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BILL ANALYSIS

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Senate Bills 176 and 357 (as enacted)  
House Bill 4980 (as enacted)  
Sponsor: Senator Tonya Schuitmaker (S.B. 176 & 357)  
Representative Clint Kesto (H.B. 4980)  
Senate Committee: Judiciary  
House Committee: Judiciary

**PUBLIC ACTS 32 & 33 of 2016**

**PUBLIC ACT 34 of 2016**

Date Completed: 4-25-17

**CONTENT**

**Senate Bill 176** amended the Michigan Vehicle Code to do the following with respect to breath alcohol ignition interlock devices (BAIIDs):

- Allow BAIIDs to be installed, serviced, or removed only in a motor vehicle repair facility.
- Provide that only service centers that are BAIID manufacturer and vendor approved may install, service, or remove a BAIID approved for use in the State.
- Provide that the Department of State is responsible for approving BAIID service centers in Michigan, and establish criteria for approval.
- Prohibit a person from installing, servicing, or removing a BAIID in Michigan without being certified by the Department, and establish criteria for the certification of BAIID installers.
- Prohibit a person convicted of a felony or alcohol-related driving offense within the previous five years from being approved as a BAIID installer.
- Authorize the Secretary of State (SOS) to investigate a BAIID installer's compliance with the Code, and require the SOS to suspend, revoke, or deny an installer's certification under certain circumstances.
- Authorize the SOS to suspend or revoke a manufacturer's BAIID certification under certain circumstances.
- Revise requirements that a BAIID manufacturer must comply with in order to be included on the Department's list of approved manufacturers.
- Revise liability insurance requirements for BAIID manufacturers.
- Allow the Department to conduct compliance inspections of a manufacturer or service center, at the manufacturer's expense.
- Require a manufacturer, upon request, to give the Department model certified BAIIDs and install them in vehicles at no cost to the State for demonstration and training purposes.
- Require a BAIID manufacturer to train Department employees at no cost to the State, and provide a detailed description of the device and complete technical specifications upon request.
- Revise provisions regarding certification by the Department of BAIIDs.
- Require a manufacturer to apply annually for recertification of its BAIID devices.
- Delete provisions exempting the State, the Department of State, or a court, and its officers, agents, and employees, from liability regarding damage to people or property resulting from a BAIID manufacturer's, installer's, or servicing agent's act or omission.

The bill also amended the Code to:

- Provide that a required period of suspension or restriction due to a drunk driving conviction is not subject to appeal to the SOS.
- Prohibit a hearing officer from issuing an unrestricted driver license to a person for at least one year if the hearing officer determines that the person consumed alcohol or unlawfully used a controlled substance while his or her license was restricted.
- Authorize the SOS to provide by electronic means any notice required to be provided under the Code.

**Senate Bill 357** amended the Motor Vehicle Service and Repair Act to do the following:

- Include in the definition of "motor vehicle repair facility" a place of business that is engaged in the business of performing, or employs individuals who perform, BAIID service.
- Prohibit a motor vehicle repair facility from providing BAIID service without the approval of the Department of State.
- Establish operational requirements for a facility that provides BAIID service.
- Authorize the Department to inspect a repair facility that provides BAIID service.
- Prohibit a person from performing BAIID service in Michigan without having a specialty mechanic's certificate in BAIID service.
- Require the SOS to develop or adopt an examination for a specialty mechanic's certification in the repair or service of BAIIDs.
- Establish requirements for a motor vehicle repair facility and BAIID mechanic.

**House Bill 4980** amended the sentencing guidelines in the Code of Criminal Procedure to revise references to sections of the Vehicle Code that Senate Bill 176 amended.

Each of the bills took effect on June 6, 2016. The Senate bills are described below in further detail.

### **Senate Bill 176**

#### **Service Centers**

The bill specifies that the Department of State is responsible for approving BAIID service centers for operation in Michigan. The Department may not approve a service center unless all of the conditions described below are satisfied.

Only service centers that are BAAID manufacturer and vendor approved may install, service, or remove BAIIDs approved for use in the State.

