

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

House Bill 430
Judiciary

(Delegates Folden and Afzali)

Drunk Driving - Accidents Resulting in Death - Sanctions for Administrative Per Se Offenses

This bill increases the administrative *per se* sanctions that must be imposed on a person who is stopped or detained on suspicion of committing an alcohol-related driving offense if test results indicate a blood alcohol concentration (BAC) of 0.08 or greater and the person was involved in a motor vehicle accident that resulted in the death of another person. The same administrative penalties apply to a nonresident of Maryland or an unlicensed person. Existing administrative *per se* penalties for test refusal are not altered by the occurrence of a motor vehicle accident that results in death to another person.

The bill expands the issues that may be considered on administrative appeal of an administrative *per se* sanction to include whether the person was involved in a motor vehicle accident that resulted in the death of another person. The bill also clarifies that, once a license suspension or revocation order becomes effective, the Motor Vehicle Administration (MVA) *must* suspend or revoke the license, as specified. MVA is authorized to issue a restrictive license to a person for an imposed license suspension period or reinstate a license that has been revoked under the bill for the purpose of participating in the Ignition Interlock System Program (IISP).

Fiscal Summary

State Effect: Transportation Trust Fund (TTF) revenues are not likely to be materially affected by additional fees from license corrections issued to those with license suspensions or those who participate in IISP due to the bill. Any increase in license suspensions or revocations or in participants in IISP can be handled by MVA with existing resources. Any increase in administrative hearings resulting from the bill can be handled by the Office of Administrative Hearings (OAH) with existing resources. Enforcement can be handled with existing resources.

Local Effect: Enforcement can be handled with existing resources. Revenues are not affected.

Small Business Effect: Potential minimal.

Analysis

Bill Summary/Current Law:

The bill increases administrative *per se* sanctions related to the offense of driving or attempting to drive a vehicle while under the influence of alcohol *per se* if the person is involved in a motor vehicle accident resulting in death. Driving while under the influence of alcohol *per se* is defined as having 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.

A person *must* submit to a test of blood or breath, or both, as directed by a police officer, if the person is involved in an accident that results in death or life-threatening injury to another person and the police officer who detains the person has reasonable grounds to believe that the person was driving or attempting to drive while committing an alcohol-and/or drug-related driving offense, as specified.

A person who (1) is detained by a police officer on suspicion of committing an alcohol-and/or drug-related driving offense; (2) is directed to take such a test; and (3) takes the test with a result of 0.08 BAC, but less than 0.15 BAC, is subject to an immediate administrative license suspension of 45 days for a first offense. A person who takes a test as directed by a police officer with a result of 0.15 BAC or greater is subject to an immediate administrative license suspension of 90 days. If a person is directed to take a test by a police officer and refuses, the person is subject to an immediate administrative license suspension of 120 days. Administrative penalties increase for second or subsequent offenses. Under specified circumstances, test refusal is a criminal offense that is also subject to judicial sanctions.

Exhibit 1 compares existing administrative *per se* penalties to those administrative *per se* penalties proposed by the bill.

**Exhibit 1
Under House Bill 430**

Comparison of Current Administrative *Per Se* Penalties to Increased Administrative *Per Se* Penalties

<u>Test Result/Refusal</u>	<u>Current Administrative <i>Per Se</i> Penalties</u>		<u>Proposed Administrative <i>Per Se</i> Penalties if Death Results</u>	
	<u>Occurrence</u>	<u>Suspension</u>	<u>Occurrence</u>	<u>Sanction</u>
BAC Test Result \geq 0.08, but $<$ 0.15	First	45 Days	First	Six Months Suspension
BAC Test Result \geq 0.08, but $<$ 0.15	Second/Subsequent	90 Days	Second/Subsequent	One Year Suspension
BAC Test Result \geq 0.15	First	90 Days	First	One Year Suspension
BAC Test Result \geq 0.15	Second/ Subsequent	180 Days	Second/Subsequent	License Revocation
Test Refusal	First	120 Days	First	120 Days
Test Refusal	Second/Subsequent	One Year	Second/Subsequent	One Year Suspension

\geq means greater than or equal to

$<$ means less than

Source: Department of Legislative Services

If a police officer directs that a person be tested, 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.

If the person stopped by the police officer is unconscious or otherwise incapable of refusing to take a test, the officer must (1) obtain prompt medical attention; (2) arrange for removal of the person to a medical facility, if necessary; and (3) direct a qualified medical person to withdraw blood for a test, if it does not jeopardize the person's health. An initial refusal to take a test that is withdrawn as specified by statute is deemed not to be a refusal. The burden of proof rests with the person who has withdrawn the refusal to show, by a preponderance of the evidence, that the requirements for withdrawal of a refusal were met.

