
By: **Delegate Menes (Special Committee on Drug and Alcohol Abuse) and
Delegates Hennessy, Anderson, Barkley, Boschert, Bronrott, Burns,
Dumais, Eckardt, Kelley, Nathan-Pulliam, and Petzold**

Introduced and read first time: January 28, 2004

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Evidence - Tests for Drug or Controlled Dangerous Substance Content of**
3 **Urine**

4 FOR the purpose of altering certain evidentiary provisions concerning tests for a drug
5 or controlled dangerous substance to include tests for drug or controlled
6 dangerous substance content of urine; providing that a refusal to submit to a
7 urine test for drug or controlled dangerous substance content is an
8 administrative offense under the Maryland Vehicle Law under certain
9 circumstances; providing for a suspension of a driver's license or a
10 disqualification of a commercial driver's license for a refusal to submit to a urine
11 test for drug or controlled dangerous substance content under certain
12 circumstances; defining certain terms; making stylistic changes; clarifying
13 language; and generally relating to tests for drug or controlled dangerous
14 substance content of urine under certain circumstances.

15 BY repealing and reenacting, with amendments,
16 Article - Courts and Judicial Proceedings
17 Section 10-301.1, 10-302, 10-303(b), 10-304(b) and (d)(1), 10-305(b),
18 10-306(a)(1)(ii), and 10-308(b)
19 Annotated Code of Maryland
20 (2002 Replacement Volume and 2003 Supplement)

21 BY repealing and reenacting, without amendments,
22 Article - Courts and Judicial Proceedings
23 Section 10-304(a)(1) and (3)
24 Annotated Code of Maryland
25 (2002 Replacement Volume and 2003 Supplement)

26 BY repealing and reenacting, with amendments,
27 Article - Transportation
28 Section 16-205.1(a)(1) and (g)(2) and (3)
29 Annotated Code of Maryland

1 (2002 Replacement Volume and 2003 Supplement)

2 BY repealing and reenacting, without amendments,
3 Article - Transportation
4 Section 16-205.1(b)(1) and 16-812(a)(2), (b), and (c)
5 Annotated Code of Maryland
6 (2002 Replacement Volume and 2003 Supplement)

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

9 **Article - Courts and Judicial Proceedings**

10 10-301.1.

11 (a) In §§ 10-302 through 10-309 of this subtitle, the following words have the
12 meanings indicated.

13 (b) "Specimen of blood" and "1 specimen of blood" have the meaning stated in
14 § 16-205.1 of the Transportation Article.

15 (C) "SPECIMEN OF URINE" AND "1 SPECIMEN OF URINE" HAVE THE MEANING
16 STATED IN § 16-205.1 OF THE TRANSPORTATION ARTICLE.

17 [(c)] (D) "Test" has the meaning stated in § 16-205.1 of the Transportation
18 Article.

19 10-302.

20 In a prosecution for a violation of a law concerning a person who is driving or
21 attempting to drive a vehicle in violation of § 16-113, § 16-813, or § 21-902 of the
22 Transportation Article, or in violation of Title 2, Subtitle 5, § 2-209, or § 3-211 of the
23 Criminal Law Article[, a]:

24 (1) A test of the person's breath or blood may be administered for the
25 purpose of determining alcohol concentration [and a]; AND

26 (2) (I) A test or tests of 1 specimen of [the person's] blood may be
27 administered for the purpose of determining the drug or controlled dangerous
28 substance content of [the] A person's blood; OR

29 (II) A TEST OR TESTS OF 1 SPECIMEN OF URINE MAY BE
30 ADMINISTERED FOR THE PURPOSE OF DETERMINING THE DRUG OR CONTROLLED
31 DANGEROUS SUBSTANCE CONTENT OF A PERSON'S URINE.

1 10-303.

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

5 (2) ONLY 1 SPECIMEN OF URINE MAY BE TAKEN FOR THE PURPOSE OF A
6 TEST OR TESTS FOR DETERMINING THE DRUG OR CONTROLLED DANGEROUS
7 SUBSTANCE CONTENT OF THE PERSON'S URINE.

8 [(2)] (3) For the purpose of a test or tests for determining drug or
9 controlled dangerous substance content of the person's blood OR URINE, the specimen
10 of blood OR URINE shall be taken within 4 hours after the person accused is
11 apprehended.

12 10-304.

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

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

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

22 (2) The officer arresting the individual may not administer the test of
23 breath OR URINE.

24 (d) (1) For the purpose of establishing that the test of breath [or blood],
25 BLOOD, OR URINE was administered with equipment approved by the toxicologist
26 under the Postmortem Examiners Commission, a statement signed by the toxicologist
27 certifying that the equipment used in the test has been approved by [him] THE
28 TOXICOLOGIST shall be prima facie evidence of the approval, and the statement is
29 admissible in evidence without the necessity of the toxicologist personally appearing
30 in court.

31 10-305.

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

35 10-306.

36 (a) (1) (ii) Subject to the provisions of § 10-308(b) of this subtitle and
37 paragraph (2) of this subsection, in any criminal trial in which a violation of § 21-902

1 of the Transportation Article or a violation of Title 2, Subtitle 5, § 2-209, or § 3-211 of
 2 the Criminal Law Article is charged, a copy of a report of the results of a test or tests
 3 of blood OR URINE to determine drug or controlled dangerous substance content
 4 signed by the technician or analyst who performed the test, is admissible as
 5 substantive evidence without the presence or testimony of the technician or analyst
 6 who performed the test.

