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BILL ANALYSIS



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House Bill 4289 (Substitute H-7 as passed by the House)

House Bill 4920 (Substitute H-6 as passed by the House)

Sponsor: Representative Bob Constan (H.B. 4289)

Representative Marc Corriveau (H.B. 4920)

House Committee: Judiciary

Senate Committee: Transportation (H.B. 4289)

Judiciary (H.B. 4920)

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CONTENT

The bills would amend the Michigan Vehicle Code to do all of the following:

- **Prohibit a person from operating a motor vehicle without a properly installed ignition interlock device if the person were allowed to operate a vehicle only if it had such a device.**
- **Require a law enforcement officer to impound a vehicle not equipped with a properly installed ignition interlock device if the driver were allowed to operate a vehicle only if it had that device.**
- **Require a person's vehicle to be immobilized until the person obtained a restricted license and an ignition interlock device was properly installed, if he or she unlawfully operated a vehicle without such a device.**
- **Add a criminal penalty for operating a vehicle with a bodily alcohol content (BAC) of 0.15 or more.**
- **Require a driver license suspension, and subsequent use of an ignition interlock device when driving on a restricted license, for a 0.15 BAC violation.**
- **Require participation in an alcohol rehabilitative program for a 0.15 BAC violation.**
- **Prohibit a person required to use an ignition interlock device from removing it from a vehicle until removal was authorized by the Department of State or the court.**

-- **Revise requirements for the Department of State's administration and approval of ignition interlock devices.**

-- **Revise the criteria for establishing a prior conviction of driving with a suspended or revoked license or registration.**

The bills are tie-barred and would take effect on October 1, 2008.

Under House Bill 4920 (H-6), "ignition interlock device" would mean 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, which is enabled, the device installation uses a positive-negative-positive air pressure test requirement, a 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.

House Bill 4289 (H-7)

Driving without Ignition Interlock Device

The bill would prohibit a person from operating a motor vehicle on which an ignition interlock device was not properly installed, if that person were only permitted to drive a vehicle equipped with such a device.

If a law enforcement officer detained the operator of a motor vehicle for violating a State law or local ordinance and the driver were only allowed to operate a vehicle with an ignition interlock device properly installed, but no ignition interlock device were properly installed on the vehicle, the officer would have to impound the vehicle. If an impounded vehicle were individually or jointly owned by the detained driver, the officer would have to 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 Secretary of State for temporary registration plates issued to licensed dealers and vehicle owners.
- Place the temporary registration plate on the motor vehicle in the manner prescribed by the Secretary of State.
- Notify the Secretary of State through the Law Enforcement Information Network (LEIN), in a form prescribed by the Secretary of State, that the registration plate was destroyed and a temporary registration plate was issued.

A temporary registration plate would be valid until the charges for operating a vehicle without a properly installed ignition interlock device were dismissed, the person pleaded guilty or no contest to the charge, or the person was found guilty or acquitted.

If the impounded vehicle were not owned individually or jointly by the detained driver, the law enforcement officer would have to impound it by contacting a local towing agency. The vehicle could be returned only to the registered owner. The owner of an impounded vehicle would be liable for the

expenses incurred in the removal and storage of the vehicle, whether or not it was returned to him or her. The vehicle could be returned to the owner only if he or she paid the removal and storage expenses. If redemption were not made or the vehicle were not returned, it would be considered an abandoned vehicle and would have to be disposed of as provided in the Code.

Under the Code, the court must order vehicle immobilization for certain periods for certain 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 would apply to operating a vehicle without a properly installed ignition interlock device when the person was allowed to drive only a vehicle equipped with such a device.

The Code provides that an immobilization order required to be issued may not be suspended. Under the bill, however, if the person obtained a restricted operator's license from the Secretary of State and an ignition interlock device were properly installed in the vehicle, the court would have to suspend the immobilization order. The court could reinstate vehicle immobilization if an ignition interlock device were tampered with, circumvented, or disabled, or if the person's restricted license were suspended or revoked.

Administration & Approval of Ignition Interlock 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 model specifications for breath alcohol ignition interlock devices. The bill would delete the reference to NHTSA, but retain the requirement for approval of certified devices that complied with those model specifications. The Code also requires the Department to "publish" a list of all manufacturers of approved certified devices. The bill would require the Department, instead, to "provide" such a list to each person who was issued a restrictive license that permitted him or her to drive a vehicle only if it were equipped with an ignition interlock device. The Department would

have to rotate the order of the providers with each list it issued.

The Code prohibits the Department from including a manufacturer of an ignition interlock device on the list unless the manufacturer complies with certain criteria. Among those requirements is that the device is set to take periodic samples while the vehicle is in operation and, if it detects a BAC of 0.025 or more, that it emit a warning signal. If it detects a BAC of 0.04 grams or more, the device must render the vehicle inoperable as soon as the vehicle is no longer being operated. Under the bill, the vehicle would have to be rendered inoperable if the device detected a BAC of 0.025 gram or more, requiring the operator to provide a sample containing a breath alcohol level of less than 0.025 gram before the vehicle could be restarted. Also, the warning signal the device emitted could be visible or audible.

To be included on the Department-approved list of ignition interlock devices, a manufacturer also 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. Under the bill, a manufacturer instead would have to agree to provide the device to a person without cost if the court or the Department found that paying the cost of the device would constitute a substantial financial hardship. In making that determination, the court or the Department would have to consider the person's income, household composition, child support obligations, household expenses, treatment expenses, drug and alcohol testing expenses, court costs and fines, and any other relevant information.

