

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1105 (Calvert County Delegation)
Health and Government Operations

Job-Related Alcohol and Controlled Dangerous Substances Testing - Medical
Review Officers and Preliminary Breath Tests

This bill authorizes an employer to use a preliminary breath test (PBT) to test a job applicant or an employee for the use or abuse of alcohol, unless prohibited from doing so under a collective bargaining agreement. If the PBT result is positive, the employer must require the job applicant or employee to submit a blood or urine sample and must submit the specimen for laboratory testing in accordance with specified procedures. The bill makes a series of conforming changes to testing requirements, including training and designation requirements, to include the performance of PBTs.

Fiscal Summary

State Effect: The bill is not expected to materially affect State finances or operations, as discussed below.

Local Effect: The bill is not expected to materially affect local finances or operations, as discussed below.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: “Preliminary breath test” means a preliminary alcohol breath test using a device approved by the State Toxicologist.

The bill also alters the definition of “medical review officer” to include certification requirements by specified entities.

Current Law:

Job-related Alcohol or Drug Testing

An employer who requires any person to be tested for job-related reasons for the use or abuse of any controlled dangerous substance (CDS) or alcohol must (1) have the specimen tested by a laboratory that is permitted or otherwise certified in accordance with specified requirements and (2) at the time of testing and at the person's request, inform the person of the name and address of the laboratory that will test the specimen.

An employer may use a preliminary screening procedure to test a job applicant for the use or abuse of any CDS, unless prohibited from doing so under a collective bargaining agreement. If the result of the preliminary screening procedure is positive, the employer must submit the specimen for testing to a permitted or certified laboratory.

An employer using preliminary screening procedures to test job applicants must have a medical review officer review a positive test result after laboratory confirmation of the positive test result.

“Specimen” means blood, urine, hair, or saliva.

Preliminary Breath Tests

Under the Transportation Article, without making an arrest and prior to the issuance of a citation, a police officer who has reasonable grounds to believe that a person has been driving or attempting to drive while under the influence of alcohol, under the influence of alcohol *per se*, or while impaired by alcohol may request that the person submit to a PBT. The officer who administers the test must use a device approved by the State Toxicologist. The results of a PBT must be used only as a guide by a police officer to determine whether or not an arrest for an alcohol-related driving offense should be made.

The taking of or refusal to submit to a PBT under these circumstances is not admissible as evidence, and the State may not use the results as evidence in any court action. A defendant, however, may use the results of a PBT as evidence in a court action. In a civil action, evidence pertaining to a PBT may not be used. Refusal to submit to a PBT is not a violation of the Maryland Vehicle Law.

Background: The bill is by request of the Calvert County Delegation. Calvert County advises that, in October 2016, the Calvert County Government Department of Human Resources began to investigate the possibility of implementing a drug and alcohol testing program for all employees, including pre-employment, reasonable suspicion, and random testing. (Currently, the county conducts such testing for commercial drivers and the

U.S. Coast Guard in accordance with federal requirements.) The county seeks to amend the Calvert County Code to allow alcohol *breath* testing (rather than only blood samples); however, this option is not specifically authorized under State law. The bill is intended to amend State law accordingly.

U.S. Department of Transportation (USDOT) “safety sensitive” employees are required to undergo drug and alcohol testing as a condition of employment. Such employees include flight crews, holders of commercial driver’s licenses who operate certain commercial motor vehicles, commercial vessel operators, and Federal Transit Administration vehicle operators and controllers. Testing may occur pre-employment, due to reasonable suspicion, as a condition of return-to-duty, post-accident or as a follow-up, or randomly. Alcohol tests are administered with a breath screening test and a subsequent breath follow-up test, if necessary, using USDOT-approved devices.

State Fiscal Effect: The bill does not define “employer,” nor is this term defined in corresponding sections of the Health-General Article. The Judiciary advises that, generally, if statute is meant to include a unit of government, the definition explicitly includes such language. As neither the bill nor existing statute provides a definition, it is unclear if the bill applies to State government entities. Regardless, as the bill is only authorizing, and not requiring, employers to use PBTs, the bill is not expected to materially affect State finances or operations.

The Maryland Department of Transportation (MDOT) advises that breathalyzers are used to conduct alcohol tests for employees. However, MDOT does not perform pre-employment or random alcohol tests for non-USDOT employees. Non-USDOT employees may be subject to reasonable suspicion and post-accident alcohol testing; seven such tests were performed in calendar 2016, but no such tests were performed in calendar 2017. MDOT notes that the bill does not establish a distinction for non-USDOT and USDOT testing.

Local Expenditures: Calvert County advises that the anticipated cost to implement a countywide alcohol and drug testing program is approximately \$17,000, and that the county seeks to authorize the use of PBTs in such a program. However, as noted previously, as “employer” is not specifically defined to include units of State or local governments, it is unclear if the bill applies to local governments.

Small Business Effect: Employers may choose to use PBTs to conduct job-related alcohol testing for employees.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore, Frederick, Montgomery, and St. Mary's counties; Judiciary (Administrative Office of the Courts); University System of Maryland; Department of Budget and Management; Maryland Department of Health; Department of Labor, Licensing, and Regulation; Maryland Department of Transportation; Department of Legislative Services

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