

State Notes

TOPICS OF LEGISLATIVE INTEREST

Fall 2018



Slamming the Brakes on Driver Responsibility Fees **By Joe Carrasco, Jr., Fiscal Analyst**

Fifteen years after enactment of the controversial driver responsibility fees (DRFs) legislation all fees will be repealed on October 1, 2018. Fees for certain minor infractions were eliminated in 2011 under Public Act (PA) 255 of 2011, which is discussed further below; the remaining DRFs will be repealed under a number of recently enacted public acts (PAs 43 through 50 of 2018) on October 1, 2018. Provided below is a brief background of the law, the revenue received from the fees over the years, and a discussion of the public acts that repealed the fees and the effect of those repeals on the State budget.

Background

In August 2003, Michigan enacted PA 165 of 2003 which amended the Michigan Vehicle Code, to assess "driver responsibility fees", in addition to existing court costs and fees associated with infractions. The Act created two types of financial penalties for driving violations. The first type was levied on those who accrued seven or more points on their driving record within a two-year period, and the second type was issued for certain one-time moving violations. The legislation was intended to serve two purposes: deter reckless driving and raise money to support the State budget.

Public Act 165 of 2003 also imposed a \$150 DRF on drivers cited for having no proof of insurance, even if they were insured but did not have their paperwork with them. In 2004, the Legislature amended the Code again to allow drivers assessed a DRF for that offense to have the fee and the ticket waived if they provided the court with proof of insurance before the ticket due date. This legislation also increased the fee to \$200 for drivers who did not provide proof of insurance.

The Fees in Detail

As mentioned above, there are two types of driver responsibility fees: point-related fees and fees for specific serious infractions. Generally, both types are imposed for two years; thus, a \$500 fee results in \$1,000 being paid over two years. The fees are described below.

- If a driver accrues seven or more points, a fee of \$100 is assessed, with an additional \$50 for each additional point. The Secretary of State collects the fee for each year that the driver's point total is at least seven points. Points remain on a driver record for two years; therefore, any accumulation of seven or more points generally results in two years of assessments. However, there are situations in which points from a previous year may drop off of a driver's record; in those situations the DRF would be levied only for one year.
- A fee of \$150, \$200, \$500, or \$1,000 for specific infractions is assessed for two consecutive years in the following situations:
 - \$150 fee for driving without a license or with an expired license.
 - \$200 fee when an individual is driving without insurance or for failing to produce proof of insurance.
 - \$500 fee for more serious infractions, such as driving while impaired by alcohol or a controlled substance, or reckless driving.



- \$1,000 fee (the highest assessed, and imposed for the most serious violations,) for operating while intoxicated, hit-and-run violations, fleeing an officer, or seriously wounding or killing someone through negligent or impaired driving.

As noted below, Public Act 255 of 2011 eliminated the \$50 and \$200 fee categories effective October 1, 2012.

Revenue

During the 16-year period for which data are available, the State levied nearly \$2.0 billion in DRFs but collected just over \$1.2 billion (or 60%) over that time period. The data show the collection rate was in the mid-50% range in the early years and slowly climbed to about an 80% collection rate mainly due to the allowance of payment plan arrangements in the later years. Even so, nearly \$800.0 million in assessed fees will not be collected after October 1, 2018, when all remaining unpaid and outstanding fees will be forgiven.

The majority of the revenue collected from DRFs is deposited into the State's General Fund. Fee revenue also goes to fire prevention programs through the Fire Protection Fund (FPF) created by Public Act 165 of 2003. Money from the FPF is disbursed through grants to local fire prevention programs. In each fiscal year, the FPF receives the first \$8.5 million of DRF revenue collected. Additionally another \$1.0 million is appropriated annually to the Department of State to fund the Breath Alcohol Ignition Interlock Device (BAIID) Program. All other revenue derived from the fees is deposited into the General Fund.