A BAIID may be installed, serviced, or removed only in a motor vehicle repair facility. However, a business that installs, services, or removes a BAIID, including a BAIID manufacturer's corporate office located in Michigan, that was installing, repairing, or removing BAIID devices on the bill's effective date may do so without being certified as a motor vehicle repair facility, if the business employs a certified BAIID installer to perform any installation, service, or repair of a BAIID.

A service center must be located in a fixed facility within the State.

Each service center must comply with the following:

- Have at least one individual who is a mechanic, who possesses a specialty certification in BAIID service under the Motor Vehicle Service and Repair Act, and who holds a BAAID certification, to work as a BAIID installer.
- Maintain and make available for inspection records proving that each BAIID installer working at the center has been properly trained by the manufacturer to service the device for which the center is a vendor.
- Provide a designated waiting area for customers that is separate from the area in which the devices are installed or serviced.

Only certified BAIID installers, and representatives of the manufacturer or the Department of State, may be allowed to observe the installation or removal of a device. Adequate security measures must be taken to ensure that unauthorized personnel are not allowed access to proprietary materials of BAIID manufacturers or files of customers.

A BAIID manufacturer service center must install, maintain, service, and remove all BAIIDs handled by the service center and perform any other services determined necessary by the Department for people using those BAIIDs in Michigan.

Service centers must make the addresses of their locations available to the Department. A manufacturer must inform the Department of a change in its service center's business address 15 days before any relocation.

Each application for approval must be for a single service center. A separate application is required for each additional service center.

Before issuing approval, the Department may require an on-site evaluation to ensure compliance with the Code's requirements. The Department's approval of a service center will be for one year. The renewal process must be the same as the initial service center approval process.

A BAIID approved for use in Michigan may be serviced only by service centers located within the State, unless a customer is unable to return to Michigan for service because of a significant personal hardship. If a BAIID is serviced by a center outside the State, the BAIID service provider must ensure that the device operates using the same firmware used for devices in Michigan; and that the data recorded in the device remain intact for later retrieval by a Michigan service center, or are transferred to a service center database within the State for review.

The Department may conduct inspections of a manufacturer or service center to ensure compliance with the Code and rules promulgated under it. The manufacturer must pay for the actual costs to the Department in conducting an inspection.

Previously, the Code required an ignition interlock device to be serviced according to the manufacturer's standards, and specified that service included physical inspection of the device and vehicle for tampering, calibration of the device, and monitoring of the data contained within its memory. Only authorized employees of the manufacturer or the Department could observe the installation of a device. Reasonable security measures had to be taken to prevent the customer from observing the installation or obtaining access to installation materials. The bill deleted these provisions.

#### BAIID Installation; Installer Certification

The bill prohibits a person from installing, servicing, or removing a BAIID in the State without being certified by the Department.

A manufacturer must ensure that BAIID certified installers have the appropriate certification from the Department and meet all of the following requirements:

- Possess and maintain all necessary training and skills required to install, examine, troubleshoot, and verify the proper operation of BAIIDs.
- Possess the tools, test equipment, and manuals needed to install, inspect, download, calibrate, repair, maintain, service, and remove BAIID devices.
- Provide all people who will use the vehicle with written and hands-on training regarding the operation of a vehicle equipped with the BAIID and ensure that each person demonstrates a properly delivered alveolar breath sample and an understanding of how the abort test feature works.

A person who has been convicted of an alcohol-related driving offense or any offense classified as a felony in Michigan or elsewhere within five years before applying for approval as a BAIID certified installer is not be eligible for approval.

A BAIID certified installer must be at least 18 years old, have a valid driver license, be a motor vehicle mechanic as defined in the Motor Vehicle Service and Repair Act and possess a specialty certification in BAIID service under that Act, and be certified as a BAIID mechanic under the Code. To be certified as a BAIID installer, an individual must meet all of the following requirements:

- Possess a specialty certification in BAIID installation under the Motor Vehicle Service and Repair Act.
- Properly complete and file a BAIID installer application form with the Department.
- Be a mechanic who is certified as a mechanic with a specialty certification in BAIID service under the Motor Vehicle Service and Repair Act and hold a BAIID certification under the Vehicle Code.
- Submit a criminal history report certified by the Department of State Police within the preceding 30 days.
- Meet the Department's requirements for certification under the Code.

