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By: **Delegates Pitkin, R. Baker, Bobo, Brown, D. Davis, Giannetti, Glassman,  
Hubbard, and Valderrama**

Introduced and read first time: February 11, 2000

Assigned to: Economic Matters

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A BILL ENTITLED

1 AN ACT concerning

2 **Breathalyzer Incentive Pilot Program**

3 FOR the purpose of creating a Breathalyzer Incentive Pilot Program in the  
4 Department of Labor, Licensing, and Regulation and creating a Breathalyzer  
5 Incentive Program Commission; providing for the duration and purposes of the  
6 pilot program and the Commission; requiring the Department to place at least  
7 one breathalyzer, at State expense, in a certain number of establishments that  
8 sell alcoholic beverages for consumption on the premises at locations around the  
9 State; providing for the criteria for the selection of breathalyzers to be used;  
10 providing for the selection of the participating establishments and requiring  
11 participation to be voluntary; requiring the Department to inspect each  
12 breathalyzer each month and replace certain breathalyzers that are not  
13 accurate; requiring the Department to train employees of participating  
14 establishments in the administration of a breathalyzer test; providing for the  
15 continuing application of certain laws; providing for the membership and  
16 selection of Commission members and the selection of a Commission chairman;  
17 providing for the time and place of Commission meetings; requiring the  
18 Commission to make certain determinations and report those determinations to  
19 the Secretary of Labor, Licensing, and Regulation by a certain date; requiring  
20 the Secretary to make certain recommendations, submit a report to the General  
21 Assembly, and develop legislation by a certain date; defining certain terms;  
22 providing for the termination of this Act; and generally relating to the  
23 Breathalyzer Incentive Pilot Program.

24 BY adding to  
25 Article - Business Regulation  
26 Section 19-201 through 19-203, inclusive, to be under the new subtitle "Subtitle  
27 2. Breathalyzer Incentive Pilot Program"  
28 Annotated Code of Maryland  
29 (1998 Replacement Volume and 1999 Supplement)

30 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
31 MARYLAND, That the Laws of Maryland read as follows:

Article - Business Regulation

SUBTITLE 2. BREATHALYZER INCENTIVE PILOT PROGRAM.

19-201.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) "BREATHALYZER" MEANS AN APPARATUS THAT ANALYZES A USER'S BREATH TO DETERMINE THE PERCENTAGE BY WEIGHT OF ALCOHOL IN THE USER'S BLOOD.

(C) "PILOT PROGRAM" MEANS THE BREATHALYZER INCENTIVE PILOT PROGRAM CREATED UNDER THIS SUBTITLE.

19-202.

(A) (1) THERE IS A BREATHALYZER INCENTIVE PILOT PROGRAM IN THE DEPARTMENT OF LABOR, LICENSING, AND REGULATION.

(2) THE PROGRAM EXISTS FOR A PERIOD OF 1 YEAR, BEGINNING APRIL 1, 2001.

(B) THE PURPOSES OF THE PILOT PROGRAM ARE TO:

(1) ENCOURAGE OWNERS AND OPERATORS OF ESTABLISHMENTS THAT SERVE ALCOHOLIC BEVERAGES FOR CONSUMPTION ON THE PREMISES TO PROVIDE A BREATHALYZER IN THE ESTABLISHMENT THAT A CUSTOMER CAN USE TO ANALYZE THE ALCOHOL CONTENT OF THE CUSTOMER'S BLOOD BEFORE LEAVING THE ESTABLISHMENT; AND

(2) DETERMINE ANY APPROPRIATE PARAMETERS FOR REGULATING A BREATHALYZER LOCATED IN AN ESTABLISHMENT THAT SERVES ALCOHOLIC BEVERAGES FOR CONSUMPTION ON THE PREMISES.

(C) (1) (I) UNDER THE PILOT PROGRAM, THE DEPARTMENT SHALL PLACE AT LEAST ONE BREATHALYZER, AT STATE EXPENSE, IN 50 ESTABLISHMENTS THAT SERVE ALCOHOLIC BEVERAGES FOR CONSUMPTION ON THE PREMISES, AT GEOGRAPHICALLY DIVERSE LOCATIONS AROUND THE STATE.

