

Department of Legislative Services
Maryland General Assembly
2001 Session

FISCAL NOTE

Senate Bill 23

(Senator Lawlah)

Judicial Proceedings

Vehicle Laws - Alcoholic Beverages - Open Containers

This bill provides that a person may not keep an open container with an alcoholic beverage in a motor vehicle located on a highway or highway right-of-way in Maryland.

Fiscal Summary

State Effect: General fund revenues would increase minimally from the penalty provision applicable to this offense. Enforcement could be handled with existing resources. Failure to enact conforming legislation will result in 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: This bill provides that a person may not keep an open bottle, can, or other container that contains an alcoholic beverage in the passenger compartment of a motor vehicle on a highway or highway right-of-way in Maryland. The bill provides that "passenger compartment" means the area of a motor vehicle that is readily accessible to an occupant of the motor vehicle and includes a glove compartment or utility compartment in the passenger area. "Passenger compartment" does not include the

vehicle trunk or the cargo area behind the last upright back seat if the vehicle does not have a trunk.

The bill does not prohibit a person from keeping an open container of alcohol in an area other than the passenger compartment of a vehicle. The bill does not prohibit a person, other than the driver, from possessing an open container of an alcoholic beverage in the passenger compartment of a bus, taxi, or other vehicle for hire or the living quarters of a motor home. Containing permanently installed independent life support systems and living quarters with specified facilities such as cooking equipment, toilet facilities, and electricity. The bill provides that the owner of the motor vehicle, if present, or the driver, if the owner is absent, is presumed responsible for any violations if it cannot be determined which occupant is the violator.

A violator is guilty of a misdemeanor and subject to a maximum fine of \$500.

Current Law: A person may not consume an alcoholic beverage while driving a motor vehicle on a highway of this 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 of consumption of alcoholic beverages on any highway.

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.

States that do not conform to the federal standards must 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.

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.

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 (NHTSA), states that are currently considering enactment of conforming legislation, in addition to Maryland, are: Colorado, Mississippi, Missouri, and Virginia.

State Fiscal Effect: As 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. Without enactment of a conforming provision, about \$7 million in federal funds will be transferred from State highway construction projects to safety programs beginning October 1, 2002.

Additional Comments: The Maryland Department of Transportation advises that the authority granted to certain local jurisdictions to regulate possession and consumption of alcoholic beverages may affect the conformance of this bill with federal requirements.

Additional Information

Prior Introductions: Similar bills were introduced in the 2001 session. SB 179 was substantially similar and it received an unfavorable report from the Judicial Proceedings Committee. HB 777 was similar, but exempted a locked glove compartment from the defined passenger area and did not contain the presumption of responsibility provision. It 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 is a similar bill, but it does exempt a locked glove compartment from the passenger area of a vehicle and does not contain the presumption of responsibility provision. It has been referred to the Judiciary Committee. SB 21 is cross-filed with and is identical to HB 3. It has been referred to the Judicial Proceedings Committee.

Information Source(s): 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

Fiscal Note History: First Reader - March 1, 2002
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