

Act No. 461  
Public Acts of 2008  
Approved by the Governor  
January 9, 2009  
Filed with the Secretary of State  
January 9, 2009  
EFFECTIVE DATE: October 31, 2010

**STATE OF MICHIGAN  
94TH LEGISLATURE  
REGULAR SESSION OF 2008**

Introduced by Reps. Constan, Polidori, Miller, Vagnozzi and Johnson

# **ENROLLED HOUSE BILL No. 4289**

AN ACT to amend 1949 PA 300, entitled "An act to provide for the registration, titling, sale, transfer, and regulation of certain vehicles operated upon the public highways of this state or any other place open to the general public or generally accessible to motor vehicles and distressed vehicles; to provide for the licensing of dealers; to provide for the examination, licensing, and control of operators and chauffeurs; to provide for the giving of proof of financial responsibility and security by owners and operators of vehicles; to provide for the imposition, levy, and collection of specific taxes on vehicles, and the levy and collection of sales and use taxes, license fees, and permit fees; to provide for the regulation and use of streets and highways; to create certain funds; to provide penalties and sanctions for a violation of this act; to provide for civil liability of owners and operators of vehicles and service of process on residents and nonresidents; to provide for the levy of certain assessments; to provide for the enforcement of this act; to provide for the creation of and to prescribe the powers and duties of certain state and local agencies; to impose liability upon the state or local agencies; to provide appropriations for certain purposes; to repeal all other acts or parts of acts inconsistent with this act or contrary to this act; and to repeal certain parts of this act on a specific date," by amending sections 625k, 625l, 904, and 904d (MCL 257.625k, 257.625l, 257.904, and 257.904d), sections 625k, 625l, and 904d as amended by 2003 PA 61 and section 904 as amended by 2004 PA 362.

*The People of the State of Michigan enact:*

Sec. 625k. (1) The department shall approve an ignition interlock device certified by a department-approved laboratory as complying with the model specifications for breath alcohol ignition interlock devices (BAIID), 57 FR 11772 - 11787 (April 7, 1992). Subject to subsection (5), the department shall provide a list of all manufacturers of approved certified devices to each person who is issued a restricted license that permits the person to drive a vehicle only if it is equipped with an ignition interlock device. The department shall rotate the order of the providers with each list provided under this subsection.

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

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

(4) A laboratory that certifies an ignition interlock device as provided in this section shall immediately notify the department of that certification.

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

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

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

(ii) Evidence of insurance as described in section 625l.

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

(A) Meets the definition in section 20d.

(B) Is set to periodically take samples while the vehicle is in operation and to do 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:

(I) Emit a visible or audible warning signal.

(II) 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 grams per 210 liters of breath before the vehicle may be restarted.

(b) Provides a list of installers who are authorized to install and service its ignition interlock devices to the secretary of state.

(c) Agrees to have service locations within 50 miles of any location within this state.

(d) Agrees 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 poverty line for that same tax year established in the poverty guidelines issued by the secretary of health and human services under 42 USC 9902. A person in whose vehicle an ignition interlock device is installed without cost under this subdivision shall pay a maintenance fee to the installer of not more than \$2.00 per day.

(e) Agrees to comply with the reporting requirements of the secretary of state.

(f) Agrees to periodically monitor installed ignition interlock devices and if monitoring indicates that the device has been circumvented, tampered with, or that a person with a breath alcohol level of 0.025 or more grams per 210 liters of breath has attempted to operate the motor vehicle, or both, to communicate all of the relevant information concerning these facts to the secretary of state or to the court, or both, as appropriate.

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

(7) A person who knowingly provides false information to the department under subsection (4) or (5) is guilty of a felony punishable by imprisonment for not less than 5 years or more than 10 years or a fine of not less than \$5,000.00 or more than \$10,000.00, or both, together with costs of the prosecution.

(8) A person who negligently provides false information to the department under subsection (4) or (5) is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both, together with costs of the prosecution.

(9) A person who knowingly fails to comply with subsection (6) is guilty of a felony punishable by imprisonment for not less than 5 years or more than 10 years or a fine of not less than \$5,000.00 or more than \$10,000.00, or both, together with costs of the prosecution.

