

**Department of Legislative Services**  
 Maryland General Assembly  
 2002 Session

**FISCAL NOTE**

Senate Bill 638 (Senator Baker)  
 Judicial Proceedings

**Alcohol-Related Driving Offenses - Test Refusal and Increased Alcohol Concentration - Penalties and Restrictions**

This bill requires the Motor Vehicle Administration (MVA) to suspend a person's driver's license or driving privilege for a specified period of time based on an alcohol concentration over 0.15. It increases the period of suspension for a driver's license or driving privilege for an alcohol concentration test refusal and alters the authority of the MVA to modify a suspension or to issue a restrictive license. It also establishes enhanced criminal penalties for driving under the influence of alcohol or alcohol per se with an alcohol concentration over 0.15.

**Fiscal Summary**

**State Effect:** Special fund (Transportation Trust Fund) expenditures increase by \$197,100 in FY 2003 for personnel and hearing costs. Future years reflect annualization, inflation, and an additional position beginning in FY 2004. General fund expenditures increase to the extent that persons incarcerated are required to stay for longer periods. Transportation Trust Fund (TTF) revenues increase by \$140,000 in FY 2003 from fees for processing of license reinstatements and issuance of corrected licenses. Out-years reflect annualization. General fund revenues increase by \$23,400 in FY 2003 from fees charged for administrative hearings. Out-years reflect annualization. Potential additional increase in general fund revenues from monetary penalties.

(in dollars)	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
GF Revenue	\$23,400	\$31,200	\$31,200	\$31,200	\$31,200
SF Revenue	140,000	186,600	186,600	186,600	186,600
GF Expenditure	-	-	-	-	-
SF Expenditure	197,100	286,800	284,000	290,400	297,100
Net Effect	(\$33,700)	(\$69,000)	(\$66,200)	(\$72,600)	(\$79,300)

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

**Local Effect:** None.

**Small Business Effect:** Meaningful.

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## Analysis

### Bill Summary:

#### Administrative License Suspensions for Increased Alcohol Concentration and Test Refusal

This bill creates sanctions for drivers who drive under the influence of alcohol or under the influence of alcohol per se with an alcohol concentration that exceeds 0.15. The bill provides that a person may not be compelled to take a test of blood or breath, when requested by a detaining officer. The person must be advised of administrative sanctions that must be imposed if the person refused to take a test, or was tested and the result indicated a concentration of more than 0.15. For the first offense of a test result indicating an alcohol concentration of more than 0.15 at the time of testing, the MVA must suspend the driver's license, or in case of an unlicensed or nonresident person, the driving privilege, for 180 days. For a second or subsequent offense the driving license or driving privilege must be suspended for one year. For a first offense of test refusal, the driver's license or driving privilege must be suspended for one year. For a second or subsequent offense of test refusal, the driver's license or driving privilege must be suspended for two years.

#### Limitations on the MVA Authority to Modify Sanctions

Subject to specified circumstances, the MVA has limited authority to modify a suspension or issue a restrictive license. If a licensee has refused to take a test, the MVA may issue a restrictive license if the licensee participates in the ignition interlock system program for two years. The bill creates an exemption to the limitation against license suspension for more than one year to include a two-year suspension period for a licensee who fails to take a test. The MVA may issue a restrictive license to an individual who is a participant in the ignition interlock system program in lieu of a license revocation for a violation of driving under the influence of alcohol or driving under the influence of alcohol per se, or for an accumulation of 12 points for a violation of driving under the influence of alcohol or under the influence of alcohol per se. The periods of suspension that apply to a suspension in lieu of license revocation are not more than six months for a first conviction. For a second conviction at least five years after the date of the first conviction, the suspension period may be not more than nine months. For a second

conviction less than five years after the date of the first conviction, or for a third conviction, the suspension period may be not more than 12 months. For a fourth or subsequent conviction, the suspension period may be for not more than 24 months.

Subject to the person's participation in the ignition interlock system program, the MVA may reinstate the driver's license of a participant whose license has been revoked. However, the MVA must impose a suspension that is in accordance with a violation of driving while impaired by alcohol or driving while impaired by drugs or drugs and alcohol, if the license revocation was pursuant to those offenses. For a person whose license has been revoked due to driving while under the influence of alcohol or under the influence of alcohol per se, the MVA must impose a period of suspension on the ignition interlock participant that is in accordance with a violation of driving while under the influence or driving while under the influence of alcohol per se, or the accumulation of points for that offense. For an ignition interlock participant who has refused a test, the MVA must impose the period of suspension that is in accordance with that offense.

