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By: Senators Ruben, Lawlah, Dyson, Forehand, Munson, Boozer, Blount, Hollinger, Kasemeyer, Madden, McCabe, Roesser, Frosh, Van Hollen, Teitelbaum, Dorman, Currie, Middleton, Astle, Middlebrooks, Craig, Stoltzfus, Hogan, Hoffman, Conway, McFadden, and Fry

Introduced and read first time: January 23, 1998

Assigned to: Judicial Proceedings

#### A BILL ENTITLED

1 AN ACT concern	ing
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### 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; reducing the level of alcohol
- 5 concentration that will result in the suspension of a driver's license; reducing
- 6 the level of alcohol concentration that constitutes prima facie evidence of driving
- while under the influence; reducing the level of alcohol concentration that will
- 8 result in the crime of homicide by motor vehicle or vessel while intoxicated per
- 9 se and the crime of life threatening injury by motor vehicle or vessel while
- intoxicated per se; and generally relating to offenses involving driving 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 1997 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 1997 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 and 1997 Supplement)

	SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:				
3	Article - Transportation				
4 11-127.1.					
6 of [0.10] 0.08 or more as me	"Intoxicated per se" means having 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.				
8 16-205.1.					
9 (b) (1) Except as provided in subsection (c) of this section, a person may not 10 be compelled to take a test. However, the detaining officer shall advise the person 11 that, on receipt of a sworn statement from the officer that the person was so charged 12 and refused to take a test, or was tested and the result indicated an alcohol 13 concentration of [0.10] 0.08 or more, the Administration shall:					
14 (i)	In the	case of a person licensed under this title:			
15 16 [0.10] 0.08 or more at the tir	15 1. For a test result indicating an alcohol concentration of 16 [0.10] 0.08 or more at the time of testing:				
17 18 or	A.	For a first offense, suspend the driver's license for 45 days;			
19 20 license for 90 days; or	B.	For a second or subsequent offense, suspend the driver's			
21	2.	For a test refusal:			
22 23 days; or	A.	For a first offense, suspend the driver's license for 120			
24 25 license for 1 year;	B.	For a second or subsequent offense, suspend the driver's			
26 (ii)	In the	case of a nonresident or unlicensed person:			
27 28 [0.10] 0.08 or more at the tir	1. ne of test	For a test result indicating an alcohol concentration of ing:			
29 30 for 45 days; or	A.	For a first offense, suspend the person's driving privilege			
31 32 driving privilege for 90 days	B.	For a second or subsequent offense, suspend the person's			
33	2.	For a test refusal:			

1 2	for 120 days; or		A.	For a first offense, suspend the person's driving privilege		
3 4	driving privilege for 1	year; and	B. d	For a second or subsequent offense, suspend the person's		
			n the cas	ion to any applicable driver's license suspensions e of a person operating a commercial motor		
10 11	transporting hazardou	s materia	als requi	Disqualify the person's commercial driver's license for a arrs for a first offense which occurs while red to be placarded, and disqualify for life for occurs while operating any commercial motor		
15		disqualif	fication t	If the person is licensed as a commercial driver by another o operate a commercial motor vehicle and o the person's resident state which may result son's resident state.		
19 20 21 22 23 24	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:					
26		(i)	Detain t	he person;		
27		(ii)	Request	that the person permit a test to be taken; and		
30	imposed for refusal to suspension or issuance	e of a res	test, inc	the person of the administrative sanctions that shall be luding ineligibility for modification of a icense, and for test results indicating an more at the time of testing.		
				ises to take the test or takes a test which results in or more at the time of testing, the police officer		
35		(i)	Confisc	ate the person's driver's license issued by this State;		
36 37	order of suspension or	(ii) n the per		on behalf of the Administration, personally serve an		
38		(iii)	Issue a	remporary license to drive;		

1 2	(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;
3	(v) Inform the person that:
6 7	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
11 12 13 14	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:
24 25 26 27 28	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] 0.08 or more at the time of testing; and
35	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:

