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By: **Delegate Kelly**

Introduced and read first time: January 21, 2005

Assigned to: Judiciary

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A BILL ENTITLED

1 AN ACT concerning

2                           **Hunting - Shooting of Another While Under the Influence of Alcohol or**  
3                           **Drugs - Required Test**

4 FOR the purpose of requiring an individual who a police officer has reasonable  
5 grounds to believe shot and killed or injured another individual while hunting  
6 while intoxicated or under the influence of alcohol or drugs to submit to a blood  
7 or breath test to determine alcohol concentration or drug content; authorizing  
8 the results of the test to be admitted into evidence in certain criminal trials  
9 under certain circumstances; establishing certain requirements and procedures  
10 relating to the admissibility of certain evidence and the presence in court of  
11 certain witnesses concerning tests administered under this Act; providing for a  
12 penalty for refusal to submit to the test; authorizing the administering of the  
13 test; requiring the test to be administered within a certain time; providing that  
14 the test shall be administered by certain qualified medical personnel; limiting  
15 the liability of any medical personnel who perform the test; defining certain  
16 terms; and generally relating to testing for alcohol and drugs an individual who  
17 shoots and kills or injures an individual while hunting.

18 BY adding to  
19 Article - Natural Resources  
20 Section 10-426  
21 Annotated Code of Maryland  
22 (2000 Replacement Volume and 2004 Supplement)

23 BY adding to  
24 Article - Courts and Judicial Proceedings  
25 Section 10-1101 through 10-1107, inclusive, to be under the new subtitle  
26 "Subtitle 11. Testing of Hunters for Alcohol or Drugs"  
27 Annotated Code of Maryland  
28 (2002 Replacement Volume and 2004 Supplement)

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

1

**Article - Natural Resources**

2 10-426.

3 (A) IN THIS SECTION, "TEST" HAS THE MEANING STATED IN § 16-205.1 OF THE  
4 TRANSPORTATION ARTICLE.

5 (B) AN INDIVIDUAL WHO A POLICE OFFICER HAS REASONABLE GROUNDS TO  
6 BELIEVE SHOT AND KILLED OR INJURED ANOTHER INDIVIDUAL WHILE CARRYING A  
7 FIREARM TO HUNT WHILE INTOXICATED OR UNDER THE INFLUENCE OF ALCOHOL  
8 OR ANY NARCOTIC DRUG, IN VIOLATION OF § 10-410(I) OF THIS SUBTITLE, SHALL BE  
9 REQUIRED TO SUBMIT TO A TEST, AS DIRECTED BY THE POLICE OFFICER.

10 (C) AN INDIVIDUAL WHO REFUSES TO SUBMIT TO A TEST REQUIRED UNDER  
11 THIS SECTION IS SUBJECT TO A CIVIL PENALTY NOT EXCEEDING \$2,500.

12 (D) THE PROVISIONS OF TITLE 10, SUBTITLE 11 OF THE COURTS ARTICLE  
13 APPLY TO ANY TEST ADMINISTERED UNDER THIS SECTION.

14 (E) ANY MEDICAL PERSONNEL WHO PERFORMS A TEST REQUIRED BY THIS  
15 SECTION IS NOT LIABLE FOR CIVIL DAMAGES AS THE RESULT OF ANY ACT OR  
16 OMISSION RELATED TO THE TEST, NOT AMOUNTING TO GROSS NEGLIGENCE.

17

**Article - Courts and Judicial Proceedings**

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## SUBTITLE 11. TESTING OF HUNTERS FOR ALCOHOL OR DRUGS.

19 10-1101.

20 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
21 INDICATED.

22 (B) "1 SPECIMEN OF BLOOD" HAS THE MEANING STATED IN § 16-205.1 OF THE  
23 TRANSPORTATION ARTICLE.

24 (C) "TEST" HAS THE MEANING STATED IN § 16-205.1 OF THE TRANSPORTATION  
25 ARTICLE.

26 10-1102.

27 IN A PROSECUTION FOR A VIOLATION OF A LAW CONCERNING A PERSON WHO  
28 SHOOTS AND KILLS OR INJURES ANOTHER PERSON WHILE CARRYING A FIREARM IN  
29 VIOLATION OF § 10-410(I) OF THE NATURAL RESOURCES ARTICLE, A TEST OF THE  
30 PERSON'S BREATH OR BLOOD MAY BE ADMINISTERED FOR THE PURPOSE OF  
31 DETERMINING ALCOHOL CONCENTRATION AND A TEST OR TESTS OF 1 SPECIMEN OF  
32 THE PERSON'S BLOOD MAY BE ADMINISTERED FOR THE PURPOSE OF DETERMINING  
33 THE NARCOTIC DRUG CONTENT OF THE PERSON'S BLOOD.

