

Act No. 340
Public Acts of 1998
Approved by the Governor
October 16, 1998
Filed with the Secretary of State
October 16, 1998
EFFECTIVE DATE: October 1, 1999

STATE OF MICHIGAN
89TH LEGISLATURE
REGULAR SESSION OF 1998

**Introduced by Reps. Wetters, Harder, Cropsey, Law, Goschka, Voorhees, Jellema, Whyman, LeTarte, Bobier, McNutt, Nye, Middaugh, DeVuyst, Gernaat, Fitzgerald, Richner, Green and Galloway
Reps. Basham, Bodem, Bogardus, Brackenridge, Byl, Callahan, Cassis, Crissman, DeHart, Dobb, Dobronski, Gagliardi, Horton, Jansen, Jelinek, Kaza, Kelly, Kukuk, London, McBryde, Middleton, Murphy, Olshove, Oxender, Palamara, Parks, Profit, Prusi, Raczkowski, Rocca, Schauer, Schroer, Scranton, Sikkema, Thomas, Varga, Vaughn and Wallace named co-sponsors
Reps. Baade, Baird, Birkholz, Freeman, Gagliardi, Hammerstrom, Leland, Owen, Oxender, Scott and Stallworth named co-sponsors**

ENROLLED HOUSE BILL No. 4210

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 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 322, 625k, and 625l (MCL 257.322, 257.625k, and 257.625l), sections 625k and 625l as amended by 1994 PA 450, and by adding sections 622a and 625o.

The People of the State of Michigan enact:

Sec. 322. (1) The secretary of state shall appoint a hearing officer to hear appeals from persons aggrieved by a final determination of the secretary of state denying an application for an operator's or chauffeur's license, suspending, restricting, or revoking an operator's or chauffeur's license, or other license action.

(2) The appeal shall be in writing and filed with the secretary of state within 14 days after the final determination. Upon notice of the appeal, the hearing officer shall require production of all documents filed in the matter, together with a transcript of any testimony taken.

(3) In a hearing or matter properly before the hearing officer, he or she may do any of the following:

(a) Issue subpoenas to compel attendance of witnesses.

(b) Issue process to compel attendance.

(c) Punish for contempt any witness failing to appear or testify in the same manner as provided by the rules and practice in the circuit court.

(d) Swear witnesses, administer oaths, and exemplify records in any matter before the officer.

(e) Take additional testimony he or she considers appropriate.

(4) A verbatim record shall be made of the hearing.

(5) After a hearing, the hearing officer may affirm, modify, or set aside a final determination of the secretary of state denying an application for an operator's or chauffeur's license, suspending, restricting, or revoking an operator's or chauffeur's license, or any other license action. The hearing officer shall include his or her findings of fact and conclusions of law in the record.

(6) Except as provided in subsection (7), if a person whose license has been denied or revoked under section 303(1)(f) or section 303(2)(c), (d), or (f) applies for a license or reinstatement of a license after the time period specified in section 303(4) has elapsed, the hearing officer may issue a restricted license to that person, setting restrictions upon operating a vehicle as the hearing officer determines are appropriate. If the hearing officer issues a restricted license following a hearing held after October 1, 1999, he or she shall do both of the following:

(a) Require installation of a functioning ignition interlock device that meets or exceeds the model specifications of the national highway traffic safety administration set forth in 57 F.R. p.11772, April 7, 1992, on each motor vehicle the person owns or intends to operate, the costs of which shall be borne by the person whose license is restricted.

(b) Condition issuance of a restricted license upon verification by the secretary of state that an ignition interlock device has been installed.

(7) The hearing officer shall not issue a restricted license under subsection (6) that would permit the person to operate a commercial motor vehicle that hauls hazardous material.

(8) If the hearing officer issues a restricted license to a person who intends to operate a vehicle owned by his or her employer, the secretary of state shall notify the employer of the employee's license restriction that requires the installation of an ignition interlock device. An employer who receives notice under this subsection is not required to install an ignition interlock device on the employer-owned vehicle. This subsection does not apply to a vehicle that is operated by a self-employed individual who uses the vehicle for both business and personal use.

