

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

House Bill 393

(Delegate Niemann)

Judiciary

**Vehicle Laws - Driving While License Refused, Suspended, Canceled, or Revoked
- Penalty**

This bill establishes a uniform judicial penalty for the offenses of driving while the license is refused, suspended, canceled, or revoked. The new penalty reduces the maximum incarceration penalties associated with certain of these violations, reduces the maximum fine for certain first offenses but increases the maximum fine for certain other offenses, and establishes a uniform standard for assessment of points on a violator's driving record. The bill also removes from the list of those who may participate in the Ignition Interlock System Program individuals whose license is suspended or revoked due to an accumulation of points for driving while impaired by alcohol or while impaired by a drug, combination of drugs, or a combination of one or more drugs and alcohol, or driving within 12 hours after arrest for one of these offenses.

Fiscal Summary

State Effect: Transportation Trust Fund (TTF) expenditures may decrease beginning in FY 2014 due to a potentially significant reduction in the number of participants in the Ignition Interlock System Program and due to fewer driver's license suspension and revocation hearings at the Office of Administrative Hearings (OAH). General fund expenditures decrease minimally for the Department of Public Safety and Correctional Services due to a lessening in the severity of the incarceration penalty for many offenses under the bill. General fund revenues decrease minimally due to collection by OAH of fewer fees associated with driver's license suspension and revocation hearings; however, this decrease in revenues may be offset by an increase in the maximum allowable fine for certain offenses under the bill. TTF revenues decrease minimally beginning in FY 2014 due to the collection by the Motor Vehicle Administration (MVA) of fewer driver's license renewal and reinstatement fees as a result of fewer license suspensions and

revocations caused by the bill's reduction in the number of points that may be assessed for certain violations.

Local Effect: Local expenditures decrease minimally as a result of the bill's lessening of the current incarceration penalty for many offenses.

Small Business Effect: None.

Analysis

Bill Summary: A person who is convicted of driving while the license is refused, suspended, canceled, or revoked is subject to maximum penalties of a \$500 fine and/or two-month imprisonment for a first offense. For a second offense, a violator is subject to maximum penalties of a \$1,000 fine and/or 90-day imprisonment. For a third or subsequent offense, a violator is subject to maximum penalties of a \$2,000 fine and/or one-year imprisonment. A conviction also results in a uniform assessment of three points on the driver's record, rather than the current tiered assessment of three points for certain offenses and 12 points for most other offenses.

In any prosecution for these offenses, the introduction of official MVA records showing that notice of the refusal, suspension, cancellation, or revocation of the defendant's license or driving privilege was sent to the last known address of the defendant is *prima facie* evidence that the defendant knew or had reason to know that the license or privilege to drive had been refused, suspended, canceled, or revoked in Maryland or any other state. The introduction of MVA records may not limit the introduction of other evidence of whether the defendant knew, or had reason to know, that the driving license or privilege had been refused, suspended, canceled, or revoked.

Current Law: A person may not drive a motor vehicle on a highway while the person's license or privilege to drive is refused, suspended, canceled, or revoked in Maryland or another state. A violation is a misdemeanor and the violator is subject to maximum penalties of \$1,000 and/or one-year imprisonment for a first offense. For any subsequent offense, the violator is subject to maximum penalties of a fine of \$1,000 and/or two-year imprisonment. If the license is suspended due to lapse of required security, noncompliance with a traffic citation issued under State or federal law, or nonpayment of a fine, however, the violation is a misdemeanor with maximum penalties of a \$500 fine and/or two-month imprisonment.

For driving after a license has been refused, suspended, canceled, or revoked (except for certain types of suspensions), MVA is required to assess 12 points against the license. MVA must revoke a license that has accumulated 12 points. For driving after suspension

of a license due to a lapse in required security, noncompliance with traffic citations issued under State or federal law, or nonpayment of a fine, MVA is required to assess three points against the driver's license. MVA sends a warning letter to any driver who accumulates three points in a two-year period.