(II) 1. THE DEPARTMENT SHALL CHOOSE FOR PLACEMENT IN EACH ESTABLISHMENT AT LEAST ONE OF THREE DIFFERENT MODELS OF BREATHALYZERS.

2. THE DEPARTMENT SHALL SELECT THE MODELS OF BREATHALYZERS TO BE USED ON THE BASIS OF THEIR ACCURACY.

(2) AN ESTABLISHMENT THAT SERVES ALCOHOLIC BEVERAGES FOR CONSUMPTION ON THE PREMISES MAY NOT BE REQUIRED TO PARTICIPATE IN THE

1 PILOT PROGRAM, EITHER IMPLICITLY AS A CONDITION OF LICENSING OR  
2 EXPLICITLY.

3 (3) THE DEPARTMENT SHALL CHOOSE THE ESTABLISHMENTS FOR  
4 PARTICIPATION IN A MANNER THAT ENSURES THAT THE TYPES OF PARTICIPATING  
5 ESTABLISHMENTS ARE DIVERSE.

6 (4) THE DEPARTMENT SHALL TRAIN AT LEAST TWO EMPLOYEES IN  
7 EACH ESTABLISHMENT PARTICIPATING IN THE PILOT PROGRAM TO ADMINISTER A  
8 BREATHALYZER TEST.

9 (5) (I) EACH MONTH, THE DEPARTMENT SHALL INSPECT EACH  
10 BREATHALYZER TO ENSURE THAT IT ACCURATELY MEASURES THE ALCOHOL  
11 CONTENT OF A USER'S BLOOD.

12 (II) THE DEPARTMENT SHALL REPLACE ANY BREATHALYZER THAT  
13 THE DEPARTMENT DETERMINES IS NOT ACCURATE IN 3 CONSECUTIVE MONTHS.

14 (D) THIS SUBTITLE DOES NOT ALTER ANY CURRENT FEDERAL, STATE, OR  
15 LOCAL LAW GOVERNING THE LEGAL LIABILITY OF AN ESTABLISHMENT.

16 19-203.

17 (A) THERE IS A BREATHALYZER INCENTIVE PROGRAM COMMISSION.

18 (B) (1) THE COMMISSION CONSISTS OF 13 MEMBERS.

19 (2) OF THE 13 MEMBERS:

20 (I) ONE SHALL BE A MEMBER OF THE HOUSE OF DELEGATES,  
21 APPOINTED BY THE SPEAKER OF THE HOUSE;

22 (II) ONE SHALL BE A MEMBER OF THE SENATE OF MARYLAND,  
23 APPOINTED BY THE PRESIDENT OF THE SENATE;

24 (III) ONE SHALL BE THE SECRETARY;

25 (IV) ONE SHALL BE THE ADMINISTRATOR OF THE MOTOR VEHICLE  
26 ADMINISTRATION; AND

27 (V) NINE SHALL BE APPOINTED BY THE SECRETARY WITH THE  
28 APPROVAL OF THE GOVERNOR.

29 (3) OF THE NINE MEMBERS OF THE COMMISSION APPOINTED BY THE  
30 SECRETARY:

31 (I) ONE SHALL BE A STATE POLICE OFFICER WHO REGULARLY  
32 ADMINISTERS BREATHALYZER TESTS;

1 (II) ONE SHALL BE AN OWNER OR MANAGER OF AN  
2 ESTABLISHMENT THAT PARTICIPATES IN THE PILOT PROGRAM CREATED UNDER §  
3 19-201 OF THIS SUBTITLE;

4 (III) ONE SHALL REPRESENT THE MARYLAND RESTAURANT  
5 ASSOCIATION;

6 (IV) ONE SHALL REPRESENT THE RETAIL LIQUOR INDUSTRY;

7 (V) ONE SHALL BE AN ATTORNEY WHO REGULARLY DEFENDS  
8 INDIVIDUALS ACCUSED OF DRIVING WHILE INTOXICATED OR DRIVING WHILE  
9 IMPAIRED;

10 (VI) ONE SHALL BE A MANUFACTURER OF BREATHALYZERS;

11 (VII) ONE SHALL BE A MEMBER OF AN ADVOCACY GROUP  
12 CONCERNED WITH THE INCIDENCE OF DRUNK DRIVING IN THE STATE; AND

13 (VIII) ONE SHALL BE A STATE'S ATTORNEY OR ASSISTANT STATE'S  
14 ATTORNEY WHO IS EXPERIENCED IN THE PROSECUTION OF ALCOHOL-RELATED  
15 OFFENSES; AND

16 (IX) ONE SHALL BE A CONSUMER MEMBER.

