cropsey (S.B. 1134)  
Representative Bob Constan (H.B. 4289)  
Senate Committee: Judiciary (S.B. 1134)  
Transportation (H.B. 4289)  
House Committee: Judiciary

**PUBLIC ACT 462 of 2008**  
**PUBLIC ACT 461 of 2008**

Date Completed: 7-27-09

## **CONTENT**

The bills amend the Michigan Vehicle Code to do the following:

- Add a criminal penalty for operating a vehicle with a bodily alcohol content (BAC) of 0.17 gram or more per 100 milliliters of blood, 210 liters of breath, or 67 milliliters of urine.
- Require a driver license suspension, and use of an ignition interlock device when driving on a restricted license, for a 0.17 BAC violation.
- Require participation in an alcohol rehabilitative program for a 0.17 BAC violation.
- Prohibit a person required to use an ignition interlock device from removing it from a vehicle until removal is authorized by the Department of State.
- Prohibit a person from operating a motor vehicle without a properly installed ignition interlock device if the person is allowed to operate a vehicle only if it has such a device.
- Require a law enforcement officer to impound a vehicle not equipped with a properly installed ignition interlock device if the driver is allowed to operate a vehicle only if it has that device.
- Require a person's vehicle to be immobilized until the person obtains a restricted license and an ignition interlock device is properly installed,

if he or she unlawfully operates a vehicle without such a device.

- Revise requirements for the Department of State's administration and approval of ignition interlock devices.
- Require an ignition interlock device to render a vehicle inoperable if it detects a BAC of 0.25 gram or more, rather than 0.04 gram or more as currently required.
- Revise the criteria for establishing a prior conviction of driving with a suspended or revoked license or registration.

The bills were tie-barred and will take effect on October 31, 2010.

Senate Bill 1134 defines "ignition interlock device" as an alcohol concentration measuring device that prevents a motor vehicle from being started at any time without first determining through a deep lung sample the operator's alcohol level, calibrated so that the motor vehicle cannot be started if the operator's breath alcohol level, as measured by the test, reaches a level of 0.025 gram per 210 liters of breath, and to which all of the following apply:

- The device meets or exceeds the model specifications for breath alcohol ignition interlock devices (BAIID), 57 FR 11772-11787 (April 7, 1992).

- The device uses alcohol-specific electrochemical fuel sensor technology.
- As its anticircumvention method, the device installation uses a positive-negative-positive air pressure test requirement, a midtest hum tone requirement, or any other anticircumvention method or technology that first becomes commercially available after July 31, 2007, and that is approved by the Department of State as equally or more effective.

### **Senate Bill 1134**

#### **0.17 BAC Violation; Penalties**

The Code prohibits a person, whether licensed or not, from operating a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for parking, if the person is operating while intoxicated. "Operating while intoxicated" means either of the following:

- The person is under the influence of alcohol, a controlled substance, or a combination of alcohol and a controlled substance.
- The person has a BAC of 0.08 gram or more (or 0.10 gram or more, beginning October 1, 2013) per 100 milliliters of blood, 210 liters of breath, or 67 milliliters of urine.

Under the bill, "operating while intoxicated" also means that the person has a BAC of 0.17 gram or more per 100 milliliters of blood, 210 liters of breath, or 67 milliliters of urine.

Under the Code, a violation of operating while intoxicated is a misdemeanor punishable by one or more of the penalties shown in Table 1. (Enhanced penalties apply for a violation that occurs within seven years of a prior conviction, or after two or more prior convictions regardless of the number of years since any prior conviction, or if the operator causes the death or serious impairment of a body function of another person.)

Table 1 also shows the penalties that will apply to a violation of operating while intoxicated with a BAC of 0.17 gram or more.

Table 1

Penalty	Under the influence or	
	0.08 BAC	0.17 BAC
Imprisonment	Up to 93 days	Up to 180 days
Fine	\$100 - \$500	\$200 - \$700
Community Service	Up to 360 hours	Up to 360 hours

#### **Rehabilitative Program**

Under the Code, before imposing sentence for a drunk driving violation, the court must order the person to undergo screening and assessment by a person or agency designated by the Office of Substance Abuse Services to determine whether the offender is likely to benefit from rehabilitative services, including alcohol or drug education and treatment programs. If the person has one or more prior convictions, the court must order the person to participate in and successfully complete one or more appropriate rehabilitative programs as part of his or her sentence. The bill extends this requirement to a person convicted of a 0.17 BAC violation.

