

# HOUSE BILL 212

R3, E2

9lr1951

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By: **Delegates Anderson, Jameson, Levy, and Murphy**

Introduced and read first time: January 28, 2009

Assigned to: Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

2 **Vehicle Laws – Preliminary Breath Test – Evidence**

3 FOR the purpose of providing that the results of a certain preliminary breath test may  
4 be used as evidence by the State to establish probable cause to arrest a person;  
5 making stylistic changes; and generally relating to the use by the State of the  
6 results of a certain preliminary breath test to establish probable cause to arrest  
7 a person.

8 BY repealing and reenacting, with amendments,  
9 Article – Transportation  
10 Section 16–205.2  
11 Annotated Code of Maryland  
12 (2006 Replacement Volume and 2008 Supplement)

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

15 **Article – Transportation**

16 16–205.2.

17 (a) A police officer who has reasonable grounds to believe that an individual  
18 is or has been driving or attempting to drive a motor vehicle while under the influence  
19 of alcohol or while impaired by alcohol may, without making an arrest and prior to the  
20 issuance of a citation, request the individual to submit to a preliminary breath test to  
21 be administered by the officer using a device approved by the State Toxicologist.

22 (b) The police officer requesting the preliminary breath test shall advise the  
23 person to be tested that neither a refusal to take the test nor the taking of the test  
24 shall prevent or require a subsequent chemical test pursuant to § 16–205.1 of this  
25 subtitle.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1           (c)    **(1)**    The results of the preliminary breath test shall be used as a guide  
2 for the police officer in deciding whether an arrest should be made and may not be  
3 used as evidence by the State in any court action, **EXCEPT TO ESTABLISH PROBABLE**  
4 **CAUSE TO ARREST THE PERSON.**

5                   **(2)**    The results of the preliminary breath test may be used as evidence  
6 by a defendant in a court action.

7                   **(3)**    The [taking of or] refusal to submit to a preliminary breath test is  
8 not admissible in evidence in any court action.

9                   **(4)**    Any evidence pertaining to a preliminary breath test may not be  
10 used in a civil action.

11           (d)    Refusal to submit to a preliminary breath test shall not constitute a  
12 violation of § 16–205.1 of this subtitle and the taking of a preliminary breath test shall  
13 not relieve the individual of the obligation to take the test required under § 16–205.1  
14 of this subtitle if requested to do so by the police officer.

15           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
16 October 1, 2009.