Beginning on October 1, 2018, DRFs no longer will be assessed or collected. The loss in revenue is explained in detail below with the most immediate impact being the elimination of the \$1.0 million for the Department of State and the unavailability of funds for deposit into the Fire Protection Fund pursuant to PA 165 of 2003. The Department of State has indicated that it can absorb the loss of the \$1.0 million in revenue, particularly since the costs of the BAIID Program have declined in recent years.

Because DRFs will be eliminated beginning October 1, 2018, the Michigan Legislature enacted Public Act 248 of 2018. This Act amended the Local Community Stabilization Authority Act to change the distribution of disbursements made by the Local Community Stabilization Authority. Beginning in calendar year 2018, \$13.6 million will be distributed to municipalities for fire protection grants. This money is intended to replace the \$8.5 million in lost revenue to the Fire Protection Fund due to the elimination of DRFs.

Estimating the exact amount of revenue for any given year based on the number of assessments has always been difficult. Because fees are assessed over a two-year period, it is not possible to determine whether a collected fee is for the first or second year of assessment. In addition, fees for previous years also are being collected in any given year; some of the fees collected in a given year may have been assessed as far back as 2004, the initial year of the fees. Therefore, the available data regarding the collection of fees reflect a combination of first-year and second-year assessments, as well as fees assessed in previous years.

Table 1 provides information on the amount of fees assessed and collected for each year since the program's inception through 2016, the last year for which complete data are available. One can see from the table that although assessments have declined, the collection rate averaged just over 60%.



Table 1

Driver Responsibility Fee Assessment and Collection Trends				
Calendar Year	Number Assessed	Assessed Amount	Collections	
			Dollars	Percent of Assessment
2004	263,525	\$92,255,850	\$21,129,270	22.9%
2005	484,775	168,492,600	64,655,317	38.4
2006	546,288	203,655,550	108,951,540	53.5
2007	578,207	225,929,500	120,878,236	53.5
2008	493,089	185,724,600	99,362,661	53.5
2009	421,725	168,822,900	94,540,824	56.0
2010	419,676	166,953,100	93,493,736	56.0
2011	425,373	159,202,500	118,293,193	74.3
2012	404,494	150,166,400	115,541,169	76.9
2013	311,887	131,523,100	100,148,866	76.1
2014	211,893	112,617,550	89,815,009	79.8
2015	194,094	108,702,850	87,347,017	80.4
2016	190,903	107,762,900	86,612,415	80.4
Total to Date	4,945,929	\$1,981,809,400	\$1,200,769,253	60.6%

Source: Michigan Department of Treasury

Partial Repeal - 2011

Public Act 255 of 2011 amended the Michigan Vehicle Code to prohibit the assessment of certain driver responsibility fees. The fees that were eliminated under PA 255 of 2011 included fees for driving without a valid license, failing to produce proof of insurance, and failing to obtain no-fault insurance under the Insurance Code.

The Act prohibited the assessment and collection of the fees for the infractions listed above, effective October 1, 2012. The amount of the fees was \$150 (assessed each year for two consecutive years) for driving without a valid license and \$200 each for failing to produce proof of insurance or failing to obtain no-fault insurance.

Based on current year 2010 data, there were approximately 17,752 violations in 2010 for driving with an expired license, which was subject to a \$150 fee. With a collection rate of 56.0% (as noted in Table 1 above), the revenue from this fee was an estimated \$1.5 million for 2010 for the first year of assessment. There were approximately 8,553 violations for the civil infraction of failing to obtain no-fault insurance, which was subject to a \$200 fee. The 56.0% collection rate yielded approximately \$958,000 in revenue in 2010 for the first year of assessment. Finally, there were approximately 82,676 violations in 2010 for failure to provide proof of insurance, which was subject to a \$200 fee. Again, the collection rate of 56.0% yielded approximately \$9.3 million in revenue for the first year of assessment.

The sum of the loss in revenue for the first-year assessments for the DRFs listed above is an estimated \$11.8 million. At the time, the statute required the assessment of driver responsibility fees for a two-year period. For that reason, the three fees affected by the repeal in PA 255 of 2011 are

assumed to have been assessed for two years; thus, the actual loss in revenue to the State is estimated to be twice the amount listed above for the individual fees, or \$23.6 million annually.

