

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

Senate Bill 260 (The President and Senator Forehand)(By Request - Administration)
(Task Force to Combat Driving Under the Influence of Drugs and
Alcohol)

Judicial Proceedings

**Vehicle Laws - Testing of Drivers Involved in Fatal or Life-Threatening
Accidents**

This Administration bill requires a police officer to request a driver involved in a motor vehicle accident resulting in life-threatening injury or death to voluntarily submit to a preliminary breath test (PBT) for alcohol to be administered by the police officer using an approved device under specified circumstances. A person is not subject to any criminal or civil sanctions for refusing to voluntarily submit to a PBT under these circumstances, and the result of the PBT may be used only for research and statistical purposes.

Fiscal Summary

State Effect: Enforcement can be handled with existing resources.

Local Effect: Potential minimal increase in expenditures.

Small Business Effect: The Administration has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment.

Analysis

Bill Summary: A police officer must request a PBT if (1) the officer does not have reasonable grounds to believe that the driver was committing an alcohol- and/or drug-related driving offense; (2) the driver is not transported to a medical facility; and (3) a PBT is available. The police officer must advise the driver that refusal to submit to

a PBT is not a criminal or civil violation and the person will not be subject to any criminal or civil sanctions for refusal. In addition, the driver must be advised that refusing the PBT request may not be introduced or considered in any criminal or civil proceeding, may not be the impetus for or considered in any administrative action, or be considered for purposes of motor vehicle insurance coverage.

The bill further specifies that the refusal to submit to a PBT or the results of a PBT that a driver consents to may only be used for research and statistical purposes and may not be the impetus for any criminal or civil proceeding, administrative action, or used for purposes of insurance coverage. If the result of a voluntary PBT is reported on a police report, the result must be coded to indicate that the result may only be used for statistical or research purposes. If a police officer requests a driver to submit to a PBT under these circumstances, no police officer may request the driver to submit to a test for alcohol or drugs under any other provision, nor may the driver be charged with specified alcohol-and/or drug-related driving offenses or manslaughter by vehicle or vessel.

Current Law: A police officer who has reasonable grounds to believe that a person has been driving or attempting to drive a motor vehicle while under the influence of or impaired by alcohol may request that the person take a PBT using an approved device. The police officer may make the request without arresting the person and prior to issuing a citation. The request to take a PBT does not either prevent or require a subsequent chemical test of blood or breath.

If administered, the PBT results must be used by a police officer as a guide to determine whether an arrest must be made, but the results may not be used as evidence by the State in any court action. The defendant may use the PBT results, however, as evidence in a court action. Contrary to the test results, the taking or refusal to take a PBT is not admissible as evidence in any court action and, in a civil action, any evidence pertaining to a PBT is inadmissible. The sanctions that apply for refusal to take a chemical test of blood or breath do not apply to refusal to take a PBT. Also, agreeing to a PBT does not exempt a person from the obligation to take a chemical test of blood or breath if requested to do so by a police officer.

A person must submit to an intoximeter test of blood or breath, or both, as directed by a police officer if the person is involved in a motor vehicle accident that results in death or life-threatening injury to another person and the police officer detains the person *due to a reasonable belief* that the person was driving or attempting to drive while:

- under the influence of alcohol or under the influence of alcohol per se;
- impaired by alcohol;
- impaired by drugs or drugs and alcohol; or

- impaired by a controlled dangerous substance; or
- in violation of an alcohol prohibition for operating a commercial motor vehicle.

If a police officer directs that a person be tested, then the test must be administered by qualified personnel who comply with the testing procedures specified in statute. Medical personnel who perform the required tests are not liable for civil damages from administering the tests, unless gross negligence is proved.

Enhanced criminal penalties apply 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 a requested test of blood or breath. A maximum penalty of imprisonment for two months and/or a fine of \$500 may be imposed in addition to the penalty for the underlying alcohol- and/or drug-related driving offense.

Background:

The Task Force to Combat Driving Under the Influence of Drugs and Alcohol: The bill is recommended by the Task Force to Combat Driving Under the Influence of Drugs and Alcohol. The task force advises that additional data is needed to more accurately determine the role of alcohol and drug consumption in fatal crashes. Enactment of the bill may also make Maryland eligible for additional funding for impaired driving programs from the National Highway Traffic Safety Administration. The task force notes that a similar program has been successfully implemented in Nebraska, with testing rates of drivers in fatal crashes ranging from 60% to 80%.

