Unofficial Copy R3 HB 241/98 - JUD

By: Delegate Morhaim

Introduced and read first time: February 6, 2002 Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 3	Drunk and Drugged Driving - Evidence - Statements by Qualified Medical Persons and Toxicologist
4 5 6 7 8 9 10 11 12 13 14 15 16 17	COR the purpose of repealing a requirement that the State provide certain notice and deliver a copy of a certain certified statement of a qualified medical person who obtained blood of a defendant charged with certain alcohol- or drug-related driving offenses; repealing certain procedures by which a defendant charged with certain alcohol- or drug-related driving offenses may exercise the right to the presence and testimony of the qualified medical person who obtained blood; providing that a statement signed by the toxicologist under the Postmortem Examiners Commission shall be prima facie evidence that a blood test was performed in a laboratory approved by the toxicologist and the statement is admissible in evidence without the necessity of the toxicologist shall be quashed if the defendant fails to comply with certain requirements; and generally relating to certain certified statements by qualified medical persons and the toxicologist.
18 19 20 21 22	BY repealing and reenacting, with amendments, Article - Courts and Judicial Proceedings Section 10-304 Annotated Code of Maryland (1998 Replacement Volume and 2001 Supplement)
23 24	SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:
25	Article - Courts and Judicial Proceedings
26	10-304.
27	(a) (1) In this section the following words have the meanings indicated.
28	(2) "Qualified medical person" means any person permitted by law to

29 withdraw blood from humans.

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1 (3) "Qualified person" means a person who has received training in the 2 use of the equipment in a training program approved by the toxicologist under the 3 Postmortem Examiners Commission and who is either a police officer, a police 4 employee, an employee of the office of the Chief Medical Examiner, or a person 5 authorized by the toxicologist under the Postmortem Examiners Commission.
 6 (b) (1) The test of breath shall be administered by a qualified person with 7 equipment approved by the toxicologist under the Postmortem Examiners 8 Commission at the direction of a police officer.
9 (2) The officer arresting the individual may not administer the test of 10 breath.
 11 (c) (1) (i) The blood shall be obtained by a qualified medical person using 12 equipment approved by the toxicologist under the Postmortem Examiners 13 Commission acting at the request of a police officer.
14(ii)A certified statement by the qualified medical person who15obtained the blood [shall]:
16 1. SHALL be prima facie evidence of that person's 17 qualifications and that the blood was obtained in compliance with this section[.
18(iii)1.A certified statement that complies with the requirements19 of this paragraph is]; AND
20 2. IS admissible as substantive evidence without the 21 presence or testimony of the qualified medical person who obtained the blood.
22 [2. If the State decides to offer the certified statement without 23 the testimony of the qualified medical person, the State shall, at least 30 days before 24 trial, notify the defendant or the defendant's attorney in writing of the State's 25 intention and deliver to the defendant or the defendant's attorney a copy of the 26 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.
 34 35 circumstances in which a defendant is entitled to and demands a jury trial, or appeals 36 from the District Court to a circuit court, the defendant shall notify the circuit court

36 from the District Court to a circuit court, the defendant shall notify the circuit court37 and the State in writing no later than 20 days before trial.

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 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 4. Failure to give the timely and proper notice constitutes a 5 waiver of the defendant's right to the presence and testimony of the qualified medical 6 person.]
 7 (2) The test of blood shall be conducted by a qualified person using 8 equipment approved by the toxicologist under the Postmortem Examiners 9 Commission in a laboratory approved by the toxicologist.
10 (d) (1) (I) For the purpose of establishing that the test of breath or blood 11 was administered with equipment approved by the toxicologist under the Postmortem 12 Examiners Commission, a statement signed by the toxicologist certifying that the 13 equipment used in the test has been approved by [him] THE TOXICOLOGIST shall be 14 prima facie evidence of the approval, and the statement is admissible in evidence 15 without the necessity of the toxicologist personally appearing in court.
 (II) FOR THE PURPOSE OF ESTABLISHING THAT THE TEST OF BLOOD WAS PERFORMED IN A LABORATORY APPROVED BY THE TOXICOLOGIST UNDER THE POSTMORTEM EXAMINERS COMMISSION, A STATEMENT SIGNED BY THE TOXICOLOGIST THAT THE LABORATORY WAS APPROVED BY THE TOXICOLOGIST 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.
 30 (iii) If a trial date is postponed for any reason beyond 30 days from 31 the trial date for which the subpoena was issued, the defendant shall file a new 32 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.
 36 (3) A subpoena for the toxicologist [may] SHALL be quashed if a 37 defendant fails to comply with the requirements of this subsection.
 38 (4) A motion to quash a defendant's subpoena may be filed by any party 39 or by the Attorney General.

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1 (e) The person tested is permitted to have a physician of the person's own

2 choosing administer tests in addition to the one administered at the direction of the

3 police officer, and in the event no test is offered or requested by the police officer, the

4 person may request, and the officer shall have administered, one or more of the tests

5 provided for in this section.

6 (f) Nothing in this section precludes the right to introduce any other 7 competent evidence bearing upon the date of the certificate or change in the

8 equipment since the date of the certificate.

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect 10 October 1, 2002.