Additionally, the bill changed the distribution of the fees collected such that the first \$8.5 million would be credited to the Fire Protection Fund and all additional funding would be credited to the General Fund. That change in statute remained for all future years in which DRFs were assessed.

Phase Out and Full Repeal – 2014 and 2018

The establishment of DRFs was intended to curb bad driver behavior and to reduce traffic accident fatalities. At the time, Michigan ranked fourth in the nation for fatalities due to traffic accidents. The majority of these fatalities were caused by drivers whose records contained moving violations, serious accidents, impaired driving, or license suspensions. As time passed, it became apparent that the fees were creating severe financial hardships for those who could not afford to pay them.¹ Because PA 165 of 2003 required the suspension of a driver license for unpaid DRFs, many of those who could not afford the fees were left without a valid license to drive to work or elsewhere, which further complicated these individuals' financial situations.

In an attempt to alleviate some of the financial hardships created by the imposition of DRFs, a series of amendments were adopted in 2014 to phase out the assessment of new DRFs and to prohibit new fees being imposed after September 30, 2019. The legislation also included a provision to allow an individual to perform community service instead of paying the fees if he or she were assessed a DRF for driving without a license or failing to provide proof of insurance.²

Although fees for these violations were eliminated under PA 255 of 2011, the Act only eliminated the assessment of further DRFs for those violations. It did not forgive any fees that were assessed and owed before 2012. Accordingly, individuals who were assessed DRFs for those violations still owed them and had their license suspended if they failed to pay them. This was the rationale for amending the statute to allow for the performance of community service for those infractions.

Following the 2014 amendments it continued to be apparent that despite these changes, DRFs were still creating a financial hardship and a barrier to employment for many individuals. In late 2017, many suggested that the only solution to this problem for those individuals who were being harmed financially by the assessment of the DRFs was to completely eliminate the assessment and collection of all driver responsibility fees. In 2018, a series of bills were enacted that amended the Michigan Vehicle Code to discontinue all assessments of, and phase out liability for, all DRFs. The following is a summary of each of those bills:

- House Bill 5040 (PA 43 of 2018) – Beginning on September 30, 2018, DRFs may not be collected and an individual will no longer be liable for any outstanding DRFs or responsible for completing community service related to a DRF; and an individual whose driving privileges were suspended for unpaid DRFs may reinstate his or her driver license provided they are otherwise compliant and eligible for a driver license.

¹ Senate Fiscal Agency Analysis as Enacted, Senate Bills 613 and 625, and House Bills 5040, 5041, 5043, 5044, 5046, and 5079, 3-5-18.

² *Id.*

- House Bill 5041 (PA 44 of 2018) – Requires the Department of Treasury to educate and inform individuals with DRFs about the changes to the law on the bill's effective date.
- House Bill 5043 (PA 45 of 2018) – Provides that individuals who have entered into an installment payment plan for any assessed DRFs by February 1, 2018, will no longer have to pay any outstanding DRF or any remaining installment payments and will no longer be liable for that debt; and if the individual has had their driver license suspended, he or she may reinstate his or her license if otherwise in compliance and eligible for a valid driver license.
- House Bill 5044 (PA 46 of 2018) – Discontinues the assessment of all DRFs for the accumulation of seven or more points on a person's driving record, beginning October 1, 2018, instead of October 1, 2019.
- Senate Bill 613 (PA 47 of 2018) - amended the Enhanced Driver License and Enhanced Official State Personal Identification Card Act to delete the assessment of DRFs from licensing sanctions that may be imposed on the holder of an enhanced driver license.
- House Bill 5046 (PA 48 of 2018) – Waives the DRFs for a person whose participation in a driving while impaired/sobriety court program is successfully completed on or after October 1, 2018.
- Senate Bill 625 (PA 49 of 2018) – Requires the Department of Treasury to create and administer a workforce training payment program.
- House Bill 5079 (PA 50 of 2018) does the following:
 - Prohibits the assessment of DRFs, beginning on the bill's effective date, for driving with a suspended or revoked license, or driving without the required insurance coverage.
 - Allows an individual to engage in 10 hours of workforce training as an alternative to paying a DRF for either of those violations.
 - Allows an individual whose driving privileges were suspended to reinstate his or her operator's license if the suspension arose out of a Vehicle Code violation while the individual's driving privileges were suspended for nonpayment of DRFs.
 - Allows an individual whose driving privileges were suspended for nonpayment of DRFs to reinstate his or her license without paying a reinstatement fee, between the effective date of the bill and December 31, 2018; this waiver applies to drivers who are otherwise in compliance and eligible for a driver license.