Each application for approval must be for a single BAIID installer. The Department of State's approval of a BAIID mechanic will be for one year, and the renewal process must be the same as the initial installer approval process.

The Secretary of State may investigate a BAIID installer's compliance with the Code and must suspend, revoke, or deny an individual's certification as a BAIID installer if the SOS determines the installer did one or more of the following:

- Violated the Code or a rule promulgated under it.
- Committed a fraudulent act in connection with the installation, monitoring, servicing, or removal of a BAIID.
- Performed improper, careless, or negligent inspection, installation, monitoring, servicing, or removal of a BAIID.
- Made a false statement of a material fact regarding his or her actions in inspecting, installing, monitoring, servicing, or removing a BAIID.

Within 14 days of the date the Department decertifies an installer, it must notify the manufacturer that one of its installers has been decertified.

All installations must be done in a workmanlike manner by a BAIID certified installer at an approved service center and be in accordance with the standards set forth in the Code and with the manufacturer's requirements. All installed devices must be in working order and perform in accordance with the Code's standards. All connections must be covered with a tamper seal.

When an installer completes the installation of a BAIID, he or she must give the customer verification in the form and format designated by the Department.

### Manufacturer Certification

Suspension or Revocation. The Code requires the Department to provide a list of all manufacturers of approved certified devices to each person who is issued a restricted license that permits him or her to drive a vehicle only if it is equipped with a BAIID.

The bill permits the Department to suspend or revoke the certification of a manufacturer and its device from the list of approved certified BAIIDs for either of the following reasons:

- The manufacturer, its BAIIDs, or its installer or service provider no longer complies with the requirements of the Code or relevant rules.
- The manufacturer or the installer and service provider authorized to install and service the manufacturer's BAIIDs failed to submit required reports in a timely manner in the form prescribed by the Department.

Before removing a manufacturer from the list the SOS must give the manufacturer written notice of the reasons for removal. The notice also must indicate that suspension or revocation will occur 30 days after the date of the notice unless the manufacturer establishes, to the satisfaction of the SOS, that both of the following apply:

- The conditions for suspension or revocation no longer exist.
- The manufacturer, its BAIID, or its installer or service provider, as applicable, is in compliance with the Code and relevant rules.

The SOS may order a summary suspension or revocation of the certification of a manufacturer and its device for any of the following reasons:

- Repeated failure to submit reports in a timely manner.
- Repeated failure to report violations, as required by administrative rules.
- Repeated submission of inaccurate violation reports or annual reports to the Department.
- The manufacturer, installer, or service provider gave an individual a bypass code.
- The manufacturer, installer, or service provider has shown or instructed an individual how to tamper with or circumvent a BAIID.
- The manufacturer, installer, or service provider has provided a sample to start a vehicle for an individual in an attempt to circumvent a BAIID.
- The manufacturer, installer, or service provider has allowed an individual (except a certified installer or a representative of the manufacturer or the Department) to observe the installation or removal of a BAIID.
- The BAIID no longer meets the National Highway Traffic Safety Administration (NHTSA) standards or the requirements of the Vehicle Code.

A manufacturer to which a summary order is directed must comply with the order immediately, but, upon application to the Department, must be given a hearing within 30 days after the date of the application. On the basis of a hearing, the order must be continued, modified, or held in abeyance within 30 days after the hearing.

The Secretary of State may promulgate rules to implement these provisions.

Manufacturer Requirements. The Department may not include a certified BAIID manufacturer on its list of manufacturers of approved devices unless the manufacturer complies with specific requirements. Previously, these included filing with the Department a copy of evidence of insurance under Section 625I (which the bill amended as described below). The bill instead

requires the manufacturer to file proof of liability insurance issued by an insurance company authorized to do business in Michigan, specifying all of the following:

- That the policy is current at the time of application and will remain valid during the duration of device approval.
- The name and model number of the device model covered by the policy.
- That the policy has a minimum coverage of \$1.0 million per occurrence and \$3.0 million in the aggregate.
- That the policy will indemnify the Department and any other person injured as a result of any defects in manufacture, materials, design, calibration, installation, or operation of the device.