A driver must participate in the Ignition Interlock System Program as a condition of modification of a license suspension or revocation of a license or the issuance of a restrictive license if the driver:

- is required to participate by a court order;
- is convicted of driving while under the influence of alcohol or under the influence of alcohol *per se* and had a blood alcohol concentration at the time of testing of 0.15 or greater;
- is convicted of driving while under the influence of alcohol, under the influence of alcohol *per se*, or while impaired by alcohol *and* within the preceding five years was convicted of any specified alcohol- and/or drug-related driving offense; or
- was younger than age 21 and violated the alcohol restriction imposed on the driver's license or committed the specified alcohol-related driving offense.

Background: The U.S. District Court for the District of Maryland has ruled, in *United States v. Haynesworth* 743 F. Supp. 388 (D. Md. 1990) that a person driving on a suspended license, who was already aware that he had been found criminally responsible, may not avoid administrative sanctions by claiming that he had never received actual notification of the imposition of administrative sanctions. Sufficient grounds existed for his conviction because he knowingly drove in Maryland without a valid Maryland driver's license. The Maryland Court of Special Appeals ruled in *McCallum v. State*, 81 Md. App. 403 (1990) that *mens rea*, that is, an intent to do the prohibited act, is an element of the crime of driving while a license is suspended. Later, in *Rice v. State*, 136 Md. App. 593 (2001), the Court of Special Appeals ruled that, while knowledge of the suspension is required to support a conviction of driving with a suspended license, the required knowledge can be manifested by deliberate ignorance, as well as by actual notice.

State Fiscal Effect: The bill removes from participation in the Ignition Interlock System Program a substantial number of individuals whose license is revoked due to an accumulation of points for driving while impaired by alcohol or while impaired by a drug, combination of drugs, or a combination of one or more drugs and alcohol, or driving within 12 hours after arrest for one of these offenses. According to District Court data, in fiscal 2012 alone, 3,367 individuals were found guilty of the provisions repealed by the bill. Therefore, some of these individuals no longer participate in the program under the bill. MVA advises that each customer agent can handle the workload

associated with about 1,000 participants. Thus, MVA may eliminate or divert significant resources, including one or more customer agent positions currently within the program, potentially resulting in significant TTF savings. TTF expenditures may also decrease to the extent the bill results in fewer administrative hearings; MVA budgets about \$100 per hearing.

TTF revenues may decrease to a lesser extent due to a decline in the collection of driver's license renewal and reinstatement fees as the bill's reduction in points assessed for certain violations results in fewer driver's license suspensions and revocations. A reliable estimate of this decline cannot be made as it is unknown how many points each person has on their license when convicted of driving with a suspended, revoked, or canceled license under the bill. However, there were over 73,000 such offenses charged in fiscal 2012, and MVA advised that, in calendar 2009, there were 1,593 convictions that resulted in the imposition of 12 points. The magnitude of the loss in license renewal and reinstatement fees is not likely to exceed \$100,000.

General fund expenditures decrease minimally as the bill lessens the severity of the current incarceration penalty for driving while a license is suspended, canceled, or revoked. Assuming violators are incarcerated for fewer days under the bill, expenditures of the Department of Public Safety and Correctional Services decrease to support those incarcerated in Baltimore City. Generally, persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to a local detention facility. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

General fund revenues may decrease minimally as the bill results in fewer driver's license suspension and revocation hearings, and fewer hearings pertaining to alcohol-related Ignition Interlock System Program participation; OAH charges individuals a \$150 filing fee and MVA budgets \$100 for each hearing conducted by OAH. This decrease may be offset to the extent higher fines are imposed for repeat offenders. Any such impact cannot be reliably estimated, particularly since the fine for a first offense is reduced under the bill.

Local Expenditures: Expenditures decrease as a result of the bill's lessening of the severity of current incarceration penalties. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years.

Additional Information

Prior Introductions: HB 806 of 2011 received an unfavorable report from the House Judiciary Committee. A similar bill, HB 1204 of 2010, received an unfavorable report from the House Judiciary Committee. Bills with similar provisions (except for those relating to the Ignition Interlock System Program) have been considered in recent legislative sessions. HB 1335 of 2009 was heard by the House Judiciary Committee, but no further action was taken. HB 1078 of 2004 passed the House with amendments, was heard by the Senate Judicial Proceedings Committee, but no further action was taken. HB 664 of 2003 passed the House with amendments but received an unfavorable report from the Senate Judicial Proceedings Committee.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Office of Administrative Hearings, Maryland Department of Transportation, Department of Legislative Services

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