

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

April 11, 2005

TO: Honorable Joe Driver, Chair, House Committee on Law Enforcement

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: **HB3241** by Smith, Todd (Relating to the civil and criminal consequences of engaging in certain intoxication offenses or refusing to submit to the taking of a specimen to test for intoxication.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB3241, As Introduced: a positive impact of \$3,035,421 through the biennium ending August 31, 2007.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2006	\$1,028,956
2007	\$2,006,465
2008	\$5,812,074
2009	\$5,812,074
2010	\$5,812,074

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/(Loss) from GENERAL REVENUE FUND 1	Probable Revenue Gain/(Loss) from TRAUMA FACILITY AND EMS 5111
2006	\$1,028,956	\$1,008,581
2007	\$2,006,465	\$1,966,733
2008	\$5,812,074	\$0
2009	\$5,812,074	\$0
2010	\$5,812,074	\$0

Fiscal Analysis

The bill would amend the Code of Criminal Procedure, Government Code, Penal Code, and Transportation Code as it relates to the civil and criminal consequences of engaging in certain intoxication offenses or refusing to submit to the taking of a specimen to test for intoxication.

Under the provisions of the bill, a person would not be able to petition the court for an order of nondisclosure for an offense under Chapter 49, Penal Code, other than an offense that is a Class C misdemeanor.

The bill would make it a Class B misdemeanor, with a minimum term of 120 hours of continuous confinement, for a person arrested for an offense relating to the operation of a motor vehicle while intoxicated, an offense of operating an aircraft while intoxicated, or an offense of operating a watercraft while intoxicated, to refuse to submit to the taking of a specimen of the person's blood or breath at the request of and as designated by a peace officer. The bill specifies that the offense is not a

lesser-included offense under any of the intoxication or alcohol related statutes.

A surcharge of \$2,000 per year would be assessed on the driver license of a person for an intoxication conviction involving a refusal to provide a blood or breath specimen. A mandatory blood or breath specimen is required for any person arrested for an offense under Penal Code, Chapter 49 (intoxication-related offenses), or, if at the time of the arrest, the officer possesses or receives reliable information from a credible source that the person has been previously convicted two or more times of an offense under Chapter 49, Penal Code, involving the operation of a motor vehicle or a watercraft.

Before requesting a person to submit to the taking of a specimen, the officer would be required to inform the person orally and in writing that if the person refuses to submit to the taking of the specimen, that refusal is an offense under Section 49.03, Penal Code; may be admissible in a subsequent prosecution; and may result in a suspension of the person's license to operate a motor vehicle or in a denial to issue the person a license, regardless of whether the person is subsequently prosecuted for the underlying offense and may result in additional administrative sanctions, including the assessment of a \$2,000 per year surcharge on the person's license during the 36-month period following any conviction that results from prosecution of the underlying offense. The officer would also be required to inform the person orally and in writing that the person has a right to a hearing on any suspension of the person's license to operate a motor vehicle or denial to issue the person a license if, not later than the 15th day after the date on which the person receives notice of suspension or denial or is considered to have received notice as provided by law, the Department of Public Safety receives a written request for the hearing.

Evidence of alcohol concentration would be admissible in a criminal proceeding arising out of an offense under Chapter 49, Penal Code. The bill would also create a presumption, if the blood or breath specimen was taken within three hours of the incident giving rise to the criminal proceeding, that the person's alcohol concentration at the time of the incident was the same as or greater than the level shown by that evidence.

The bill would take effect September 1, 2005.

Methodology

Under the provisions of the bill, persons convicted of an intoxication offense after refusing to submit a blood or breath specimen after being arrested for operating a motor vehicle, aircraft, or boat while intoxicated would be required to pay a \$2,000 surcharge. DPS does not currently collect data specific to the surcharge collection rate for those convicted of intoxication offenses, but reports payment compliance decreases as the surcharge increases. DPS reports the current collection rate for the Driver Responsibility Program (DRP) is 31 percent. This fiscal analysis assumes that the collection rate for offenders refusing to submit specimens would be half the overall rate, or 15.5 percent, since this would be the highest surcharge category.

Of the 125,000 Administrative License Revocations in fiscal year 2004, DPS estimates 45 percent included a refusal to submit a blood or breath specimen upon request. DPS reports 61,927 intoxication convictions in fiscal year 2004. DPS does not currently collect data on the number of convictions that involve persons who refused to submit either a blood or breath specimen. Intoxication convictions reported by DPS were adjusted for the number of persons entering the Texas Department of Criminal Justice whose primary offense was driving while intoxicated (DWI) in fiscal year 2004 since it is anticipated these persons would not pay the surcharges. This fiscal analysis assumes that the frequency of intoxication convictions involving a refusal to provide a specimen would be 22.5 percent, or half the rate of refusals among Administrative License Revocations. The number of new persons making the surcharge payments are assumed to decrease by 5 percent in subsequent fiscal years as a result of fewer refusals to provide a specimen, lower rates of payment for subsequent surcharges and repeat offenders, and multiple convictions requiring felony punishment. The number of persons making the payments is assumed to stabilize after three years.

The estimated amount of revenue collected as a result of the provisions of the bill would be \$2,037,537 in fiscal year 2006, \$3,973,198 in fiscal year 2007, \$5,812,074 in fiscal year 2008, \$5,812,074 in fiscal year 2009, and \$5,812,074 in fiscal year 2010.

Under current law, revenue collected under the DRP through fiscal year 2007 must be distributed to the Trauma Center Fund (49.5 percent) and the General Revenue Fund (51.5 percent). Effective fiscal year 2008, all money collected under the DRP will be deposited into the General Revenue Fund.

Local Government Impact

Costs to sheriff's and police departments would vary. The Travis County Sheriff's Department reported that the provisions of the bill could result in an increased county jail capacity of 22,082 man-days per year, for an approximate increased cost of \$1.53 million per year and an additional 11 staff. This represents a moderate impact to the department's budget.

The Harris County Sheriff's Department reports that Harris County disposed of over 10,000 DWI and DUID cases in calendar year 2004, or nearly 12 percent of all such cases disposed statewide. It is estimated that the cost of DWI and DUID trials ranged upward of \$3 million for Harris County in 2004, but it is unknown how many of those would not have been tried were this law in effect. The county was unable to determine what impact the provisions of the bill would have on the department.

The Collin County Sheriff's Office and the City of Abilene Police Department reported that there would be no significant fiscal implications to their organizations.

Source Agencies: 405 Department of Public Safety

LBB Staff: JOB, VDS, LM, KJG, SJ