

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

House Bill 430

(Chair, Judiciary Committee)(By Request - Departmental
- Transportation)

Judiciary

Judicial Proceedings

**Criminal Law - Alcoholic Beverages - Consumption and Possession in Motor
Vehicles**

This departmental bill alters the definition of “motor vehicle” to expand the types of motor vehicles for which an occupant is prohibited from consuming or possessing an alcoholic beverage in the passenger area while on a highway. For purposes of the prohibition, “motor vehicle” means a self-propelled vehicle or a vehicle propelled by power obtained from overhead wires and that is not operated on rails. “Motor vehicle” includes a low-speed vehicle, a moped, and a motor scooter.

The bill takes effect July 1, 2013.

Fiscal Summary

State Effect: General fund revenues increase minimally from the fines applicable to this offense. Enforcement can be handled with existing resources. The bill *may* prevent the reallocation of at least \$12 million in federal funds from highway construction projects to safety and drunk driving enforcement programs.

Local Effect: Enforcement of the bill’s requirements can be handled with existing resources.

Small Business Effect: The Maryland Department of Transportation (MDOT) has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services (DLS) concurs with this assessment.

Analysis

Current Law: The following words are defined in State law:

- “Alcoholic beverage” means a spirituous, vinous, malt, or fermented liquor, liquid, or compound that contains at least 0.5% alcohol by volume and is fit for beverage purposes.
- “Highway” means the entire width between the boundary lines of any way or thoroughfare of which any part is used for vehicular travel, whether or not the way or thoroughfare has been dedicated to the public and accepted by any proper authority. It also means the entire width between boundary lines of any way or thoroughfare used for vehicular travel on any property leased, owned, or controlled by the United States government and located in Maryland.
- “Motor vehicle” means a vehicle that is self-propelled or propelled by electric power obtained from overhead electric wires and is not operated on rails. “Motor vehicle” includes a low-speed vehicle, but it does not include a moped or motor scooter.
- “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 that is (1) designed to seat the driver and any passenger of a motor vehicle while it is in operation or (2) readily accessible to the driver or passenger of a motor vehicle while in their seating positions. “Passenger area” does not include a locked glove compartment, the trunk, the area behind the rearmost upright seat, or an area not normally occupied by the driver or passenger.

Under the Transportation Article, a *driver* of a motor vehicle is prohibited from *consuming* an alcoholic beverage in a passenger area of a motor vehicle on a highway. The prohibition applies to a motor vehicle that is driven, stopped, standing, or otherwise located on a highway. A violation is a misdemeanor, and a violator is subject to a maximum fine of \$500. The prepayment penalty established by the District Court is \$530, including court costs.

Under the Criminal Law Article, an *occupant* of a motor vehicle may not *possess* an open container with any amount of alcoholic beverage and a *passenger* occupant may not *consume* an alcoholic beverage in the passenger area of a motor vehicle on a highway. The prohibition does not apply to a passenger in a bus, taxicab, or limousine or a passenger in the living quarters of a motor home, motor coach, or recreational vehicle. A violation is a civil offense, subject to a maximum fine of \$25, which may be charged as a

civil citation by a police officer. Prepayment of the civil fine is \$30, including \$5 in court costs.

The law regarding open containers for drivers and other vehicle occupants applies throughout the entire State, notwithstanding local authority to regulate possession and consumption of alcoholic beverages.

Background: The bill is intended to specifically expand the prohibition against possession of an open container or unlawful consumption of an alcoholic beverage by removing the exemptions for motor scooters and mopeds from the definition of motor vehicle under the Criminal Law Article.

According to data maintained by the District Court, 1,727 citations were issued to drivers in fiscal 2012 for consuming an alcoholic beverage in a motor vehicle. Of those, 914 went to trial, 162 were disposed of with the prepayment penalty, and 651 were open.

MDOT advises that Maryland law does not comply with federal standards in spite of uncodified language that specifies that the law is to be construed to conform to federal law. The discrepancy arises because the Maryland Vehicle Law does not include mopeds and motor scooters in the definition of “motor vehicle.” According to MDOT, federal law, on the other hand, requires that all motor vehicles, including mopeds and motor scooters, be subject to the prohibition against open alcoholic beverage containers.

Federal Actions: The Transportation Equity Act for the 21st Century (TEA-21) established a penalty program to encourage states to enact laws prohibiting the possession and consumption of alcoholic beverages in motor vehicles (open container laws). Federal enactments subsequent to TEA-21, including the most recent, the Moving Ahead for Progress in the 21st Century Act (MAP-21), continue this penalty program. If a state is found to be out of compliance with the federal requirements for its open container law, a specified percentage of the state’s federal-aid apportionment for certain highway programs must be diverted to highway safety programs.

As a result of the enactment of MAP-21, the National Highway Traffic Safety Administration (NHTSA) has been reviewing the compliance of states with regard to open container laws. An initial determination was made by NHTSA that Puerto Rico and 21 states, including Maryland, may have an issue related to federal requirements. For Maryland, the potential issue is the reference to the definition of motor vehicles that specifically excludes mopeds and motor scooters. NHTSA has raised questions about whether the open container prohibition can be enforced against operators of motor scooters and mopeds in Maryland.

If the penalty for noncompliance is imposed on Maryland, then reallocation of certain federal highway funding to safety programs would be required. The amount of potential

reallocation depends on the final apportionment of federal highway funds but could be \$12 million or higher. The reallocation requirement is prospective as of October 1, 2012, however, so Maryland is not subject to any penalties for noncompliance with the federal requirements for open container laws before October 1, 2012.

In 2001 and 2002, Maryland was penalized for not complying with the federal requirement for its open container law. As a result, \$3.5 million in federal funds was transferred each 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. Chapters 108 and 109 of 2002 (SB 21/HB 3) were enacted to conform to the federal requirement.

State Fiscal Effect: As of the start of federal fiscal 2013 (October 1, 2012), the federal government requires the annual transfer 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 for open container laws. MDOT advises that the enactment of this bill would prevent at least \$12 million in federal funds from being diverted to safety programs from State highway construction projects. The total amount of federal highway funds accruing to the State is not affected by the federal penalty provision. However, DLS advises that, as the bill does not make a corresponding change to the definition of “motor vehicle” applicable to the misdemeanor offense for drivers consuming alcoholic beverages in the Transportation Article, the federal funds may still be subject to diversion.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of State Police, Maryland Department of Transportation, National Highway Traffic Safety Administration, Department of Legislative Services

Fiscal Note History: First Reader - February 11, 2013
mc/ljm

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Criminal Law – Open Container – Prohibition Against Possession in Motor Vehicles

BILL NUMBER: HB 430

PREPARED BY: Maryland Department of Transportation

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.