The police officer must also advise the person of the administrative sanctions that must be imposed for refusal to take a test or if test results are 0.08 BAC or greater, and inform the person of notice and hearing procedures. A person operating a commercial vehicle or who holds a commercial driver's license (even if not operating a commercial vehicle at the time of detention) is subject to more stringent administrative sanctions. No modification of the license suspension is permitted for refusal unless the driver participates in the Ignition Interlock System Program.

Under current law, a person subject to an administrative *per se* sanction, as specified, has the right to an administrative hearing on the proposed imposition of that sanction. However, at an administrative hearing, the issues are limited to the following:

- whether the detaining police officer had reasonable grounds to believe the person was driving or attempting to drive while committing an alcohol- and/or drug-related driving offense, as specified;
- whether there was evidence of use or alcohol, drugs, a combination of drugs and/or drugs and alcohol, or a controlled dangerous substance;
- whether the person refused to take a test;
- whether the person drove or attempted to drive a motor vehicle with an alcohol concentration of 0.08 BAC or more at the time of testing;
- whether the person drove or attempted to drive a motor vehicle with an alcohol concentration of 0.15 BAC or more at the time of testing; or

- if the hearing involves disqualification of a commercial instructional permit or license, whether the person was operating a commercial motor vehicle or held a commercial instructional permit or license.

At an administrative hearing, the sworn statement of the police officer who detained the person and of the test technician or analyst are designated *prima facie* evidence of a test result indicating 0.08 BAC, but less than 0.15 BAC, or a test result of 0.15 BAC or greater, or of test refusal.

Under current law, after an administrative hearing, MVA must suspend the driver's license of a person charged with an administrative *per se* offense if the hearing officer determines that:

- the detaining police officer had reasonable grounds to believe the person was driving or attempting to drive while committing an alcohol- and/or drug-related driving offense, as specified;
- there was evidence of use by the person of alcohol, drugs, a combination of drugs and/or drugs and alcohol, or a controlled dangerous substance; and
- the police officer requested a test after the person was fully advised of the administrative sanctions that could be imposed, and the person refused to take the test, or the test was taken with a result of 0.08 or greater at the time of testing.

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. 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. A court may not impose this additional penalty unless the State's Attorney served notice of the alleged test refusal on the defendant before acceptance of a plea of guilty or *nolo contendere* (no contest), or the notice was served at least fifteen days before trial in a circuit court or 5 days before trial in the District Court, whichever is earlier.

Background: The Maryland Highway Safety Office reports that, for the five-year period from 2009 through 2013, there were 1,792 motor vehicle occupant deaths in Maryland that did not involve pedestrians or motorcycles. Of this total, 594, or 33%, involved alcohol and/or drug impairment. The National Highway Traffic Safety Administration (NHTSA) reports that, for 2012 (the latest information available), the rate of alcohol-impaired fatalities per 100 million vehicle miles traveled in Maryland was 0.29 and the national rate of alcohol-impaired fatalities per 100 million vehicle miles traveled was 0.35.

According to the latest information available from the National Conference of State Legislatures, at least 39 states require post-accident testing of drivers, passengers, or pedestrians and make those tests admissible in court proceedings. Most of these states require testing when there are reasonable grounds to suspect that one or more of those involved may have been under the influence of alcohol or impaired by alcohol and/or drugs.

According to the latest information available from NHTSA, all states have some form of implied consent statute, but administrative and criminal penalties vary widely for test refusal. In Maryland, and at least 16 other states, refusal to submit to a test is a separate crime. Criminal sanctions imposed by states include fines, community service, alcohol or drug treatment, vehicle impoundment, and jail time.

State Fiscal Effect: The bill's provisions are not likely to materially alter the population of drivers subject to license suspension or revocation. Those suspected of an alcohol- and/or drug-related driving offense may be more likely to refuse a directed test, if a fatal motor vehicle accident has occurred, as the bill makes any penalty for a test result of 0.08 BAC or higher more stringent than any penalty for test refusal. However, any increase in test refusals is not expected to be significant. Any disincentive to refuse a directed test due to the criminal penalties that may be imposed upon conviction for an alcohol-related driving offense remains unchanged from existing provisions.

Drivers who are subject to a license suspension due to an alcohol- and/or drug-related driving offense must pay \$45 for reissuance of a driver's license upon completion of the suspension. Drivers who are subject to license revocation due to an alcohol- and/or drug-related driving offense must pay \$75 for reinstatement of the driver's license upon termination of the revocation. Drivers who participate in IISP must pay \$20 for the attachment of a restriction to the driver's license once participation begins and \$20 to remove the restriction once participation in the program is successfully completed.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of State Police, Office of Administrative Hearings, Maryland Department of Transportation, National Conference of State Legislatures, National Highway Traffic Safety Administration, Department of Legislative Services

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