

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

House Bill 502
Economic Matters

(Delegate Myers, *et al.*)

Health - Job-Related Drug Testing - Breath Tests for Alcohol

This bill authorizes an employer that requires any person to be tested for job-related reasons for the use or abuse of alcohol to test a breath specimen using an “evidential breath measurement device.”

Fiscal Summary

State Effect: This bill would not directly affect governmental operations or finances.

Local Effect: None.

Small Business Effect: Meaningful for small businesses that could use this device and that could prohibit an employee’s independent test to verify a positive result, unless prohibited by a collective bargaining agreement.

Analysis

Bill Summary: The breath measurement device must be operated by a federally qualified breath alcohol technician. The device must be portable, capable of being administered at a work site or other appropriate testing site, and listed on the Federal National Highway Traffic Safety Administration conforming products list of such devices. The test must be conducted according to the U.S. Department of Transportation’s requirements, including a screening and confirmation test.

If the test results show an employee’s or contractor’s breath specimen is positive for an alcohol concentration level of 0.02 or greater, the individual is considered to have tested

positive for alcohol abuse. When this occurs, the employer must provide the individual with: (1) a written copy of the test results; (2) a copy of the employer's written policy on the use or abuse of controlled dangerous substances or alcohol by employees, contractors, or other persons; (3) immediate verbal notice of the employer's disciplinary actions, if necessary for health or safety reasons; and (4) written notice of the employer's disciplinary action and the employer's intent to take further disciplinary action, terminate employment, or change the conditions of continued employment.

An individual subject to a breath alcohol test may not request independent testing of the same specimen to verify the test's results.

The Department of Health and Mental Hygiene (DHMH) may adopt regulations governing the oversight of employers' preliminary screening and alcohol testing using an evidential breath measurement device. The bill also expands the definition of a medical review officer (a licensed physician with knowledge of drug abuse disorders and drug and alcohol testing) to require the officer to be certified by the American Association of Medical Review Officer or the Medical Review Officer Certification Council.

Current Law: A person's blood, urine, hair, or saliva may be tested for the use or abuse of a controlled dangerous substance or alcohol.

An employer may use a preliminary screening procedure to test a job applicant for the use or abuse of any controlled dangerous substance. However, statute does not specifically allow employers to use a preliminary screening procedure to test for alcohol use or abuse. An employer who requires any person to be tested for job-related reasons for the use or abuse of alcohol must have the specimen tested by a laboratory.

If an employer receives the laboratory's test results that show an employee, contractor, or other person has tested positive for the use or abuse of a controlled dangerous substance or alcohol must provide the tested individual with: (1) a copy of the test results; (2) a copy of the employer's written policy on the use or abuse of controlled dangerous substances or alcohol by employees, contractors, or other persons; (3) if applicable, written notice of the employer's intent to take certain actions against the individual; and (4) a statement or copy of the employee's ability to request independent testing of the same sample to verify the test's results.

Any employee under a collective bargaining agreement would not be covered by this bill if these job-related tests are covered by the agreement.

Chapter 5 of 2001 reduced the alcohol concentration level needed to determine a violation of driving under the influence of alcohol or under the influence of alcohol per se

from 0.10 grams to 0.08 grams of alcohol per 100 millimeters of blood, or per 210 liters of breath at the time of testing.

Background: The Federal Motor Carrier Safety Administration's regulations allow for breath alcohol testing for persons required to have a commercial driver's license. Two tests are required to determine if a person has a "prohibited alcohol concentration." In the screening test, if a person has less than a 0.02 alcohol concentration, the test is considered negative. An alcohol concentration of 0.02 or greater requires a confirmation test. The regulations require a driver who has any alcohol concentration (0.02 or greater) when tested just before, during, or just after performing safety-sensitive functions must be removed from those duties for 24 hours.

Preliminary breath tests are routinely administered to offenders being monitored or supervised by the Division of Parole and Probation. Most of these tests are administered to individuals who are on probation for drunk driving and who are court ordered to submit to alcohol or substance abuse testing. The sole purpose of such a test is to determine whether an offender who has been ordered to remain alcohol-free has used any amount of alcohol.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Health and Mental Hygiene; Department of Labor, Licensing, and Regulation; Federal Motor Carrier Safety Administration; Department of Legislative Services

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Analysis by: Lisa A. Daigle

Direct Inquiries to:
(410) 946-5510
(301) 970-5510