

Department of Legislative Services
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FISCAL AND POLICY NOTE

House Bill 32
Judiciary

(Delegate Arora)

Drunk Driving - Transporting Minor - Ignition Interlock System Program

This bill requires an individual who is convicted of transporting a minor while driving under the influence of alcohol, or under the influence *per se*, to participate in the Ignition Interlock System Program.

Fiscal Summary

State Effect: Minimal increase in Transportation Trust Fund (TTF) revenues due to Ignition Interlock System Program fees and fees assessed for corrected driver's licenses. Minimal increase in general fund revenues and TTF expenditures due to additional administrative hearings. Enforcement can be handled with existing resources.

Local Effect: Enforcement can be handled with existing resources.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: If a driver convicted of the offense of transporting a minor while under the influence of alcohol or under the influence *per se* fails to participate in the Ignition Interlock System Program as required, the Motor Vehicle Administration (MVA) must suspend the individual's license indefinitely until the program is successfully completed. Such a driver must participate in the Ignition Interlock System Program for at least six months, operating under a newly issued restricted license, the first time the requirement is imposed. Mandatory participation periods increase if the requirement is imposed more than one time. A driver who does not initially become a participant may reapply to MVA to become a participant at a later time. If the driver is removed due to

violations of the program's requirements, MVA may allow the driver to reenter the program after a period of 30 days from the date of removal.

A driver who is required to participate in the Ignition Interlock System Program under the bill's provisions is prohibited from driving a motor vehicle without an ignition interlock device, unless otherwise exempt. A violation is a misdemeanor and the offender is subject to maximum penalties of a \$1,000 fine and/or one year imprisonment for the first offense and, for a second or subsequent offense, maximum penalties of a \$1,000 fine and/or two years imprisonment.

Current Law: A person may not drive or attempt to drive any vehicle while:

- under the influence of alcohol or under the influence of alcohol *per se*; or
- impaired by a controlled dangerous substance.

A person may not violate these provisions while transporting a minor. A person convicted of driving while under the influence of alcohol, under the influence of alcohol *per se*, or impaired by a controlled dangerous substance while transporting a minor is subject to (1) for a first offense, maximum penalties of a fine of \$2,000 and/or two years imprisonment; (2) for a second offense, maximum penalties of a fine of \$3,000 and/or three years imprisonment; or (3) for a third or subsequent offense, maximum penalties of a fine of \$4,000 and/or four years imprisonment.

Mandatory Program Participation: A driver must participate in the Ignition Interlock System Program as a condition of modification of a license suspension or revocation of a license or the issuance of a restrictive license if the driver:

- is required to participate by a court order;
- is convicted of driving while under the influence of alcohol or under the influence of alcohol *per se* and had a blood alcohol concentration (BAC) at the time of testing of 0.15 or greater;
- is convicted of driving while under the influence of alcohol, under the influence of alcohol *per se*, or impaired by alcohol *and* within the preceding five years was convicted of any specified alcohol- and/or drug-related driving offense; or
- was younger than age 21 and violated the alcohol restriction imposed on the driver's license or committed the specified alcohol-related driving offense.

A driver who is required to participate in the program must be in the program for six months the first time the requirement is imposed. For the second time, the driver must participate for one year. For the third or any subsequent time the requirement is

imposed, the driver must participate for three years. A court and MVA may also impose a longer participation period in accordance with other Maryland Vehicle Law provisions.

MVA must immediately issue a license to a driver who successfully completes the program and whose license is not otherwise suspended, revoked, refused, or canceled.

Sanctions for Program Participants: A driver who is convicted of driving while under the influence of alcohol or under the influence of alcohol *per se* and had a BAC of 0.15 or greater is subject to a mandatory indefinite license suspension until the driver successfully completes the Ignition Interlock System Program. The other categories of drivers who are mandated to participate in the program (as noted above) are subject to mandatory license suspension for one year if they fail to participate in the program or do not complete it. Periods of mandatory participation must run concurrently for a driver who is subject to participation in the program due to more than one provision of the law.

A driver who is eligible to participate in the program after taking a test of blood or breath with a BAC result of at least 0.08 but less than 0.15, and who is otherwise ineligible for modification of a license suspension or issuance of a restrictive license under existing provisions, has to participate in the program for one year. If the driver does not participate, MVA must suspend the driver's license for the full suspension period otherwise required.

A driver who does not successfully complete the program and is subject to suspension may request a hearing. If the hearing is timely requested, the suspension must be stayed pending the decision at the administrative hearing.

Any driver who is mandated to participate in the program, or who requests ignition interlock program entry and is not otherwise exempt, must not drive a motor vehicle without an ignition interlock device in violation of an ignition interlock system restriction on the participant's driver's license. A person who violates this provision is guilty of a misdemeanor and is subject to maximum penalties of one year imprisonment and/or a \$1,000 fine for a first offense and two years imprisonment and/or a \$1,000 fine for a second or subsequent offense.

Reconsideration of Refusal or Program Reentry: If a driver who is eligible or required to participate in the Ignition Interlock System Program does not initially become a participant, that driver may apply to MVA to become a participant at a later time. MVA may reconsider any suspension or revocation of the driver's license arising out of the same circumstances and allow the driver to participate in the program.

If MVA removes a driver from the program due to violation of the program requirements, MVA may allow the driver to reenter the program after a period of 30 days from the date

of removal. If the driver reenters the program under these circumstances, that driver must participate in the program for the entire period that was initially assigned for successful completion of the program without any credit for participation that occurred before the driver was removed from the program.