Currently, a person in whose vehicle an ignition interlock device is installed without cost must pay a maintenance fee of not more than \$1 per day to the installer. Under the bill, the person would have to pay a maintenance fee, based on the court's or the Department's findings concerning his or her ability to pay, of not less than \$2 per day.

A manufacturer also must agree to monitor periodically an installed ignition interlock device and, if monitoring indicated the

device had been circumvented, to communicate that fact to the Secretary of State or the court, as appropriate. Under the bill, the monitoring would have to include whether a person with a breath alcohol level of 0.025 gram or more attempted to operate the vehicle, and the manufacturer would have to communicate the relevant information to the Secretary of State, the court, or both, as appropriate.

The bill would require the Department to investigate and evaluate the effectiveness of photo identification technology in ignition interlock devices. Beginning December 31, 2011, and by December 31 every fourth year after that, the Secretary of State would have to convene a panel to review current technology and investigate program improvements.

Establishing a Prior Conviction

Section 904 of the Vehicle Code prohibits and provides 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. Currently, 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 could 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.

House Bill 4920 (H-6)

0.15 BAC Violation

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 the parking of vehicles, 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.

The bill would include in the definition of operating while intoxicated that the person had a BAC of 0.15 gram or more per 100 milliliters of blood, 210 liters of breath, or 67 milliliters of urine.

0.15 BAC Penalties

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 and if the violation occurs after two or more prior convictions, regardless of the number of years that have elapsed since any prior conviction.)

Under the bill, a violation of operating while intoxicated with a BAC of 0.15 or more would be a misdemeanor punishable by one or more of the penalties shown in Table 1.

Table 1

Penalty	Under the influence or 0.08 BAC (current)	0.15 BAC (proposed)
Imprisonment	Up to 93 days	Up to 180 days
Fine	\$100 - \$500	\$200 - \$700
Community Service	Up to 360 hours	Up to 360 hours

In addition, the bill would require the court to order a person convicted of a 0.15 BAC violation, or a substantially corresponding local ordinance, not to operate a motor vehicle unless it was equipped with an ignition interlock device approved, certified, and installed as required under the Code. When a person was found guilty of a 0.15 BAC violation, or the court accepted a plea of guilty or no contest for that violation, the court would have to inform the person that every vehicle registered individually or jointly to him or her would have to be equipped with an ignition interlock device by

the time of sentencing for that violation. At sentencing, the court would have to ascertain whether the vehicle was equipped with such a device. A person who failed to comply with this order would be guilty of contempt of court.

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 person 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 would extend this requirement to a person convicted of a 0.15 BAC violation, and specifies that the required program could include an alcohol treatment program or a self-help program for a period of at least one year. The treatment plan would have to be devised from an assessment performed by an appropriately licensed alcohol assessor and be approved by the court. The bill specifies that these provisions would not require the successful completion of an ordered rehabilitative program before the person could drive a vehicle with an ignition interlock device on a restricted license.

License Sanctions

The Code requires the Secretary of State to suspend a person's driver license for certain violations. Under the bill, for a 0.15 BAC violation, if the person had no prior convictions within seven years, the Secretary of State would have to suspend the person's license for the longer of one year or until he or she satisfied the conditions described below regarding use of an ignition interlock device. The Secretary of State would have to issue the person a restricted license, except during the first 45 days of the suspension.

The Department of State would have to order a person convicted of a 0.15 BAC violation not to operate a motor vehicle under a restricted license unless the vehicle was equipped with an ignition interlock device approved, certified, and installed as required under the Code. The device could

be removed after the expiration of the minimum period for the restricted license if the device's provider verified with the Department that the person had operated the vehicle for the most recent six continuous months with no instances of reaching or exceeding a blood alcohol level of 0.025 gram per 210 liters of breath.

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 would be not less than one year. The bill would delete a provision allowing the hearing officer to continue the ignition interlock device requirement for any length of time after one year.

The bill would prohibit a person who was issued a restricted license requiring an ignition interlock device from removing it or causing it to be removed unless the Department or the court issued an order authorizing its removal.

MCL 257.625k et al. (H.B. 4289)
257.319 et al. (H.B. 4920)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

House Bill 4289

State: The bill would have an indeterminate fiscal impact on the State related to the possible hiring of additional staff to investigate and evaluate the effectiveness of photo identification technology in ignition interlock devices as prescribed in the bill. There also would be an indeterminate cost associated with the requirement that the Secretary of State convene a panel to review current technology and investigate program improvements beginning December 31, 2011, and every fourth year after that.

Local: The bill would have no fiscal impact on local government.

House Bill 4920

State: The bill would have an indeterminate fiscal impact on State resources resulting from the possible hiring of additional staff and programming costs associated with monitoring the installation and removal of

ignition interlock devices. The devices would have to be approved and certified by the Department of State, which could require additional staff.

Local: The bill would have an indeterminate fiscal impact on local governments. There are no data to indicate how many offenders would be convicted of removing an ignition interlock device or operating a vehicle with a blood alcohol content of 0.15 gram or more per 100 milliliters of blood. To the extent that the bill resulted in increased convictions or increased incarceration time, local governments would incur increased costs of misdemeanor probation and incarceration in local facilities, which vary by county. Additional penal fine revenue would benefit public libraries.

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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.