

# SENATE BILL 684

R3

2lr1567

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By: **Senators Kagan and West**

Introduced and read first time: February 4, 2022

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

1 AN ACT concerning

2 **Vehicle Laws – Drugged Driving – Oral Fluid Tests**

3 FOR the purpose of authorizing a police officer who has reasonable grounds to believe that  
4 an individual has been driving while impaired by a controlled dangerous substance  
5 to request that the individual submit to an oral fluid test; prohibiting a police officer  
6 from using the results of a test as the only guide in deciding whether charges should  
7 be filed; prohibiting the results of a test from being introduced as evidence in any  
8 court action; requiring the Motor Vehicle Administration to suspend the driver's  
9 license of an individual who submits to a test that indicates the presence of cannabis  
10 at or above a certain level; and generally relating to oral fluid tests.

11 BY repealing and reenacting, with amendments,  
12 Article – Transportation  
13 Section 16–205.2  
14 Annotated Code of Maryland  
15 (2020 Replacement Volume and 2021 Supplement)

16 BY adding to  
17 Article – Transportation  
18 Section 16–205.3  
19 Annotated Code of Maryland  
20 (2020 Replacement Volume and 2021 Supplement)

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

23 **Article – Transportation**

24 16–205.2.

25 (a) A police officer who has reasonable grounds to believe that an individual is or

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 has been driving or attempting to drive a motor vehicle while under the influence of alcohol  
 2 or while impaired by alcohol may, without making an arrest and prior to the issuance of a  
 3 citation, request the individual to submit to a preliminary breath test to be administered  
 4 by the officer using a device approved by the State Toxicologist.

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

8 (c) (1) The results of the preliminary breath test [shall]:

9 (I) **SHALL** be used as a guide for the police officer in deciding  
 10 whether an arrest should be made [and may];

11 (II) **MAY** not be used as evidence by the State in any court action [.  
 12 The results of the preliminary breath test may]; **AND**

13 (III) **MAY** be used as evidence by a defendant in a court action.

14 (2) The taking of or refusal to submit to a preliminary breath test is not  
 15 admissible in evidence in any court action.

16 (3) Any evidence pertaining to a preliminary breath test may not be used  
 17 in a civil action.

18 (d) Refusal to submit to a preliminary breath test [shall] **DOES** not constitute a  
 19 violation of § 16–205.1 of this subtitle and the taking of a preliminary breath test [shall]  
 20 **DOES** not relieve the individual of the obligation to take the test required under § 16–205.1  
 21 of this subtitle if requested to do so by the police officer.

22 **16–205.3.**

23 (A) (1) **IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS**  
 24 **INDICATED.**

25 (2) **“AUTHORIZED DEVICE” MEANS A SCREENING INSTRUMENT THAT:**

26 (I) **USES AN INSTRUMENTED ANALYZER IN WHICH THE SAMPLE**  
 27 **AND REAGENTS ARE MIXED, ASSAYS PERFORMED, AND RESULTS INTERPRETED**  
 28 **WITHIN THE ANALYZER;**

29 (II) **HAS THE CAPACITY TO RECORD AND STORE THE RESULTS**  
 30 **INTERNALLY;**

31 (III) **IS CAPABLE OF ACCURATELY RECORDING EACH**

1 CONTROLLED DANGEROUS SUBSTANCE BEING TESTED; AND

2 (IV) COMPLETES THE TESTING PROCESS WITHIN 15 MINUTES  
3 AFTER COLLECTION OF THE SAMPLE.

4 (3) "ORAL FLUID TEST" MEANS A TEST DONE ON AN AUTHORIZED  
5 DEVICE OF THE ORAL FLUID OF A DRIVER WHO IS THE SUBJECT OF A TRAFFIC STOP  
6 FOR THE PURPOSE OF DETECTING THE PRESENCE OF A CONTROLLED DANGEROUS  
7 SUBSTANCE.

