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CF 7lr0830

By: Delegates D. Davis, Crumlin, Patterson, B. Hughes

Introduced and read first time: January 31, 1997

Assigned to: Judiciary

## A BILL ENTITLED

1 AN ACT concerning

## 2 Drunk Driving - Intoxicated Per Se - Driving While Under the Influence

- 3 FOR the purpose of reducing the level of alcohol concentration required for a
- 4 determination of driving while intoxicated per se or driving while under the
- 5 influence of alcohol; reducing the level of alcohol concentration that will result in
- 6 the suspension of a driver's license; reducing the level of alcohol concentration that
- 7 will result in the crime of homicide by motor vehicle or vessel while intoxicated per
- 8 se and the crime of life threatening injury by motor vehicle or vessel while
- 9 intoxicated per se; and generally relating to offenses involving driving while
- intoxicated per se or driving while under the influence of alcohol.
- 11 BY repealing and reenacting, with amendments,
- 12 Article Transportation
- 13 Section 11-127.1 and 16-205.1(b), (f)(1), (4)(i), (7), and (8)(i) and (v), and (h)
- 14 Annotated Code of Maryland
- 15 (1992 Replacement Volume and 1996 Supplement)
- 16 BY repealing and reenacting, with amendments,
- 17 Article Courts and Judicial Proceedings
- 18 Section 10-307
- 19 Annotated Code of Maryland
- 20 (1995 Replacement Volume and 1996 Supplement)
- 21 BY repealing and reenacting, with amendments,
- 22 Article 27 Crimes and Punishments
- 23 Section 388A(a) and 388B(a)
- 24 Annotated Code of Maryland
- 25 (1996 Replacement Volume)
- 26 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
- 27 MARYLAND, That the Laws of Maryland read as follows:

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## Article - Transportation

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- 3 "Intoxicated per se" means having an alcohol concentration at the time of testing of 4 [0.10] 0.08 or more as measured by grams of alcohol per 100 milliliters of blood or grams 5 of alcohol per 210 liters of breath.
- 6 16-205.1.
- 7 (b) (1) Except as provided in subsection (c) of this section, a person may not be 8 compelled to take a test. However, the detaining officer shall advise the person that, on 9 receipt of a sworn statement from the officer that the person was so charged and refused 10 to take a test, or was tested and the result indicated an alcohol concentration of [0.10]
- 11 0.08 or more, the Administration shall:
- 12 (i) In the case of a person licensed under this title:
- 13 1. For a test result indicating an alcohol concentration of 14 [0.10] 0.08 or more at the time of testing:
- 15 A. For a first offense, suspend the driver's license for 45 days; or
- B. For a second or subsequent offense, suspend the driver's
- 17 license for 90 days; or
- 18 2. For a test refusal:
- 19 A. For a first offense, suspend the driver's license for 120 days;
- 20 or
- B. For a second or subsequent offense, suspend the driver's
- 22 license for 1 year;
- 23 (ii) In the case of a nonresident or unlicensed person:
- 24 1. For a test result indicating an alcohol concentration of
- 25 [0.10] 0.08 or more at the time of testing:
- A. For a first offense, suspend the person's driving privilege for
- 27 45 days; or
- 28 B. For a second or subsequent offense, suspend the person's
- 29 driving privilege for 90 days; or
- 30 2. For a test refusal:
- 31 A. For a first offense, suspend the person's driving privilege for
- 32 120 days; or
- B. For a second or subsequent offense, suspend the person's
- 34 driving privilege for 1 year; and