(10) A person who negligently fails to comply with subsection (6) is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both, together with costs of the prosecution.

Sec. 625l. (1) The manufacturer of an ignition interlock device shall design a warning label, and the person who has an ignition interlock device shall promptly affix that label to each ignition interlock device upon installation. The label shall contain a warning that any person tampering with, circumventing, or otherwise misusing the device is guilty of a misdemeanor punishable as provided by law.

(2) A person who is only permitted to operate a motor vehicle equipped with an ignition interlock device shall not operate a motor vehicle on which an ignition interlock device is not properly installed.

(3) A person who has an ignition interlock device installed and whose driving privilege is restricted shall not request or solicit any other person to blow into an ignition interlock device or to start a vehicle equipped with the device for the purpose of providing the person whose driving privilege is restricted with an operable vehicle.

(4) A person shall not blow into an ignition interlock device or start a motor vehicle equipped with the device for the purpose of providing an operable vehicle to a person who has an interlock device installed and whose driving privilege is restricted.

(5) A person shall not tamper with or circumvent the operation of an ignition interlock device.

(6) A person who violates subsection (2), (3), (4), or (5) is guilty of a misdemeanor punishable by imprisonment for not more than 6 months or a fine of not more than \$5,000.00, or both.

(7) If a law enforcement officer detains the operator of a motor vehicle for violating a law of this state or a local ordinance and the operator is a person required to only operate a motor vehicle with an ignition interlock device properly installed, but no ignition interlock device is properly installed on the motor vehicle, the law enforcement officer shall impound the motor vehicle. If a motor vehicle impounded under this subsection is individually or jointly owned by the operator, the law enforcement officer shall do all of the following:

(a) Immediately confiscate the motor vehicle registration plate and destroy it.

(b) Issue a temporary registration plate for the vehicle in the same manner prescribed by the secretary of state for temporary registration plates issued under section 226a or 226b.

(c) Place the temporary registration plate issued under subdivision (b) on the motor vehicle in the manner prescribed by the secretary of state.

(d) Notify the secretary of state through the law enforcement information network in a form prescribed by the secretary of state that the registration plate was destroyed and a temporary registration plate was issued to the motor vehicle.

(8) A temporary registration plate issued under this section is valid until the charges for violating subsection (2) are dismissed, the person pleads guilty or no contest to the charge, or the person is found guilty to or is acquitted of the charge.

(9) If the motor vehicle impounded under this section is not owned individually or jointly by the operator, the law enforcement officer shall impound the motor vehicle by contacting a local towing agency. The motor vehicle shall only be returned to the registered owner.

(10) The owner of a motor vehicle impounded under this section is liable for the expenses incurred in the removal and storage of the motor vehicle whether or not it is returned to him or her. The motor vehicle shall be returned to the owner only if the owner pays the expenses of removal and storage. If redemption is not made or the vehicle is not returned as described under this subsection, it shall be considered an abandoned vehicle and disposed of under section 252a.

(11) The state, or the department, its officers, employees, or agents, or a court, its officers, employees, or agents are not liable in any claim or action that may arise, directly or indirectly, out of any act or omission by a manufacturer, installer, or servicing agent of an ignition interlock device that results in damage to persons or property.

(12) A person shall not sell, lease, install, or monitor in a vehicle in this state an ignition interlock device unless the ignition interlock device manufacturer and provider carries liability insurance covering product liability, including, but not limited to, insurance to indemnify the department and any person injured as a result of a design defect or the calibration or removal of the ignition interlock device or a misrepresentation about the ignition interlock device. The insurance required by this subsection shall be in an amount of not less than \$1,000,000.00 per incident.

(13) The provider of insurance described in this section may cancel the insurance upon 30 days' written notice to the department and is not liable for a claim arising from an event that occurs after the effective date of a cancellation made in compliance with this section.

(14) An ignition interlock device shall be serviced according to manufacturer's standards. Service shall include, but not be limited to, physical inspection of the device and vehicle for tampering, calibration of the device, and monitoring of the data contained within the device's memory. Only authorized employees of the manufacturer or the department, or other persons approved by the court, may observe the installation of a device. Reasonable security measures shall be taken to prevent the customer from observing the installation of a device or obtaining access to installation materials.