8 (B) A POLICE OFFICER WHO HAS REASONABLE GROUNDS TO BELIEVE THAT  
9 AN INDIVIDUAL IS OR HAS BEEN DRIVING OR ATTEMPTING TO DRIVE A MOTOR  
10 VEHICLE WHILE IMPAIRED BY A CONTROLLED DANGEROUS SUBSTANCE:

11 (1) MAY REQUEST THAT THE INDIVIDUAL PROVIDE AN ORAL FLUID  
12 SAMPLE TO BE TESTED BY A POLICE OFFICER CERTIFIED AS A DRUG RECOGNITION  
13 EXPERT; AND

14 (2) SHALL, IF THE POLICE OFFICER REQUESTS AN ORAL FLUID  
15 SAMPLE, ADVISE THE INDIVIDUAL THAT NEITHER PROVIDING THE SAMPLE NOR  
16 REFUSING TO PROVIDE THE SAMPLE WILL PREVENT OR REQUIRE A SUBSEQUENT  
17 BLOOD TEST UNDER § 16-205.1 OF THIS SUBTITLE.

18 (C) (1) THE RESULTS OF THE ORAL FLUID TEST MAY NOT BE USED AS:

19 (I) THE ONLY GUIDE FOR A POLICE OFFICER IN DECIDING  
20 WHETHER CHARGES SHOULD BE FILED; OR

21 (II) EVIDENCE IN ANY COURT ACTION.

22 (2) PROVIDING OR REFUSING TO PROVIDE AN ORAL FLUID SAMPLE IS  
23 NOT ADMISSIBLE IN EVIDENCE IN ANY COURT ACTION.

24 (3) NO EVIDENCE PERTAINING TO AN ORAL FLUID TEST MAY BE USED  
25 IN A CIVIL ACTION.

26 (D) (1) IF AN INDIVIDUAL PROVIDES AN ORAL FLUID SAMPLE FOR  
27 TESTING, THE POLICE OFFICER SHALL ADVISE THE INDIVIDUAL THAT THE  
28 INDIVIDUAL MAY REQUEST THAT THE SAMPLE BE SUBMITTED FOR ADDITIONAL  
29 LABORATORY CONFIRMATION OF THE RESULTS.

30 (2) IF AN INDIVIDUAL SUBMITS TO ADDITIONAL LABORATORY  
31 CONFIRMATION, THE RESULTS OF THE LABORATORY CONFIRMATION SHALL BE

1 **ADMISSIBLE AS EVIDENCE IN A CRIMINAL PROCEEDING.**

2 **(E) (1) REFUSING TO PROVIDE AN ORAL FLUID SAMPLE DOES NOT**  
3 **CONSTITUTE A VIOLATION OF § 16-205.1 OF THIS SUBTITLE.**

4 **(2) PROVIDING AN ORAL FLUID SAMPLE DOES NOT RELIEVE AN**  
5 **INDIVIDUAL OF THE OBLIGATION TO TAKE THE TEST REQUIRED UNDER § 16-205.1**  
6 **OF THIS SUBTITLE IF REQUESTED TO DO SO BY THE POLICE OFFICER.**

7 **(F) (1) IF AN ORAL FLUID TEST IS PERFORMED ON AN INDIVIDUAL AND**  
8 **THE RESULTS INDICATE THE PRESENCE OF CANNABIS IN AN AMOUNT OF 25**  
9 **NANOGRAMS PER MILLILITER OR MORE, THE LAW ENFORCEMENT AGENCY SHALL**  
10 **PROVIDE NOTICE TO THE ADMINISTRATION OF THE RESULTS OF THE TEST.**

11 **(2) ON RECEIPT OF A NOTICE UNDER PARAGRAPH (1) OF THIS**  
12 **SUBSECTION, THE ADMINISTRATION SHALL:**

13 **(I) FOR A FIRST OFFENSE, SUSPEND THE DRIVER'S LICENSE**  
14 **FOR 45 DAYS; OR**

15 **(II) FOR A SECOND OR SUBSEQUENT OFFENSE, SUSPEND THE**  
16 **DRIVER'S LICENSE FOR 90 DAYS.**

17 **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect**  
18 **October 1, 2022.**