

HOUSE BILL NO. 4638

April 14, 2021, Introduced by Reps. Sneller and Cherry and referred to the Committee on Transportation.

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 625u.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 625k. (1) An ignition interlock device (BAIID)
- 2 manufacturer seeking certification of a device in this state shall
- 3 do all of the following:
- 4 (a) Complete an application to the department for

1 certification of the BAIID.

2 **(b) Pay all applicable fees assessed by the department under**
3 **subsection (15).**

4 **(c)** ~~(b)~~—Submit a report from a department-approved or National
5 Highway Traffic Safety Administration-approved laboratory
6 certifying that the BAIID meets or exceeds the model specifications
7 for BAIIDs, 78 FR 26849 - 26867 (May 8, 2013), or any subsequent
8 version. Subject to subsection (5), the department shall provide a
9 list of all manufacturers of approved certified devices to each
10 ~~person~~**individual** who is approved to be issued a restricted license
11 that permits the ~~person~~**individual** to drive a vehicle only if
12 equipped with a BAIID. The department shall rotate the order of the
13 providers with each list provided under this subsection. Any model
14 of an ignition interlock device certified by a department-approved
15 laboratory as complying with the model specifications for breath
16 alcohol ignition interlock devices (BAIIDs), 57 FR 11772-11787
17 (April 7, 1992), that was installed in a vehicle before ~~the~~
18 ~~effective date of the amendatory act that added this subdivision~~
19 **June 6, 2016** may be used in this state ~~for the 24 months after the~~
20 ~~effective date of the amendatory act that added this~~
21 ~~subdivision.~~**through June 6, 2018.**

22 **(d)** ~~(e)~~—Ensure that a BAIID is capable of recording a digital
23 image of the individual providing the sample, and record the time
24 and date the sample was provided on or logically associated with
25 the digital image. A BAIID presented to the department for
26 certification may include additional technological features,
27 including, but not limited to, the ability to remotely report
28 information collected by the device.

29 **(e)** ~~(d)~~—Agree to ensure proper record keeping in a format

1 approved by the department and provide testimony relating to any
2 aspect of the installation, service, repair, use, removal, or
3 interpretation of any report or information recorded in the data
4 storage system of a device or performance of any other duties
5 required by this act at no cost on behalf of ~~the~~**this** state or any
6 political subdivision of ~~the~~**this** state.

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

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

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

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

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

21 (i) A bond executed as provided in section 6250 or a letter of
22 credit.

23 (ii) Proof of liability insurance issued by an insurance
24 company authorized to do business in this state specifying all of
25 the following:

26 (A) That the policy is current and ~~shall~~**will** remain valid
27 during the duration of device approval.

28 (B) The name and model number of the device model covered by
29 the policy.

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

3 (D) That the policy will indemnify the department and any
4 other person injured as a result of any defects in manufacture,
5 materials, design, calibration, installation, or operation of the
6 device.

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

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

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

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

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

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

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

4 (b) Agrees to have service locations within 50 miles of any
5 location within this state. A manufacturer may request a waiver of
6 this requirement from the secretary of state if the manufacturer is
7 unable to secure an installation facility within 50 miles of any
8 location in this state. Subject to review, the secretary of state
9 may determine whether the manufacturer's waiver request ~~shall be~~ **is**
10 approved. The secretary of state shall only approve a waiver of the
11 50-mile requirement and designate a location not meeting the 50-
12 mile requirement as a service center if the service center employs
13 a BAIID certified installer who ~~shall perform~~ **performs** any
14 installation or service to a BAIID at that location. If the
15 secretary of state approves a waiver of the 50-mile requirement,
16 that waiver applies only to the approved location. A manufacturer
17 shall make a separate request for a waiver of the 50-mile
18 requirement for any additional installation facility not meeting
19 the 50-mile requirement.

20 (c) Agrees to provide an ignition interlock device without
21 cost to ~~a person~~ **an individual** whose gross income for the
22 immediately preceding tax year based on his or her state income tax
23 return was less than 150% of the official poverty line for that
24 same tax year established in the poverty guidelines issued by the
25 ~~secretary of health and human services~~ **United States Secretary of**
26 **Health and Human Services** under 42 USC 9902. A person in whose
27 vehicle an ignition interlock device is installed without cost
28 under this subdivision shall pay a maintenance fee to the installer
29 of not more than \$2.00 per day.

1 (d) Agrees to comply with the reporting requirements of the
2 secretary of state.

3 (e) Agrees to periodically monitor installed ignition
4 interlock devices and if monitoring indicates that the device has
5 been circumvented, tampered with, or that ~~a person~~**an individual**
6 with a breath alcohol level of 0.025 or more grams per 210 liters
7 of breath has attempted to operate the motor vehicle, or both, to
8 communicate all of the relevant information concerning these facts
9 to the secretary of state, and to the court if appropriate.