Additionally, in order to be included on the list, a BAIID manufacturer must file a copy of an affidavit that the device meets the Code's definition of such a device; and is set to take samples periodically while the vehicle is in operation and, when the device detects an alcohol content of at least 0.025 gram per 210 liters of breath, or if a breath sample is not given within the allotted time, to do the following:

- Emit a visible or audible warning signal.
- 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 gram per 210 liters of breath before the vehicle may be restarted.

Also, under the bill, after a vehicle is in operation, the BAIID must require a first retest sample within five to 15 minutes after the operator starts the vehicle. The device must prompt second and subsequent retests within 15 to 45 minutes of the first retest. The vehicle's operator must be given not more than five minutes to provide a passing retest sample for each retest prompted by the device. The BAIID must accept multiple attempts to provide a retest sample without initiating a lockout.

In addition, the bill requires the device to disable the free restart and activate a violation reset, as well as initiate an audible or visual cue that warns the driver that the device will enter a permanent lockout in five days.

The Code also requires a manufacturer to agree to have service locations within 50 miles of any location within the State. The bill allows a manufacturer to request a waiver of this requirement from the SOS if the manufacturer cannot secure an installation facility within 50 miles of any location in the State. Subject to review, the SOS may determine whether the request will be approved. The SOS may approve a waiver and designate a location not meeting the 50-mile requirement as a service center if the service center employs a BAIID certified installer who will perform any installation service to a BAIID at that location. An approved waiver will apply only to the approved location. A manufacturer must make a separate request for a waiver of the 50-mile requirement for any additional installation facility not meeting the requirement.

The bill requires a BAIID manufacturer, upon the request of the Department, and at no cost to the State, to give the Department at least two devices for each model certified under the Code for the Department's demonstration and training purposes.

Also, upon the Department's request, at no cost to the State, the manufacturer must install one of each certified device in a vehicle provided by the Department. Any service performed under this requirement, including installation, maintenance, calibration, or removal, must be completed at no cost to the State.

Upon the Department's request, for each Department-approved BAIID model, the manufacturer must provide at least 10 hours of training to Department employees at no cost

to the State, and at the times and locations within the State designated by the Department. The training must be designed to familiarize Department employees with the installation, operation, service, repair, and removal of the devices and include the training and instructions that a BAIID installer will give to customers. The BAIID manufacturer also must give the Department, upon request, the following information:

- A detailed description of the device, including complete instructions for installation, operation, service, repair, and removal.
- Complete technical specifications, including detailed explanations and definitions of all data log entries.

Previously, a manufacturer had to give the SOS a list of installers authorized to install and service the manufacturer's device, in order for the manufacturer to be included on the list given to a person with a restricted license. The bill deleted that requirement.

### BAIID Certification

The Code previously required the Department of State to approve an ignition interlock device certified by a Department-approved laboratory as complying with particular model specifications for breath alcohol ignition interlock devices. The bill deleted these provisions.

Instead, the bill requires a manufacturer seeking certification of a BAIID in Michigan to do all of the following:

- Complete an application to the Department for certification.
- Submit a report from a Department-approved or NHTSA-approved laboratory certifying that the BAIID meet or exceeds the model specifications.
- Ensure that a BAIID is capable of recording a digital image of the individual providing the sample, and recording the time and date the sample was provided on or logically associated with the digital image.
- Agree to ensure proper record-keeping in a Department-approved format and provide testimony relating to any aspect of the installation, service, repair, use, removal, or interpretation of any report or information recorded in the data storage system of a device or performance of any other duties required by the Code at no cost on behalf of the State or any political subdivision of the State.

The bill specifies that any model of an ignition interlock device certified by a Department-approved laboratory as complying with the model specifications for BAIIDs that was installed before the bill's effective date may be used in the State for the 24 months after that date.

The bill requires a manufacturer to notify the Department at least 15 days before implementing any modification, upgrade, or alteration to any hardware, software, or firmware of a device certified for use in Michigan. The notification must include both of the following:

- A description and explanation of the modification, upgrade, or alteration and proof satisfactory to the Department that the modifications, upgrades, and alterations will not adversely affect the device's ability to satisfy the Code's requirements.
- A comprehensive plan of action for phasing out the use of the current device, approved by the Department before implementation of the plan of action.

