

SENATE BILL No. 892

March 7, 2018, Introduced by Senators JONES, MARLEAU and KNOLLENBERG and referred to the Committee on Judiciary.

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

1 (A) THE DEVICE IS VOLUNTARILY INSTALLED IN THE MOTOR VEHICLE
2 BY THE VEHICLE OWNER.

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

5 (C) AS ITS ANTICIRCUMVENTION METHOD, THE DEVICE INSTALLATION
6 USES A POSITIVE-NEGATIVE-POSITIVE AIR PRESSURE TEST REQUIREMENT, A
7 MIDTEST HUM TONE REQUIREMENT, OR ANY OTHER ANTICIRCUMVENTION METHOD
8 OR TECHNOLOGY THAT FIRST BECOMES COMMERCIALY AVAILABLE AFTER JULY
9 31, 2007.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 attempted to operate the motor vehicle, or both, to communicate all
2 of the relevant information concerning these facts to the secretary
3 of state, and to the court if appropriate.

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

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

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

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

1 (a) A detailed description of the device, including complete
2 instructions for installation, operation, service, repair, and
3 removal of the BAIID.

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

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

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

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

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

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

1 (13) A BAIID manufacturer shall apply to the department
2 annually for recertification of BAIID devices it manufactures.

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

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

10 (b) Except as provided in subdivision (d), beginning July 1,
11 2016, a BAIID shall only be installed, serviced, or removed in a
12 motor vehicle repair facility. As used in this subdivision, "motor
13 vehicle repair facility" means that term as defined in section 2 of
14 the motor vehicle service and repair act, 1974 PA 300, MCL
15 257.1302.

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

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

27 (e) Each service center shall have not less than 1 individual

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

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

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

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

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

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

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

26 (l) BAIIDs approved for use in this state shall only be
27 serviced by service centers located within this state, unless the

1 customer is unable to return to this state for service because of a
2 significant personal hardship.

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

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

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

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

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

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

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

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

25 (15) The department may conduct inspections of a manufacturer
26 or a BAIID service center to ensure compliance with this act and
27 rules promulgated to implement this act. The manufacturer shall pay

1 for the actual costs to the department in conducting an inspection
2 under this subsection. **MONEY COLLECTED BY THE DEPARTMENT UNDER THIS**
3 **SUBSECTION SHALL BE CREDITED TO THE TRANSPORTATION ADMINISTRATION**
4 **COLLECTION FUND CREATED IN SECTION 810B.**

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

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

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

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

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

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

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

1 and remove BAIID devices.

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

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

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

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

16 (b) Possess a valid driver license.

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

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

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

25 (a) Possess a specialty certification in BAIID installation
26 under section 10(1)(j) of the motor vehicle service and repair act,
27 1974 PA 300, MCL 257.1310.

1 (b) Properly complete and file a BAIID installer application
2 form with the department.

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

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

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

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

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

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

27 Enacting section 1. This amendatory act takes effect 90 days

1 after the date it is enacted into law.