Revenue Impact

The elimination of the assessment and collection of DRFs will result in the loss of GF/GP revenue to the State of an estimated \$20.6 million in fiscal year (FY) 2017-18; \$26.0 million in FY 2018-19; and \$10.0 million in FY 2019-20. Additionally, beginning in FY 2018-19, the funds for the \$8.5 million deposit into the Fire Protection Fund will no longer be available (instead, as mentioned previously, \$13.6 million will be distributed to municipalities under PA 248 of 2018).

According to the Department of Treasury, an estimated 317,000 drivers owe DRFs to the State and are in default. This is the estimated total number of drivers with outstanding DRFs that are owed



since the enactment of the fees in 2003, that remain uncollected. Based on that data, the outstanding DRFs collectable at the end of FY 2016-17 (the most recent year for which complete data are available) totaled an estimated \$630.3 million. Additionally, an estimated 15,000 individuals have chosen to complete community service instead of paying the DRF, resulting in the forgiveness of an estimated \$2.0 million annually. The history of collections indicates that payments received in a given fiscal year come primarily from current assessments and those assessed within the past two years of that fiscal year, with an average collection rate of 60.6% for all DRF debt since the fees began in 2003, meaning that of all DRFs assessed, about 60.6% of that debt is eventually collected.

Because of the eventual elimination of the DRFs, the amount of the fees assessed and collected between the bills' enactment and October 1, 2018, that will be paid is indeterminate. According to the data from the Department of Treasury, current revenue collected from DRFs primarily consists of collections from people who are assessed a DRF and pay the total within 90 days, people who enter into a payment plan (representing an estimated \$20.0 million in FY 2016-17), and offsets captured from State income tax refunds or other payments to pay off old DRF debt (an estimated \$19.0 million in FY 2016-17).

Based on these figures and the best estimate of how much revenue will go uncollected as individuals wait until October 1, 2018, when all DRF fees will be forgiven, it is estimated that the loss in revenue for FY 2017-18 will be \$20.6 million. This figure (based on the full 12 months of a fiscal year) is derived from an estimated \$8.2 million decrease from new fees assessed between the bills' enactment and October 1, 2018, that will go uncollected; \$2.0 million in revenue that will be forgiven from those who choose to do community service; and an estimated \$10.4 million in lost revenue from payment plans entered into after the bills take effect. (Please note that the estimated revenue loss of \$20.6 million in FY 2017-18 is based on the assumption that one-third of the fiscal year has passed; thus, the full-year figures used in the calculations above are adjusted for the remaining two-thirds of the fiscal year.)

Public Act 50 of 2018 allows any person who was assessed a DRF, and who currently has his or her license suspended, to reinstate the license and have the reinstatement fee waived through December 31, 2018 (beginning on March 31 for people in an installment plan as of February 1, and on October 1 for the remainder). If half of the 317,000 individuals who become eligible to reinstate their driver license without a reinstatement fee do so, the amount of revenue lost due to this provision from the waiver of the \$125 reinstatement fee will total an estimated \$19.8 million. Based on the Vehicle Code's distribution of those fees, the Department of State will lose an estimated \$7.9 million; the Department of Transportation will lose an estimated \$5.5 million; the Judiciary will lose an estimated \$4.8 million; and the Michigan State Police will lose an estimated \$1.6 million. Table 2 details the breakdown of the distribution of the fees to those departments and the Judiciary.

