

Department of Legislative Services
 Maryland General Assembly
 2002 Session

FISCAL NOTE
Revised

House Bill 4

(Delegate Grosfeld, *et al.*)

Judiciary

Judicial Proceedings

Vehicle Laws - Drunk Driving - Repeat Offenders

This bill requires the Motor Vehicle Administration (MVA) to suspend for one year the driver's license of a person convicted of driving or attempting to drive while under the influence of alcohol or under the influence of alcohol per se more than once within a five-year period.

The bill also requires such repeat offenders to participate in the ignition interlock program for three months to one year after the mandatory one-year suspension as a condition of license restoration or reinstatement, and increases other penalties applicable to such repeat offenses.

The bill's effective date is September 30, 2002.

Fiscal Summary

State Effect: Special fund (Transportation Trust Fund) expenditures would increase by \$25,100 in FY 2003 as a result of the increased modification of drivers' licenses generated by the bill. Out-year expenditures reflect additional personnel, increased hearings generated by the bill, and inflation. General fund expenditures could increase from the bill's alcohol treatment provision if alcohol treatment programs are expanded to specifically serve this population. Increase of \$69,000 in special fund revenues for the MVA fees in FY 2003. Increase in general fund revenues of \$51,800 for additional hearings.

| (in dollars) | FY 2003 | FY 2004 | FY 2005 | FY 2006 | FY 2007 |
|----------------|----------|-------------|-------------|-------------|-------------|
| GF Revenue | \$51,800 | \$69,000 | \$69,000 | \$69,000 | \$69,000 |
| SF Revenue | 69,000 | 92,000 | 92,000 | 92,000 | 92,000 |
| GF Expenditure | - | - | - | - | - |
| SF Expenditure | 25,100 | 640,200 | 616,800 | 630,700 | 645,200 |
| Net Effect | \$95,700 | (\$479,200) | (\$455,800) | (\$469,700) | (\$484,200) |

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

Local Effect: Local expenditures would increase to the extent that the mandatory imprisonment provisions increase the number of inmates in local jails.

Small Business Effect: Meaningful.

Analysis

Bill Summary: The bill sets forth notice, hearing, and other procedural requirements relating to the bill's suspension and ignition interlock requirements. If the MVA finds at a hearing that maintenance of an ignition interlock system on a motor vehicle owned by a person creates a financial hardship on the person, the person's family, or a co-owner of the vehicle, the MVA may exempt the vehicle from the ignition interlock requirement; however, the driver may not be exempted from ignition interlock requirements. After expiration of the suspension period and before installation of ignition interlock, the driver is entitled to request a hearing before installation of the system.

A person convicted of a violation of driving while under the influence of alcohol or under the influence of alcohol per se within five years of a similar prior conviction is subject to a mandatory minimum penalty of imprisonment for 5 days or community service for 30 days. Such an offender must also undergo alcohol abuse assessment and participate in an alcohol program if recommended. A person convicted of a third or subsequent offense within 5 years, is subject to a mandatory minimum penalty of imprisonment for 10 days or community service for 60 days. Imprisonment includes home detention with electronic monitoring.

The MVA is authorized to modify a license suspension and issue a restrictive license or modify an ignition interlock maintenance requirement, or both, if federal law allows a state statute to include that authority. The MVA is required to certify to the General Assembly and the Office of Administrative Hearings (OAH) whether any federal statute enacted or regulation adopted after April 1, 2002 provides such authorization.

Current Law: § 21-902(a) of the Transportation Article provides that:

- (1) A person may not drive or attempt to drive any vehicle while under the influence of alcohol.
- (2) A person may not drive or attempt to drive any vehicle while under the influence of alcohol per se.

A person who is convicted of a violation of § 21-902(a) of the Transportation Article is subject to a maximum fine of \$1,000, or imprisonment for not more than one year, or both, for a first offense. For a second offense, the violator is subject to a maximum fine of \$2,000 or imprisonment for not more than two years, or both. For a third or

subsequent offense, the violator is subject to a maximum fine of \$3,000, imprisonment for not more than three years, or both. Penalties are heightened if the offender was transporting a minor at the time of the offense.

