HOUSE BILL 676

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By: **Delegates Vallario and Petzold**
Introduced and read first time: February 10, 2000
Assigned to: Judiciary

Committee Report: Favorable
House action: Adopted with floor amendments
Read second time: March 20, 2000

CHAPTER 629

AN ACT concerning

Alcohol or Drug Related Offenses - Evidence - Tests

FOR the purpose of providing that a copy of a report of the results of certain tests to determine alcohol concentration is admissible in a criminal trial concerning a violation of certain driver's license restrictions under certain circumstances; providing that a certain determination of an alcohol concentration of a certain amount is prima facie evidence that a defendant was driving in violation of certain alcohol restrictions; providing that evidence of certain tests or analyses is not admissible in prosecutions of certain alcohol or drug related offenses if the evidence is obtained contrary to certain procedures; and generally relating to the evidentiary use of certain tests for violations of certain alcohol or drug related offenses.

BY repealing and reenacting, without amendments,
Article - Courts and Judicial Proceedings
Section 10-302, 10-303, 10-305, and 10-308
Annotated Code of Maryland
(1998 Replacement Volume and 1999 Supplement)

BY repealing and reenacting, with amendments,
Article - Courts and Judicial Proceedings
Section 10-304, 10-306, 10-307, and 10-309
Annotated Code of Maryland
(1998 Replacement Volume and 1999 Supplement)

BY repealing and reenacting, without amendments,
Article - Transportation

Section 16-113
Annotated Code of Maryland
(1999 Replacement Volume and 1999 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article - Courts and Judicial Proceedings

10-302.

In a prosecution for a violation of a law concerning a person who is driving or attempting to drive a vehicle in violation of § 16-113, § 16-813, or § 21-902 of the Transportation Article, or in violation of Article 27, § 388, § 388A, or § 388B of the Code, a test of the person's breath or blood may be administered for the purpose of determining alcohol concentration and a test or tests of 1 specimen of the person's blood may be administered for the purpose of determining the drug or controlled dangerous substance content of the person's blood.

10-303.

(a) (1) A specimen of breath or 1 specimen of blood may be taken for the purpose of a test for determining alcohol concentration.

(2) For the purpose of a test for determining alcohol concentration, the specimen of breath or blood shall be taken within 2 hours after the person accused is apprehended.

(b) (1) Only 1 specimen of blood may be taken for the purpose of a test or tests for determining the drug or controlled dangerous substance content of the person's blood.

(2) For the purpose of a test or tests for determining drug or controlled dangerous substance content of the person's blood, the specimen of blood shall be taken within 4 hours after the person accused is apprehended.

10-304.

(a) (1) In this section the following words have the meanings indicated.

(2) "Qualified medical person" means any person permitted by law to withdraw blood from humans.

(3) "Qualified person" means a person who has received training in the use of the equipment in a training program approved by the toxicologist under the Postmortem Examiners Commission and who is either a police officer, a police employee, an employee of the office of the Chief Medical Examiner, or a person authorized by the toxicologist under the Postmortem Examiners Commission.

(b) (1) The test of breath shall be administered by a qualified person with equipment approved by the toxicologist under the Postmortem Examiners Commission at the direction of a police officer.

(2) The officer arresting the individual may not administer the test of breath.

(c) (1) (i) The blood shall be obtained by a qualified medical person using equipment approved by the toxicologist under the Postmortem Examiners Commission acting at the request of a police officer.

(ii) A certified statement by the qualified medical person who obtained the blood shall be prima facie evidence of that person's qualifications and that the blood was obtained in compliance with this section.

(iii) 1. A certified statement that complies with the requirements of this paragraph is admissible as substantive evidence without the presence or testimony of the qualified medical person who obtained the blood.

2. If the State decides to offer the certified statement without the testimony of the qualified medical person, the State shall, at least 30 days before trial, notify the defendant or the defendant's attorney in writing of the State's intention and deliver to the defendant or the defendant's attorney a copy of the certified statement to be offered.

3. If the District Court is deprived of jurisdiction under circumstances in which a defendant is entitled to and demands a jury trial, or appeals from the District Court to a circuit court, the State is not required to file a second notice.

(iv) 1. If the defendant desires the qualified medical person to be present and testify at trial, the defendant shall notify the court and the State in writing no later than 20 days before trial.

2. If the District Court is deprived of jurisdiction under circumstances in which a defendant is entitled to and demands a jury trial, or appeals from the District Court to a circuit court, the defendant shall notify the circuit court and the State in writing no later than 20 days before trial.

3. If the timely and proper notice required under this subparagraph is provided by the defendant, the certified statement is inadmissible without the testimony of the qualified medical person.

4. Failure to give the timely and proper notice constitutes a waiver of the defendant's right to the presence and testimony of the qualified medical person.

(2) The test of blood shall be conducted by a qualified person using equipment approved by the toxicologist under the Postmortem Examiners Commission in a laboratory approved by the toxicologist.

(d) (1) For the purpose of establishing that the test of breath or blood was administered with equipment approved by the toxicologist under the Postmortem Examiners Commission, a statement signed by the toxicologist certifying that the equipment used in the test has been approved by him shall be prima facie evidence of the approval, and the statement is admissible in evidence without the necessity of the toxicologist personally appearing in court.

(2) (i) If a defendant desires the toxicologist to be present and testify at trial as a witness, the defendant shall file a request for a subpoena for the toxicologist at least 20 days before the trial in the appropriate court.

(ii) If the District Court is deprived of jurisdiction under circumstances in which a defendant is entitled to and demands a jury trial, or appeals from the District Court to the circuit court, another subpoena must be filed at least 20 days before the trial in the circuit court.

(iii) If a trial date is postponed for any reason beyond 30 days from the trial date for which the subpoena was issued, the defendant shall file a new subpoena for the toxicologist.

(iv) In addition to the requirements of Maryland Rules 4-265 and 4-266, the subpoena shall contain the name, address, and telephone number of the defendant or the defendant's attorney.

(3) A subpoena for the toxicologist may be quashed if a defendant fails to comply with the requirements of this subsection.

(4) A motion to quash a defendant's subpoena may be filed by any party or by the Attorney General.

(e) The person tested is permitted to have a physician of the person's own choosing administer tests in addition to the one administered at the direction of the police officer, and in the event no test is offered or requested by the police officer, the person may request, and the officer shall have administered, one or more of the tests provided for in this section.

(f) Nothing in this section precludes the right to introduce any other competent evidence bearing upon the date of the certificate or change in the equipment since the date of the certificate.

10-305.

(a) The type of test administered to the defendant to determine alcohol concentration shall be the test of breath except that the test of blood shall be the type of test administered if:

(1) The defendant is unconscious or otherwise incapable of refusing to take a test to determine alcohol concentration;

(2) Injuries to the defendant require removal of the defendant to a medical facility; or

(3) The equipment for administering the test of breath is not available.

(b) The type of specimen obtained from the defendant for the purpose of a test or tests to determine drug or controlled dangerous substance content shall be a blood specimen.

(c) Any person who is dead, unconscious, or otherwise in a condition rendering him incapable of test refusal shall be deemed not to have withdrawn consent.

10-306.

(a) (1) (i) Subject to the provisions of paragraph (2) of this subsection, in any criminal trial in which a violation of [§ 16-113(a)(2)] § 16-113, § 16-813, or § 21-902 of the Transportation Article, or a violation of Article 27, § 388, § 388A, or § 388B of the Code is charged or is an issue, a copy of a report of the results of a test of breath or blood to determine alcohol concentration signed by the technician or analyst who performed the test, is admissible as substantive evidence without the presence or testimony of the technician or analyst who performed the test.

(ii) Subject to the provisions of § 10-308(b) of this subtitle and paragraph (2) of this subsection, in any criminal trial in which a violation of § 21-902 of the Transportation Article or a violation of Article 27, § 388, § 388A, or § 388B of the Code is charged, a copy of a report of the results of a test or tests of blood to determine drug or controlled dangerous substance content signed by the technician or analyst who performed the test, is admissible as substantive evidence without the presence or testimony of the technician or analyst who performed the test.

(2) To be admissible under paragraph (1) of this subsection, the report shall:

(i) Identify the technician or analyst as a "qualified person", as defined in § 10-304 of this subtitle;

(ii) State that the test was performed with equipment approved by the toxicologist under the Postmortem Examiners Commission at the direction of a police officer; and

(iii) State that the result of the test is as stated in the report.

(b) (1) (i) Test results which comply with the requirements of subsection (a) of this section are admissible as substantive evidence without the presence or testimony of the technician or analyst who administered the test.

(II) However, if the State decides to offer the test results without the testimony of the technician or analyst, it shall, at least 30 days before trial, notify the defendant or his attorney in writing of its intention and deliver to the defendant or his attorney a copy of the test results to be offered.

[(ii)] (III) If the District Court is deprived of jurisdiction under circumstances in which a defendant is entitled to and demands a jury trial, or appeals from the District Court to the circuit court, the State is not required to file a second notice.

(2) (i) If the defendant desires the technician or analyst to be present and testify at trial, the defendant shall notify the court and the State in writing no later than 20 days before trial.

(ii) If the District Court is deprived of jurisdiction under circumstances in which a defendant is entitled to and demands a jury trial, or appeals from the District Court to a circuit court, the defendant shall notify the circuit court and the State in writing no later than 20 days before trial.

(iii) If the timely and proper notice required under this paragraph is provided by the defendant, the test results are inadmissible without the testimony of the technician or analyst.

(3) Failure to give timely and proper notice constitutes a waiver of the defendant's right to the presence and testimony of the technician or analyst.

10-307.

(a) (1) In a proceeding in which a person is charged with a violation of Article 27, § 388, § 388A, or § 388B of the Code, or with driving or attempting to drive a vehicle in violation of [§ 16-113(a)(2)] § 16-113, § 16-813, or § 21-902 of the Transportation Article, the amount of alcohol in the person's breath or blood shown by analysis as provided in this subtitle is admissible in evidence and has the effect set forth in subsections (b) through (e) of this section.

(2) Alcohol concentration as used in this section shall be measured by:

(i) Grams of alcohol per 100 milliliters of blood; or

(ii) Grams of alcohol per 210 liters of breath.

(3) If the amount of alcohol in the person's blood shown by analysis as provided in this subtitle is measured by milligrams of alcohol per deciliters of blood or milligrams of alcohol per 100 milliliters of blood, a court or an administrative law judge, as the case may be, shall convert the measurement into grams of alcohol per 100 milliliters of blood by dividing the measurement by 1000.

(b) If at the time of testing a person has an alcohol concentration of 0.05 or less, as determined by an analysis of the person's blood or breath, it shall be presumed that the defendant was not intoxicated and that the defendant was not driving while under the influence of alcohol.

(c) If at the time of testing a person has an alcohol concentration of more than 0.05 but less than 0.07, as determined by an analysis of the person's blood or breath, this fact may not give rise to any presumption that the defendant was or was not

intoxicated or that the defendant was or was not driving while under the influence of alcohol, but this fact may be considered with other competent evidence in determining the guilt or innocence of the defendant.

(d) If at the time of testing a person has an alcohol concentration of at least 0.07 but less than 0.10, as determined by an analysis of the person's blood or breath, it shall be prima facie evidence that the defendant was driving while under the influence of alcohol.

(e) If at the time of testing a person has an alcohol concentration of 0.02 or more, as determined by an analysis of the person's blood or breath, it shall be prima facie evidence that the defendant was driving with alcohol in the defendant's blood.

(f) If at the time of testing a person has an alcohol concentration of 0.02 or more, as determined by an analysis of the person's blood or breath, it shall be prima facie evidence that a defendant was driving in violation of [§ 16-113(b)] AN ALCOHOL RESTRICTION UNDER § 16-113 of the Transportation Article.

10-308.

(a) The evidence of the analysis does not limit the introduction of other evidence bearing upon whether the defendant was intoxicated or whether the defendant was driving while under the influence of alcohol, while so far under the influence of any drug, any combination of drugs, or a combination of one or more drugs and alcohol that the person cannot drive a vehicle safely, or while under the influence of a controlled dangerous substance.

(b) The results of a test or tests to determine the drug or controlled dangerous substance content of a person's blood:

(1) Are admissible as evidence in a criminal trial only in a prosecution for a violation of § 21-902 of the Transportation Article, § 8-738 of the Natural Resources Article, or Article 27, § 388, § 388A, or § 388B of the Code and only if other admissible evidence is introduced that creates an inference that the person was:

(i) Driving or attempting to drive while so far under the influence of any drug, any combination of drugs, or a combination of one or more drugs and alcohol that the person could not drive a vehicle safely, or while under the influence of a controlled dangerous substance; or

(ii) Operating or attempting to operate a vessel while the person was so far under the influence of any drug, any combination of drugs, or a combination of one or more drugs and alcohol that the person could not operate a vessel safely, or while under the influence of a controlled dangerous substance; and

(2) Are not admissible in a prosecution other than a prosecution for a violation of § 21-902 of the Transportation Article, § 8-738 of the Natural Resources Article, or Article 27, § 388, § 388A, or § 388B of the Code.

10-309.

(a) (1) (I) Except as provided in § 16-205.1(c) of the Transportation Article, a person may not be compelled to submit to a test or tests provided for in this subtitle.

(II) Evidence of a test or analysis PROVIDED FOR IN THIS SUBTITLE is not admissible in a prosecution for a violation of § 16-113 OR § 21-902 of the Transportation Article, § 8-738 OF THE NATURAL RESOURCES ARTICLE, OR ARTICLE 27, § 388, § 388A, OR § 388B OF THE CODE if obtained contrary to [its] THE provisions OF ~~§§ 10-302 THROUGH 10-308 OF~~ THIS SUBTITLE.

(2) (I) No inference or presumption concerning either guilt or innocence arises because of refusal to submit.

(II) The fact of refusal to submit is admissible in evidence at the trial.

(b) This section does not limit the provisions of the vehicle laws regarding the consequences of refusal to submit to a test or tests.

(c) Nothing in this section precludes or limits the admissibility of evidence of a test or analysis to determine the alcohol concentration of a person's blood or breath in any prosecution other than for a violation of § 16-113 OR § 21-902 of the Transportation Article, § 8-738 OF THE NATURAL RESOURCES ARTICLE, OR ARTICLE 27, § 388, § 388A, OR § 388B OF THE CODE.

(d) Nothing in this section precludes or limits admissibility of evidence of a test or analysis to determine the alcohol concentration of a person's blood or breath which is obtained as provided in § 16-205.1(c) of the Transportation Article.

Article - Transportation

16-113.

(a) (1) In addition to the vision and other restrictions provided for in this subtitle, when it issues a driver's license, the Administration for good cause may impose on the licensee:

(i) Any restrictions suitable to the licensee's driving ability with respect to the type of special mechanical control devices required on motor vehicles that the licensee may drive;

(ii) An alcohol restriction which prohibits the licensee from driving or attempting to drive a motor vehicle while having alcohol in the licensee's blood; and

(iii) Any other restrictions applicable to the licensee that the Administration determines appropriate to assure the safe driving of a motor vehicle by the licensee.

(2) An alcohol restriction that prohibits the licensee from driving or attempting to drive a motor vehicle while having alcohol in the licensee's blood may, as described in subsections (b) and (g) of this section, include a restriction that prohibits the licensee from driving or attempting to drive a motor vehicle unless the licensee is a participant in the Ignition Interlock System Program established under § 16-404.1 of this title.

(b) (1) Notwithstanding the licensee's driving record, the Administration shall impose on each licensee under the age of 21 years an alcohol restriction that prohibits the licensee from driving or attempting to drive a motor vehicle with an alcohol concentration of 0.02 or more as determined by an analysis of the licensee's blood or breath.

(2) An alcohol restriction imposed under this subsection expires when the licensee reaches the age of 21 years.

(3) This subsection may not be construed or applied to limit:

(i) The authority of the Administration to impose on a licensee an alcohol restriction described in subsection (a)(2) of this section; or

(ii) The application of any other provision of law that prohibits consumption of an alcoholic beverage by an individual under the age of 21 years.

(4) An individual under the age of 21 years who is convicted of a violation of § 21-902(a), (b), or (c) of this article may be required, for a period of not more than 3 years, to participate in the Ignition Interlock System Program in order to retain the individual's driver's license.

(c) (1) Subject to the provisions of paragraph (2) of this subsection, the Administration may:

(i) Issue a special restricted license; or

(ii) Set forth the restrictions on the usual license form.

(2) The Administration shall indicate on the license of a licensee under the age of 21 years that an alcohol restriction has been imposed on the licensee under subsection (b) of this section.

(d) (1) Notwithstanding the licensee's driving record, the Administration shall impose an hour restriction on a provisional driver's license issued to an applicant under the age of 18.

(2) The restriction under this subsection shall limit the holder of a provisional license to driving unsupervised only between the hours of 5 a.m. and 12 midnight.

(3) This subsection does not preclude the holder of a provisional license from driving between the hours of 12 midnight and 5 a.m. the following day if the licensee is:

(i) Accompanied and supervised by a licensed driver who is at least 21 years old;

(ii) Driving to or from or in the course of the licensee's employment;

(iii) Driving to or from a school class or official school activity;

(iv) Driving to or from an organized volunteer program; or

(v) Driving to or from an opportunity to participate in an athletic event or related training session.

(4) The hour restriction and the supervision requirement under this subsection expire on the date the holder of the provisional license turns 18 years of age.

(e) In addition to the other restrictions provided under this subtitle, the Administration may issue a driver's license that is valid only in the State of Maryland to an applicant who has been suspended in another jurisdiction as a result of failing to comply with the financial responsibility requirements of that jurisdiction.

(f) After receiving satisfactory evidence of any violation of a restricted or provisional driver's license, the Administration may suspend or revoke the license. However, the licensee may request a hearing as provided for a suspension or revocation under Subtitle 2 of this title.

(g) (1) The Administration shall impose an alcohol restriction under subsection (a)(1)(ii) of this section that prohibits an individual for a period of 3 years from driving or attempting to drive with alcohol in the individual's blood on any licensee who is convicted within 5 years of any combination of two or more violations under § 21-902(a), (b), or (c) of this article.

(2) If a circuit court or the District Court orders a licensee not to drive or attempt to drive a motor vehicle with alcohol in the licensee's blood or orders, under § 27-107 of this article, the licensee to participate in the Ignition Interlock System Program established under § 16-404.1 of this title, the Administration shall have the licensee's driving record and driver's license reflect that the court ordered restriction was imposed, and shall keep records of the order.

(h) An individual may not drive a vehicle in any manner that violates any restriction imposed by the Administration in a restricted license issued to the individual.

(i) An individual may not drive a vehicle in any manner that violates any restriction imposed in a provisional license issued to the individual.

(j) An individual may not drive or attempt to drive a motor vehicle with alcohol in the individual's blood in violation of a restriction imposed by a court.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2000.