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

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

17 (8) Upon the request of the department, the BAIID manufacturer
18 shall, at no cost to this state, install 1 of each device that is
19 certified under this section in a vehicle provided by the
20 department. Any service performed under this subsection, including,
21 but not limited to, installation, maintenance, calibration, or
22 removal, ~~shall~~**must** be completed at no cost to this state.

23 (9) Upon the request of the department, for each BAIID model
24 approved by the department, the BAIID manufacturer shall provide a
25 total of not less than 10 hours of training to department employees
26 at no cost to this state. This training ~~shall~~**must** be held at the
27 times and locations within the state designated by the department.
28 The training ~~shall~~**must** be designed to familiarize department
29 employees with the installation, operation, service, repair, and

1 removal of the BAIIDs and include the training and instructions
2 that a BAIID installer will give to customers. The BAIID
3 manufacturer shall also provide the department, upon request, with
4 the following information:

5 (a) A detailed description of the device, including complete
6 instructions for installation, operation, service, repair, and
7 removal of the BAIID.

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

10 (10) A BAIID manufacturer shall notify the department not less
11 than 15 days before implementation of any modification, upgrade, or
12 alteration to any hardware, software, or firmware of a device
13 certified for use in this state. The notification ~~shall~~**must**
14 include both of the following:

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

20 (b) A comprehensive plan of action for the phasing out of the
21 use of the current device. This plan of action must be approved by
22 the department ~~prior to~~**before** the implementation of the plan of
23 action.

24 (11) Any equipment in the possession of the department that
25 was retained for certification of the device ~~shall~~**must** be
26 modified, upgraded, or altered simultaneously with the
27 implementation of a plan of action under subsection (10). The
28 department, in its discretion, may retain a BAIID device regardless
29 of whether the device is no longer the current version or model of

1 that device.

2 (12) Material modifications to a certified BAIID device may
3 require recertification under this section as determined by the
4 department.

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

7 (14) The department is responsible for approving BAIID service
8 centers for operation in this state. The department shall not
9 approve a BAIID service center unless all of the following
10 conditions are satisfied:

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

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

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

22 (d) A business that installs, services, or removes a BAIID,
23 including a BAIID manufacturer's corporate office located in this
24 state, that is installing, repairing, or removing BAIID devices on
25 ~~the effective date of the amendatory act that amended this section~~
26 **June 6, 2016** may install, service, and remove BAIIDs in this state
27 without being certified as a motor vehicle repair facility under
28 the motor vehicle service and repair act, 1974 PA 300, MCL ~~257.1302~~
29 **257.1301** to 257.1340, if the business employs a certified BAIID

1 installer to perform any installation, service, or removal of a
2 BAIID.

3 (e) Each service center shall have not less than 1 individual
4 who is a mechanic and who possesses a specialty certification in
5 BAIID service under section ~~10(1)(j)~~**10b(1)(l)** of the motor vehicle
6 service and repair act, 1974 PA 300, MCL ~~257.1310~~**257.1310b**, and
7 holds a BAIID certification under this section to work as a BAIID
8 installer.

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

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

17 (h) Only certified BAIID installers and representatives of the
18 BAIID manufacturer or the department ~~shall be~~**are** allowed to
19 observe the installation or removal of a BAIID.

20 (i) Adequate security measures ~~shall~~**must** be taken to ensure
21 that unauthorized personnel are not allowed access to proprietary
22 materials of BAIID manufacturers or files of customers.

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

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

1 (l) BAIIDs approved for use in this state ~~shall~~**must** only be
 2 serviced by service centers located within this state, unless the
 3 customer is unable to return to this state for service because of a
 4 significant personal hardship.

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

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

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

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

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

18 (p) Each application for approval ~~shall~~**must** be for a single
 19 service center. A separate service center application is required
 20 for each additional service center.

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

24 (r) The department's approval of a service center ~~shall be~~**is**
 25 for a period of 1 year. The renewal process ~~shall~~**must** be the same
 26 as the initial service center approval process under this section.

27 **(15) The department may assess a nonrefundable, reasonable**
 28 **application fee not to exceed \$3,000.00 and shall assess**
 29 **administrative, renewal, and other fees necessary to fund the**

1 **certification and inspection of ignition interlock devices. Fees**
2 **collected by the department under this subsection must be credited**
3 **to the BAIID fee fund created under section 625u.**

4 (16) ~~(15)~~—The department may conduct inspections of a
5 manufacturer or a BAIID service center to ensure compliance with
6 this act and rules promulgated to implement this act. The
7 manufacturer shall pay for the actual costs to the department in
8 conducting an inspection under this subsection. **Costs under this**
9 **subsection must be paid by the BAIID fee fund created under section**
10 **625u.**

11 (17) ~~(16)~~—An individual shall not install, service, or remove
12 a BAIID in this state without being certified by the department
13 under this section.