Sec. 904. (1) A person whose operator's or chauffeur's license or registration certificate has been suspended or revoked and who has been notified as provided in section 212 of that suspension or revocation, whose application for license has been denied, or who has never applied for a license, shall not operate a motor 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 motor vehicles, within this state.

(2) A person shall not knowingly permit a motor vehicle owned by the person to be operated 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, within this state by a person whose license or registration certificate is suspended or revoked, whose application for license has been denied, or who has never applied for a license, except as permitted under this act.

(3) Except as otherwise provided in this section, a person who violates subsection (1) or (2) is guilty of a misdemeanor punishable as follows:

(a) For a first violation, by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both. Unless the vehicle was stolen or used with the permission of a person who did not knowingly permit an unlicensed driver to operate the vehicle, the registration plates of the vehicle shall be canceled by the secretary of state upon notification by a peace officer.

(b) For a violation that occurs after a prior conviction, by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both. Unless the vehicle was stolen, the registration plates of the vehicle shall be canceled by the secretary of state upon notification by a peace officer.

(4) A person who operates a motor vehicle in violation of subsection (1) and who, by operation of that motor vehicle, causes the death of another person is guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not less than \$2,500.00 or more than \$10,000.00, or both. This subsection does not apply to a person whose operator's or chauffeur's license was suspended because that person failed to answer a citation or comply with an order or judgment pursuant to section 321a.

(5) A person who operates a motor vehicle in violation of subsection (1) and who, by operation of that motor vehicle, causes the serious impairment of a body function of another person is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not less than \$1,000.00 or more than \$5,000.00, or both. This subsection does not apply to a person whose operator's or chauffeur's license was suspended because that person failed to answer a citation or comply with an order or judgment pursuant to section 321a.

(6) In addition to being subject to any other penalty provided for in this act, if a person is convicted under subsection (4) or (5), the court may impose the sanction permitted under section 625n. If the vehicle is not ordered forfeited under section 625n, the court shall order vehicle immobilization under section 904d in the judgment of sentence.

(7) A person shall not knowingly permit a motor vehicle owned by the person to be operated 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, within this state, by a person whose license or registration certificate is suspended or revoked, whose application for license has been denied, or who has never been licensed except as permitted by this act. If a person permitted to operate a motor vehicle in violation of this subsection causes the serious impairment of a body function of another person by operation of that motor vehicle, the person knowingly permitting the operation of that motor vehicle is guilty of a felony punishable by imprisonment for not more than 2 years, or a fine of not less than \$1,000.00 or more than \$5,000.00, or both. If a person permitted to operate a motor vehicle in violation of this subsection causes the death of another person by operation of that motor vehicle, the person knowingly permitting the operation of that motor vehicle is guilty of a felony punishable by imprisonment for not more than 5 years, or a fine of not less than \$1,000.00 or more than \$5,000.00, or both.

(8) If the prosecuting attorney intends to seek an enhanced sentence under this section based upon the defendant having 1 or more prior convictions, the prosecuting attorney shall include on the complaint and information, or an amended complaint and information, filed in district court, circuit court, municipal court, or family division of circuit court, a statement listing the defendant's prior convictions.

(9) A prior conviction under this section shall be established at or before sentencing by 1 or more of the following:

- (a) A copy of a judgment of conviction.
- (b) An abstract of conviction.
- (c) A transcript of a prior trial, plea, or sentencing.
- (d) A copy of a court register of action.
- (e) A copy of the defendant's driving record.
- (f) Information contained in a presentence report.
- (g) An admission by the defendant.

(10) Upon receiving a record of a person's conviction or civil infraction determination for the unlawful operation of a motor vehicle or a moving violation reportable under section 732 while the person's operator's or chauffeur's license is suspended or revoked, the secretary of state immediately shall impose an additional like period of suspension or revocation. This subsection applies only if the violation occurs during a suspension of definite length or if the violation occurs before the person is approved for a license following a revocation.