Any equipment in the Department's possession that was retained for certification of the device must be modified, upgraded, or altered simultaneously with implementation of the plan of action. In its discretion, the Department may retain a BAIID device regardless of whether it is no longer the current version or model.

The bill requires a manufacturer to reapply annually for recertification of BAIID devices it manufactures.

The bill also specifies that material modifications to a certified BAIID device may require recertification under the Code as determined by the Department.

### Rescinded Rules

The bill rescinded R 257.1005 and R 257.1006, which did the following:

- Allowed the SOS to remove a manufacturer from the approved list of certified BAIID manufacturers, if the manufacturer or its devices, installers, or service providers no longer complied with applicable Code requirements or rules; or the manufacturer or authorized installers and service providers failed to submit required reports in a timely manner.
- Authorized the SOS to conduct inspections of a laboratory or BAIID manufacturer, installer, or service provider to determine compliance with relevant provisions of the Code and rules promulgated under it.
- Allowed the SOS to remove from the approved list a manufacturer or laboratory that failed to take necessary corrective action or to come into full compliance with the Code or an applicable rule, or failed to file a written response to a notice of noncompliance within 30 days.

### Liability

The bill deleted provisions under which the State of Michigan, or the Department of State, its officers, employees, or agents, or a court, its officers, employees, or agents were not liable in any claim or action that could arise out of any act or omission by a manufacturer, installer, or servicing agent of an ignition interlock device that resulted in damage to people or property.

The bill also deleted provisions that prohibited a person from selling, leasing, installing, or monitoring in a vehicle in Michigan an ignition interlock device unless the manufacturer and provider carried liability insurance covering product liability, including insurance to indemnify the Department of State and any person injured as a result of a design defect or the calibration or removal of the device or a misrepresentation about the device.

### Restricted License Suspension, Denial, & Revocation

The Code requires the SOS to suspend a person's license for a certain violations involving drunk driving or driving while visibly impaired or under the influence. The Code also provides for the issuance of a restricted license if various conditions are met.

The restricted license must be suspended, revoked, or denied under certain circumstances, such as the person operates a vehicle without the required ignition interlock device. The bill provides that any required period of suspension or restriction is not subject to appeal to the SOS.

### Unrestricted License

Except as otherwise provided, a restricted license is effective until a hearing officer orders an unrestricted license under the Code. The hearing officer may not order an unrestricted license until the latest of the following events occurs:

- The court notifies the SOS that the person has successfully completed the DWI/sobriety court program.
- The minimum period of license sanction that would have been imposed under the Vehicle Code has been completed.



- The person demonstrates that he or she has operated with a BAIID for at least one year.
- The person satisfies license reinstatement requirements under the Code and rules.

The bill also provides that a hearing officer may not issue an unrestricted license for at least one year after either of the following:

- The hearing officer determines that the person consumed any alcohol during the period that his or her license was restricted, as determined by breath, blood, urine, or transdermal testing unless a second test, administered within five minutes after the first test, showed an absence of alcohol.
- The hearing officer determines that the person consumed or otherwise used any controlled substance during the period that his or her license was restricted, except as lawfully prescribed.

### Driver Responsibility Fees

The Code imposes driver responsibility fees for certain violations and directs the first \$8.5 million of the fee revenue to the Fire Protection Fund. For fiscal year 2015-16, after that allocation, of the next \$1.5 million, \$500,000 was directed to the Department of Treasury for certain purposes and \$1.0 million was allocated to the Department of State for necessary expenses it incurred in implementing and administering the requirements of Section 625k of the Code.

For fiscal year 2016-17 and each subsequent fiscal year, after the \$8.5 million allocation to the Fire Protection Fund, the Code required the next \$1.0 million to be credited to the Department of State for expenses incurred in implementing and administering Section 625k.

The bill retains these requirements, but allocates the money to the Department of State for expenses incurred in implementing and administering Section 625q as well as Section 625k.

