

**TESTIMONY OF DEPUTY SECRETARY KURT MYERS
PENNSYLVANIA DEPARTMENT OF TRANSPORTATION
HOUSE BILL 1323
HOUSE TRANSPORTATION COMMITTEE (HARRISBURG)
OCTOBER 13, 2009**

Good morning. My name is Kurt Myers, and I am the Deputy Secretary for PennDOT's Safety Administration. On behalf of Secretary of Transportation Allen Biehler, I appreciate the opportunity to testify today on House Bill 1323, related to eligibility requirements for an Occupational Limited License (OLL).

As the law currently exists, an individual who has been convicted of driving under the influence of alcohol or a controlled substance is eligible for an Occupational Limited License (OLL) provided the violation is the individual's first offense and the individual meets additional eligibility requirements. In a very unique situation, however, an individual who has been convicted of a second DUI offense may be eligible for an OLL. The OLL authorizes the individual to drive a designated vehicle, under certain conditions, only when it is necessary for the individual's occupation, work, trade, medical treatment or study.

However, under current law, an individual is not eligible for an OLL if their driving privilege has been suspended upon conviction of a non-moving violation for the possession, sale, delivery, offering for sale, and holding for sale or giving away of any controlled substance under the laws of the United States.

Clearly this seems contradictory as an individual whose driving privilege has been suspended upon conviction of driving under the influence of drugs is eligible for an OLL, but an individual whose driving privilege has been suspended upon conviction of possessing the same drugs, a non-moving violation, is not eligible for an OLL.

Also, an individual whose driving privilege is suspended for an underage drinking violation, which is a non-moving violation, is eligible for an OLL, provided it's the individual's first offense.

House Bill 1323 would allow for those whose driver's license have been suspended upon conviction of an offense of possessing, sale, delivery, offering for sale, holding for sale or giving away of any controlled substance under the laws of the United States to be eligible for an OLL, provided it's the individual's first offense and the individual meets additional eligibility requirements.

PennDOT does not oppose this legislation as long as it does not violate federal laws or regulations. The consequence would be the withholding of federal highway funding from Pennsylvania. On a yearly basis, the Governor must certify that the Commonwealth of Pennsylvania suspends driving privileges upon conviction of drug offenses per the Federal Drug Offender's Driver License Suspension Law. This is a requirement of the Federal Highway

Administration (FHWA). If Pennsylvania was unable to certify or if a certification was rejected by the FHWA it could lead to the loss of federal highway funding. In federal Fiscal Year 2009, if the Governor had not been able to certify or the certification had been rejected, Pennsylvania would have lost an estimated \$69.5 million in federal highway funding.

As additional detail, while federal law requires suspensions for drug offenses, there is an exception for compelling circumstances set forth on a state statute requiring establishment of exceptional circumstances specific to the offender. Pennsylvania has statutes that impose suspensions for drug offenses. Pennsylvania's OLL statute, which is applicable to certain drug offenses, requires a petition setting forth the individual circumstances supporting the request for an OLL. PennDOT believes a good argument can be made that this satisfies the federal law. If that category of drug offenses eligible for OLL is expanded, we could argue as well that federal law is satisfied.

Having said that, it is imperative that any questions concerning this legislation and whether the federal law will be satisfied need to be determined in advance of its passing since the potential penalty is an unacceptable outcome for the commonwealth.

Also, assuming this bill does move forward, PennDOT would suggest an amendment to Section 1532(c)(2) of the Pennsylvania Vehicle Code relating to suspensions. We suggest that this section be amended to read:

For the purposes of this subsection, the term "conviction" shall include any conviction, probation without verdict or adjudication of delinquency for any of the offenses listed in paragraph (1), whether in this Commonwealth or any other Federal or state court.

There is a provision in Pennsylvania's Drug Act for a disposition of criminal charges called "probation without verdict." In earlier decisions, the commonwealth court held that these dispositions were "convictions" for discipline against doctors, real estate brokers, etc., for suspensions of their professional licenses. But in PennDOT's case, for no apparent reason, they held that they are not convictions.

As you know, it was the Pennsylvania legislature that first determined that Pennsylvania drivers should be protected from those arrested and adjudicated for drug act violations. Recently, the courts held that suspensions should not be imposed for "probations without verdicts." Since a large number of offenders enter pleas under this provision, they cannot be suspended unless the legislature corrects the law to include probation without verdict adjudications. We think that, for the safety of the motoring public, this provision should be passed and enacted. This amendment makes sense because under House Bill 1323, these individuals would be eligible for an OLL.

Thank you for the opportunity to testify today concerning House Bill 1323. At this time, I am available to take any questions you may have. Thank you.