
By: Senator Ruben

Requested: November 15, 1996

Introduced and read first time: January 8, 1997

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Drunk Driving - Intoxicated Per Se**

3 FOR the purpose of reducing the level of alcohol concentration required for a
4 determination of driving while intoxicated per se; making a technical change
5 regarding the level of alcohol concentration that is prima facie evidence of driving
6 while under the influence of alcohol; reducing the level of alcohol concentration
7 that will result in the suspension of a driver's license; reducing the level of alcohol
8 concentration that will result in the crime of homicide by motor vehicle or vessel
9 while intoxicated per se and the crime of life threatening injury by motor vehicle or
10 vessel while intoxicated per se; and generally relating to offenses involving driving
11 while intoxicated per se or driving while under the influence of alcohol.

12 BY repealing and reenacting, with amendments,
13 Article - Transportation
14 Section 11-127.1 and 16-205.1(b), (f)(1), (4)(i), (7), and (8)(i) and (v), and (h)
15 Annotated Code of Maryland
16 (1992 Replacement Volume and 1996 Supplement)

17 BY repealing and reenacting, with amendments,
18 Article - Courts and Judicial Proceedings
19 Section 10-307
20 Annotated Code of Maryland
21 (1995 Replacement Volume and 1996 Supplement)

22 BY repealing and reenacting, with amendments,
23 Article 27 - Crimes and Punishments
24 Section 388A(a) and 388B(a)
25 Annotated Code of Maryland
26 (1996 Replacement Volume)

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

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1 **Article - Transportation**

2 11-127.1.

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

16 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

21 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:

26 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

33 B. For a second or subsequent offense, suspend the person's
34 driving privilege for 1 year; and

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1 (iii) In addition to any applicable driver's license suspensions
 2 authorized under this section, in the case of a person operating a commercial motor
 3 vehicle who refuses to take a test:

4 1. Disqualify the person's commercial driver's license for a
 5 period of 1 year for a first offense, 3 years for a first offense which occurs while
 6 transporting hazardous materials required to be placarded, and disqualify for life for a
 7 second or subsequent offense which occurs while operating any commercial motor
 8 vehicle; or

9 2. If the person is licensed as a commercial driver by another
 10 state, disqualify the person's privilege to operate a commercial motor vehicle and report
 11 the refusal and disqualification to the person's resident state which may result in further
 12 penalties imposed by the person's resident state.

13 (2) Except as provided in subsection (c) of this section, if a police officer
 14 stops or detains any person who the police officer has reasonable grounds to believe is or
 15 has been driving or attempting to drive a motor vehicle while intoxicated, while under the
 16 influence of alcohol, while so far under the influence of any drug, any combination of
 17 drugs, or a combination of one or more drugs and alcohol that the person could not drive
 18 a vehicle safely, while under the influence of a controlled dangerous substance, in
 19 violation of an alcohol restriction, or in violation of § 16-813 of this title, and who is not
 20 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

23 (iii) Advise the person of the administrative sanctions that shall be
 24 imposed for refusal to take the test, including ineligibility for modification of a suspension
 25 or issuance of a restrictive license, and for test results indicating an alcohol concentration
 26 of [0.10] 0.08 or more at the time of testing.

27 (3) If the person refuses to take the test or takes a test which results in an
 28 alcohol concentration of [0.10] .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 (ii) Acting on behalf of the Administration, personally serve an order
 31 of suspension on the person;

32 (iii) Issue a temporary license to drive;

33 (iv) Inform the person that the temporary license allows the person to
 34 continue driving for 45 days if the person is licensed under this title;

35 (v) Inform the person that:

36 1. The person has a right to request, at that time or within 10
 37 days, a hearing to show cause why the driver's license should not be suspended
 38 concerning the refusal to take the test or for test results indicating an alcohol
 39 concentration of [0.10] 0.08 or more at the time of testing, and the hearing will be
 40 scheduled within 45 days; and

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1 2. If a hearing request is not made at that time or within 10
 2 days, but within 30 days the person requests a hearing, a hearing to show cause why the
 3 driver's license should not be suspended concerning the refusal to take the test or for test
 4 results indicating an alcohol concentration of [0.10] 0.08 or more at the time of testing
 5 will be scheduled, but a request made after 10 days does not extend a temporary license
 6 issued by the police officer that allows the person to continue driving for 45 days;