After a conviction of driving while under the influence of alcohol or under the influence per se, 12 points are required to be assessed against the driver's license. With certain exceptions, the MVA is required to issue a notice of revocation to any driver who accumulates 12 points within any two-year period. The notice of revocation also advises the driver of a right to a hearing. In the alternative, the MVA may impose a suspension in lieu of a license revocation for a violation of § 21-902(a) of the Transportation Article, for those drivers who participate in the Ignition Interlock System Program. The MVA may issue a restrictive license for the period of the suspension to a driver who participates in the ignition interlock program.

An individual who is convicted of driving while under the influence of alcohol or under the influence of alcohol per se within 3 years of a prior conviction is subject to a mandatory minimum penalty of imprisonment for not less than 48 consecutive hours or community service for not less than 80 hours.

Background: Provisions in the federal Transportation Equity Act of the 21st Century (TEA-21) condition the use of federal funds for highway construction projects on state enactment of laws that increase sanctions for drivers with repeat intoxicated driving offenses. A state without compliant legislation was required to transfer 1.5% of its federal funding from construction projects to highway safety programs on October 1, 2000 and October 1, 2001. Maryland is one of the states subject to sanctions. During fiscal 2001 and fiscal 2002, \$3.5 million in federal funding was transferred from construction to highway safety projects. In fiscal 2003, as of October 1, 2002, the sanction doubles to 3% and will require Maryland to transfer \$7 million to highway safety projects. Funds transferred in 2000 and 2001 were used for hazard elimination, primarily safety modifications to intersections. Total federal highway grants received in Maryland are not affected by the federal repeat violator sanctions.

TEA-21 establishes, as a minimum penalty that all repeat intoxicated drivers shall:

- receive a driver's license suspension of not less than one year;
- be subject to either:
 - impoundment of each of the driver's motor vehicles during the one year license suspension;
 - immobilization of each of the driver's motor vehicles during the one year license suspension; or
 - installation of a State-approved ignition interlock system on each of the driver's motor vehicles at the conclusion of the one year suspension;

- receive an assessment of their degree of alcohol abuse and treatment as appropriate;
- receive a mandatory sentence of:
 - not less than 5 days imprisonment or 30 days community service for a first offense; and
 - not less than 10 days imprisonment or 60 days of community service for a third or subsequent offense.

States may provide limited exceptions to the impoundment, immobilization, and ignition interlock sanctions to avoid undue hardship on a convicted person's family members, a co-owner, or others completely dependent on the vehicle for necessities, as long as the exceptions do not include the offender. Any exceptions to the vehicle sanctions must be issued in accordance with a state law, regulation, or binding policy directive that clearly states vehicle release conditions to be applied statewide and the exceptional situations that might apply to an offender's vehicle, as long as the repeat intoxicated driver does not gain unrestricted vehicle use.

The federal law applies to the standard drunk driving offense. In Maryland, the standard drunk driving offense is § 21-902 (a) of the Transportation Article. The bill requires the MVA to suspend for one year the license of a person who is convicted for the lesser included offenses (of driving or attempting to drive while impaired by alcohol or while impaired by any combination of drugs and/or alcohol, or while impaired by a controlled dangerous substance) if that person was previously convicted within a five-year period under any provision of § 21-902.

It should be noted that federal regulations (23 CFR 1275.5) provide that for states to avoid transfer of funds in a fiscal year, the state must certify to the U.S. Secretary of Transportation, on or before September 30 of the previous federal fiscal year, that the state has enacted and is enforcing a repeat offender law that meets federal requirements.

According to the organization Mothers Against Drunk Driving, 28 states and the District of Columbia have enacted repeat offender legislation that complies with the requirements of TEA-21. Those states include Pennsylvania and New Jersey. Twenty-one states have not enacted compliant repeat offender legislation. In addition to Maryland, those states include Delaware and Virginia.

State Revenues: Transportation Trust Fund revenues could increase by \$69,000 in fiscal 2003, based on an estimated 4,600 repeat offenders. The MVA charges \$20 for reissuance of a license after a suspension. Future years reflect annualization and a stable caseload.

General fund revenues could increase by \$51,750. OAH charges a \$15 fee to each person who requests an administrative hearing. Pursuant to this bill, repeat offenders would

have the opportunity to request a hearing before installation of an ignition interlock system. That hearing does not exist under current law. Assuming every eligible person requests a hearing pursuant to this provision, OAH hearings could increase by 4,600 annually and revenues would increase accordingly. Future years reflect annualization and a stable caseload.

State Expenditures: Of the estimated 4,600 people who could be subject to the provisions of this bill, all would likely request a hearing pursuant to the mandatory suspension and before installation of the ignition interlock program. The right to request a hearing pursuant to a license revocation or suspension is already provided under current law. This bill would establish new hearings pursuant to installation of the ignition interlock system. Expenditures would begin in fiscal 2004, after one year suspensions begin to expire. While the MVA is currently required to send notices pursuant to a request for hearing after a license revocation or suspension, notices would also have to be sent for ignition interlock hearings. Mailing costs for fiscal 2004 would increase \$1,313 accounting for the start-up delay.

Total Transportation Trust Fund expenditures in fiscal 2003 could increase by \$25,122, accounting for the bill's September 30, 2002 effective date. The estimate reflects the hiring of one on-call reserve staff member to accommodate increased traffic flow into the MVA offices to modify driver licenses.

Based on records provided by the MVA, it is estimated that the bill would increase the number of participants in the ignition interlock program by 2,800 annually. These participants would be in the program for no more than one year. Currently, there are about 4,800 participants in the ignition interlock program. The MVA employs three individuals to administer the program and monitor participants and service providers.

Based on the anticipated increased participation, which would occur beginning in fiscal 2004, the MVA would require 1.5 executive positions for administration and monitoring. Also, the MVA requires two customer service agents to process additional hearing requests for the ignition interlock system. Personnel costs in fiscal 2004 would total \$178,505 for salaries and fringe benefits. The MVA is required to pay \$92 to OAH for each administrative hearing. Pursuant to the hearings before installation of the ignition interlock system, the MVA could incur \$423,200 in special fund expenditures beginning in fiscal 2004. Total personnel and hearing costs in fiscal 2004 could be \$640,200. Future year expenditures reflect: (1) full salaries with 3.5% increases and 3% employee turnover; and (2) 1% annual increases in mailing costs for repeat offenders.

The estimate assumes that the MVA would conduct the monitoring functions relating to the Ignition Interlock Program, as opposed to the Division of Parole and Probation of the Department of Public Safety and Correctional Services.

The MVA advises that computer programming expenditures could increase by an estimated \$200,000 to modify computer programs to extract unique records, maintain case histories, and track violations. The Department of Legislative Services (DLS) advises that if other legislation is passed requiring computer reprogramming, 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 an estimate and that the MVA may be able to handle the changes with less money than it estimates.

The bill contains no provisions that designate which entity is responsible for funding any alcohol treatment that may be recommended. The Department of Health and Mental Hygiene (DHMH) pays for most in-patient alcohol treatments, but driving while under the influence of alcohol education classes are self-pay. The bill is silent on how courts may view any alcohol treatment a violator may voluntarily complete before trial. It is common practice for a person to complete such treatment before trial. If these treatments meet the recommendations of DHMH, then that could affect any potential State expenditures.

Local Fiscal Effect: Expenditures could increase to the extent that the mandatory imprisonment provisions increase the number of inmates in local jails.

Court-ordered alcohol assessments would be conducted by county health departments and could be handled within existing resources.

Small Business Effect: The bill would significantly increase the number of participants in the ignition interlock system program. Currently, there are four providers approved by the MVA to install and service ignition interlock systems. These providers will experience a meaningful increase in demand for their services. The installation of an ignition interlock costs approximately \$130 to \$150, with monthly services fees of between \$60 and \$70. Additional small businesses could be drawn to the market based on the increase in demand created by the bill.

The bill requires the regular monthly monitoring of mileage of vehicles equipped with ignition interlock. It is assumed that the service providers would be responsible for the monitoring of this data. Any costs associated with this responsibility could be mitigated by an increase in the monthly fee. Further, the bill requires that ignition interlock systems be equipped with a system that periodically tests the driver's blood alcohol level while the vehicle is in use. Current systems conform to this requirement.

Additional Information

Prior Introductions: A similar bill, HB 1048 of the 2001 session, received an unfavorable report from the House Judiciary Committee. Another similar bill, SB 525, passed the Senate with amendments and was referred to the House Judiciary Committee, where it received an unfavorable report.

Cross File: SB 352 (Senator Jimeno, *et al.*) – Judicial Proceedings.

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

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