1 10-1103.

2 (A) A POLICE OFFICER DIRECTING A TEST FOR DETERMINING ALCOHOL  
3 CONCENTRATION REQUIRED UNDER § 10-426 OF THE NATURAL RESOURCES ARTICLE  
4 SHALL HAVE REASONABLE GROUNDS TO BELIEVE THAT THE TEST IS ADMINISTERED  
5 WITHIN 2 HOURS AFTER THE PERSON BEING TESTED SHOT AND KILLED OR INJURED  
6 ANOTHER PERSON.

7 (B) A POLICE OFFICER DIRECTING A TEST FOR DETERMINING NARCOTIC  
8 DRUG CONTENT REQUIRED UNDER § 10-426 OF THE NATURAL RESOURCES ARTICLE  
9 SHALL HAVE REASONABLE GROUNDS TO BELIEVE THAT THE TEST IS ADMINISTERED  
10 WITHIN 4 HOURS AFTER THE PERSON BEING TESTED SHOT AND KILLED ANOTHER  
11 PERSON.

12 10-1104.

13 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS  
14 INDICATED.

15 (2) "QUALIFIED MEDICAL PERSON" HAS THE MEANING STATED IN §  
16 10-304 OF THIS TITLE.

17 (3) "QUALIFIED PERSON" HAS THE MEANING STATED IN § 10-304 OF THIS  
18 TITLE.

19 (B) (1) THE TEST OF BREATH SHALL BE ADMINISTERED BY A QUALIFIED  
20 PERSON WITH EQUIPMENT APPROVED BY THE TOXICOLOGIST UNDER THE  
21 POSTMORTEM EXAMINERS COMMISSION AT THE DIRECTION OF A POLICE OFFICER.

22 (2) THE POLICE OFFICER DIRECTING THE TEST MAY NOT ADMINISTER  
23 THE TEST OF BREATH.

24 (C) (1) (I) THE BLOOD SHALL BE OBTAINED BY A QUALIFIED MEDICAL  
25 PERSON USING EQUIPMENT APPROVED BY THE TOXICOLOGIST UNDER THE  
26 POSTMORTEM EXAMINERS COMMISSION ACTING AT THE REQUEST OF A POLICE  
27 OFFICER.

28 (II) A CERTIFIED STATEMENT BY THE QUALIFIED MEDICAL  
29 PERSON WHO OBTAINED THE BLOOD SHALL BE PRIMA FACIE EVIDENCE OF THAT  
30 PERSON'S QUALIFICATIONS AND THAT THE BLOOD WAS OBTAINED IN COMPLIANCE  
31 WITH THIS SECTION.

32 (III) 1. A CERTIFIED STATEMENT THAT COMPLIES WITH THE  
33 REQUIREMENTS OF THIS PARAGRAPH IS ADMISSIBLE AS SUBSTANTIVE EVIDENCE  
34 WITHOUT THE PRESENCE OR TESTIMONY OF THE QUALIFIED MEDICAL PERSON WHO  
35 OBTAINED THE BLOOD.

36 2. IF THE STATE DECIDES TO OFFER THE CERTIFIED  
37 STATEMENT WITHOUT THE TESTIMONY OF THE QUALIFIED MEDICAL PERSON, THE  
38 STATE SHALL, AT LEAST 30 DAYS BEFORE TRIAL, NOTIFY THE DEFENDANT OR THE



1 SUBPOENA MUST BE FILED AT LEAST 20 DAYS BEFORE THE TRIAL IN THE CIRCUIT  
2 COURT.

3 (III) IF A TRIAL DATE IS POSTPONED FOR ANY REASON BEYOND 30  
4 DAYS FROM THE TRIAL DATE FOR WHICH THE SUBPOENA WAS ISSUED, THE  
5 DEFENDANT SHALL FILE A NEW SUBPOENA FOR THE TOXICOLOGIST.

6 (IV) IN ADDITION TO THE REQUIREMENTS OF MARYLAND RULES  
7 4-265 AND 4-266, THE SUBPOENA SHALL CONTAIN THE NAME, ADDRESS, AND  
8 TELEPHONE NUMBER OF THE DEFENDANT OR THE DEFENDANT'S ATTORNEY.

9 (3) A SUBPOENA FOR THE TOXICOLOGIST MAY BE QUASHED IF A  
10 DEFENDANT FAILS TO COMPLY WITH THE REQUIREMENTS OF THIS SUBSECTION.

11 (4) A MOTION TO QUASH A DEFENDANT'S SUBPOENA MAY BE FILED BY  
12 ANY PARTY OR BY THE ATTORNEY GENERAL.