In either case, under the bill, the required program must include an alcohol treatment program or a self-help program for at least one year. The treatment plan must be devised from an assessment performed by an appropriately licensed alcohol assessor and be approved by the court. The bill specifies that these provisions do not require the successful completion of an ordered rehabilitative program before the person may drive a vehicle with an ignition interlock device on a restricted license.

#### **License Sanctions; Interlock Device**

The Code requires the Secretary of State (SOS) to suspend a person's driver license for certain violations. Under the bill, for a 0.17 BAC violation, if the person has no prior convictions within seven years, or not more than two convictions within 10 years, the SOS must suspend the person's license for one year. The SOS may issue the person a restricted license, except during the first 45 days of the suspension.

The Department of State must order a person convicted of a 0.17 BAC violation not to operate a motor vehicle under a restricted license unless the vehicle is equipped with

an ignition interlock device approved, certified, and installed as required under the Code. The device may be removed after its provider gives the Department verification that the person has operated the vehicle with no instances of reaching or exceeding a blood alcohol level of 0.025 gram per 210 liters of breath.

If a person convicted of a 0.17 BAC offense violates the conditions of the restricted license or operates or attempts to operate a vehicle with a blood alcohol level of 0.025 gram per 210 liters of breath, the Secretary of State must impose an additional like period of suspension and restriction. This provision does not apply to a start-up test failure within the first two months after installation of the device. (The bill defines "start-up test failure" as the term is defined in R 257.313a, i.e., the device has prevented the motor vehicle from being started.)

Currently, if a hearing officer issues a restricted license requiring an ignition interlock device, the initial period for requiring the device must be one year. Under the bill, the initial period must be not less than one year. The bill deletes a provision allowing the hearing officer to continue the ignition interlock device requirement for any length of time after one year.

Under the bill, if the Department issues a person a restricted license requiring an ignition interlock device, the person may not remove it or cause it to be removed unless the Department issues an order authorizing removal.

#### License Denial, Revocation, or Suspension

The Code requires the Secretary of State, upon receiving the appropriate records of conviction, to revoke the driver license of a person and deny a driver license to a person who has a combination of various convictions within a seven-year or 10-year period of time. For particular offenses, revocation or denial is required if a person has a single conviction. The Code also lists several offenses for which the SOS must suspend a person's license.

These requirements apply to convictions under a law of this State, a local ordinance substantially corresponding to a law of this

State, or a substantially corresponding law of another state. The bill also includes a law of the United States substantially corresponding to a law of this State.

#### **House Bill 4289**

##### Driving without Ignition Interlock Device

The bill prohibits a person from operating a motor vehicle on which an ignition interlock device is not properly installed, if that person is only permitted to operate a vehicle equipped with such a device.

The bill requires a law enforcement to impound a vehicle if he or she detains its operator for violating a State law or local ordinance and the operator is someone required to operate a vehicle only with an ignition interlock device properly installed, but no ignition interlock device is properly installed on the vehicle. If the operator individually or jointly owns the impounded vehicle, the officer must do all of the following:

- Immediately confiscate the motor vehicle registration plate and destroy it.
- Issue a temporary registration plate for the vehicle in the same manner prescribed by the SOS for temporary plates issued to licensed dealers and vehicle owners.
- Place the temporary plate on the vehicle in the manner prescribed by the SOS.
- Notify the SOS through the Law Enforcement Information Network (LEIN) that the registration plate was destroyed and a temporary plate was issued.

A temporary registration plate will be valid until the charges for operating a vehicle without a properly installed ignition interlock device are dismissed, the person pleads guilty or no contest to the charge, or the person is found guilty or acquitted.

If the impounded vehicle is not owned individually or jointly by the operator, the law enforcement officer must impound it by contacting a local towing agency. The vehicle may be returned only to the registered owner.

The owner of an impounded vehicle will be liable for the expenses incurred in its removal and storage, whether or not the vehicle is returned to him or her. The

vehicle may be returned to the owner only if he or she pays the removal and storage expenses. If redemption is not made or the vehicle is not returned, it must be considered an abandoned vehicle and disposed of as provided in the Code.

