

**Local Mandate Fiscal Impact Estimate
Kentucky Legislative Research Commission
2015 Regular Session**

Part I: Measure Information

Bill Request #: 855

Bill #: SB 133 SCS

Bill Subject/Title: AN ACT relating to driving under the influence

Sponsor: Senator Morgan M. McGarvey

Unit of Government: City County Urban-County
 Charter County Consolidated Local Unified Local
Government

Office(s) Impacted: Law enforcement; jails

Requirement: Mandatory Optional

Effect on
Powers & Duties: Modifies Existing Adds New Eliminates Existing

Part II: Purpose and Mechanics

SB 133 replaces hardship licenses with the issuance of an “ignition interlock license” which permits a person to drive noncommercial motor vehicles or motorcycles equipped with a functioning ignition interlock device, referred to herein as ‘device’. The court-ordered use of a device is already provided for in statute. A device is a mechanism, like a breathalyzer, installed on a motor vehicle's dash board that prohibits ignition if the driver meets a minimum blood alcohol threshold.

SB 133 provides that a person must be enrolled in or have completed an alcohol or substance abuse program before being eligible for a device.

SB 133 requires that at the final sentencing hearing, the person provides proof that a functioning device has been installed and will be maintained on one of more motor vehicles or motorcycles operated by the person and that the person has been issued or has filed a completed application with the Cabinet for issuance of an ignition interlock license.

SB 133 provides that a court may credit the amount of days a person has held a valid device to the required amount of time a device has been ordered by the court, but cannot reduce the period of time for which a device is required to less than 12 months for second and subsequent DUI

offenses.

SB 133 provides the person may retain valid license plate(s) for all vehicles he solely or jointly owns while holding a valid ignition interlock license.

SB 133 provides that a person may apply for an ignition interlock license following any period of incarceration related to the DUI offense.

SB 133 provides that a person will be unable to obtain a device during the license suspension period resulting from refusal to submit to an alcohol concentration or substance test. However, the person at the time of arraignment may waive judicial review of the suspension after which the court in its discretion may allow the individual to apply for an ignition interlock license. Conversely, if a test is taken, the offender may immediately apply for an ignition interlock license and may receive credit for the number of days the conditional license was held if convicted.

SB 133 provides that a person may apply for an ignition interlock license during any periods of suspension or revocation arising from the same incident, and that the cabinet may issue an ignition interlock license during any period of suspension or revocation arising from the same incident. The person may receive a day-to-day credit toward any ignition interlock requirement for any period the person held a valid ignition interlock license or that the person was prohibited from operating a motor vehicle or motorcycle without a functioning device during any period of suspension or revocation arising from the same incident.

SB 133 requires the applicant to pay the cost of leasing or buying the device as well as installing, servicing, and maintaining the device. All persons applying for an ignition interlock license shall pay a nonrefundable application fee to the cabinet not to exceed \$200.

SB 133 increases the period of license revocation for the first DUI offense within a five year period to a period of not less than six months or more than nine months. Revocation periods for subsequent DUI offenses within a five year period remain the same.

SB 133 SCS retains the major provisions of the measure as introduced and makes the following changes in the bill:

SB 133 SCS expands the definitions to include *“Ignition Interlock Certification of Installation”* as proof that the installed device is certified for use in Kentucky and *“Device Provider”* as any entity engaged in the manufacturing, selling, leasing, servicing, or monitoring devices within Kentucky.

SB 133 SCS provides that no person shall **start or operate** a motor vehicle or motorcycle without a functioning device if prohibited to do so. A first offense violation will be guilty of a Class B misdemeanor. A second or subsequent offense will be guilty of a Class A misdemeanor.

SB 133 SCS provides that no person shall knowingly install or direct to be installed a defective device or tamper with an installed device with the intent to render it defective. A first offense

violation will be guilty of a Class B misdemeanor. A second or subsequent offense will be guilty of a Class A misdemeanor and be prohibited from installing or directing others in the installation of devices.

SB 133 SCS provides that a person must wait thirty days from the date of issuance of an ignition interlock license before using an employer's vehicle NOT equipped with a device for a first offense; twelve months for a second or subsequent offense.