17 (4) THE SECRETARY SHALL APPOINT A CHAIRMAN.

18 (C) THE COMMISSION SHALL MEET AT LEAST MONTHLY DURING THE PILOT  
19 PROGRAM'S OPERATION AT LOCATIONS TO BE DETERMINED BY THE CHAIRMAN.

20 (D) THE COMMISSION SHALL DETERMINE, FROM INFORMATION COLLECTED  
21 FROM THE ESTABLISHMENTS AND USERS PARTICIPATING IN THE PILOT PROGRAM,  
22 INCLUDING SURVEYS OF ESTABLISHMENT OWNERS AND OPERATORS:

23 (1) THE ACCURACY OF THE BREATHALYZERS USED IN THE PILOT  
24 PROGRAM;

25 (2) THE PATTERNS OF USE FOR BREATHALYZERS USED IN THE PILOT  
26 PROGRAM, INCLUDING WHETHER A BREATHALYZER IS MORE LIKELY TO BE USED:

27 (I) IN CERTAIN GEOGRAPHIC REGIONS;

28 (II) IN CERTAIN TYPES OF RESTAURANTS OR BARS; OR

29 (III) BY CERTAIN POPULATIONS OF USERS;

30 (3) WHETHER IT IS DESIRABLE TO CONTINUE TO ENCOURAGE OWNERS  
31 AND OPERATORS OF ESTABLISHMENTS THAT SELL ALCOHOLIC BEVERAGES FOR  
32 CONSUMPTION ON THE PREMISES TO PROVIDE BREATHALYZERS FOR THE USE OF  
33 THEIR CUSTOMERS;

1           (4)     IF IT IS DESIRABLE TO CONTINUE TO ENCOURAGE THE USE OF  
2 BREATHALYZERS, WHETHER TO REGULATE THE USE OF BREATHALYZERS IN THOSE  
3 ESTABLISHMENTS; AND

4           (5)     IF THE DECISION IS MADE TO RECOMMEND REGULATION, HOW TO  
5 REGULATE THE USE OF BREATHALYZERS IN THOSE ESTABLISHMENTS, INCLUDING:

6                   (I)     WHAT STANDARDS SHOULD BE USED; AND

7                   (II)    WHETHER BREATHALYZER CERTIFICATION SHOULD BE MADE  
8 PART OF EACH COUNTY'S APPROVAL PROCESS FOR THE GRANTING OF AN  
9 ALCOHOLIC BEVERAGES LICENSE TO AN ESTABLISHMENT SELLING ALCOHOLIC  
10 BEVERAGES FOR CONSUMPTION ON THE PREMISES.

11       (E)     (1)     THE COMMISSION SHALL REPORT ITS DETERMINATIONS AND  
12 RECOMMENDATIONS TO THE SECRETARY AFTER THE PILOT PROGRAM IS  
13 COMPLETED, BUT ON OR BEFORE JULY 1, 2002.

14           (2)     THE COMMISSION SHALL CEASE TO EXIST AFTER JUNE 30, 2002.

15       (F)     THE SECRETARY SHALL:

16           (1)     REPORT THE RECOMMENDATIONS OF THE COMMISSION AND ANY  
17 SEPARATE RECOMMENDATIONS THE SECRETARY MAY MAKE TO THE GENERAL  
18 ASSEMBLY ON OR BEFORE SEPTEMBER 1, 2002; AND

19           (2)     DEVELOP ANY APPROPRIATE LEGISLATION IMPLEMENTING THE  
20 COMMISSION'S AND THE SECRETARY'S RECOMMENDATIONS FOR INTRODUCTION IN  
21 THE 2003 LEGISLATIVE SESSION.

22       SECTION 2. AND BE IT FURTHER ENACTED, That the members of the  
23 Breathalyzer Incentive Program Commission shall be appointed on or before  
24 December 1, 2000.

25       SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
26 October 1, 2000. It shall remain effective for a period of 3 years and, at the end of  
27 September 30, 2003, with no further action required by the General Assembly, this  
28 Act shall be abrogated and of no further force and effect.