13 (E) THE PERSON TESTED IS PERMITTED TO HAVE A PHYSICIAN OF THE  
14 PERSON'S OWN CHOOSING ADMINISTER TESTS IN ADDITION TO THE ONE  
15 ADMINISTERED AT THE DIRECTION OF THE POLICE OFFICER, AND IN THE EVENT NO  
16 TEST IS OFFERED OR REQUESTED BY THE POLICE OFFICER, THE PERSON MAY  
17 REQUEST, AND THE OFFICER SHALL HAVE ADMINISTERED, ONE OR MORE OF THE  
18 TESTS PROVIDED FOR IN THIS SECTION.

19 (F) NOTHING IN THIS SECTION PRECLUDES THE RIGHT TO INTRODUCE ANY  
20 OTHER COMPETENT EVIDENCE BEARING ON THE DATE OF THE CERTIFICATION  
21 UNDER SUBSECTION (D) OF THIS SECTION OR CHANGE IN THE EQUIPMENT SINCE  
22 THE DATE OF THE CERTIFICATION.

23 10-1105.

24 (A) (1) (I) SUBJECT TO THE PROVISIONS OF PARAGRAPH (2) OF THIS  
25 SUBSECTION, IN ANY CRIMINAL TRIAL IN WHICH A PERSON IS ALLEGED TO HAVE  
26 SHOT AND KILLED OR INJURED ANOTHER PERSON WHILE CARRYING A FIREARM IN  
27 VIOLATION OF § 10-410(I) OF THE NATURAL RESOURCES ARTICLE, A COPY OF A  
28 REPORT OF THE RESULTS OF A TEST OF BREATH OR BLOOD TO DETERMINE ALCOHOL  
29 CONCENTRATION SIGNED BY THE TECHNICIAN OR ANALYST WHO PERFORMED THE  
30 TEST IS ADMISSIBLE AS SUBSTANTIVE EVIDENCE WITHOUT THE PRESENCE OR  
31 TESTIMONY OF THE TECHNICIAN OR ANALYST WHO PERFORMED THE TEST.

32 (II) SUBJECT TO THE PROVISIONS OF PARAGRAPH (2) OF THIS  
33 SUBSECTION, IN ANY CRIMINAL TRIAL IN WHICH A PERSON IS ALLEGED TO HAVE  
34 SHOT AND KILLED OR INJURED ANOTHER PERSON WHILE CARRYING A FIREARM IN  
35 VIOLATION OF § 10-410(I) OF THE NATURAL RESOURCES ARTICLE, A COPY OF A  
36 REPORT OF THE RESULTS OF A TEST OR TESTS OF BLOOD TO DETERMINE NARCOTIC  
37 DRUG CONTENT SIGNED BY THE TECHNICIAN OR ANALYST WHO PERFORMED THE  
38 TEST IS ADMISSIBLE AS SUBSTANTIVE EVIDENCE WITHOUT THE PRESENCE OR  
39 TESTIMONY OF THE TECHNICIAN OR ANALYST WHO PERFORMED THE TEST.

1 (2) TO BE ADMISSIBLE UNDER PARAGRAPH (1) OF THIS SUBSECTION,  
2 THE REPORT SHALL:

3 (I) IDENTIFY THE TECHNICIAN OR ANALYST AS A "QUALIFIED  
4 PERSON", AS DEFINED IN § 10-304 OF THIS TITLE;

5 (II) STATE THAT THE TEST WAS PERFORMED WITH EQUIPMENT  
6 APPROVED BY THE TOXICOLOGIST UNDER THE POSTMORTEM EXAMINERS  
7 COMMISSION AT THE DIRECTION OF A POLICE OFFICER; AND

8 (III) STATE THAT THE RESULT OF THE TEST IS AS STATED IN THE  
9 REPORT.

10 (B) (1) (I) TEST RESULTS THAT COMPLY WITH THE REQUIREMENTS OF  
11 SUBSECTION (A) OF THIS SECTION ARE ADMISSIBLE AS SUBSTANTIVE EVIDENCE  
12 WITHOUT THE PRESENCE OR TESTIMONY OF THE TECHNICIAN OR ANALYST WHO  
13 ADMINISTERED THE TEST.

14 (II) HOWEVER, IF THE STATE DECIDES TO OFFER THE TEST  
15 RESULTS WITHOUT THE TESTIMONY OF THE TECHNICIAN OR ANALYST, THE STATE  
16 SHALL, AT LEAST 30 DAYS BEFORE TRIAL, NOTIFY THE DEFENDANT OR THE  
17 DEFENDANT'S ATTORNEY IN WRITING OF THE STATE'S INTENTION AND DELIVER TO  
18 THE DEFENDANT OR THE DEFENDANT'S ATTORNEY A COPY OF THE TEST RESULTS TO  
19 BE OFFERED.

