

# HOUSE BILL 1105

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8lr2484

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By: **Calvert County Delegation**

Introduced and read first time: February 7, 2018

Assigned to: Health and Government Operations

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## A BILL ENTITLED

1 AN ACT concerning

2 **Job-Related Alcohol and Controlled Dangerous Substances Testing – Medical**  
3 **Review Officers and Preliminary Breath Tests**

4 FOR the purpose of authorizing an employer to use a preliminary breath test to test a job  
5 applicant or an employee for the use or abuse of alcohol; providing that a certain  
6 provision of this Act does not apply to certain employers that have entered into  
7 certain collective bargaining agreements; requiring an employer to require a job  
8 applicant or an employee to submit a blood or urine specimen sample under certain  
9 circumstances and to submit the sample for certain testing; requiring an employer  
10 using preliminary breath tests to establish a program to train certain individuals to  
11 perform preliminary breath tests in the workplace; authorizing an employer using  
12 preliminary breath tests to designate a certain individual to be trained to perform  
13 preliminary breath tests for the employer; altering the definition of “medical review  
14 officer” for the purpose of certain provisions of law requiring a medical review officer  
15 to review certain test results; defining a certain term; making conforming changes;  
16 and generally relating to job-related alcohol and controlled dangerous substances  
17 testing.

18 BY repealing and reenacting, with amendments,  
19 Article – Health – General  
20 Section 17–214  
21 Annotated Code of Maryland  
22 (2015 Replacement Volume and 2017 Supplement)

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

25 **Article – Health – General**

26 17–214.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

2 (2) “Alcohol or controlled dangerous substance testing” means a procedure  
3 used to determine whether or not a specimen contains a controlled dangerous substance or  
4 alcohol.

5 (3) “Certification” means the approval granted by the Department for a  
6 laboratory to engage in job-related alcohol or controlled dangerous substance testing.

7 (4) “Controlled dangerous substance” has the meaning stated in § 5-101 of  
8 the Criminal Law Article.

9 (5) “Job applicant” means an individual who:

10 (i) Has applied for a position with an employer; and

11 (ii) Is not currently employed by the employer.

12 (6) “Job-related” means any alcohol or controlled dangerous substance  
13 testing used by an employer for a legitimate business purpose.

14 (7) “Laboratory” means a facility or other entity that conducts job-related  
15 alcohol or controlled dangerous substance testing.

16 (8) “Medical review officer” means a licensed physician with knowledge of  
17 drug abuse disorders and drug and alcohol testing **WHO IS CERTIFIED BY:**

18 **(I) THE AMERICAN ASSOCIATION OF MEDICAL REVIEW**  
19 **OFFICERS; OR**

20 **(II) THE MEDICAL REVIEW OFFICER CERTIFICATION**  
21 **COUNCIL.**

22 (9) **“PRELIMINARY BREATH TEST” MEANS A PRELIMINARY ALCOHOL**  
23 **BREATH TEST USING A DEVICE APPROVED BY THE STATE TOXICOLOGIST.**

24 **(10)** “Preliminary screening procedure” means a controlled dangerous  
25 substance test that uses a single-use test device that:

26 (i) Is easily portable and can be administered at a work site or other  
27 appropriate collection site;

28 (ii) Meets the requirements of the federal Food and Drug  
29 Administration for commercial distribution; and

30 (iii) Meets generally accepted cutoff levels such as those in the federal

1 Substance Abuse and Mental Health Services Administration Guidelines for drug-free  
2 workplace testing programs.

3           [(10)] (11) “Single-use test device” means the reagent-containing unit of a  
4 test system that:

5                   (i) Is in the form of a sealed container or cartridge that has a validity  
6 check, a nonresealable closure, or an evidentiary tape that ensures detection of any  
7 tampering;

8                   (ii) Is self-contained and individually packaged;

9                   (iii) Is discarded after each test; and

10                   (iv) Does not allow any test component or constituent of a test system  
11 to interact between tests.

12           [(11)] (12) “Specimen” means:

13                   (i) Blood derived from the human body;

14                   (ii) Urine derived from the human body;

15                   (iii) Hair derived from the human body as provided in subsection  
16 (b)(3) of this section; or

17                   (iv) Saliva derived from the human body.