Mandatory Warnings: MVA is required to warn a driver, in a notice of proposed suspension or revocation, about the required participation in the Ignition Interlock System Program if the driver is convicted of a subsequent alcohol-related driving offense. MVA must also warn all drivers younger than age 21 at the issuance of their licenses about the required participation in the program for any violation of the driver's alcohol restriction on the license or the commission of any alcohol-related driving offense, as specified. However, a driver may not raise the absence of a warning or the failure to receive a warning as a basis for limiting the authority of MVA to require participation in the Ignition Interlock System Program.

Judicial Sanctions: In addition to any other penalties for driving while (1) under the influence of alcohol; (2) under the influence of alcohol *per se*; or (3) impaired by alcohol or in addition to any other condition of probation, a court may prohibit a person who is either convicted for any of these offenses, or granted probation before judgment, from operating a motor vehicle that is not equipped with an ignition interlock device for up to three years.

Background: The University of Maryland School of Medicine reports that, for the period 2007 to 2011, there were 1,988 motor vehicle occupant fatalities in Maryland. Of these fatalities, the primary cause for 632, or 32%, was impairment by alcohol and/or drugs.

For additional information about the implementation the Ignition Interlock System Program in Maryland and the implementation of similar programs in other states, please see **Appendix – Ignition Interlock System Programs**.

State Fiscal Effect: Any impact on State finances is expected to be minimal as the number of individuals convicted of this offense has ranged from 45 in 2010 to 17 in 2012.

Administrative Hearings: Minimal increase in general fund revenues to the extent that additional people request administrative hearings due to the mandatory ignition interlock participation requirement in the bill. The filing fee for an administrative hearing is \$125. Any increase in hearings can be handled by the Office of Administrative Hearings.

Motor Vehicle Administration: Minimal increase in TTF revenues due to additional fees required for participation in the Ignition Interlock System Program and corrected licenses. The fee to participate in the Ignition Interlock System Program is \$47. A corrected license fee of \$30 is assessed to add a license restriction before program participation and then again to remove the restriction after program participation is completed.

Minimal increase in TTF expenditures for MVA to the extent that additional people request administrative hearings. MVA is required to reimburse the Office of Administrative Hearings \$100 for each hearing related to driver's license suspensions or revocations.

Additional Information

Prior Introductions: HB 608 of 2012, a similar bill, was heard by the House Judiciary Committee, but received no further action.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of State Police, Maryland Department of Transportation, National Conference of State Legislatures, University of Maryland School of Medicine, Department of Legislative Services

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Appendix – Ignition Interlock System Programs

Chapter 557 of 2011 (HB 1276, the Drunk Driving Reduction Act) has increased the number of participants in Maryland's Ignition Interlock System Program. Before enactment of the law, about 8,000 drivers participated in the program annually. Since the law went into effect on October 1, 2011, until the beginning of January 2013, an estimated 4,400 new drivers have started in the ignition interlock program. The Motor Vehicle Administration (MVA) reports that there are about 10,800 active participants in the program at any one time, based on January 2013 data. In fiscal 2012, 3,913 people successfully completed the program and 2,117 people withdrew due to failure to complete program requirements. Participants generally are repeat offenders or offenders who refused a blood alcohol concentration (BAC) test or had a BAC test result of 0.15 or more.

A participant must pay a fee to MVA and, unless exempted due to financial hardship, a fee to an ignition interlock vendor for device installation and maintenance. The fees to vendors are not regulated by MVA. The participant must have the device serviced and data downloaded by the vendor every 30 days. MVA monitors participants through the data reports from the vendors. Violations, such as attempting to start or operate a vehicle with a BAC greater than 0.025, failing to submit to a retest after starting the vehicle, tampering with the interlock device, having another person blow into the device, or operating a vehicle without a device, can result in removal from the program or an extension of the person's required period of participation.

In 2010, MVA altered its regulations to address an initial test failure that may result from transient mouth alcohol from certain foods, medication, or mouthwash. These regulations specify that, if there is a successful retest within five minutes of a failure, the failure is not counted against the driver.

Use of Ignition Interlock in Other States: According to the 2008 final report of the Maryland Task Force to Combat Driving Under the Influence of Drugs and Alcohol, the use of ignition interlock devices has been shown to lead to long-lasting changes in driver behavior and the reduction of recidivism. The task force advised that a minimum of six months of failure-free use is needed to significantly reduce recidivism. The task force reported that Michigan, Pennsylvania, Virginia, and West Virginia have extended required times for ignition interlock use for certain drunk driving violations and, when offenders are required to use ignition interlock devices, recidivism is reduced by at least 60% and as much as 95%.

According to reports from the National Highway Transportation Safety Administration, about 212,000 ignition interlock devices are in use at any one time nationwide.

Electronic advances have made the devices smaller, more accurate, and less prone to tampering.

About 1.5 million drivers are arrested nationwide for alcohol impairment annually. All 50 states and the District of Columbia authorize or mandate the use of an ignition interlock device to deter alcohol-impaired driving. Judges in many of the jurisdictions with ignition interlock systems have the discretion to order installation as part of sentencing for convicted drunk drivers. Fewer than one-half of the states with ignition interlock mandate its use. In states where the use of ignition interlock is mandatory, it is usually required either for repeat offenders, or drivers with a high BAC, and either as a condition of probation or in exchange for limited restoration of driving privileges.

In 2012, lawmakers in at least 30 states and the District of Columbia considered ignition interlock legislation. As the use of these devices has become more widespread, some states have required the use of ignition interlock devices for any standard drunk driving conviction (BAC of 0.08 or higher) – even for first offenses. In 2005, New Mexico became the first state in the country to enact legislation requiring the use of ignition interlock devices for all convicted drunk drivers, including first-time offenders. As of May 2012, 13 other states (Alaska, Arizona, Arkansas, Connecticut, Hawaii, Kansas, Louisiana, Nebraska, New York, Oregon, Utah, Virginia, and Washington) mandate the use of ignition interlock for any drunk driving conviction.