SB 133 SCS provides that no one shall be granted permission to operate motor vehicles or motorcycles equipped with devices unless proof of issuance is provided, the operator has applied for an ignition interlock license, and a certificate of installation is provided.

SB 133 SCS provides that an installed device shall be serviced within the first thirty days of installation and every sixty days thereafter. Only if these requirements are met for the person's personal vehicle will the person be allowed to use an employer's vehicle not equipped with a device.

SB 133 SCS provides that the court shall forward to the cabinet its court order and information that the person may only operate motor vehicles or motorcycles equipped with a functioning device, and if the person may drive an employer's vehicle not equipped with a device, the license shall indicate the exception.

SB 133 SCS creates a new section of KRS Chapter 189A which provides the cabinet to issue all necessary forms to implement ignition interlock licenses; create a uniform certificate of application, create an ignition interlock license, certify devices for use in Kentucky, include on the cabinet's web site a list of certified device providers, and promulgate regulations.

SB 133 SCS provides that in bidding for the contract to provide and service devices, the bidder take into account not all persons will be able to pay the full cost as determined by the court authorizing the device. Furthermore, the provider may not increase the cost of the device during the contract duration.

SB 133 SCS provides that the provider electronically transmit reports on driving activity within 7 days of servicing a device to the respective court, prosecuting attorney, and defendant.

SB 133 SCS provides the provider shall ensure continuous monitoring if the provider leaves the state. The provider shall also provide a minimum 45 days notice of any material change to the device or the installation, servicing, or monitoring or the device capabilities of the vendor.

SB 133 SCS provides that the provider have and maintain vendor's public liability and property damage insurance. The provider shall hold harmless any state or local government or officer / employee thereof from all claims, demands, and action resulting from damage or injury to persons or property arising from the installation, service, repair, use, or removal of a device.

SB 133 SCS provides that a warning label be affixed to each device upon installation containing a warning that any person tampering, circumventing, or misusing the device commits a violation.

A first offense violation will be guilty of a Class B misdemeanor. A second or subsequent offense will be guilty of a Class A misdemeanor.

SB 133 SCS provides that a provider will remove a device without cost if the device is found defective.

SB 133 SCS removes the following proposed language as originally introduced:

SB 133 SCS removes the proposed language that would increase the period of license revocation for the first DUI offense within a five year period to a period of not less than six months or more than nine months. It shall remain at not less than thirty days or more than 120 days for a first offense.

Part III: Fiscal Explanation, Bill Provisions, and Estimated Cost

The fiscal impact of SB 133 SCS on local government is expected to be minimal.

All cost to install and maintain the device will be paid by the applicant. The device is optional and the court may establish a payment schedule for the applicant. The cost involved to install and maintain might be a hardship on some applicants. Given that, this might be construed as a means of giving financially secure applicants the means to drive if convicted of a DUI. Those convicted of a DUI, but not as financially secure, may not be able to apply for an ignition interlock license. Typically, the installation costs are around \$50 to \$200. Monthly rental and monitoring fees range from \$50 to \$100. The device will normally need to be checked and calibrated every 60 days. Current law provides for an application cost not to exceed the actual cost of issuing the device up to \$200.

Any fees currently retained by local agencies will not be affected. Beyond increasing the license revocation period for first time offenders, there are no further changes to penalties for not abiding by the requirements of the device or the corresponding license.

A person convicted of a Class B misdemeanor may be incarcerated for up to 90 days. A person convicted of a Class A misdemeanor may be incarcerated for up to one year. Misdemeanants are housed in one of Kentucky's 78 full service jails or five life safety jails. While the expense of housing inmates varies by jail, each additional inmate increases facility costs by an estimated average of \$31.34 per day. While the majority of misdemeanor defendants are granted bail, those who do not will also cost local jails an average of \$31.34 per day.

Data Source(s): <http://www.ignitioninterlockdevice.org/installationexpense.html>, LRC Staff.

Preparer: Wendell F. Butler **Reviewer:** MCY **Date:** 3/3/15