

Michigan's New "Super Drunk" Law

By Patrick T. Barone

On January 9, 2009, Governor Jennifer Granholm signed two public acts that created what has become commonly known as Michigan's "super drunk" law.¹ With an effective date of October 31, 2010, this law amends several sections of the Michigan Vehicle Code and most notably adds a new definition of drunk driving applicable to drivers with a bodily alcohol content (BAC) of 0.17 or more grams of alcohol per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.² Drivers convicted under this new definition will be subject to enhanced punitive and license sanctions and will also be required to undergo one year of alcohol rehabilitation, which may be an alcohol treatment program or a self-help program. The enhanced punitive and license sanctions will apply only to first-time high-BAC offenders. Second- and subsequent-offense license and punitive sanctions will remain unchanged, regardless of the driver's BAC, presumably because the current overall punishment for repeat offenders is still greater than that established for super drunks.³

The one change that will apply to both repeat offenders and first-time high-BAC drivers is the one-year alcohol rehabilitation requirement.⁴ This one-year alcohol rehabilitation period is the longest treatment requirement yet mandated for those convicted of any drunk-driving offense. Previously, even those convicted of felony drunk driving were not required by law to undergo such extensive treatment. Under the new law, however, alcohol rehabilitation will continue to not be mandatory for a traditional first drunk-driving offense.

Upon notice of a conviction of a high-BAC offense under the new law, the Secretary of State

will suspend driving privileges for one year. The first 45 days of this suspension is a "hard" suspension, meaning no driving is allowed. During the remaining 320 days, the offender is entitled to restricted driving privileges, but only if the offender pays to have a breath alcohol ignition interlock device ("breath interlock" or "interlock") placed on his or her car during this period.⁵

A high-BAC driver will also be exposed to an array of enhanced punitive sanctions, including an increase in the potential fine (to not less than \$200 or more than \$700) and an increase in the potential jail time (increased from not more than 93 days to not more than 180 days).⁶

The amendments also create a second new offense related to the monitoring of the breath interlock. Accordingly, operating or attempting to operate an interlock-equipped vehicle with a BAC of 0.025 or more grams of alcohol per 210 liters of breath or any violation of the driving restrictions imposed will result in a doubling of the license penalty. Thus, offenders who violate their license restrictions in this way will have a second set of identical driver license sanctions imposed, meaning a new 45-day period of no driving followed by 320 days of restricted driving with an interlock.⁷

Michigan's preamendment drunk-driving laws provided for the discretionary use of a breath interlock under other circumstances, including as a condition of probation. The breath interlock may still be used in this way, but several sections of the amended law more broadly define this device and make its use during restricted driving mandatory. For example, approved devices are now specifically defined as those that meet or exceed the specifications appearing on the 1992 Federal Register conforming products list. These devices use "alcohol-specific electrochemical fuel sensor technology," and the statute requires that certain "anticircumvention" technology be employed.⁸

Once installed, a typical breath interlock requires a driver to blow into the device when first starting the car, and then do so again within the first 5 to 15 minutes. The interlock will not allow



Fast Facts:

The effective date of Michigan's "super drunk" law is October 31, 2010.

"Super drunk" means having a bodily alcohol content of 0.17 or more grams of alcohol per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

Convicted super drunk drivers face stiffer penalties, including a one-year breath alcohol ignition interlock requirement, higher fines and costs, and possibly more jail time.

the car to be started if it detects a BAC of 0.025 or more grams of alcohol per 210 liters of breath.⁹ As a rough approximation, having a BAC of 0.025 grams corresponds to having had about one drink of alcohol for a person weighing approximately 160 pounds.¹⁰ When driving for longer periods, the driver must also repeat the test (generally about twice an hour). The device records the date and time of each test, and any violation is reported to the monitoring agency. If a BAC of more than 0.025 grams is detected during operation, the device emits a visible or audible "warning signal," and after coming to a complete stop, the car cannot be restarted until the driver has a BAC of less than 0.025 grams.¹¹ A person required to have a breath interlock cannot operate a vehicle that is not equipped with one.¹²

The amended law also provides for impoundment when a person required to have a breath interlock is stopped while driving a car without one. If the operator individually or jointly owns the vehicle that has no interlock, the vehicle's registration plate will be confiscated and destroyed. A new temporary plate will be issued, and the Secretary of State will be notified.¹³ This is considered a sanction against the "offending vehicle," meaning that the owner and not necessarily the driver of the car will be liable for all expenses incurred in the removal and storage of the vehicle.¹⁴

The new law will also make drunk driving far more expensive because it is the driver's responsibility to pay the cost of installing the breath interlock as well as the monthly fees required to maintain it. While the state does not regulate the cost of ignition interlock devices, the legislature had previously limited the amount that people with low incomes can be charged to a maximum of \$1 a day. The new law increases this maximum to \$2 a day, and for certain low-income drivers the installation fee will be waived.¹⁵ Drivers who do not meet the low-income deferment requirements must pay the interlock vendor's usual rates. In Michigan, installation fees are about \$50, and depending on the vendor, monthly fees can be as high as \$100.

The statute also provides that repeat drunk-driving offenders who have had their driver's licenses revoked and receive a restricted license requiring a breath interlock must use an interlock for not less than one year.¹⁶ The interlock may only be removed by order of the Secretary of State.¹⁷

In a rather peculiar change, if a person is required to use an interlock, a conviction of operating a car not equipped with one requires immobilization of the car for 90 to 180 days.¹⁸ Under

these circumstances, there is an option to have a breath interlock installed, in which case the immobilization must be suspended.¹⁹ However, the court may reinstate the vehicle immobilization if the interlock device is tampered with, circumvented, or disabled or the person's restricted license is suspended or revoked.²⁰

In passing this legislation, Michigan's lawmakers stopped short of matching a law recently enacted in Illinois requiring that a breath interlock be installed for all offenders. The Illinois law, which went into effect last year, requires the interlock as a condition of driving even before there has been a conviction.²¹

While the new Michigan law is certainly less encompassing than the laws of some states, it is unclear if it will have any meaningful impact on driver safety. Under the preamendment law, it was quite common for first-offense drunk drivers to plead guilty to the lesser-included offense of impaired driving. Depending on how plea bargaining is handled for the new offense, the new law will either have no effect or will clog court dockets with unnecessary trials. This is because it seems entirely plausible that high-BAC first offenders will be offered the option of pleading guilty of operating while intoxicated or operating while visibly impaired, thereby avoiding the interlock requirement and other enhanced sanctions altogether. It is also entirely plausible that more trials will result if such reductions are not offered. ■



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FOOTNOTES

- 2008 PA 461 and 2008 PA 462. All citations to the Michigan Vehicle Code are to the MCL sections as amended by those acts.
- MCL 257.625(1)(c).
- MCL 257.625(9)(b) and (c).
- MCL 257.625b(5).
- MCL 257.319(8)(g).
- MCL 257.625(9)(a)(ii) and (iii).
- MCL 257.319(8)(i).
- MCL 257.20d.
- Id.*
- See Jones & Holmgren, *Age and gender differences in blood-alcohol concentration in apprehended drivers in relation to the amounts of alcohol consumed*, 188 *Forensic Sci Int'l* 43 (2009).
- MCL 257.625(5)(iii)(B)(i) and (ii).
- MCL 257.625(2).
- MCL 257.625(7).
- MCL 257.625(10).
- MCL 257.625(5)(d).
- MCL 257.322(9).
- MCL 257.322a.
- MCL 257.904d(1)(c).
- MCL 257.904d(11).
- MCL 257.904d(12).
- 625 Ill Comp Stat 5/6-206.1.