(11) Upon receiving a record of a person's conviction or civil infraction determination for the unlawful operation of a motor vehicle or a moving violation reportable under section 732 while the person's operator's or chauffeur's license is indefinitely suspended or whose application for a license has been denied, the secretary of state immediately shall impose a 30-day period of suspension or denial.

(12) Upon receiving a record of the conviction, bond forfeiture, or a civil infraction determination of a person for unlawful operation of a motor vehicle requiring a vehicle group designation while the designation is suspended or revoked under section 319b, or while the person is disqualified from operating a commercial motor vehicle by the United States secretary of transportation or under 49 USC 31301 to 31317, the secretary of state immediately shall impose an additional like period of suspension or revocation. This subsection applies only if the violation occurs during a suspension of definite length or if the violation occurs before the person is approved for a license following a revocation.

(13) If the secretary of state receives records of more than 1 conviction or civil infraction determination resulting from the same incident, all of the convictions or civil infraction determinations shall be treated as a single violation for purposes of imposing an additional period of suspension or revocation under subsection (10), (11), or (12).

(14) Before a person is arraigned before a district court magistrate or judge on a charge of violating this section, the arresting officer shall obtain the person's driving record from the secretary of state and shall furnish the record to the court. The driving record of the person may be obtained from the secretary of state's computer information network.

(15) This section does not apply to a person who operates a vehicle solely for the purpose of protecting human life or property if the life or property is endangered and summoning prompt aid is essential.

(16) A person whose vehicle group designation is suspended or revoked and who has been notified as provided in section 212 of that suspension or revocation, or whose application for a vehicle group designation has been denied as provided in this act, or who has never applied for a vehicle group designation and who operates a commercial motor vehicle within this state, except as permitted under this act, while any of those conditions exist is guilty of a misdemeanor punishable, except as otherwise provided in this section, by imprisonment for not less than 3 days or more than 93 days or a fine of not more than \$100.00, or both.

(17) If a person has a second or subsequent suspension or revocation under this section within 7 years as indicated on the person's Michigan driving record, the court shall proceed as provided in section 904d.

(18) Any period of suspension or revocation required under subsection (10), (11), or (12) does not apply to a person who has only 1 currently effective suspension or denial on his or her Michigan driving record under section 321a and was convicted of or received a civil infraction determination for a violation that occurred during that suspension or denial. This subsection may only be applied once during the person's lifetime.

(19) For purposes of this section, a person who never applied for a license includes a person who applied for a license, was denied, and never applied again.

Sec. 904d. (1) Vehicle immobilization applies as follows:

(a) For a conviction under section 625(1), (3), (7), or (8) or a local ordinance substantially corresponding to section 625(1) or (3) with no prior convictions, the court may order vehicle immobilization for not more than 180 days.

(b) For a conviction under section 625(4) or (5) with no prior convictions, the court shall order vehicle immobilization for not more than 180 days.

(c) For a conviction under section 625(1), (3), (4), (5), (7), or (8) within 7 years after a prior conviction, or for a conviction under section 625(2), the court shall order vehicle immobilization for not less than 90 days or more than 180 days.

(d) For a conviction under section 625(1), (3), (4), (5), (7), or (8) within 10 years after 2 or more prior convictions, the court shall order vehicle immobilization for not less than 1 year or more than 3 years.

(2) For a conviction or civil infraction determination resulting from a violation that occurred during a period of suspension, revocation, or denial, the following apply:

(a) Except as provided in subdivision (b), for 1 prior suspension, revocation, or denial under section 904(10), (11), or (12) or former section 904(2) or (4) within the past 7 years, the court may order vehicle immobilization for not more than 180 days.

(b) Except as provided in subdivisions (c) and (d), if the person is convicted under section 904(4) or (5), the court shall order vehicle immobilization for not more than 180 days.

(c) For any combination of 2 or 3 prior suspensions, revocations, or denials under section 904(10), (11), or (12) or former section 904(2) or (4) within the past 7 years, the court shall order vehicle immobilization for not less than 90 days or more than 180 days.