7 (vi) Advise the person of the administrative sanctions that shall be
 8 imposed in the event of failure to request a hearing, failure to attend a requested hearing,
 9 or upon an adverse finding by the hearing officer; and

10 (vii) Within 72 hours after the issuance of the order of suspension, send
 11 any confiscated driver's license, copy of the suspension order, and a sworn statement to
 12 the Administration, that states:

13 1. The officer had reasonable grounds to believe that the
 14 person had been driving or attempting to drive a motor vehicle on a highway or on any
 15 private property that is used by the public in general in this State while intoxicated, while
 16 under the influence of alcohol, while so far under the influence of any drug, any
 17 combination of drugs, or a combination of one or more drugs and alcohol that the person
 18 could not drive a vehicle safely, while under the influence of a controlled dangerous
 19 substance, in violation of an alcohol restriction, or in violation of § 16-813 of this title;

20 2. The person refused to take a test when requested by the
 21 police officer or the person submitted to the test which indicated an alcohol
 22 concentration of [0.10] 0.08 or more at the time of testing; and

23 3. The person was fully advised of the administrative sanctions
 24 that shall be imposed, including the fact that a person who refuses to take the test is
 25 ineligible for modification of a suspension or issuance of a restrictive license.

26 (f) (1) Subject to the provisions of this subsection, at the time of, or within 30
 27 days from the date of, the issuance of an order of suspension, a person may submit a
 28 written request for a hearing before an officer of the Administration if:

29 (i) The person is arrested for driving or attempting to drive a motor
 30 vehicle while intoxicated, while under the influence of alcohol, while so far under the
 31 influence of any drug, any combination of drugs, or a combination of one or more drugs
 32 and alcohol that the person could not drive a vehicle safely, while under the influence of
 33 a controlled dangerous substance, in violation of an alcohol restriction, or in violation of
 34 § 16-813 of this title; and

35 (ii) 1. There is an alcohol concentration of [0.10] 0.08 or more at
 36 the time of testing; or

37 2. The person refused to take a test.

38 (4) If a hearing request is not made at the time of or within 10 days after the
 39 issuance of the order of suspension, the Administration shall:

40 (i) Make the suspension order effective suspending the license:

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1 1. For a test result indicating an alcohol concentration of
2 [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 (7) (i) At a hearing under this section, the person has the rights described
9 in § 12-206 of this article, but at the hearing the only issues shall be:

10 1. Whether the police officer who stops or detains a person had
11 reasonable grounds to believe the person was driving or attempting to drive while
12 intoxicated, while under the influence of alcohol, while so far under the influence of any
13 drug, any combination of drugs, or a combination of one or more drugs and alcohol that
14 the person could not drive a vehicle safely, while under the influence of a controlled
15 dangerous substance, in violation of an alcohol restriction, or in violation of § 16-813 of
16 this title;

17 2. Whether there was evidence of the use by the person of
18 alcohol, any drug, any combination of drugs, a combination of one or more drugs and
19 alcohol, or a controlled dangerous substance;

20 3. Whether the police officer requested a test after the person
21 was fully advised of the administrative sanctions that shall be imposed, including the fact
22 that a person who refuses to take the test is ineligible for modification of a suspension or
23 issuance of a restrictive license;

24 4. Whether the person refused to take the test;

25 5. Whether the person drove or attempted to drive a motor
26 vehicle while having an alcohol concentration of [0.10] 0.08 or more at the time of
27 testing; or

28 6. If the hearing involves disqualification of a commercial
29 driver's license, whether the person was operating a commercial motor vehicle.

30 (ii) The sworn statement of the police officer and of the test technician
31 or analyst shall be prima facie evidence of a test refusal or a test resulting in an alcohol
32 concentration of [0.10] 0.08 or more at the time of testing.