18           (b) (1) Except as provided in [paragraph (2)] PARAGRAPHS (2) AND (3) of  
19 this subsection, an employer who requires any person to be tested for job-related reasons  
20 for the use or abuse of any controlled dangerous substance or alcohol shall:

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

22                           1. Holds a permit under this subtitle; or

23                           2. Is located outside of the State and is certified or otherwise  
24 approved under subsection (f) of this section; and

25                   (ii) At the time of testing, at the person’s request, inform the person  
26 of the name and address of the laboratory that will test the specimen.

27                   (2) (i) 1. Except as provided in subparagraph 2 of this  
28 subparagraph, an employer may use a preliminary screening procedure to test a job  
29 applicant for the use or abuse of any controlled dangerous substance.

30                           2. Subsubparagraph 1 of this subparagraph does not apply

1 to an employer that has entered into a collective bargaining agreement that prohibits the  
2 employer from using a preliminary screening procedure to test a job applicant for the use  
3 or abuse of any controlled dangerous substances.

4 (ii) If the result of a preliminary screening procedure is positive, the  
5 employer shall submit the specimen for testing by a laboratory as required under  
6 paragraph (1) of this subsection.

7 (iii) Following voluntary disclosure and documentation by an  
8 applicant of the taking of a legally prescribed medication, an employer may hire the  
9 applicant pending confirmation of a positive test result by the medical laboratory and  
10 review by the employer's medical review officer.

11 (iv) An employer may not use a preliminary screening procedure to  
12 test an individual who is not applying for a job with that employer.

13 (v) An employer may designate a medical laboratory licensed to  
14 perform job-related testing for controlled dangerous substances to also perform  
15 preliminary screening procedures on job applicants for the employer.

16 (3) (i) **1. EXCEPT AS PROVIDED IN SUBSUBPARAGRAPH 2 OF  
17 THIS SUBPARAGRAPH, AN EMPLOYER MAY USE A PRELIMINARY BREATH TEST TO  
18 TEST A JOB APPLICANT OR AN EMPLOYEE FOR THE USE OR ABUSE OF ALCOHOL.**

19 **2. SUBSUBPARAGRAPH 1 OF THIS SUBPARAGRAPH DOES  
20 NOT APPLY TO AN EMPLOYER THAT HAS ENTERED INTO A COLLECTIVE BARGAINING  
21 AGREEMENT THAT PROHIBITS THE EMPLOYER FROM USING A PRELIMINARY  
22 BREATH TEST TO TEST A JOB APPLICANT FOR THE USE OR ABUSE OF ALCOHOL.**

23 **(II) IF THE RESULT OF A PRELIMINARY BREATH TEST  
24 PERFORMED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH IS POSITIVE, THE  
25 EMPLOYER SHALL:**

26 **1. REQUIRE THE JOB APPLICANT OR THE EMPLOYEE TO  
27 SUBMIT A BLOOD OR URINE SPECIMEN SAMPLE; AND**

28 **2. SUBMIT THE SPECIMEN FOR TESTING BY A  
29 LABORATORY AS REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION.**

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

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

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

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

5 2. Use the specimen for any purpose other than testing for  
6 controlled dangerous substances.

7 (c) (1) An employer who requires any employee, contractor, or other person to  
8 be tested for job-related reasons for the use or abuse of any controlled dangerous substance  
9 or alcohol and who receives notice from the laboratory under subsection (b) of this section  
10 that an employee, contractor, or other person has tested positive for the use or abuse of any  
11 controlled dangerous substance or alcohol shall, after confirmation of the test result,  
12 provide the employee, contractor, or other person with:

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

14 (ii) A copy of the employer's written policy on the use or abuse of  
15 controlled dangerous substances or alcohol by employees, contractors, or other persons;

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

19 (iv) A statement or copy of the provisions set forth in subsection (e)  
20 of this section permitting an employee to request independent testing of the same sample  
21 for verification of the test result.

22 (2) The information required to be provided to the employee, contractor, or  
23 other person under paragraph (1) of this subsection shall be delivered to the employee,  
24 contractor, or other person:

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

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

27 (d) An employer that uses a preliminary screening procedure to test specimens  
28 for the use or abuse of a controlled dangerous substance under this section shall:

29 (1) In using a single-use test device, collect, handle, store, and ship each  
30 specimen in a manner that:

31 (i) Maintains the specimen donor's identity and confidentiality and  
32 the physical integrity of the specimen; and

1 (ii) Precludes contamination of the specimen; and

2 (2) Maintain a written record of the chain of custody of each specimen from  
3 the time that the specimen is collected until the time that the specimen is no longer needed  
4 for retesting.