7 10-308.

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

10 (1) Are admissible as evidence in a criminal trial only in a prosecution
 11 for a violation of § 21-902 of the Transportation Article, § 8-738 of the Natural
 12 Resources Article, or Title 2, Subtitle 5, § 2-209, or § 3-211 of the Criminal Law
 13 Article and only if other admissible evidence is introduced that creates an inference
 14 that the person was:

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

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

23 (2) Are not admissible in a prosecution other than a prosecution for a
 24 violation of § 21-902 of the Transportation Article, § 8-738 of the Natural Resources
 25 Article, or Title 2, Subtitle 5, § 2-209, or § 3-211 of the Criminal Law Article.

26 **Article - Transportation**

27 16-205.1.

28 (a) (1) (i) In this [section,] SECTION the following words have the
 29 meanings indicated.

30 (ii) "Under the influence of alcohol" includes under the influence of
 31 alcohol per se as defined by § 11-127.1 of this article.

32 (iii) "Specimen of blood" and "1 specimen of blood" means 1 sample
 33 of blood that is taken, in a single procedure, in 2 or more portions in 2 or more
 34 separate vials.

35 (IV) "SPECIMEN OF URINE" AND "1 SPECIMEN OF URINE" MEANS 1
 36 SAMPLE OF URINE THAT IS TAKEN, IN A SINGLE PROCEDURE, IN 2 OR MORE
 37 PORTIONS IN 2 OR MORE SEPARATE VIALS.

1 [(iv)] (V) "Test" means:

2 1. A test of a person's breath or of 1 specimen of [a person's]
3 blood to determine alcohol concentration;

4 2. A test or tests of 1 specimen of [a person's] blood OR 1
5 SPECIMEN OF URINE to determine the drug or controlled dangerous substance
6 content of [the] A person's blood OR URINE; or

7 3. Both:

8 A. A test of a person's breath or a test of 1 specimen of [a
9 person's] blood, to determine alcohol concentration; and

10 B. A test or tests of 1 specimen of [a person's] blood OR 1
11 SPECIMEN OF URINE to determine the drug or controlled dangerous substance
12 content of [the] A person's blood OR URINE.

13 (b) (1) Except as provided in subsection (c) of this section, a person may not
14 be compelled to take a test. However, the detaining officer shall advise the person
15 that, on receipt of a sworn statement from the officer that the person was so charged
16 and refused to take a test, or was tested and the result indicated an alcohol
17 concentration of 0.08 or more, the Administration shall:

18 (i) In the case of a person licensed under this title:

19 1. For a test result indicating an alcohol concentration of
20 0.08 or more at the time of testing:

21 A. For a first offense, suspend the driver's license for 45 days;
22 or

23 B. For a second or subsequent offense, suspend the driver's
24 license for 90 days; or

25 2. For a test refusal:

26 A. For a first offense, suspend the driver's license for 120
27 days; or

28 B. For a second or subsequent offense, suspend the driver's
29 license for 1 year;

30 (ii) In the case of a nonresident or unlicensed person:

31 1. For a test result indicating an alcohol concentration of
32 0.08 or more at the time of testing:

33 A. For a first offense, suspend the person's driving privilege
34 for 45 days; or

1 B. For a second or subsequent offense, suspend the person's
2 driving privilege for 90 days; or

3 2. For a test refusal:

4 A. For a first offense, suspend the person's driving privilege
5 for 120 days; or

6 B. For a second or subsequent offense, suspend the person's
7 driving privilege for 1 year; and

8 (iii) In addition to any applicable driver's license suspensions
9 authorized under this section, in the case of a person operating a commercial motor
10 vehicle who refuses to take a test:

11 1. Disqualify the person's commercial driver's license for a
12 period of 1 year for a first offense, 3 years for a first offense which occurs while
13 transporting hazardous materials required to be placarded, and disqualify for life for
14 a second or subsequent offense which occurs while operating any commercial motor
15 vehicle; or

16 2. If the person is licensed as a commercial driver by another
17 state, disqualify the person's privilege to operate a commercial motor vehicle and
18 report the refusal and disqualification to the person's resident state which may result
19 in further penalties imposed by the person's resident state.

20 (g) (2) A person who initially refuses to take a test may withdraw the initial
21 refusal and subsequently consent to take the test if the subsequent consent:

22 (i) Is unequivocal;

23 (ii) Does not substantially interfere with the timely and efficacious
24 administration of the test; and

25 (iii) Is given by the person:

26 1. Before the delay in testing would materially affect the
27 outcome of the test; and

28 2. A. For the purpose of a test for determining alcohol
29 concentration, within 2 hours of the person's apprehension; or

30 B. For the purpose of a test for determining the drug or
31 controlled dangerous substance content of the person's blood OR URINE, within 4
32 hours of the person's apprehension.

33 (3) In determining whether a person has withdrawn an initial refusal for
34 the purposes of paragraph (1) of this subsection, among the factors that the
35 Administration shall consider are the following:

36 (i) Whether the test would have been administered properly:

