

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 1024

(Chair, Judiciary Committee)(By Request - Departmental
- Natural Resources)

Judiciary

**State Boat Act - Operating Vessel While Impaired or Under the Influence of
Alcohol - Testing**

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

The bill takes effect July 1, 2010.

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: The Department of Natural Resources (DNR) has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment.

Analysis

Bill Summary: The bill establishes that 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 a police officer detains the person on suspicion that the person is 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 must, upon conviction and in addition to any other penalties, prohibit the person from operating a vessel on State waters for one year.

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 may be 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.

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.

Information Source(s): Department of Natural Resources, Judiciary (Administrative Office of the Courts), Department of State Police, Department of Legislative Services

Fiscal Note History: First Reader - March 1, 2010
ncs/lgc

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: State Boat Act – Operating Vessel While Impaired or Under the Influence of Alcohol – Testing

BILL NUMBER: HB 1024

PREPARED BY: Department of Natural Resources

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.