5 (e) (1) A person who is required to submit to job-related testing, under  
6 subsection (b) or (c) of this section, may request independent testing of the same specimen  
7 for verification of the test results by a laboratory that:

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

9 (ii) If located outside of the State, is certified or otherwise approved  
10 under subsection (f) of this section.

11 (2) The person shall pay the cost of an independent test conducted under  
12 this subsection.

13 (f) (1) The Maryland Department of Health:

14 (i) Shall adopt regulations governing the certification of  
15 laboratories that conduct job-related alcohol or controlled dangerous substance testing;  
16 and

17 (ii) May adopt regulations governing the oversight of preliminary  
18 screening procedures administered by employers.

19 (2) In addition to any other laboratory standards, the regulations shall:

20 (i) Require that the laboratory comply with the guidelines for  
21 laboratory accreditation, if any, as set forth by the College of American Pathologists, the  
22 Centers for Medicare and Medicaid Services, or any other government agency or program  
23 designated to certify or approve a laboratory that is acceptable to the Secretary;

24 (ii) Require that a laboratory performing confirmation tests for  
25 controlled dangerous substances or alcohol be inspected and accredited in forensic drug  
26 analysis by the College of American Pathologists, the Centers for Medicare and Medicaid  
27 Services, or any other government agency or program designated to inspect and accredit a  
28 laboratory that is acceptable to the Secretary;

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

32 (iv) Require that the laboratory comply with standards regarding  
33 cutoff levels for positive testing that are established by the United States Department of  
34 Health and Human Services or established by the Secretary as mandatory guidelines for

1 workplace drug testing programs; and

2 (v) Include procedures for annual recertification and inspection.

3 (g) This section does not apply to:

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

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

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

11 (h) This section applies to job-related alcohol and controlled dangerous substance  
12 testing of any person, including preemployment applicants, employees, and contractors.

13 (i) (1) Except as provided in paragraphs (2) and (3) of this subsection, in the  
14 course of obtaining information for, or as a result of, conducting job-related alcohol or  
15 controlled dangerous substance testing for an employer under this section, a laboratory, a  
16 physician, including a physician retained by the employer, or any other person may not  
17 reveal to the employer information regarding:

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

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

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

27 (3) The prohibitions against disclosure of information under paragraph (1)  
28 of this subsection do not apply if, prior to the administration of a preliminary screening for  
29 controlled dangerous substances, the test operator notifies the applicant that if the  
30 preliminary test is positive, the applicant may voluntarily disclose and provide  
31 documentation to the operator that the applicant is taking a legally prescribed medication.

32 (j) (1) An employer using preliminary screening procedures to test job  
33 applicants under this section shall have a medical review officer review a positive test result  
34 after laboratory confirmation of the positive test result.

1 (2) The employer may contract for the services of an outside medical review  
2 officer if the employer does not have a medical review officer on staff.

3 (k) (1) An employer using preliminary screening procedures **OR**  
4 **PRELIMINARY BREATH TESTS** shall establish a program to train individuals to collect  
5 specimens [and], perform controlled dangerous substance tests, **AND PERFORM**  
6 **PRELIMINARY BREATH TESTS** in the workplace.

7 (2) The employer may designate an employee or any other individual to be  
8 trained, including any individual employed by a medical laboratory designated under  
9 subsection (b)(2)(v) of this section who will perform preliminary screening procedures **AND**  
10 **PRELIMINARY BREATH TESTS** for the employer.

11 (3) A trainee shall receive appropriate and practical instruction, which  
12 includes:

13 (i) A reading of the test manufacturer's package insert sheet;

14 (ii) Observing the test manufacturer's training video or receiving  
15 training from the test manufacturer;

16 (iii) Completing the test manufacturer's self-administered test; and

17 (iv) The actual performance of tests and the actual interpretation of  
18 the results.

19 (4) (i) The employer shall:

20 1. Keep a record of the training received by each trainee; and

21 2. Establish a procedure for training each trainee as having  
22 received the minimum training required to properly perform the test.

23 (ii) After the trainee has demonstrated competency in performing  
24 the test, the employer shall maintain documentation that indicates that the trainee has  
25 been trained under this section.

26 (l) The provisions of a collective bargaining agreement that concern drug testing  
27 **OR ALCOHOL TESTING** override and preempt the provisions of this section that authorize  
28 an employer to use a preliminary screening procedure **OR A PRELIMINARY BREATH TEST**  
29 to test a job applicant.

30 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
31 October 1, 2018.