The task force was created by Chapters 533 and 534 of 2007 and was required to submit an interim report in December of 2007 and a final report by October 31, 2008. The task force was required to:

- review achievements in combating impaired driving within the past 20 years;
- identify and assess current efforts to address impaired driving;
- identify national best practices for combating impaired driving;
- determine if any gaps exist between current State efforts and the identified national best practices;
- recommend necessary actions to implement national best practices in Maryland;
- recommend new State initiatives to address populations that are disproportionately responsible for driving fatalities due to impaired driving;
- recommend actions to sustain and enhance public awareness and concern for the dangers imposed by impaired driving; and

- recommend strategies for the improved coordination of management, funding, and resources at State and local levels.

The task force issued 42 recommendations focusing on initiatives in the Maryland Department of Transportation, law enforcement, treatment of alcohol- or drug-impaired drivers, the courts, education, and the legislature. Seven recommendations specifically were targeted to the Maryland General Assembly:

- pass legislation to discourage and punish underage drinking by linking the privilege of driving to abstention from alcohol and drugs;
- impose incarceration for the violation of an alcohol restriction on a driver's license;
- increase the time before a person is eligible for another probation before judgment (PBJ) after receiving the first one, from 5 to 10 years;
- make all driving while impaired offenses count toward repeat offender status;
- require law enforcement to request alcohol testing of all drivers involved in life-threatening or fatal crashes;
- require from all ignition interlock users at least six months of failure-free use before release from the program; and
- recodify all laws related to driving under the influence and driving while impaired.

Impaired Driving Generally: According to the U.S. Department of Transportation, alcohol-impaired driving is one of the nation's deadliest crimes. Although some progress has been made in reducing alcohol-impaired driving, most of that progress occurred in the 1980s and 1990s. From about 1982 to 1995, the percentage of fatally injured alcohol-impaired drivers who were 16 to 20 years old declined by more than half. Since then, the proportion of those fatalities has hovered around 25%. In 2007, over half of all fatally injured drivers in the 21 to 30 age group had blood alcohol concentration levels at or above 0.08%.

According to the Insurance Institute for Highway Safety, 20,281 alcohol-related traffic fatalities occurred nationwide in 2007, about 49% of the total traffic fatalities for that year. The nationwide number of alcohol-related traffic fatalities in 2007 declined, however, by 5.2% from the 21,497 alcohol-related traffic fatalities in 2006.

According to the Fatality Analysis Reporting System maintained by the U.S. Department of Transportation, alcohol-related fatalities in Maryland are somewhat below national rates. In 2007, a total of 614 traffic fatalities occurred in Maryland, a crash rate of 10.9 per 100,000 people. Of those fatalities, 272, or 44.2%, were alcohol-related. Ninety-four of those fatalities, or 34.5%, involved drivers with blood alcohol concentration levels at or above 0.08%. According to the District Court, 41,038 traffic citations involving alcohol- and/or drug-related driving were filed in fiscal 2008. There were guilty dispositions for 5,014 of those citations, and 6,025 citations were disposed of with PBJ.

Local Expenditures: Most local governments indicated that the bill's changes can be handled with existing resources; however, the Talbot County Sheriff's Office indicated that \$5,000 is needed to purchase 10 additional test units.

Additional Information

Prior Introductions: None.

Cross File: HB 307 (The Speaker, *et al.*) (By Request - Administration) - Judiciary.

Information Source(s): Allegany, Harford, Montgomery, Talbot, and Wicomico counties; City of Laurel; Judiciary (Administrative Office of the Courts); Department of State Police; Maryland Department of Transportation; National Highway Traffic Safety Administration; Insurance Institute for Highway Safety; U.S. Department of Transportation; Department of Legislative Services

Fiscal Note History: First Reader - February 14, 2009
ncs/ljm

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Vehicle Laws - Testing of Drivers Involved in Fatal or Life-Threatening Accidents

BILL NUMBER: SB 260

PREPARED BY: Governor's Legislative Office

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

☒ WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESS

OR

☐ WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.