Beginning January 1, 2019, anyone whose driver license was suspended because of an unpaid DRF will have to pay the \$125 reinstatement fee to have his or license reinstated. At that time, the revenue again will flow to the Departments of State and Transportation, the Judiciary, and the Michigan State Police according to the distribution of fees as listed in Table 2. The amount of revenue that will be received is indeterminate and will depend on how many of the estimated 317,000 individuals who have suspended licenses because of unpaid DRFs reinstate them before December 31, 2018, and therefore will not pay a reinstatement fee.



Table 2

Distribution of Revenue from the \$125 Driver License Reinstatement Fee			
Department	Amount Received	Fund into which Deposited	Description of Use of Funds
State	\$50	Reinstatement Fees	Supports various activities in the Dept. of State
Transportation	\$35	Economic Development Fund	Funds highway, road, and street projects resulting from economic development
Judiciary	\$30	Drunk Driving Fund	Funds the drunk driving case-flow program to assist trial courts in the disposition of drunk driving cases
State Police	\$10	Drunk Driving Prevention and Training Fund	Supports the purchase and maintenance of breath-alcohol testing equipment and training on its use

Finally, as noted above, under the Vehicle Code the first \$8.5 million in revenue collected from DRFs is deposited into the Fire Protection Fund created in the State Treasury. The money in the Fund is then disbursed for fire protection grants to cities, villages, and townships with State-owned facilities for fire services. Beginning in FY 2018-19, there no longer will be any funding available from DRFs for the deposit of \$8.5 million into the Fire Protection Fund; however, the revenue will be replaced as discussed above with the enactment of Public Act 248 of 2018. Additionally, beginning in FY 2018-19, the Department of State will lose the current \$1.0 million annual appropriation from the DRFs collected that the Department uses for costs associated with administering the BAIID program. While the Department has spent nearly the full \$1.0 million each year, it has indicated that the costs are decreasing and can be absorbed within its annually appropriated budget.

Conclusion

Driver responsibility fees were implemented in an attempt to reduce reckless driving and to raise additional funds for the State budget. The result was that it penalized those drivers who least could afford the additional fees. An individual's nonpayment of the fees often resulted in the suspension of his or her driver license, which prevented him or her from being able to get to and from work, training programs, or job interviews. These complications inevitably meant that the DRFs that were assessed would not be paid. Alternatively, he or she could attempt to drive on a suspended license and, if caught, he or she would be assessed more fees for driving without a valid driver license (because of it having been suspended for nonpayment of the initial DRFs).

Although the State was receiving revenue from the fees, the majority of which was being deposited into the State's General Fund to the tune of nearly \$100.0 million in most years, many believed that the assessment of these fees was unfair. Accordingly, Public Acts 43 through 50 of 2018 were enacted. The legislation will end the assessment of any further fees as well as the collection of any outstanding fees effective October 1, 2018. In addition, on that date, all outstanding fees will be forgiven and any driver whose license was suspended for nonpayment of DRFs will be able to reinstate their license, if he or she is otherwise eligible for a valid driver license. Finally, there will be an amnesty period for the \$125 reinstatement fee between October 1, 2018 and December 31, 2018. During that period, those who have had their driver license suspended due to nonpayment of DRF fees will be able to reinstate it without having to pay the fee, provided he or she is otherwise in compliance and eligible for a valid driver license. After January 1, 2019, those who did not reinstate their licenses during the amnesty period will have to pay the \$125 fee to have their driver license reinstated.

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As stated earlier, the loss in revenue to the State will reduce the revenue for the State budget by an estimated \$26.0 million in FY 2018-19. It will remain to be seen as to whether the State finds other sources of revenue to replace the lost revenue from DRFs aside from the enactment of Public Act 248 of 2018 to replace the lost revenue of \$8.5 million that was deposited annually into the Fire Protection Fund.