(d) For any combination of 4 or more prior suspensions, revocations, or denials under section 904(10), (11), or (12) or former section 904(2) or (4) within the past 7 years, the court shall order vehicle immobilization for not less than 1 year or more than 3 years.

(3) The defendant shall provide to the court the vehicle identification number and registration plate number of the vehicle involved in the violation.

(4) The court may order vehicle immobilization under this section under either of the following circumstances:

(a) The defendant is the owner, co-owner, lessee, or co-lessee of the vehicle operated during the violation.

(b) The owner, co-owner, lessee, or co-lessee knowingly permitted the vehicle to be operated in violation of section 625(2) or section 904(2) regardless of whether a conviction resulted.

(5) Except as otherwise provided in subsection (11), an order required to be issued under this section shall not be suspended.

(6) If a defendant is ordered imprisoned for the violation for which immobilization is ordered, the period of immobilization shall begin at the end of the period of imprisonment.

(7) This section does not apply to any of the following:

(a) A suspension, revocation, or denial based on a violation of the support and parenting time enforcement act, 1982 PA 295, MCL 552.601 to 552.650.

(b) A vehicle that is registered in another state or that is a rental vehicle.

(c) A vehicle owned by the federal government, this state, or a local unit of government of this state.

(d) A vehicle not subject to registration under section 216.

(e) Any of the following:

(i) A violation of chapter II.

(ii) A violation of chapter V.

(iii) A violation for failure to change address.

(iv) A parking violation.

(v) A bad check violation.

(vi) An equipment violation.

(vii) A pedestrian, passenger, or bicycle violation, other than a violation of section 703(1) or (2) of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1703, or a local ordinance substantially corresponding to section 703(1) or (2) of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1703, or section 624a or 624b or a local ordinance substantially corresponding to section 624a or 624b.

(viii) A violation of a local ordinance substantially corresponding to a violation described in subparagraphs (i) to (vii).

(8) As used in this section:

(a) Subject to subsections (9) and (10), “prior conviction” means a conviction for any of the following, whether under a law of this state, a local ordinance substantially corresponding to a law of this state, or a law of another state substantially corresponding to a law of this state:

(i) Except as otherwise provided in subsection (10), a violation or attempted violation of any of the following:

(A) Section 625, except a violation of section 625(2), or a violation of any prior enactment of section 625 in which the defendant operated a vehicle while under the influence of intoxicating or alcoholic liquor or a controlled substance, or a combination of intoxicating or alcoholic liquor and a controlled substance, or while visibly impaired, or with an unlawful bodily alcohol content.

(B) Section 625m.

(C) Former section 625b.

(ii) Negligent homicide, manslaughter, or murder resulting from the operation of a vehicle or an attempt to commit any of those crimes.

(b) “Vehicle immobilization” means requiring the motor vehicle involved in the violation immobilized in a manner provided in section 904e.

(9) If 2 or more convictions described in subsection (8)(a) are convictions for violations arising out of the same incident, only 1 conviction shall be used to determine whether the person has a prior conviction.

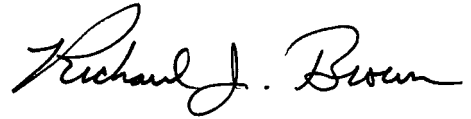
(10) Only 1 violation or attempted violation of section 625(6), a local ordinance substantially corresponding to section 625(6), or a law of another state substantially corresponding to section 625(6) may be used as a prior conviction.

(11) 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 shall suspend the immobilization order issued under subsection (1)(c) for a conviction under section 625(2).

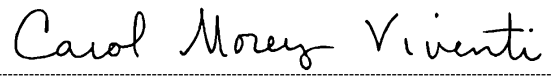
(12) The court may reinstate vehicle immobilization issued under subsection (1)(c) for a conviction under section 625(2) if an ignition interlock device is tampered with, circumvented, or disabled, or if the person’s restricted operator’s or chauffeur’s license is suspended or revoked.

Enacting section 1. This amendatory act takes effect October 31, 2010.

Enacting section 2. This amendatory act does not take effect unless Senate Bill No. 1134 of the 94th Legislature is enacted into law.



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Clerk of the House of Representatives



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Secretary of the Senate

Approved -----

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Governor