(Section 625k contains the provisions concerning the certification of BAIID devices; manufacturers' provision of BAIID devices to the Department and training to Department employees; the modification of devices; the approval of BAIID service centers; and the certification of BAIID installers. Section 625q permits the SOS to investigate installers' compliance with Section 625k; authorizes the suspension, revocation, or denial of an individual's certification as an installer; authorizes the Department to suspend or revoke the certification of a manufacturer and its device; and authorizes the SOS to promulgate rules to implement the section.)

## **Senate Bill 357**

### BAIID Service Facility

The bill prohibits a motor vehicle repair facility from providing BAIID service without the approval of the Department of State. The Department may approve a motor vehicle repair facility to perform BAIID service, or renew an approval, if the facility meets the requirements outlined below.

The facility must operate at a fixed location in Michigan and employ at least one mechanic who holds a specialty certification in BAIID service and who is properly trained as a BAIID technician by the BAIID manufacturer for which the facility is a vendor. The facility must maintain and make available for inspection records that prove that each mechanic who holds a specialty certification in BAIID service and is employed by the facility is properly trained by the BAIID manufacturer.

The facility must provide a designated waiting area for customers that is separate from the area in which BAIID service is performed. Only a mechanic who holds a specialty certification in BAIID service, a representative of the manufacturer, or a representative of the Department may observe the installation or removal of a BAIID.

The facility must take adequate security measures to ensure that unauthorized personnel cannot gain access to proprietary materials or files of any BAIID manufacturer for which the facility is a vendor.

The facility must inform the Department of any change in its business address at least 15 days before the date of any relocation. An application for approval must be for a single location, and separate application is required for each location at which the facility will provide BAIID service.

If requested by the Department, the facility must allow it to conduct an on-site evaluation to ensure compliance with the Act.

The term of an original or renewal approval of a motor vehicle repair facility will be one year.

The Department may conduct an inspection of a motor vehicle repair facility that provides BAIID service to ensure compliance with the Act and the Michigan Vehicle Code, and rules promulgated to implement those provisions. The facility must pay for the actual costs to the Department in conducting an inspection.

#### Specialty Mechanic's Certification

Under the Act, a person may become certified as a specialty mechanic if he or she passes an examination, developed or adopted by the Secretary of State, as an adequate test of a person's ability to perform certain types of motor vehicle repair. In addition to the categories of repair or service for which certification already was required, the bill includes BAIID service.

The bill requires the Department, on application, to issue an initial specialty mechanic's certificate in BAIID service, without examination, to an individual who held a valid specialty mechanic's certificate in electrical systems repair on the bill's effective date.

Within 120 days after the bill's effective date, the SOS had to develop or adopt an examination for specialty mechanic certification in the repair or service of BAIIDs for a person who is engaged for compensation in BAIID service.

Beginning July 1, 2016, the bill prohibits a person from performing BAIID service in Michigan unless he or she has a specialty mechanic's certificate in BAIID service under the Act and certification as a BAIID installer under the Vehicle Code. A BAIID mechanic must perform BAIID service in a workmanlike manner and, in performing the service, must comply with the Act, the Code, and the requirements of the BAIID manufacturer.

#### BAIID Installation

The bill requires a motor vehicle repair facility and BAIID mechanic to ensure that a BAIID that is installed is in working order; that it performs in a manner that meets the requirements of the Act and the Vehicle Code; and that all connections are soldered and covered with a tamper seal.

When a BAIID mechanic completes the installation of a BAIID, he or she must give the customer a written installation verification. The Department must establish the form and format of the verification.

MCL 257.20d et al. (S.B. 176)  
257.1302 et al. (S.B. 357)  
777.12f (H.B. 4980)

Legislative Analyst: Suzanne Lowe

## **FISCAL IMPACT**

### **Senate Bills 176 and 357**

The bills will have no fiscal impact on the Department of State or on local government. Given the program already in place, any costs to the Department associated with the certification of BAIID installers, mechanics, service centers, or BAIIDs themselves will either be reimbursed by the BAIID manufacturer or be covered by the Department's current annual appropriations. Any increases in costs to the Department will be negligible.

### **House Bill 4980**

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

Fiscal Analyst: Joe Carrasco

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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.