

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE

House Bill 743
Economic Matters

(Delegate Myers, *et al.*)

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

This bill authorizes an employer to use an “evidential breath measurement device” in testing employees for alcohol use without providing for independent testing of the sample. The bill also permits the Department of Health and Mental Hygiene (DHMH) to adopt regulations governing the oversight of alcohol testing using an evidential breath measurement device.

The bill also requires a medical review officer, defined as a licensed physician with knowledge of drug abuse disorders and testing, to be licensed by specified organizations.

Fiscal Summary

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

Local Effect: None.

Small Business Effect: Potential minimal.

Analysis

Current Law: Statute allows a person’s blood, urine, hair, or saliva to be tested for the use of alcohol or a controlled dangerous substance. DHMH regulations further specify that an employer may not require any other type of specimen to be tested. An employer may use a preliminary screening procedure to test a job applicant for use of a controlled dangerous substance; however, an employer who requires any person to be tested for alcohol use must have the specimen tested by a laboratory.

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

Collective bargaining agreements override and preempt provisions of State law regarding authorized drug testing by an employer.

Background: Breath alcohol testing is common among certain professions and law enforcement functions to provide immediate feedback on an individual's blood alcohol concentration.

The Federal Motor Carrier Safety Administration's regulations allow for breath alcohol testing for persons with 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 an alcohol concentration of 0.02 or greater when tested just before, during, or just after performing safety-sensitive functions to 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 are court ordered to submit to alcohol or substance abuse testing. The purpose of this test is to determine whether an offender who has been ordered to remain alcohol-free has consumed any amount of alcohol.

Additional Information

Prior Introductions: HB 299 of 2006, an identical bill, received an unfavorable report from the House Economic Matters Committee. Another similar bill, HB 502 of 2005, had a hearing in Economic Matters; but no further action was taken.

Cross File: None.

Information Source(s): Department of Health and Mental Hygiene; Department of Labor, Licensing, and Regulation; Department of Budget and Management; Department of Legislative Services

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Analysis by: Suzanne O. Potts

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