14 (18) ~~(17)~~—All BAIID installations ~~shall~~**must** be done in a
15 workmanlike manner by a BAIID certified installer at an approved
16 service center and ~~shall be~~ in accordance with the standards set
17 forth in this section and with the requirements of the
18 manufacturer. All BAIIDs installed ~~shall~~**must** be in working order
19 and ~~shall~~ perform in accordance with the standards set forth in
20 this act. All connections ~~shall~~**must** be covered with a tamper seal.

21 (19) ~~(18)~~—Upon completion of the installation of a BAIID
22 required under this act, the approved BAIID certified installer
23 shall provide the customer with installation verification in the
24 form and format designated by the department.

25 (20) ~~(19)~~—A manufacturer shall ensure that BAIID certified
26 installers meet the following requirements:

27 (a) Possess the appropriate certification from the department
28 under this section.

29 (b) Possess and maintain all necessary training and skills

1 required to install, examine, troubleshoot, and verify the proper
2 operation of BAIIDs.

3 (c) Possess the tools, test equipment, and manuals needed to
4 install, inspect, download, calibrate, repair, maintain, service,
5 and remove BAIID devices.

6 (d) Provide all ~~persons~~**individuals** who will use the vehicle
7 with written and hands-on training regarding the operation of a
8 vehicle equipped with the BAIID and ensure that each of those
9 ~~persons~~**individuals** demonstrates a properly delivered alveolar
10 breath sample and an understanding of how the abort test feature
11 works.

12 **(21)** ~~(20)~~—An individual who has been convicted of an alcohol-
13 related driving offense or any offense classified as a felony in
14 this state or elsewhere within 5 years before the date of filing an
15 application for approval as a BAIID certified installer is not
16 eligible for approval as a BAIID certified installer under this
17 act.

18 **(22)** **An individual who has been convicted of an alcohol-**
19 **related driving offense or any offense classified as a felony in**
20 **this state or elsewhere within 5 years before the date of filing an**
21 **application for approval as a BAIID service center owner is not**
22 **eligible for approval as a BAIID service center owner under this**
23 **act.**

24 **(23)** ~~(21)~~—The following requirements apply to a BAIID
25 certified installer under this act:

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

27 (b) Possess a valid driver license.

28 (c) Be a motor vehicle mechanic as defined in section ~~2~~**2a** of
29 the motor vehicle service and repair act, 1974 PA 300, MCL

1 ~~257.1302,~~**257.1302a**, and possess a specialty certification in BAIID
 2 service under section ~~10(1)(j)~~**10b(1)(l)** of the motor vehicle
 3 service and repair act, 1974 PA 300, ~~257.1310.~~**257.1310b**.

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

5 **(24)** ~~(22)~~—To be certified as a BAIID installer under this
 6 section, the individual shall meet all of the following
 7 requirements:

8 (a) Possess a specialty certification in BAIID installation
 9 under section ~~10(1)(j)~~**10b(1)(l)** of the motor vehicle service and
 10 repair act, 1974 PA 300, MCL ~~257.1310.~~**257.1310b**.

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

13 (c) Beginning ~~180 days after the effective date of the~~
 14 ~~amendatory act that added this subdivision,~~**December 3, 2016**, be a
 15 mechanic who is certified as a mechanic with a specialty
 16 certification in BAIID service under section ~~(10)(1)(j)~~**10b(1)(l)** of
 17 the motor vehicle service and repair act, 1974 PA 300, MCL
 18 ~~257.1310,~~**257.1310b**, and hold a BAIID certification under this
 19 section.

20 (d) Submit a criminal history report certified by the
 21 department of state police within the immediately preceding 30
 22 days.

23 (e) Meet the requirements of the department for certification
 24 under this act.

25 **(25)** ~~(23)~~—Each application for approval ~~shall~~**must** be for a
 26 single BAIID installer. A separate BAIID installer application is
 27 required for each additional BAIID installer.

28 **(26)** ~~(24)~~—The department's approval of a BAIID installer is
 29 for 1 year. The renewal process ~~shall be~~**is** the same as the initial

1 BAIID installer approval process under this section.

2 Sec. 625u. (1) The BAIID fee fund is created within the state
3 treasury.

4 (2) The state treasurer may receive money or other assets from
5 any source for deposit into the fund. The state treasurer shall
6 direct the investment of the fund. The state treasurer shall credit
7 to the fund interest and earnings from fund investments.

8 (3) Money in the fund at the close of the fiscal year shall
9 remain in the fund and shall not lapse to the general fund.

10 (4) The department shall be the administrator of the fund for
11 auditing purposes.

12 (5) The department shall expend money from the fund, upon
13 appropriation, only for 1 or more of the following purposes:

14 (a) To fund the costs for approval and inspection of
15 manufacturers or BAIID service centers under section 625k.

16 (b) To fund the costs for certification and inspection of
17 ignition interlock devices under section 625k.

18 (c) To fund any other BAIID program cost incurred by the
19 department.