33 (8) (i) After a hearing, the Administration shall suspend the driver's
34 license or privilege to drive of the person charged under subsection (b) or (c) of this
35 section if:

36 1. The police officer who stopped or detained the person had
37 reasonable grounds to believe the person was driving or attempting to drive while
38 intoxicated, while under the influence of alcohol, while so far under the influence of any
39 drug, any combination of drugs, or a combination of one or more drugs and alcohol that

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1 the person could not drive a vehicle safely, while under the influence of a controlled
2 dangerous substance, in violation of an alcohol restriction, or in violation of § 16-813 of
3 this title;

4 2. There was evidence of the use by the person of alcohol, any
5 drug, any combination of drugs, a combination of one or more drugs and alcohol, or a
6 controlled dangerous substance;

7 3. The police officer requested a test after the person was fully
8 advised of the administrative sanctions that shall be imposed, including the fact that a
9 person who refuses to take the test is ineligible for modification of a suspension or
10 issuance of a restrictive license; and

11 4. A. The person refused to take the test; or

12 B. A test to determine alcohol concentration was taken and the
13 test result indicated an alcohol concentration of [0.10] 0.08 or more at the time of testing.

14 (v) The suspension imposed shall be:

15 1. For a test result indicating an alcohol concentration of
16 [0.10] 0.08 or more at the time of testing:

17 A. For a first offense, a suspension for 45 days; or

18 B. For a second or subsequent offense, a suspension for 90 days;

19 or

20 2. For a test refusal:

21 A. For a first offense, a suspension for 120 days; or

22 B. For a second or subsequent offense, a suspension for 1 year.

23 (h) Notwithstanding any other provision of this section, if a driver's license is
24 suspended based on multiple administrative offenses of refusal to take a test, or a test to
25 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
27 committed at the same time, or arising out of circumstances simultaneous in time and
28 place, or arising out of the same incident, the Administration:

29 (1) Shall suspend the driver's license for the administrative offense that
30 results in the lengthiest period of suspension; and

31 (2) May not impose any additional periods of suspension for the remainder
32 of the administrative offenses.

33 **Article - Courts and Judicial Proceedings**

34 10-307.

35 (a) (1) In a proceeding in which a person is charged with a violation of Article
36 27, § 388, § 388A, or § 388B of the Code, or with driving or attempting to drive a vehicle
37 in violation of § 16-113(a)(2), § 16-813, or § 21-902 of the Transportation Article, the
38 amount of alcohol in the person's breath or blood shown by analysis as provided in this

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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, as determined by an analysis of the person's blood or breath, this
12 fact may not give rise to any presumption that the defendant was or was not intoxicated or
13 that the defendant was or was not driving while under the influence of alcohol, but this
14 fact may be considered with other competent evidence in determining the guilt or
15 innocence of the defendant.

16 (d) If at the time of testing a person has an alcohol concentration of at least 0.07
17 but less than [0.10] 0.08, as determined by an analysis of the person's blood or breath, it
18 shall be prima facie evidence that the defendant was driving while under the influence of
19 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.

27 **Article 27 - Crimes and Punishments**

28 388A.

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

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.

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1 (5) "Under the influence of a controlled dangerous substance" means under
2 the influence of a controlled dangerous substance, as that term is defined in § 279 of this
3 article, if the person is not entitled to use the controlled dangerous substance under the
4 laws of this State.

5 388B.

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

7 (2) "Intoxicated per se" means an alcohol concentration at the time of
8 testing of [0.10] 0.08 or more as measured by grams of alcohol per 100 milliliters of blood
9 or grams of alcohol per 210 liters of breath.

10 (3) "Under the influence of alcohol" has the meaning indicated in and is
11 subject to the same presumptions and evidentiary rules of § 10-307 of the Courts Article
12 regarding driving while under the influence of alcohol under § 21-902(b) of the
13 Transportation Article.

14 (4) "Under the influence of drugs" means so far under the influence of a
15 drug, a combination of drugs, or a combination of one or more drugs and alcohol that a
16 person cannot drive, operate, or control a motor vehicle or vessel safely.

17 (5) "Under the influence of a controlled dangerous substance" means under
18 the influence of a controlled dangerous substance, as that term is defined in § 279 of this
19 article, if the person is not entitled to use the controlled dangerous substance under the
20 laws of this State.

21 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
22 October 1, 1997.