
By: **Delegates Stull, Bartlett, Boutin, Conway, Donoghue, Edwards,
Hammen, Hecht, Hubbard, Mitchell, Morhaim, and Snodgrass**

Introduced and read first time: February 9, 2001

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Breath Testing for Alcohol**

3 FOR the purpose of requiring certification for a person to conduct breath testing for
4 the use or abuse of alcohol; redefining specimen to include breath from a human
5 body; allowing an employer who requires an individual to be tested for the use or
6 abuse of alcohol to use breath from the human body as a specimen to be tested;
7 requiring a certain confirmation test of breath for alcohol; requiring that the
8 confirmation test be conducted on a breath analyzer that provides a quantitative
9 reading of alcohol concentration in a breath specimen and is approved by the
10 Secretary of Health and Mental Hygiene; requiring that the testing comply with
11 certain federal cutoff levels for positive testing; requiring the Department of
12 Health and Mental Hygiene to adopt regulations governing the certification of
13 persons who conduct breath alcohol testing; providing for the content of the
14 regulations; making stylistic changes; and generally relating to breath alcohol
15 testing.

16 BY repealing and reenacting, with amendments,
17 Article - Health - General
18 Section 17-214
19 Annotated Code of Maryland
20 (2000 Replacement Volume)

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

23 **Article - Health - General**

24 17-214.

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

26 (1) "Alcohol or controlled dangerous substance testing" means a
27 procedure used to determine whether or not a specimen contains a controlled
28 dangerous substance or alcohol.

1 (2) "Certification" means the approval granted by the Department [for
2 a] FOR:

3 (I) A laboratory to engage in job-related alcohol or controlled
4 dangerous substance testing; AND

5 (II) A PERSON TO CONDUCT BREATH TESTING FOR THE USE OR
6 ABUSE OF ALCOHOL.

7 (3) "Controlled dangerous substance" has the meaning stated in Article
8 27, § 277 of the Code.

9 (4) "Job-related" means any alcohol or controlled dangerous substance
10 testing used by an employer for a legitimate business purpose.

11 (5) "Laboratory" means a facility or other entity that conducts
12 job-related alcohol or controlled dangerous substance testing.

13 (6) "Specimen" means:

14 (i) Blood derived from the human body;

15 (ii) Urine derived from the human body; or

16 (iii) Hair derived from the human body as provided in subsection
17 (b)(2) of this section; OR

18 (IV) BREATH FROM THE HUMAN BODY AS PROVIDED IN
19 SUBSECTION (B)(3) OF THIS SECTION.

20 (b) (1) An employer who requires [any person] AN INDIVIDUAL to be tested
21 for job-related reasons for the use or abuse of any controlled dangerous substance or
22 alcohol shall:

23 (i) Have the specimen tested by a laboratory that:

24 1. Holds a permit under this subtitle; or

25 2. Is located outside of the State and is certified or otherwise
26 approved under subsection (e) of this section; and

27 (ii) At the time of testing, at the [person's] INDIVIDUAL'S request,
28 inform the [person] INDIVIDUAL of the name and address of the laboratory that will
29 test the specimen.

30 (2) (i) An employer who requires [any person] AN INDIVIDUAL to be
31 tested for job-related reasons for the use or abuse of any controlled dangerous
32 substance may use hair derived from the human body as a specimen in accordance
33 with this paragraph.

1 (ii) An employer may use hair derived from the human body only
2 for pre-employment purposes.

3 (iii) If an employer uses hair derived from the human body as a
4 specimen, the employer may not:

5 1. Use a specimen that is longer than one and one-half
6 inches measured from the human body; or

7 2. Use the specimen for any purpose other than testing for
8 controlled dangerous substances.

9 (3) (I) AN EMPLOYER WHO REQUIRES AN INDIVIDUAL TO BE TESTED
10 FOR JOB-RELATED REASONS FOR THE USE OR ABUSE OF ALCOHOL MAY USE BREATH
11 FROM THE HUMAN BODY AS A SPECIMEN IN ACCORDANCE WITH THIS PARAGRAPH.

12 (II) AN INDIVIDUAL WHO IS REQUIRED TO SUBMIT TO
13 JOB-RELATED BREATH ALCOHOL TESTING SHALL HAVE A CONFIRMATION TEST
14 THAT IS:

15 1. A SECOND TEST THAT FOLLOWS A POSITIVE RESULT ON A
16 SCREENING TEST; AND

17 2. PERFORMED ON A BREATH ANALYZER APPROVED BY THE
18 SECRETARY THAT PROVIDES A QUANTITATIVE READING OF THE ALCOHOL
19 CONCENTRATION IN THE SPECIMEN.

