

Chapter 226

(Senate Bill 216)

AN ACT concerning

Evidence – Approval of Breath and Blood Tests for Alcohol, Drugs, or Controlled Dangerous Substances

FOR the purpose of transferring certain duties relating to the approval of breath and blood tests as evidence for alcohol, drugs, or controlled dangerous substances from the State Toxicologist to the Department of State Police; and generally relating to alcohol, drug, and controlled dangerous substance testing as evidence.

BY repealing and reenacting, with amendments,
 Article – Courts and Judicial Proceedings
 Section 10–304(a) through (d) and 10–306(a)
 Annotated Code of Maryland
 (2020 Replacement Volume and 2021 Supplement)

BY repealing and reenacting, with amendments,
 Article – Health – General
 Section 17–214(g)
 Annotated Code of Maryland
 (2019 Replacement Volume and 2021 Supplement)

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

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

Article – Courts and Judicial Proceedings

10–304.

- (a) (1) In this section the following words have the meanings indicated.
- (2) “Qualified medical person” means a person permitted to withdraw blood from a human.
- (3) “Qualified person” means a person who has received training in the use of the equipment in a training program approved by the toxicologist [under the Postmortem

Examiners Commission] **IN THE DEPARTMENT OF STATE POLICE FORENSIC SCIENCES DIVISION** and who is either a police officer, a police employee, [an employee of the office of the Chief Medical Examiner,] or a person authorized by the toxicologist [under the Postmortem Examiners Commission] **IN THE DEPARTMENT OF STATE POLICE FORENSIC SCIENCES DIVISION**.

(b) (1) The test of breath shall be administered by a qualified person with equipment approved by the toxicologist [under the Postmortem Examiners Commission] **IN THE DEPARTMENT OF STATE POLICE FORENSIC SCIENCES DIVISION** at the direction of a police officer.

(2) The officer arresting the individual may not administer the test of breath.

(c) (1) (i) The blood shall be obtained by a qualified medical person using equipment approved by the toxicologist [under the Postmortem Examiners Commission] **IN THE DEPARTMENT OF STATE POLICE FORENSIC SCIENCES DIVISION** acting at the request of a police officer.

(ii) If a law enforcement officer testifies that the officer witnessed the taking of a blood specimen by a person who the officer reasonably believed was a qualified medical person, the officer's testimony shall be sufficient evidence that the person was a qualified medical person and that the blood was obtained in compliance with this section, without testimony from the person who obtained the blood specimen.

(2) The test of blood shall be conducted by a qualified person using equipment approved by the toxicologist [under the Postmortem Examiners Commission] **IN THE DEPARTMENT OF STATE POLICE FORENSIC SCIENCES DIVISION** in a laboratory approved by the toxicologist.

(d) (1) For the purpose of establishing that the test of breath or blood was administered with equipment approved by the toxicologist [under the Postmortem Examiners Commission] **IN THE DEPARTMENT OF STATE POLICE FORENSIC SCIENCES DIVISION**, a statement signed by the toxicologist certifying that the equipment used in the test has been approved by him shall be prima facie evidence of the approval, and the statement is admissible in evidence without the necessity of the toxicologist personally appearing in court.

(2) (i) If a defendant desires the toxicologist to be present and testify at trial as a witness, the defendant shall file a request for a subpoena for the toxicologist at least 20 days before the trial in the appropriate court.

(ii) If the District Court is deprived of jurisdiction under circumstances in which a defendant is entitled to and demands a jury trial, or appeals from the District Court to the circuit court, another subpoena must be filed at least 20 days

before the trial in the circuit court.

(iii) If a trial date is postponed for any reason beyond 30 days from the trial date for which the subpoena was issued, the defendant shall file a new subpoena for the toxicologist.

(iv) In addition to the requirements of Maryland Rules 4–265 and 4–266, the subpoena shall contain the name, address, and telephone number of the defendant or the defendant’s attorney.

(3) A subpoena for the toxicologist may be quashed if a defendant fails to comply with the requirements of this subsection.

(4) A motion to quash a defendant’s subpoena may be filed by any party or by the Attorney General.

10–306.

(a) (1) (i) Subject to the provisions of paragraph (2) of this subsection, in any criminal trial in which a violation of § 16–113, § 16–813, or § 21–902 of the Transportation Article, or a violation of Title 2, Subtitle 5, § 2–209, or § 3–211 of the Criminal Law Article is charged or is an issue, a copy of a report of the results of a test of breath or blood to determine alcohol concentration signed by the technician or analyst who performed the test, is admissible as substantive evidence without the presence or testimony of the technician or analyst who performed the test.

(ii) Subject to the provisions of § 10–308(b) of this subtitle and paragraph (2) of this subsection, in any criminal trial in which a violation of § 21–902 of the Transportation Article or a violation of Title 2, Subtitle 5, § 2–209, or § 3–211 of the Criminal Law Article is charged, a copy of a report of the results of a test or tests of blood to determine drug or controlled dangerous substance content signed by the technician or analyst who performed the test, is admissible as substantive evidence without the presence or testimony of the technician or analyst who performed the test.

(2) To be admissible under paragraph (1) of this subsection, the report shall:

(i) Identify the technician or analyst as a “qualified person”, as defined in § 10–304 of this subtitle;

(ii) State that the test was performed with equipment approved by the toxicologist [under the Postmortem Examiners Commission] **IN THE DEPARTMENT OF STATE POLICE FORENSIC SCIENCES DIVISION** at the direction of a police officer; and

(iii) State that the result of the test is as stated in the report.

Article – Health – General

17–214.

(g) This section does not apply to:

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

(2) Alcohol testing procedures conducted by a law enforcement or correctional agency on breath testing equipment certified by the **[State Toxicologist] TOXICOLOGIST IN THE DEPARTMENT OF STATE POLICE FORENSIC SCIENCES DIVISION**; or

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

Article – Transportation

16–205.2.

(a) A police officer who has reasonable grounds to believe that an individual is or has been driving or attempting to drive a motor vehicle while under the influence of alcohol or while impaired by alcohol may, without making an arrest and prior to the issuance of a citation, request the individual to submit to a preliminary breath test to be administered by the officer using a device approved by the **[State Toxicologist] TOXICOLOGIST IN THE DEPARTMENT OF STATE POLICE FORENSIC SCIENCES DIVISION**.

SECTION 2. AND BE IT FURTHER ENACTED, That the qualifications and approvals issued by the State Toxicologist under the Postmortem Examiners Commission before the effective date of this Act remain valid through this Act's transfer of those functions to the Department of State Police Forensic Sciences Division.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2022.

Approved by the Governor, April 21, 2022.