

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1270
Judiciary

(Delegate Sophocleus, *et al.*)

**Operating a Vessel While Under the Influence of or Impaired by Alcohol or Drugs
- Testing**

This bill alters the substantive and procedural provisions related to testing vessel operators to determine alcohol concentration or drug or controlled substance content.

Fiscal Summary

State Effect: The bill's changes can be handled with existing budgeted resources.

Local Effect: While local governments with marine enforcement units will be required to enforce the new requirements, the bill is not expected to have a significant impact on local operations or finances.

Small Business Effect: None.

Analysis

Bill Summary: A person who operates or attempts to operate a vessel on State waters is deemed to have consented to take a test to determine alcohol concentration or drug or controlled substance content if the person is detained by a police officer who has reasonable grounds to believe that the person has been operating or attempting to operate a vessel while under the influence or impaired by alcohol, drugs, and/or a controlled dangerous substance. The detaining officer must advise the person that, if the person refuses to take a test or is tested and the result is an alcohol concentration of 0.08 or more, the court may, upon conviction and in addition to any other penalties, prohibit the person from operating a vessel on State waters for up to one year. A court is authorized to prohibit a person from operating a vessel on State waters for up to one year in specified circumstances. These provisions apply to specified vessel types.

Generally, a vessel operator may not be compelled to take a test. However, if the person is involved in an accident resulting in death or life-threatening injury to another person and is detained by a police officer, the vessel operator is required to submit, as directed by the police officer, to breath and/or blood tests to determine whether the operator is under the influence or impaired by alcohol or drugs. Specified provisions of the Courts and Judicial Proceedings Article concerning alcohol and drug testing apply when a police officer directs an individual to be tested. Medical personnel who administer the authorized tests are not liable for civil damages, as long as the acts or omissions do not rise to the level of gross negligence.

Current Law: Currently, due to the absence of an “implied consent” statute applicable to a vessel operator, a police officer does not have the authority to require a vessel operator to submit to breath or blood tests to determine alcohol and/or drug concentration. However, under the Transportation Article, a police officer has this authority for a person driving or attempting to drive a vehicle.

Similarly, currently no statutory authority exists for a police officer to compel a vessel operator to submit to a test for alcohol or a drug if the operator was involved in an accident that resulted in a death or life-threatening injury and the officer has reasonable grounds to believe the operator was operating or attempting to operate a vessel while under the influence or while impaired by alcohol or a drug. However, a driver of a vehicle may be compelled to submit to a test, by a police officer, if the driver was involved in an accident that resulted in a death or life-threatening injury.

Individuals may not operate or attempt to operate a vessel while (1) under the influence of alcohol or under the influence of alcohol *per se*, (2) impaired by alcohol, (3) impaired by drugs and/or drugs and alcohol, or (4) impaired by a controlled substance. If an individual’s blood or breath test results indicate an alcohol concentration at the time of testing of 0.08 or more as measured by grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath, it is *prima facie* evidence that the individual was operating a vessel while under the influence of alcohol.

Violators are guilty of a misdemeanor and subject to fines and/or imprisonment. For those convicted of operating a vessel while under the influence of alcohol or under the influence of alcohol *per se*, the maximum penalties range from a fine of \$1,000 and/or imprisonment for one year to a fine of \$3,000 and/or imprisonment for three years, depending on whether the conviction is for a first, second, or third or subsequent offense. For those convicted of operating a vessel while impaired by alcohol, alcohol and/or drugs, or by a controlled dangerous substance, maximum penalties range from a fine of \$500 and/or imprisonment for two months to a fine of \$1,000 and/or imprisonment for one year, depending on whether the conviction was for a first or second or subsequent offense.

Background: In calendar 2009, there were approximately 200 significant boating accidents reported statewide; 16 of these accidents caused 17 fatalities.

The Department of Natural Resources (DNR) advises the bill will enable the Natural Resources Police to more effectively investigate and prosecute vessel accidents in which the operator of the vessel was under the influence of alcohol and/or drugs. Currently, prosecution of impaired vessel operators is difficult, as operators have the right to refuse a breath or blood test. DNR also notes that a having a certified “blood alcohol content” report is necessary to ensure that criminal charges and prosecution for a vessel accident are based upon reliable information.

Additional Information

Prior Introductions: None.

Cross File: None designated; however, SB 475 is nearly identical.

Information Source(s): Allegany, Harford, and Montgomery counties; Baltimore City; Department of Natural Resources; Judiciary (Administrative Office of the Courts); Department of State Police; Department of Legislative Services

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