20 (c) (1) An employer who requires any employee, contractor, or other
21 [person] INDIVIDUAL to be tested for job-related reasons for the use or abuse of any
22 controlled dangerous substance or alcohol and who receives notice that an employee,
23 contractor, or other [person] INDIVIDUAL has tested positive for the use or abuse of
24 any controlled dangerous substance or alcohol shall, after confirmation of the test
25 result, provide the employee, contractor, or other [person] INDIVIDUAL with:

26 (i) A copy of the laboratory test indicating the test results;

27 (ii) A copy of the employer's written policy on the use or abuse of
28 controlled dangerous substances or alcohol by employees, contractors, or other
29 [persons] INDIVIDUALS;

30 (iii) If applicable, written notice of the employer's intent to take
31 disciplinary action, terminate employment, or change the conditions of continued
32 employment; and

33 (iv) A statement or copy of the provisions set forth in subsection (d)
34 of this section permitting an employee to request independent testing of the same
35 sample for verification of the test result.

1 (2) The information required to be provided to the employee, contractor,
2 or other [person] INDIVIDUAL under paragraph (1) of this subsection shall be
3 delivered to the employee, contractor, or other [person] INDIVIDUAL:

4 (i) Either in person or by certified mail; and

5 (ii) Within 30 days from the date the test was performed.

6 (d) (1) [A person] AN INDIVIDUAL who is required to submit to job-related
7 CONTROLLED DANGEROUS SUBSTANCE testing, under subsection (b) of this section,
8 may request independent testing of the same specimen for verification of the test
9 results by a laboratory that:

10 (i) Holds a permit under this subtitle; or

11 (ii) If located outside of the State, is certified or otherwise approved
12 under subsection (e) of this section.

13 (2) The [person] INDIVIDUAL shall pay the cost of an independent test
14 conducted under this subsection.

15 (e) (1) The Department of Health and Mental Hygiene shall adopt
16 regulations governing the certification of laboratories that conduct job-related alcohol
17 or controlled dangerous substance testing AND PERSONS WHO CONDUCT BREATH
18 ALCOHOL TESTING.

19 (2) In addition to any other [laboratory] ALCOHOL OR CONTROLLED
20 DANGEROUS SUBSTANCE TESTING standards, the regulations shall:

21 (i) Require that the laboratory comply with the guidelines for
22 laboratory accreditation, if any, as set forth by the College of American Pathologists,
23 the U. S. Health Care Financing Administration (HCFA), or any other government
24 agency or program designated to certify or approve a laboratory that is acceptable to
25 the Secretary;

26 (ii) Require that a laboratory performing confirmation tests, for
27 controlled dangerous substances or alcohol be inspected and accredited in forensic
28 drug analysis by the College of American Pathologists, the U. S. Health Care
29 Financing Administration (HCFA), or any other government agency or program
30 designated to inspect and accredit a laboratory that is acceptable to the Secretary;

31 (iii) Require that, if the laboratory performs job related drug testing,
32 the laboratory be a participant in a program of proficiency testing of drug screening
33 conducted by an organization acceptable to the Secretary;

34 (iv) Require that the laboratory OR PERSON CONDUCTING BREATH
35 ALCOHOL TESTING comply with standards regarding cutoff levels for positive testing
36 that are established by the United States Department of Health and Human Services
37 or established by the Secretary as mandatory guidelines for workplace drug testing
38 programs; [and]

1 (v) REQUIRE THAT ALL TESTS INDICATING THE USE OF ALCOHOL
2 OR A CONTROLLED DANGEROUS SUBSTANCE BE CONFIRMED BY A SCIENTIFICALLY
3 RECOGNIZED METHOD OF TESTING CAPABLE OF PROVIDING QUANTITATIVE
4 INFORMATION ABOUT ALCOHOL OR A CONTROLLED DANGEROUS SUBSTANCE; AND

5 (VI) Include procedures for annual recertification and inspection.

6 (f) This section does not apply to:

7 (1) Alcohol or controlled dangerous substance testing of a person under
8 arrest or held by a law enforcement or correctional agency;

9 (2) Alcohol testing procedures conducted by a law enforcement or
10 correctional agency on breath testing equipment certified by the State Toxicologist; or

11 (3) Controlled dangerous substance testing by a laboratory facility of a
12 law enforcement or correctional agency that maintains laboratory testing standards
13 comparable to the standards in this section.

14 (g) This section applies to job-related alcohol and controlled dangerous
15 substance testing of any [person] INDIVIDUAL, including preemployment applicants,
16 employees, and contractors.

17 (h) (1) Except as provided in paragraph (2) of this subsection, in the course
18 of obtaining information for, or as a result of, conducting job-related alcohol or
19 controlled dangerous substance testing for an employer under this section, a
20 laboratory, a physician, including a physician retained by the employer, or any other
21 person may not reveal to the employer information regarding:

22 (i) The use of a nonprescription drug, excluding alcohol, that is not
23 prohibited under the laws of the State; or

24 (ii) The use of a medically prescribed drug, unless the person being
25 tested is unable to establish that the drug was medically prescribed under the laws of
26 the State.

27 (2) The prohibitions against disclosure of information under paragraph
28 (1) of this subsection do not apply to the extent that they prevent a person from
29 complying with the applicable provisions of the federal Commercial Motor Vehicle
30 Safety Act of 1986 and the federal Motor Carrier Safety Regulations.

31 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
32 October 1, 2001.