

Department of Legislative Services
Maryland General Assembly
2002 Session

FISCAL NOTE
Revised

Senate Bill 21

(Senator Forehand, *et al.*)

Judicial Proceedings

Judiciary

Alcoholic Beverage Consumption or Possession of Open or Unsealed Container

This bill prohibits an occupant of a motor vehicle from possessing an open container containing an alcoholic beverage or consuming an alcoholic beverage in the passenger area of a motor vehicle driven, stopped, standing, or otherwise located on a highway in the State.

The bill is effective September 30, 2002.

Fiscal Summary

State Effect: General fund revenues could increase minimally from the fine applicable to this offense. Enforcement could be handled with existing resources. The bill could prevent the reallocation of \$7 million in federal funds from highway construction projects to safety and drunk driving enforcement programs.

Local Effect: Enforcement by local law enforcement agencies could be handled within existing resources.

Small Business Effect: None.

Analysis

Bill Summary: The bill's provisions for drivers and other vehicle occupants apply throughout the entire State, notwithstanding local authority to regulate possession and consumption of alcoholic beverages. A violation for a vehicle occupant other than the driver is a civil offense, subject to a maximum fine of \$25, which may be charged as a

civil citation by a police officer. The bill establishes procedures for prepayment of fines and District Court trial procedures to challenge the citation.

“Open container” means a bottle, can, or other receptacle that is open, has a broken seal, or from which the contents are partially removed. “Passenger area” means an area designed to seat the driver and any passenger of a motor vehicle while it is in operation or an area readily accessible to the driver or passenger while in their seating positions. The passenger area does not include a locked glove compartment, a vehicle trunk, or the area behind the rearmost upright seat if the vehicle has no trunk. The provisions do not apply to a passenger occupant who is in a bus, taxicab, limousine or other vehicle for hire, nor do they apply to a passenger in the living quarters of a motor home, motor coach, or recreational vehicle.

The bill is to be construed to conform to the federal law that encourages states to enact and enforce open container laws.

Current Law: A person may not consume an alcoholic beverage while driving a motor vehicle on a highway of the State. A violator is guilty of a misdemeanor and is subject to a fine not exceeding \$500. It is not unlawful for a passenger in a motor vehicle to possess an open alcoholic beverage container or consume an alcoholic beverage. Additionally, 11 counties in the State have statutory authority to regulate possession or consumption of alcoholic beverages on any highway.

State Fiscal Effect: At the start of federal fiscal 2003 (October 1, 2002) and each year thereafter, the federal government will require the annual transfer of 3% of federal highway funds from State highway construction projects to safety enhancement and drunk driving prevention programs for states that do not meet certain requirements (see Background section). It is believed that the enactment of this bill would prevent approximately \$7 million in federal funds from being transferred from State highway construction projects to safety programs on October 1, 2002. The total amount of federal highway funds accruing to the State are not affected.

Background:

Federal Open Container Requirements: As part of the Transportation Equity Act for the 21st Century (TEA-21), Congress enacted a provision which set standards for the enactment and enforcement of state open container laws. The federal law provides that states must enact and enforce a law that prohibits the possession of any open alcoholic beverage container and the consumption of any alcoholic beverage in the passenger area of any motor vehicle located on a public highway, or public highway right-of-way in the state. To avoid the transfer of any funds in a fiscal year, the state must certify, on or

before September 30 of the previous fiscal year, that it has enacted and is enforcing an open container law that meets federal requirements.

For purposes of the federal law, “open alcoholic beverage container” means any bottle, can, or other receptacle that contains any amount of alcoholic beverage, is open, or has a broken seal or has partially removed contents. “Passenger area” means the area designed to seat the driver while the motor vehicle is in operation and any area readily accessible to a driver or passenger while in seating positions, including the glove compartment.

The federal law provides that a state may exempt from its law the possession of an open alcoholic beverage in a locked glove compartment, behind the last upright seat, or in an area not normally occupied by a driver or passenger in a motor vehicle without a trunk. The federal law also allows a state to exempt from its law the possession of an open alcoholic beverage by a passenger in the passenger area of a vehicle for hire or in the living quarters of a house coach or trailer.

States that did not conform to the federal standards would have to allocate a certain percentage of federal highway funds to their safety programs with a focus on alcohol-impaired driving and drunk driving prevention. The federal law required the transfer of 1.5% of federal highway construction funds to safety programs on October 1, 2000 and October 1, 2001 for nonconforming states.

Maryland and Other States: In Maryland, \$3.5 million in federal funds was transferred in fiscal 2001 (as of October 1, 2000) and in fiscal 2002 (as of October 1, 2001) from highway construction programs to safety programs. The transferred funds were used for hazard elimination, primarily safety modifications to intersections. Total federal highway grants to the State were not affected by the open container provision, but the authorized allocation of federal funds was altered.

According to the “Mothers Against Drunk Driving” legislative database, as of 2001, 34 states and the District of Columbia have enacted and are enforcing legislation that is compliant with TEA-21 open alcoholic container provisions. Sixteen other states, including Maryland, have not enacted the legislation. Besides Maryland, these states are: Alaska, Arkansas, Colorado, Connecticut, Delaware, Indiana, Louisiana, Mississippi, Missouri, Montana, Tennessee, Vermont, Virginia, West Virginia, and Wyoming. According to the National Conference of State Legislatures and the National Highway Traffic Safety Administration, states that are currently considering enactment of conforming legislation, in addition to Maryland, are: Colorado, Mississippi, Missouri, and Virginia.

Additional Information

Prior Introductions: Similar bills were introduced in the 2001 session. SB 179 received an unfavorable report from the Judicial Proceedings Committee. House Bill 777 was substantially similar and received an unfavorable report from the House Judiciary Committee. Similar bills were introduced in the 1999 session as SB 656 and HB 348. SB 656 received an unfavorable report from the Senate Judicial Proceedings Committee and HB 348 received an unfavorable report from the House Judiciary Committee.

Cross File: HB 3 (Delegate Petzold, *et al.*) – Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of State Police, Department of Transportation, Mothers Against Drunk Driving, National Highway Safety Traffic Administration, National Conference of State Legislatures, Department of Legislative Services

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Analysis by: Karen D. Morgan

Direct Inquiries to:
John Rixey, Coordinating Analyst
(410) 946-5510
(301) 970-5510