(9) If the hearing officer issues a restricted license requiring an ignition interlock device, the initial period for requiring the device shall be 1 year. After that time, the hearing officer may continue the ignition interlock device requirement for any length of time.

Sec. 622a. The crash report form required by this chapter shall include, when applicable, whether an ignition interlock device was installed in a vehicle involved in a crash.

Sec. 625k. (1) The department shall 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 (BAIID), 57 F.R. p.11772, April 7, 1992. Subject to subsection (5), the department shall publish a list of all manufacturers of approved certified devices.

(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 is all of the following:

(A) 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 breath alcohol level.

(B) Calibrated to render the motor vehicle incapable of being started if the device detects an alcohol content of 0.025 grams or more per 210 liters of breath of the person who offers a breath sample.

(C) Set to periodically take samples while the vehicle is in operation and to do 1 or both of the following:

(I) Emit a warning signal 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.

(II) If it detects an alcohol content of 0.04 grams or more per 210 liters of breath of the person who offers the breath sample, render the vehicle inoperable as soon as the vehicle is no longer being operated.

(b) The manufacturer of ignition interlock devices 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

authority of section 673(2) of the community services block grant act, subtitle B of title VI of the omnibus budget reconciliation act of 1981, Public Law 97-35, 42 U.S.C. 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 \$1.00 per day.

(e) Agrees to periodically monitor installed ignition interlock devices and if monitoring indicates that the device has been circumvented, to communicate that fact to the secretary of state.

(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, circumventing, or otherwise misusing the device is guilty of a misdemeanor punishable as provided by law.

(2) 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.

(3) 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.

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

(5) A person who violates subsection (2), (3), or (4) 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.

(6) As used in this act, "ignition interlock device" or "device" means 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 breath alcohol level. The system shall be calibrated so that the motor vehicle may not be started if the breath alcohol level of the operator, as measured by the test, reaches a level of 0.025 grams per 210 liters of breath.

(7) The state, or the department, 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.

(8) 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.

(9) 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.

(10) 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 may observe the installation of a device. Reasonable security measures must be taken to prevent the customer from observing the installation of a device or obtaining access to installation materials.

Sec. 625o. (1) A person shall not sell, lease, or install in a vehicle in this state an ignition interlock device unless the manufacturer of the device has obtained an executed bond described in subsection (2) or a renewal certificate for that bond.

(2) The bond required under subsection (1) shall be in the amount of \$50,000.00 with a surety approved by the department and shall be conditioned to indemnify or reimburse a person who has an ignition interlock device installed on his or her vehicle for monetary loss caused by the manufacturer's fraud, cheating, misrepresentation, or defaulting

on a contractual obligation, whether the fraud, cheating, misrepresentation, or defaulting was done by the manufacturer or by an employee or agent of the manufacturer.

(3) The surety on the bond described in subsection (2) is required to make indemnification or reimbursement for a monetary loss only after final judgment has been entered in a court of record against the manufacturer or an employee or agent of the manufacturer. The surety on the bond may cancel the bond upon 30 days' written notice to the department and is not liable for a loss arising from an event that occurs after the effective date of the cancellation.

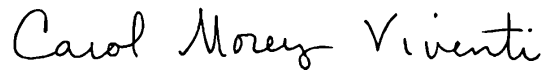
Enacting section 1. This amendatory act takes effect October 1, 1999.

Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 89th Legislature are enacted into law:

- (a) Senate Bill No. 268.
- (b) Senate Bill No. 269.
- (c) Senate Bill No. 625.
- (d) Senate Bill No. 627.
- (e) Senate Bill No. 869.
- (f) Senate Bill No. 870.
- (g) Senate Bill No. 953.
- (h) House Bill No. 4576.
- (i) House Bill No. 4959.
- (j) House Bill No. 4960.
- (k) House Bill No. 4961.
- (l) House Bill No. 5122.
- (m) House Bill No. 5123.
- (n) House Bill No. 5951.
- (o) House Bill No. 5952.
- (p) House Bill No. 5953.
- (q) House Bill No. 5954.
- (r) House Bill No. 5955.
- (s) House Bill No. 5956.



Clerk of the House of Representatives.



Secretary of the Senate.

Approved -----

Governor.