20 (III) IF THE DISTRICT COURT IS DEPRIVED OF JURISDICTION UNDER  
21 CIRCUMSTANCES IN WHICH A DEFENDANT IS ENTITLED TO AND DEMANDS A JURY  
22 TRIAL, OR APPEALS FROM THE DISTRICT COURT TO THE CIRCUIT COURT, THE STATE  
23 IS NOT REQUIRED TO FILE A SECOND NOTICE.

24 (2) (I) IF THE DEFENDANT DESIRES THE TECHNICIAN OR ANALYST TO  
25 BE PRESENT AND TESTIFY AT TRIAL, THE DEFENDANT SHALL NOTIFY THE COURT  
26 AND THE STATE IN WRITING NO LATER THAN 20 DAYS BEFORE TRIAL.

27 (II) IF THE DISTRICT COURT IS DEPRIVED OF JURISDICTION UNDER  
28 CIRCUMSTANCES IN WHICH A DEFENDANT IS ENTITLED TO AND DEMANDS A JURY  
29 TRIAL, OR APPEALS FROM THE DISTRICT COURT TO A CIRCUIT COURT, THE  
30 DEFENDANT SHALL NOTIFY THE CIRCUIT COURT AND THE STATE IN WRITING NO  
31 LATER THAN 20 DAYS BEFORE TRIAL.

32 (III) IF THE TIMELY AND PROPER NOTICE REQUIRED UNDER THIS  
33 PARAGRAPH IS PROVIDED BY THE DEFENDANT, THE TEST RESULTS ARE  
34 INADMISSIBLE WITHOUT THE TESTIMONY OF THE TECHNICIAN OR ANALYST.

35 (3) FAILURE TO GIVE TIMELY AND PROPER NOTICE CONSTITUTES A  
36 WAIVER OF THE DEFENDANT'S RIGHT TO THE PRESENCE AND TESTIMONY OF THE  
37 TECHNICIAN OR ANALYST.

1 10-1106.

2 (A) IN ANY CRIMINAL, JUVENILE, OR CIVIL PROCEEDING IN WHICH A PERSON  
3 IS ALLEGED TO HAVE SHOT AND KILLED OR INJURED ANOTHER PERSON WHILE  
4 CARRYING A FIREARM IN VIOLATION OF § 10-410(I) OF THE NATURAL RESOURCES  
5 ARTICLE, THE AMOUNT OF ALCOHOL IN THE PERSON'S BREATH OR BLOOD SHOWN BY  
6 ANALYSIS AS PROVIDED IN THIS SUBTITLE IS ADMISSIBLE IN EVIDENCE AND HAS  
7 THE EFFECT SET FORTH IN SUBSECTIONS (B) AND (C) OF THIS SECTION.

8 (B) ALCOHOL CONCENTRATION AS USED IN THIS SECTION SHALL BE  
9 MEASURED BY:

10 (1) GRAMS OF ALCOHOL PER 100 MILLILITERS OF BLOOD; OR

11 (2) GRAMS OF ALCOHOL PER 210 LITERS OF BREATH.

12 (C) IF THE AMOUNT OF ALCOHOL IN THE PERSON'S BLOOD SHOWN BY  
13 ANALYSIS AS PROVIDED IN THIS SUBTITLE IS MEASURED BY MILLIGRAMS OF  
14 ALCOHOL PER DECILITERS OF BLOOD OR MILLIGRAMS OF ALCOHOL PER 100  
15 MILLILITERS OF BLOOD, A COURT OR AN ADMINISTRATIVE LAW JUDGE, AS THE CASE  
16 MAY BE, SHALL CONVERT THE MEASUREMENT INTO GRAMS OF ALCOHOL PER 100  
17 MILLILITERS OF BLOOD BY DIVIDING THE MEASUREMENT BY 1,000.

18 10-1107.

19 (A) EVIDENCE OF A TEST OR ANALYSIS PROVIDED FOR IN THIS SUBTITLE IS  
20 NOT ADMISSIBLE IN A PROSECUTION FOR A VIOLATION OF A LAW CONCERNING A  
21 PERSON WHO SHOOTS AND KILLS OR INJURES ANOTHER PERSON WHILE CARRYING A  
22 FIREARM IN VIOLATION OF § 10-410(I) OF THE NATURAL RESOURCES ARTICLE IF  
23 OBTAINED CONTRARY TO THE PROVISIONS OF THIS SUBTITLE.

24 (B) THE FACT OF REFUSAL TO SUBMIT TO A TEST UNDER THIS SUBTITLE IS  
25 ADMISSIBLE IN EVIDENCE AT THE TRIAL.

26 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
27 October 1, 2005.