#### Enhanced Criminal Penalties For Per Se Offenses Exceeding 0.15

For a first offense of driving while under the influence or driving under the influence of alcohol per se with an alcohol concentration of more than 0.15, the violator is subject to a maximum fine of \$2,000, imprisonment for not more than two years, or both. For a second offense, the violator is subject to a maximum fine of \$3,000, imprisonment for not more than three years, or both. For a third or subsequent offense, the violator is subject to a maximum fine of \$5,000, imprisonment for up to five years, or both. For the purpose of a second or subsequent offender penalty, a prior conviction for a lesser included alcohol- or drug-related driving offense within five years of a conviction for driving under the influence or under the influence per se, shall be considered a conviction of driving under the influence or under the influence per se.

A person who is convicted of driving under the influence or under the influence per se, with an alcohol concentration of more than 0.15, while transporting a minor, for a first offense, is subject to a maximum fine of \$3,000 or imprisonment for up to three years, or both. For a second offense, the person is subject to a maximum fine of \$4,000, or imprisonment for up to four years, or both. For a third or subsequent offense, the person is subject to a maximum fine of \$6,000, or imprisonment for up to six months, or both.

**Current Law:** Current law prohibits a person from driving or attempting to drive any vehicle while under the influence of alcohol or under the influence of alcohol per se (§ 21-902(a) of the Transportation Article). A first offense is punishable with a maximum fine of \$1,000 or imprisonment up to one year, or both. Second and third offense maximum penalties each increase by \$1,000 and an additional year of imprisonment, but

subsequent offenses have a maximum penalty of a fine up to \$3,000 or imprisonment for up to three years, or both.

Additionally, the MVA may revoke the license of any person convicted of a violation of § 21-902(a) or issue a restricted license prohibiting a licensee from driving with alcohol in the licensee's blood.

The administration may suspend for 120 days the license of an individual who, within a three-year period, is convicted of a subsequent violation of driving or attempting to drive a motor vehicle while impaired by drugs or drugs and alcohol. When a suspension of a license expires, the administration is required to immediately return the license or reinstate driving privileges to the driver, unless the license or privilege has been refused, revoked, suspended, or canceled under any other provision of the Maryland Vehicle Law.

After a first revocation of a license, an individual may file an application for reinstatement at any time after the day the revoked license is received by the MVA or the effective date of the revocation. On receipt of the application, the MVA may reinstate the license or privilege six months after the revoked license is received or, in the case of an individual who does not have a State driver's license, six months after the effective date of the revocation. After a second revocation of a license, the individual may file a reinstatement application at any time after one year from the day the revoked license was received by the MVA or one year from the effective date of the revocation.

The suspension period for an accumulation of points for driving or attempting to drive a motor vehicle while impaired by any combination of drugs and/or alcohol is six months for a first conviction and nine months for a second conviction that is more than five years after the first conviction. For a second or third conviction within five years of the first conviction, the suspension is 12 months. For a fourth or subsequent conviction, the suspension is not more than 24 months. However, a habitual offender (i.e., an individual with four or more convictions under § 21-902) may not have a license reinstated unless the individual participates in the ignition interlock system program for at least two years.

A person who drives or attempts to drive a motor vehicle is deemed to have consented to take a test. This applies to a person who is detained by a police officer who had reasonable grounds to believe the person committed an alcohol- or drug-related driving offense. However, a person cannot be compelled to submit to a test or analysis to determine the alcohol or drug concentration of a person's blood or breath unless there is a motor vehicle accident that results in death or a life-threatening injury to another person.

A person who is stopped by a police officer with reasonable grounds to believe that a violation of alcohol- and/or drug-related driving provisions has taken place must detain the person and request that the person permit a test to be taken. The police officer must

advise the person of the administrative sanctions that must be imposed for refusal to take a test and inform the person of notice and hearing procedures. Refusal to take a test is an “administrative per se” offense. An offender’s license or driving privilege must be suspended by the MVA for 120 days for a first offense and one year for a second or subsequent offense. A person operating a commercial vehicle who refuses to take a test for alcohol or drug concentration is subject to more stringent administrative sanctions. No modification of the license suspension is permitted for a refusal unless the driver participates in the ignition interlock system program for at least one year.

If a licensee takes a breath or blood test that indicates an alcohol concentration of 0.08 or more at the time of testing, the MVA must suspend the driver’s license for 45 days for a first offense, and 90 days for a second or subsequent offense. If a licensee refuses to take a test, the MVA shall suspend the driver’s license for 120 days for a first offense and one year for subsequent offenses.

**Background:** According to the organization Mothers Against Drunk Driving and the National Conference of State Legislatures, 21 states, including Virginia and Florida, impose enhanced penalties for drivers who have been tested and have a concentration of alcohol that exceeds 0.15. The District of Columbia and 30 states, including Maryland, Delaware, and Pennsylvania, do not impose enhanced penalties for drivers with alcohol concentrations above 0.15.

**State Revenues:** The MVA would charge \$20 for each alcohol restriction placed on the licenses for ignition interlock program participants. For 1,200 new participants annually, TTF revenues could increase by \$18,000 in fiscal 2003, accounting for the October 1, 2002 effective date. The MVA charges \$75 to reinstate licenses after revocation. The MVA advises that 2,168 new reinstatements would have to be processed annually. The MVA estimates additional revenues of \$121,950 in fiscal 2003, accounting for the October 1, 2002 effective date. Total TTF revenues would be \$139,950 in fiscal 2003. Future year revenues would annualize to \$186,600, assuming no change in ignition interlock caseloads.

The MVA charges a \$15 fee to all individuals who request administrative hearings. The revenues accrue to the general fund. The MVA advises that 2,077 additional hearings could occur annually as a result of this bill. Fiscal 2003 revenues would be \$23,366. Out-year revenues would annualize to \$31,155.

General fund revenues could increase minimally as a result of the bill’s monetary penalties from cases heard in the District Court.

## State Expenditures:

The MVA: The MVA advises there would be a significant workload increase related to administrative hearings, license suspensions, revocations, reinstatements, and ignition interlock system program participation. The MVA currently employs two individuals to process hearing requests related to suspensions and the issuance of restrictive licenses. The MVA anticipates a 25% increase in hearing requests. In 2001, 8,308 individuals refused an alcohol or drug concentration test. If 25% more people request hearings, that would mean an estimated additional 2,077 hearings annually. One customer service agent would be needed to process hearings requests. In addition, the MVA expects additional expenditures for hearings related to license suspension, revocation, and participation in the ignition interlock program. The MVA expenditures for hearings conducted by OAH could increase by \$143,313 in fiscal 2003, accounting for the October 1, 2002 effective date of the bill.

The MVA advises that the number of ignition interlock system program participants could increase by as many as 1,200 people annually. Currently, 4,800 people participate in the ignition interlock program. Three staff members are required to monitor the participants. New people who enter the program will be with the program for two years before rotating out. The MVA will need one additional Department of Transportation executive officer in fiscal 2004 to accommodate the additional workload from ignition interlock participants.

The MVA also anticipates \$13,080 for forms purchase and mailing costs in fiscal 2003, accounting for the October 1, 2002 effective date.

Salary	\$27,664
Hearing Costs	143,313
Other Operating Expenses	<u>26,153</u>
<b>Total FY 2003 Expenditures</b>	<b>\$197,130</b>

Public Safety and Correctional Services: General fund expenditures could increase minimally as a result of the bill's incarceration penalties due to people being committed to Division of Correction (DOC) facilities for longer periods of time. The number of people affected is expected to be minimal.

Generally, persons serving a sentence longer than one year are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$1,850 per month. This bill alone, however, should not create the need for additional

beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including medical care and variable costs) is \$300 per month.

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

State law requires the monthly monitoring of mileage of vehicles equipped with ignition interlock systems. It is assumed that the service providers would be responsible for monitoring this data. Ignition interlock systems are equipped with a system to randomly test the driver's blood alcohol level while the vehicle is in use.

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### **Additional Information**

**Prior Introductions:** SB 474 of the 2001 session contained some provisions of this bill. It was withdrawn after a hearing in the Judicial Proceedings Committee. HB 834 of the 2001 session also contained some similar provisions to this bill. It was withdrawn after a hearing in the Judiciary Committee.

**Cross File:** None.

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

**Fiscal Note History:** First Reader - March 4, 2002  
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