Under the Code, the court must order vehicle immobilization for certain periods for particular violations. For a drunk driving conviction within seven years of a prior conviction, the court must order vehicle immobilization for not less than 90 days or more than 180 days. Under the bill, this provision also applies to operating a vehicle without a properly installed ignition interlock device when the person is allowed to operate a vehicle only if it is equipped with such a device.

In that case, the bill requires the court to suspend the immobilization order if the person obtains a restricted operator's or chauffeur's license from the Secretary of State and an ignition interlock device is properly installed in the vehicle. The court may reinstate vehicle immobilization if the device is tampered with, circumvented, or disabled, or if the person's restricted license is suspended or revoked.

#### Administration & Approval of Devices

The Code requires the Department of State to approve an ignition interlock device certified by a Department-approved laboratory as complying with the National Highway Traffic Safety Administration's (NHTSA's) model specifications for breath alcohol ignition interlock devices. The bill deletes the reference to NHTSA, but retains the requirement for approval of certified devices that comply with those model specifications. The Code also requires the Department to publish a list of all manufacturers of approved certified devices. The bill requires the Department, instead, to provide such a list to each person who is issued a restricted license that permits him or her to drive a vehicle only if it is equipped with an ignition interlock device. The bill also requires Department to rotate the order of the providers with each list it issues.

Currently, the Department may not include a manufacturer of an ignition interlock device on the list unless the manufacturer complies with certain criteria. These include a requirement that the device be set to take

periodic samples while the vehicle is in operation and, if it detects a BAC of 0.025 gram or more per 210 liters of breath, that it emit a warning signal. If it detects a BAC of 0.04 gram or more, the device must render the vehicle inoperable as soon as the vehicle is no longer being operated. Under the bill, instead, if the device detects a BAC of 0.025 gram or more or if a breath sample is not given within the allotted time, the device must emit a visible or audible warning signal and render the vehicle inoperable as soon as it 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 can be restarted.

Under the Code, to be included on the Department-approved list of ignition interlock devices, a manufacturer must agree to provide an ignition interlock device without cost to a person whose gross income for the immediately preceding tax year, based on his or her State income tax return, was less than 150% of the official Federal poverty line for that tax year. The person then must pay a maintenance fee of not more than \$1 per day to the installer. The bill increases the maximum maintenance fee to \$2 per day.

The Code also requires a manufacturer to agree to monitor periodically an installed ignition interlock device and, if monitoring indicates that the device has been circumvented, to communicate that fact to the Secretary of State or the court, as appropriate. Under the bill, the manufacturer must notify the SOS or the court, or both, if the monitoring indicates that a device has been circumvented or tampered with, or that a person with a breath alcohol level of 0.025 gram or more has attempted to operate the vehicle.

#### Establishing a Prior Conviction

The Code prohibits and prescribes criminal penalties and license sanctions for operating a vehicle with a suspended or revoked license or registration, and includes graduated penalties for a violation that occurs after a prior conviction. A prior conviction must be established at or before sentencing by one or more of the following: an abstract of conviction, a copy of the defendant's driving record, or an admission

by the defendant. Under the bill, a prior conviction also may be established by any of the following:

- A copy of a judgment of conviction.
- A transcript of a prior trial, plea, or sentencing.
- A copy of a court register of action.
- Information contained in a presentence report.

MCL 257.20d et al. (S.B. 1134)  
257.625k et al. (H.B. 4289)

Legislative Analyst: Suzanne Lowe

## **FISCAL IMPACT**

### **Senate Bill 1134**

The bill will have an indeterminate fiscal impact on local governments. There are no data to indicate how many offenders will be convicted of removing an ignition interlock device, operating a vehicle without an ignition interlock device, or operating a vehicle with a blood alcohol content of 0.17 gram or more per 100 milliliters of blood. To the extent that the bill results in increased convictions or increased incarceration time, local governments will incur increased costs of misdemeanor probation and incarceration in local facilities, which vary by county. Additional penal fine revenue will benefit public libraries.

### **House Bill 4289**

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

Fiscal Analyst: Joe Carrasco  
Lindsay Hollander

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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.