	(iii) In addition to any applicable driver's license suspensions authorized under this section, in the case of a person operating a commercial motor vehicle who refuses to take a test:
6 7	1. Disqualify the person's commercial driver's license for a period of 1 year for a first offense, 3 years for a first offense which occurs while transporting hazardous materials required to be placarded, and disqualify for life for a second or subsequent offense which occurs while operating any commercial motor vehicle; or
11	2. If the person is licensed as a commercial driver by another state, disqualify the person's privilege to operate a commercial motor vehicle and report the refusal and disqualification to the person's resident state which may result in further penalties imposed by the person's resident state.
15 16 17 18 19	(2) Except as provided in subsection (c) of this section, if a police officer stops or detains any person who the police officer has reasonable grounds to believe is or has been driving or attempting to drive a motor vehicle while intoxicated, while under the influence of alcohol, while so far under the influence of any drug, any combination of drugs, or a combination of one or more drugs and alcohol that the person could not drive a vehicle safely, while under the influence of a controlled dangerous substance, in violation of an alcohol restriction, or in violation of § 16-813 of this title, and who is not unconscious or otherwise incapable of refusing to take a test, the police officer shall:
21	(i) Detain the person;
22	(ii) Request that the person permit a test to be taken; and
25	(iii) Advise the person of the administrative sanctions that shall be imposed for refusal to take the test, including ineligibility for modification of a suspension or issuance of a restrictive license, and for test results indicating an alcohol concentration of [0.10] 0.08 or more at the time of testing.
27 28	(3) If the person refuses to take the test or takes a test which results in an alcohol concentration of [0.10] 0.08 or more at the time of testing, the police officer shall:
29	(i) Confiscate the person's driver's license issued by this State;
30 31	(ii) Acting on behalf of the Administration, personally serve an order of suspension on the person;
32	(iii) Issue a temporary license to drive;
33 34	(iv) Inform the person that the temporary license allows the person to continue driving for 45 days if the person is licensed under this title;
35	(v) Inform the person that:
38 39	1. The person has a right to request, at that time or within 10 days, a hearing to show cause why the driver's license should not be suspended concerning the refusal to take the test or for test results indicating an alcohol concentration of [0.10] 0.08 or more at the time of testing, and the hearing will be scheduled within 45 days; and

3 4 5	2. If a hearing request is not made at that time or within 10 days, but within 30 days the person requests a hearing, a hearing to show cause why the driver's license should not be suspended concerning the refusal to take the test or for test results indicating an alcohol concentration of [0.10] 0.08 or more at the time of testing will be scheduled, but a request made after 10 days does not extend a temporary license issued by the police officer that allows the person to continue driving for 45 days;
	(vi) Advise the person of the administrative sanctions that shall be imposed in the event of failure to request a hearing, failure to attend a requested hearing, or upon an adverse finding by the hearing officer; and
	(vii) Within 72 hours after the issuance of the order of suspension, send any confiscated driver's license, copy of the suspension order, and a sworn statement to the Administration, that states:
15 16 17 18	1. The officer had reasonable grounds to believe that the person had been driving or attempting to drive a motor vehicle on a highway or on any private property that is used by the public in general in this State while intoxicated, while under the influence of alcohol, while so far under the influence of any drug, any combination of drugs, or a combination of one or more drugs and alcohol that the person could not drive a vehicle safely, while under the influence of a controlled dangerous substance, in violation of an alcohol restriction, or in violation of § 16-813 of this title;
	2. The person refused to take a test when requested by the police officer or the person submitted to the test which indicated an alcohol concentration of [0.10] 0.8 or more at the time of testing; and
	3. The person was fully advised of the administrative sanctions that shall be imposed, including the fact that a person who refuses to take the test is ineligible for modification of a suspension or issuance of a restrictive license.
	(f) (1) Subject to the provisions of this subsection, at the time of, or within 30 days from the date of, the issuance of an order of suspension, a person may submit a written request for a hearing before an officer of the Administration if:
31 32 33	(i) The person is arrested for driving or attempting to drive a motor vehicle while intoxicated, while under the influence of alcohol, while so far under the influence of any drug, any combination of drugs, or a combination of one or more drugs and alcohol that the person could not drive a vehicle safely, while under the influence of a controlled dangerous substance, in violation of an alcohol restriction, or in violation of § 16-813 of this title; and
35 36	(ii) 1. There is an alcohol concentration of $[0.10]\ 0.08$ or more at the time of testing; or
37	2. The person refused to take a test.
38 39	(4) If a hearing request is not made at the time of or within 10 days after the issuance of the order of suspension, the Administration shall:
40	(i) Make the suspension order effective suspending the license:

1 2	1. For a test result indicating an alcohol concentration of 0.10] 0.08 or more at the time of testing:
3	A. For a first offense, for 45 days; or
4	B. For a second or subsequent offense, for 90 days; or
5	2. For a test refusal:
6	A. For a first offense, for 120 days; or
7	B. For a second offense or subsequent offense, for 1 year; and
8 9	(7) (i) At a hearing under this section, the person has the rights described a § 12-206 of this article, but at the hearing the only issues shall be:
12 13 14 15	1. Whether the police officer who stops or detains a person had easonable grounds to believe the person was driving or attempting to drive while ntoxicated, while under the influence of alcohol, while so far under the influence of any drug, any combination of drugs, or a combination of one or more drugs and alcohol that he person could not drive a vehicle safely, while under the influence of a controlled dangerous substance, in violation of an alcohol restriction, or in violation of § 16-813 of his title;
	2. Whether there was evidence of the use by the person of alcohol, any drug, any combination of drugs, a combination of one or more drugs and alcohol, or a controlled dangerous substance;
22	3. Whether the police officer requested a test after the person was fully advised of the administrative sanctions that shall be imposed, including the fact hat a person who refuses to take the test is ineligible for modification of a suspension or ssuance of a restrictive license;
24	4. Whether the person refused to take the test;
	5. Whether the person drove or attempted to drive a motor vehicle while having an alcohol concentration of [0.10] 0.08 or more at the time of esting; or
28 29	6. If the hearing involves disqualification of a commercial driver's license, whether the person was operating a commercial motor vehicle.
	(ii) The sworn statement of the police officer and of the test technician or analyst shall be prima facie evidence of a test refusal or a test resulting in an alcohol concentration of [0.10] 0.08 or more at the time of testing.
	(8) (i) After a hearing, the Administration shall suspend the driver's icense or privilege to drive of the person charged under subsection (b) or (c) of this section if:
38	1. The police officer who stopped or detained the person had reasonable grounds to believe the person was driving or attempting to drive while intoxicated, while under the influence of alcohol, while so far under the influence of any drug, any combination of drugs, or a combination of one or more drugs and alcohol that

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2	1 the person could not drive a vehicle safely, while under the influence of a 2 dangerous substance, in violation of an alcohol restriction, or in violation 3 this title;		
	2. There was evidence of the use by the p 5 drug, any combination of drugs, a combination of one or more drugs and 6 controlled dangerous substance;		
9	7 3. The police officer requested a test afte 8 advised of the administrative sanctions that shall be imposed, including the 9 person who refuses to take the test is ineligible for modification of a susp 10 issuance of a restrictive license; and	he fact that a	
11	11 4. A. The person refused to take the test;	or	
	B. A test to determine alcohol concentration of [0.10] 0.08 or more at the		
14	14 (v) The suspension imposed shall be:		
	1. For a test result indicating an alcohol of [0.10] 0.08 or more at the time of testing:	concentration of	
17	17 A. For a first offense, a suspension for 45	5 days; or	
	B. For a second or subsequent offense, a 19 or	suspension for 90 days;	
20	20 2. For a test refusal:		
21	21 A. For a first offense, a suspension for 12	20 days; or	
22	B. For a second or subsequent offense, a	suspension for 1 year.	
24 25 26 27	(h) Notwithstanding any other provision of this section, if a driver's license is suspended based on multiple administrative offenses of refusal to take a test, or a test to determine alcohol concentration taken that indicated an alcohol concentration of [0.10] 26 0.08 or more at the time of testing, or any combination of these administrative offenses committed at the same time, or arising out of circumstances simultaneous in time and place, or arising out of the same incident, the Administration:		
	29 (1) Shall suspend the driver's license for the administration of results in the lengthiest period of suspension; and	ive offense that	
	31 (2) May not impose any additional periods of suspension 32 of the administrative offenses.	n for the remainder	
33	33 Article - Courts and Judicial Proceedings		
34	34 10-307.		
36 37	35 (a) (1) In a proceeding in which a person is charged with a viola 36 27, § 388, § 388A, or § 388B of the Code, or with driving or attempting 37 in violation of § 16-113(a)(2), § 16-813, or § 21-902 of the Transportation 38 amount of alcohol in the person's breath or blood shown by analysis as p	to drive a vehicle on Article, the	

