
By: **Delegates Vallario and Petzold**

Introduced and read first time: February 10, 2000

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Alcohol or Drug Related Offenses - Evidence - Tests**

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

13 BY repealing and reenacting, without amendments,
14 Article - Courts and Judicial Proceedings
15 Section 10-302, 10-303, 10-305, and 10-308
16 Annotated Code of Maryland
17 (1998 Replacement Volume and 1999 Supplement)

18 BY repealing and reenacting, with amendments,
19 Article - Courts and Judicial Proceedings
20 Section 10-304, 10-306, 10-307, and 10-309
21 Annotated Code of Maryland
22 (1998 Replacement Volume and 1999 Supplement)

23 BY repealing and reenacting, without amendments,
24 Article - Transportation
25 Section 16-113
26 Annotated Code of Maryland
27 (1999 Replacement Volume and 1999 Supplement)

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

1 **Article - Courts and Judicial Proceedings**

2 10-302.

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

10 10-303.

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

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

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

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

22 10-304.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (iv) In addition to the requirements of Maryland Rules 4-265 and
12 4-266, the subpoena shall contain the name, address, and telephone number of the
13 defendant or the defendant's attorney.

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

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

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

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

26 10-305.

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

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

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

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

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

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

3 10-306.

4 (a) (1) (i) Subject to the provisions of paragraph (2) of this subsection, in
5 any criminal trial in which a violation of [§ 16-113(a)(2)] § 16-113, § 16-813, or §
6 21-902 of the Transportation Article, or a violation of Article 27, § 388, § 388A, or §
7 388B of the Code is charged or is an issue, a copy of a report of the results of a test of
8 breath or blood to determine alcohol concentration signed by the technician or analyst
9 who performed the test, is admissible as substantive evidence without the presence or
10 testimony of the technician or analyst who performed the test.

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

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

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

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

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

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

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

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

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

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

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

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

10 10-307.

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

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

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

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

20 (3) If the amount of alcohol in the person's blood shown by analysis as
21 provided in this subtitle is measured by milligrams of alcohol per deciliters of blood or
22 milligrams of alcohol per 100 milliliters of blood, a court or an administrative law
23 judge, as the case may be, shall convert the measurement into grams of alcohol per
24 100 milliliters of blood by dividing the measurement by 1000.

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

29 (c) If at the time of testing a person has an alcohol concentration of more than
30 0.05 but less than 0.07, as determined by an analysis of the person's blood or breath,
31 this fact may not give rise to any presumption that the defendant was or was not
32 intoxicated or that the defendant was or was not driving while under the influence of
33 alcohol, but this fact may be considered with other competent evidence in determining
34 the guilt or innocence of the defendant.

35 (d) If at the time of testing a person has an alcohol concentration of at least
36 0.07 but less than 0.10, as determined by an analysis of the person's blood or breath,
37 it shall be prima facie evidence that the defendant was driving while under the
38 influence of alcohol.

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

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

8 10-308.

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

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

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

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

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

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

32 10-309.

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

36 (II) Evidence of a test or analysis PROVIDED FOR IN THIS SUBTITLE
37 is not admissible in a prosecution for a violation of § 16-113 OR § 21-902 of the
38 Transportation Article, § 8-738 OF THE NATURAL RESOURCES ARTICLE, OR ARTICLE

1 27, § 388, § 388A, OR § 388B OF THE CODE if obtained contrary to [its] THE provisions
2 OF §§ 10-302 THROUGH 10-308 OF THIS SUBTITLE.

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

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

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

9 (c) Nothing in this section precludes or limits the admissibility of evidence of
10 a test or analysis to determine the alcohol concentration of a person's blood or breath
11 in any prosecution other than for a violation of § 16-113 OR § 21-902 of the
12 Transportation Article, § 8-738 OF THE NATURAL RESOURCES ARTICLE, OR ARTICLE
13 27, § 388, § 388A, OR § 388B OF THE CODE.

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

17 **Article - Transportation**

18 16-113.

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

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

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

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

30 (2) An alcohol restriction that prohibits the licensee from driving or
31 attempting to drive a motor vehicle while having alcohol in the licensee's blood may,
32 as described in subsections (b) and (g) of this section, include a restriction that
33 prohibits the licensee from driving or attempting to drive a motor vehicle unless the
34 licensee is a participant in the Ignition Interlock System Program established under
35 § 16-404.1 of this title.

36 (b) (1) Notwithstanding the licensee's driving record, the Administration
37 shall impose on each licensee under the age of 21 years an alcohol restriction that

1 prohibits the licensee from driving or attempting to drive a motor vehicle with an
2 alcohol concentration of 0.02 or more as determined by an analysis of the licensee's
3 blood or breath.

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

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

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

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

11 (4) An individual under the age of 21 years who is convicted of a violation
12 of § 21-902(a), (b), or (c) of this article may be required, for a period of not more than
13 3 years, to participate in the Ignition Interlock System Program in order to retain the
14 individual's driver's license.

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

17 (i) Issue a special restricted license; or

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

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

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

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

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

31 (i) Accompanied and supervised by a licensed driver who is at least
32 21 years old;

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

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

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

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

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

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

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

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

19 (2) If a circuit court or the District Court orders a licensee not to drive or
20 attempt to drive a motor vehicle with alcohol in the licensee's blood or orders, under §
21 27-107 of this article, the licensee to participate in the Ignition Interlock System
22 Program established under § 16-404.1 of this title, the Administration shall have the
23 licensee's driving record and driver's license reflect that the court ordered restriction
24 was imposed, and shall keep records of the order.

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

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

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

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