

Department of Finance and Administration

Legislative Impact Statement

Bill: SB130

Bill Subtitle: CONCERNING THE OMNIBUS DWI OR BWI ACT; CONCERNING OPERATION OF A MOTOR VEHICLE OR BOAT UNDER THE INFLUENCE OF MARIJUANA; AND ESTABLISHING A PRESUMPTIVE LEVEL OF INTOXICATION DUE TO MARIJUANA IN A PERSON'S BODILY FLUIDS.

Basic Change :

Sponsor: Senator G. Stubblefield

SB130 amends the offenses of Negligent Homicide, § 5-10-105, and Driving or Boating While Intoxicated, § 5-65-103 ("DWI" or "BWI"), as a result of operating a vehicle, an aircraft, or a watercraft while intoxicated. The bill provides that a person will be presumed to be intoxicated if a chemical test determines the grams of delta-9-tetrahydrocannabinol per milliliter of the person's blood ("THC concentration") is five nanograms (5ng) or more. The bill also states a person is presumed to not be intoxicated if the person's THC concentration is less than two nanograms (2ng). In addition, the bill adds the five nanograms (5ng) THC concentration limit as one of the elements of offense of Battery in the Second Degree, § 5-13-202(a)(3)(B), if the person causes serious physical injury to another person while operating a motor vehicle or motorboat while intoxicated.

Also, the bill adds the THC concentration limit to the DWI and BWI law for purposes of suspension of driving privileges. The bill directs DFA's Office of Driver Services to suspend or revoke the driving privilege of an arrested person if at the administrative hearing the Hearing Officer determines by a preponderance of the evidence that the law enforcement officer had reasonable grounds to believe that the person was driving or in actual control of a motor vehicle if the person's THC concentration was equal or greater than five nanograms (5ng).

Revenue Impact :

None.

Taxpayer Impact :

A driver that operates or is in actual control of a motor vehicle while his or her THC concentration is five nanograms or more will be presumed to be intoxicated.

Resources Required :

None.

Time Required :

Adequate time is provided.

Procedural Changes :

None.

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Other Comments :

None.

Legal Analysis :

SB130 establishes a DWI/BWI level of THC (marijuana) concentration in a person's body that leads to a presumption of intoxication similar to the presumption of intoxication for alcohol being, that is, .08% by weight in a person's breath or blood. SB130 sets a presumption of intoxication for the concentration of five nanograms (5ng) of delta-9-tetrahydrocannabinol per milliliter of blood. In Section 3 of the bill, "THC concentration" is defined in grams per milliliter, yet every other reference in the bill is to nanograms, which may cause confusion.

For purposes of suspension of driving privileges for DWI or BWI, Section 5 of the bill adds the THC concentration presumption to the offense of DWI/BWI – 4th or Subsequent Offense within a five-year period. However, THC concentration is not included in DWI/BWI – 1st, 2nd, and 3rd Offense, which may cause confusion for law enforcement agencies and for the Office of Driver Services for license suspension purposes. See § 5-65-104(a)(1)(A), (a)(1)(B), and (a)(1)(C). This ambiguity may result in a person being found guilty of DWI or BWI – 1st, 2nd, or 3rd Offense by a THC concentration over 5ng, yet if there is no other distinguishable evidence of intoxication, it is possible that the Office of Driver Services would not have the statutory authority to suspend the person's driving privileges. An amendment to Section 5 of the bill would be recommended.