7 1 subtitle is admissible in evidence and has the effect set forth in subsections (b) through 2 (e) of this section. 3 (2) Alcohol concentration as used in this section shall be measured by: 4 (i) Grams of alcohol per 100 milliliters of blood; or 5 (ii) Grams of alcohol per 210 liters of breath. 6 (b) If at the time of testing a person has an alcohol concentration of 0.05 or less, 7 as determined by an analysis of the person's blood or breath, it shall be presumed that the 8 defendant was not intoxicated and that the defendant was not driving while under the 9 influence of alcohol. 10 (c) If at the time of testing a person has an alcohol concentration of more than 11 0.05 but less than [0.07] 0.06, as determined by an analysis of the person's blood or 12 breath, this fact may not give rise to any presumption that the defendant was or was not 13 intoxicated or that the defendant was or was not driving while under the influence of 14 alcohol, but this fact may be considered with other competent evidence in determining 15 the guilt or innocence of the defendant. 16 (d) If at the time of testing a person has an alcohol concentration of at least 17 [0.07] 0.06 but less than [0.10] 0.08, as determined by an analysis of the person's blood 18 or breath, it shall be prima facie evidence that the defendant was driving while under the 19 influence of alcohol. 20 (e) If at the time of testing a person has an alcohol concentration of 0.02 or more, 21 as determined by an analysis of the person's blood or breath, it shall be prima facie 22 evidence that the defendant was driving with alcohol in the defendant's blood. 23 (f) If at the time of testing a person has an alcohol concentration of 0.02 or more, 24 as determined by an analysis of the person's blood or breath, it shall be prima facie 25 evidence that a defendant was driving in violation of § 16-113(b) of the Transportation 26 Article. **Article 27 - Crimes and Punishments** 27 28 388A. (a) (1) In this section the following words have the meanings indicated. 29 30 (2) "Intoxicated per se" means an alcohol concentration at the time of 31 testing of [0.10] 0.08 or more as measured by grams of alcohol per 100 milliliters of blood 32 or grams of alcohol per 210 liters of breath. 33 (3) "Under the influence of alcohol" has the meaning indicated in and is 34 subject to the same presumptions and evidentiary rules of § 10-307 of the Courts Article 35 regarding driving while under the influence of alcohol under § 21-902(b) of the 36 Transportation Article. 37 (4) "Under the influence of drugs" means so far under the influence of a 38 drug, a combination of drugs, or a combination of one or more drugs and alcohol that a 39 person cannot drive, operate, or control a motor vehicle or vessel safely.

22 October 1, 1997.

3	(5) "Under the influence of a controlled dangerous substance" means under the influence of a controlled dangerous substance, as that term is defined in § 279 of this article, if the person is not entitled to use the controlled dangerous substance under the laws of this State.
5	388B.
6	(a) (1) In this section the following words have the meanings indicated.
	(2) "Intoxicated per se" means an alcohol concentration at the time of testing of [0.10] 0.08 or more as measured by grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.
12	(3) "Under the influence of alcohol" has the meaning indicated in and is subject to the same presumptions and evidentiary rules of § 10-307 of the Courts Article regarding driving while under the influence of alcohol under § 21-902(b) of the Transportation Article.
	(4) "Under the influence of drugs" means so far under the influence of a drug, a combination of drugs, or a combination of one or more drugs and alcohol that a person cannot drive, operate, or control a motor vehicle or vessel safely.
19	(5) "Under the influence of a controlled dangerous substance" means under the influence of a controlled dangerous substance, as that term is defined in § 279 of this article, if the person is not entitled to use the controlled dangerous substance under the laws of this State.
21	SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect