

Department of Legislative Services
 Maryland General Assembly
 2001 Session

FISCAL NOTE
 Revised

House Bill 3 (Delegate D. Davis, *et al.*)
 Judiciary

Judicial Proceedings

Alcohol Concentration - "0.08"

This bill reduces the alcohol concentration level needed to determine a violation of driving under the influence of alcohol or under the influence of alcohol per se from 0.10 grams to 0.08 grams of alcohol per 100 millimeters of blood, or per 210 liters of breath at the time of testing.

The bill is effective September 30, 2001.

Fiscal Summary

State Effect: Transportation Trust Fund (TTF) expenditures would increase by \$115,600 in FY 2002. Future years reflect inflation and new and ongoing personnel expenses. Estimates are exclusive of potentially significant costs for administrative hearings, Medical Advisory Review statements, and computer programming. TTF revenues could also increase. General fund revenues and expenditures could increase depending upon the increase in fines and convictions. Significant increase in federal fund revenue beginning in FY 2001 (perhaps as much as \$3.1 million).

(in dollars)	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
GF Revenue	-	-	-	-	-
SF Revenue	-	-	-	-	-
FF Revenue	1,800,000	1,800,000	0	0	0
GF Expenditure	-	-	-	-	-
SF Expenditure	115,600	207,400	220,500	232,100	244,700
Net Effect	\$1,684,400	\$1,592,600	(\$220,500)	(\$232,100)	(\$244,700)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Revenues and expenditures could increase depending on the number of additional fines and convictions imposed.

Small Business Effect: None.

Analysis

Bill Summary: The bill reduces to 0.08 the blood alcohol concentration (BAC) required for a determination of the “per se” crimes of: (1) homicide by motor vehicle or vessel while under the influence of alcohol; and (2) causing life-threatening injury by motor vehicle or vessel while under the influence of alcohol. The bill also reduces to .08 the BAC that creates a presumption of drunk or drugged boating.

The bill also alters the terms used for alcohol related driving offenses. “Driving under the influence of alcohol or influence of alcohol per se” replaces the existing standard of “driving while intoxicated or intoxicated per se.” Similarly, the term “driving while impaired” replaces “driving under the influence” of alcohol, drugs, or a controlled dangerous substance. The new terms include in their meanings all conduct prohibited by current law.

Additionally, the bill provides for the admissibility of evidence of the amount of alcohol in a person’s breath or blood and the evidentiary effects in juvenile and civil proceedings.

This bill is to be construed to conform to the requirements of the federal government in order for the State to obtain full incentive grant funding under the federal Transportation Equity Act for the 21st Century. The bill applies prospectively only to offenses committed on or after the effective date.

Current Law: Maryland’s drunk driving laws establish a two-tiered system of violations: a person may be convicted of driving while intoxicated per se or under the influence of alcohol, depending on the person’s blood alcohol content. A driver with a BAC of 0.10 and above is “intoxicated per se.” A driver with a BAC of at least 0.07 but less than 0.10 is presumptively considered “under the influence.” There is no presumption that a driver was or was not intoxicated or under the influence if the driver has a BAC of more than 0.05 but less than 0.07, but the BAC may be considered with other competent evidence in determining whether the driver was intoxicated or under the influence.

Background: In fiscal 2000, there were 38,463 cases involving drunk driving violations, including 4,660 convictions for driving while intoxicated and 4,433 convictions for driving while under the influence. The Division of Correction reports that 208 individuals are imprisoned in State facilities for such violations, serving an average sentence of 12 months. Statistics on the number of individuals in local detention facilities are not readily available at this time.

In 1999 the U.S. General Accounting Office (GAO) released a report on the effectiveness of state 0.08 blood alcohol laws. The report stated that passing a 0.08 BAC standard would not conclusively lower drunk driving fatalities or incidents. The report concluded that there are strong indications that 0.08 BAC laws in combination with other drunk driving laws (particularly license revocation laws), sustained public education and information efforts, and vigorous and consistent enforcement can save lives. According to the GAO, the number of lives saved is dependent on the degree to which the law is publicized, how well it is enforced, other drunk driving laws in effect, and public attitudes concerning alcohol.

In 2000 the federal National Highway Traffic Safety Administration released a report that concluded that far more alcohol-related driving fatalities are caused by drivers with a BAC in excess of .20 than by drivers with a BAC level from .08 to .10.

State Revenues:

Federal Funds

The bill affects two components of federal transportation funds; the Transportation Equity Act for the 21st Century (TEA-21) and Section 163(a) penalties.

The TEA-21 established a new program of incentive grants for states that adopt a .08 BAC level as the legal standard for a drunk driving offense. TEA-21 provides \$500 million in incentive grants over the six-year program period beginning in fiscal 1998. The incentive grant is based upon the proportion of funds allocated to each eligible state under the federal State and Community Safety Grant Program. Grants under this program are disbursed based on a formula of each state’s population and road miles.

Currently, 18 states have enacted and are enforcing a .08 BAC level as the legal standard for driving while intoxicated. Exhibit 1 details Maryland’s share of the incentive program since the program’s inception should Maryland become the 19th state to adopt the .08 standard.

Exhibit 1

**Maryland’s Projected Share of TEA-21 Incentive Grants
With 19 States Complying
(in millions)**

1998	1999	2000	2001	2002	2003
\$1.9	\$2.2	\$2.8	\$3.1	\$3.5	\$3.8

These estimates are based on only 19 states complying with the federal standard. As additional states adopt the new standard, Maryland’s share of the program would

decrease. If all states were to comply, Maryland's grant would simply be 2% of the total available funding, or \$1.8 million in fiscal 2001.

Maryland has forgone the grant for 1998, 1999, and 2000. However, because this bill becomes effective prior to the end of federal fiscal 2001, Maryland would be eligible for the grants beginning in 2001.

The TEA-21 program sunsets at the end of federal fiscal 2003; it is not known if it will be re-authorized.

Federal funds would also be affected by a provision in the recently enacted federal transportation appropriations bill commonly referred to as Section 163(a). It requires the Federal Highway Administration of the U.S. Department of Transportation to withhold a certain percentage of federal highway funds from any state that fails to enact a .08 BAC level as the legal standard for a drunk driving offense. The penalty provision, which is progressive, is effective for federal fiscal year 2004. Exhibit 2 shows the amount of federal funding that Maryland stands to lose under Section 163(a). Maryland currently receives approximately \$260.3 million annually in federal highway funding.

Exhibit 2
Potential Penalties Under Section 163(a)

<u>Federal Fiscal Year</u>	<u>Penalty Percentage</u>	<u>Dollar Amount</u>
2004	2.0%	\$5.2 million
2005	4.0%	\$10.4 million
2006	6.0%	\$15.6 million
2007	8.0%	\$20.8 million

It is expected that the 8% penalty will continue in the out-years.

The Section 163(a) program contains a provision that allows a state to receive, upon enactment of a .08 BAC standard, all withheld money up to four years prior to the .08 BAC enactment.

Special Funds

The bill is expected to increase the number of driver's license suspensions and revocations. For a revocation, the Motor Vehicle Administration (MVA) collects a \$15 filing fee for an application to reinstate a license plus \$60 for the reinstatement on an alcohol or drug-related driving offense. An additional \$30 fee is assessed to produce the new license. Further, the MVA imposes a fee of \$20 to reissue a license after an alcohol or drug-related suspension. TTF revenues could increase in future years depending upon the number of reinstatements.

General Funds

The bill will increase the number of individuals charged with driving while intoxicated. General fund revenues could increase under the monetary penalty provision for those cases heard in the District Court, depending upon the number of convictions and fines imposed. Furthermore, it is expected that the bill will significantly increase the requests for administrative hearings. The Office of Administrative Hearings imposes a \$15 fee for each case.

State Expenditures: In fiscal 2000, the MVA processed 3,550 suspensions for individuals convicted of driving while under the influence and who fell into the BAC range of .08 to .10. Under the bill these individuals would be subject to the stricter penalties imposed on those convicted of driving while intoxicated, including a revocation of driving privileges.

Accordingly, TTF expenditures could increase by an estimated \$115,626 in fiscal 2002, which accounts for a 90-day start-up delay. This estimate reflects the cost of hiring one customer service representative, two administrative specialists, and one docket specialist. These employees will be responsible for a variety of duties including processing revocations, preparing cases for administrative hearings, and preparing files for presentation to the Medical Advisory Review Board. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Salaries and Fringe Benefits	\$51,469
One-time Expenses	27,760
Operating Expenses	<u>36,397</u>
Total FY 2002 TTF Expenditures	\$115,626

Because there will be an increase in revocations beginning with the effective date of this bill, the number of applications for license reinstatements will increase in the future. Based on the current volume of such requests and the anticipated increase, it is expected that the MVA will require two additional employees, one administrative specialist, and one clerk to process reinstatement applications beginning in fiscal 2003. The expense for the three employees, including salaries, fringe benefits, and operating expenses, would be \$109,960 in fiscal 2003.

Future year expenditures reflect: (1) full salaries with a 6.5% increase for fiscal 2003 and a 4.5% annual increase thereafter, with 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

It costs the MVA approximately \$92 in reimbursable funds to the Office of Administrative Hearings for each MVA hearing. It is expected that this bill will significantly increase the number of hearings requested, although the number of

additional hearings that may be held to contest license suspensions and revocations is uncertain. To the extent that individuals with suspended and revoked licenses request hearings, TTF expenditures could increase. Similarly, all reinstatements concerning alcohol-related offenses must be reviewed by the Medical Advisory Review Board. It costs the MVA \$100 for each hour of the board's service. On average, each reinstatement case needs 30 minutes to process. Depending on the number of reinstatements, TTF expenditures could increase.

The MVA advises that computer programming expenditures in fiscal 2002 could increase by an estimated \$10,000 to modify its computer programs. The Department of Legislative Services (DLS) advises that if other legislation is passed requiring computer reprogramming changes, economies of scale could be realized. This would reduce computer programming costs associated with this bill and other legislation affecting the MVA system. Further, DLS advises that the increased computer expenditure is simply an estimate and the MVA may be able to handle the changes either with less money than it estimates or with existing resources.

The bill will increase the number of individuals charged with driving while intoxicated. General fund expenditures could increase minimally due to more people being committed to a Division of Correction facility and increased payments to counties for reimbursement of inmate costs.

Local Revenues: Revenues could increase minimally under the monetary penalty provision for those cases heard in the circuit courts.

Local Expenditures: Expenditures could increase due to a greater number of individuals being charged with drunk driving. Counties pay the full cost of incarceration for people in their facilities for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$17 to \$77 per inmate in fiscal 2002.

Additional Information

Prior Introductions: This bill was introduced in the 1999 session as SB 255 and in the 2000 session as SB 568. Both received unfavorable reports from the Senate Judicial Proceedings Committee.

Cross File: None.

Information Source(s): Maryland Department of Transportation (Motor Vehicle Administration, State Highway Administration), Judiciary (The District Court), Office of Administrative Hearings, Department of Public Safety and Correctional Services

(Division of Correction), National Conference of State Legislatures, National Highway Traffic Safety Administration, Department of Legislative Services

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