

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 152

(Senator Salling)

Judicial Proceedings

Driving Records - Expungement - Refusal to Submit to Chemical Test for Intoxication

This bill expands eligibility for expungement to those licensees charged with a refusal to submit to a test of blood or breath after being detained on suspicion of committing an alcohol- and/or drug-related driving offense. To qualify, the applicant must be found not guilty of the underlying alcohol- and/or drug-related driving offense associated with the refusal, and any suspension or disqualification period imposed as a result of the refusal must have expired. The Motor Vehicle Administration (MVA) is required to expunge the driving records of the “refusal” violation if the applicant meets the requirements, as specified. However, the bill specifies that commercial driver’s license (CDL) records must be retained as under current law.

Fiscal Summary

State Effect: The bill’s requirements can be handled by MVA and the Department of State Police (DSP) with existing budgeted resources. The number of drivers eligible for the bill’s expungement process established in the bill is expected to be minimal.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law:

Expungement of Driver Records by MVA: Generally, if a licensee applies for expungement of a driving record, MVA is required to expunge the record if, at the time of the application, the licensee does not have charges pending for allegedly committing a moving violation or a criminal offense involving a motor vehicle (other than violations of the Maryland Vehicle Law), and the licensee meets one of the following three sets of conditions:

- has not been convicted of a moving violation or a criminal offense involving a motor vehicle for the preceding three years and has never had his or her license suspended or revoked;
- has not been convicted of a moving violation or a criminal offense involving a motor vehicle for the preceding five years, and the driving record shows up to one suspension and no revocations; or
- within the preceding 10 years, has not been convicted of or granted probation before judgment for either the failure to remain at the scene of an accident that resulted in bodily injury or death or driving while under the influence of alcohol or impaired by alcohol, drugs, or a controlled dangerous substance (including convictions from other jurisdictions) **and** has not been convicted of any other moving violation or criminal offense involving a motor vehicle, regardless of the number of suspensions or revocations.

Additionally, MVA must *automatically* expunge from its driver record database the driving record or probation before judgment disposition of an individual:

- who has not been convicted of a moving violation or criminal offense involving a motor vehicle for the preceding three years;
- who has not been convicted of, or been granted probation before judgment for, the failure to remain at the scene of an accident that resulted in bodily injury or death or driving while under the influence of alcohol or impaired by alcohol, drugs, or a controlled dangerous substance; and
- whose license or privilege to drive has never been suspended or revoked.

MVA may refuse to expunge a driving record if it determines that the individual requesting the expungement has not driven a motor vehicle on the highways during the particular conviction-free period. However, MVA *is prohibited from expunging* any driving records of holders of a CDL before the expiration of the time they are required to be retained under State or federal law.

Implied Consent to Take a Test: 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*;
- impaired by alcohol;
- impaired by a drug, any combination of drugs, or any combination of drugs and alcohol; or
- impaired by a controlled dangerous substance.

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 on suspicion of committing an alcohol- and/or drug-related driving offense. However, a person may not be compelled to submit to a test 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 police officer who stops a driver 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 the person to take a test. The police officer must advise the person of the administrative sanctions that must be imposed for refusal to take a test and notice and hearing procedures. An offender's license or driving privilege must be suspended by 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.

A police officer is required to advise a person detained on suspicion of an alcohol- and/or drug-related driving offense of the additional criminal penalties that may be imposed if the person is convicted of an alcohol- and/or drug-related driving offense and knowingly refused to take a test requested at the time of the suspected violation. If a person is convicted of an alcohol- and/or drug-related driving offense and the trier of fact finds beyond a reasonable doubt that the person knowingly refused to take the requested test, the person is subject to a penalty in addition to any other penalty that may be imposed for the alcohol- and/or drug-related driving conviction. A person who knowingly refuses to take a test of blood or breath under these circumstances is subject to a maximum penalty of imprisonment for two months and/or a fine of \$500. The court may not impose the additional penalty unless the State's Attorney serves notice of the alleged test refusal on the defendant or the defendant's counsel before acceptance of a plea of *nolo contendere* or guilty, or at least 15 days before a circuit court trial or 5 days before a District Court trial, whichever is earlier.

Background: Federal Motor Carrier Safety Administration regulations require states to have in effect, and enforce through licensing sanctions, disqualifying offenses for CDL holders. The regulations also state that CDL holders are subject to any and all state implied consent laws for purposes of alcohol or drug concentration testing. The penalty for refusing a test of blood or breath while operating a commercial motor vehicle is a one-year license disqualification; it increases to three years if an operator refuses a test while transporting hazardous waste. Subsequent violations incur a lifetime CDL license ban.

According to the National Conference of State Legislatures, blood and breath test refusal rates vary by jurisdiction. Historical national data has indicated that, generally, at least 20% of arrested drivers refuse a test. For example, in Maryland, DSP reported that a total of 20,112 people were arrested for alcohol- and/or drugged-driving violations in calendar 2015. Of those arrests, 20,089 people were requested to take a test. Of that number, 6,649 people, or 33%, refused to take a requested test.

According to the latest information available from the National Highway Traffic Safety Administration, all states have some form of implied consent statute, but they vary widely with respect to the administrative and criminal penalties for refusing to submit to a chemical test. Maryland and at least 14 other states (Alaska, California, Florida, Kansas, Minnesota, Mississippi, New Hampshire, New Jersey, New York, Ohio, Oklahoma, Oregon, Rhode Island, and Vermont) have criminal sanctions for refusal to submit to a test of blood or breath for drivers age 21 and older.

In at least 16 states, refusal to submit to a test of blood or breath is a separate crime; criminal sanctions imposed by the states include fines, community service, alcohol or drug treatment, vehicle impoundment, and jail time.

State Fiscal Effect: MVA advises that, for fiscal 2015, the Maryland Department of Transportation received \$12.9 million in federal funds from various programs, in part, for compliance with federal regulations regarding CDL holders. MVA also advises that, although the bill could be implemented with existing resources, implementation could place it in violation of Federal Motor Carrier Safety Administration regulations regarding retention of CDL records, including all violations, thereby resulting in a potential reduction in federal fund revenues. However, the Department of Legislative Services disagrees with this assertion, given that the bill, and existing law, specifically exempts CDL drivers from eligibility for expungement under such provisions.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of State Police, Maryland Department of Transportation, U.S. Department of Transportation, National Conference of State Legislatures, Department of Legislative Services

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min/kdm

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