3 4 5	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			
7 8	the time of testing; or	(ii)	1.	There is an alcohol concentration of [0.10] 0.08 or more at
9			2.	The person refused to take a test.
10 11	\ /			est is not made at the time of or within 10 days after the Administration shall:
12		(i)	Make th	e suspension order effective suspending the license:
13 14	[0.10] 0.08 or more a	t the time	1. e of testin	For a test result indicating an alcohol concentration of g:
15			A.	For a first offense, for 45 days; or
16			B.	For a second or subsequent offense, for 90 days; or
17			2.	For a test refusal:
18			A.	For a first offense, for 120 days; or
19			B.	For a second offense or subsequent offense, for 1 year; and
20 21	(7) described in § 12-206	(i) 5 of this a		ring under this section, the person has the rights t at the hearing the only issues shall be:
24 25 26 27	intoxicated, while und any drug, any combinal alcohol that the perso	der the in nation of on could r substanc	fluence of drugs, or not drive	Whether the police officer who stops or detains a person berson was driving or attempting to drive while of alcohol, while so far under the influence of a combination of one or more drugs and a vehicle safely, while under the influence of a ation of an alcohol restriction, or in violation of
	alcohol, any drug, an alcohol, or a controlle			Whether there was evidence of the use by the person of drugs, a combination of one or more drugs and tance;
34	including the fact that	t a persor	n who ref	Whether the police officer requested a test after the strative sanctions that shall be imposed, uses to take the test is ineligible for the of a restrictive license;
36			4.	Whether the person refused to take the test;

	vehicle while having an alcohesting; or	5. nol concer		the person drove or attempted to drive a motor [0.10] 0.08 or more at the time of
4 5	driver's license, whether the p	6. person wa		earing involves disqualification of a commercial g a commercial motor vehicle.
	(ii) technician or analyst shall be in an alcohol concentration or	prima fac	ie eviden	nent of the police officer and of the test ce of a test refusal or a test resulting re at the time of testing.
	(8) (i) license or privilege to drive of section if:			he Administration shall suspend the driver's ed under subsection (b) or (c) of this
14 15 16 17	reasonable grounds to believ intoxicated, while under the any drug, any combination o alcohol that the person could	influence f drugs, o not drive	on was dr of alcohor a combine a vehicle	ice officer who stopped or detained the person had iving or attempting to drive while I, while so far under the influence of nation of one or more drugs and safely, while under the influence of a an alcohol restriction, or in violation of
				vas evidence of the use by the person of alcohol, any of one or more drugs and alcohol, or a
24	fully advised of the administ	take the to	ctions tha est is ineli	ice officer requested a test after the person was t shall be imposed, including the fact gible for modification of a suspension
26		4.	A.	The person refused to take the test; or
	the test result indicated an al testing.	B. cohol con		o determine alcohol concentration was taken and of [0.10] 0.08 or more at the time of
30	(v)	The sus	spension i	mposed shall be:
31 32	[0.10] 0.08 or more at the tin	1. ne of testi		st result indicating an alcohol concentration of
33		A.	For a fir	est offense, a suspension for 45 days; or
34 35	days; or	B.	For a se	cond or subsequent offense, a suspension for 90
36		2.	For a tes	st refusal:

1	A. For a first offense, a suspension for 120 days; or
2 3	B. For a second or subsequent offense, a suspension for 1 year.
6 7 8	(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] 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:
10 11	(1) Shall suspend the driver's license for the administrative offense that results in the lengthiest period of suspension; and
12 13	(2) May not impose any additional periods of suspension for the remainder of the administrative offenses.
14	Article - Courts and Judicial Proceedings
15	10-307.
18 19 20	(a) (1) In a proceeding in which a person is charged with a violation of Article 27, § 388, § 388A, or § 388B of the Code, or with driving or attempting to drive a vehicle in violation of § 16-113(a)(2), § 16-813, or § 21-902 of the Transportation Article, the amount of alcohol in the person's breath or blood shown by analysis as provided in this subtitle is admissible in evidence and has the effect set forth in subsections (b) through (e) of this section.
22	(2) Alcohol concentration as used in this section shall be measured by:
23	(i) Grams of alcohol per 100 milliliters of blood; or
24	(ii) Grams of alcohol per 210 liters of breath.
27	(b) If at the time of testing a person has an alcohol concentration of 0.05 or less, as determined by an analysis of the person's blood or breath, it shall be presumed that the defendant was not intoxicated and that the defendant was not driving while under the influence of alcohol.
31 32 33 34	(c) If at the time of testing a person has an alcohol concentration of more than 0.05 but less than [0.07] 0.06, as determined by an analysis of the person's blood or breath, this fact may not give rise to any presumption that the defendant was or was not intoxicated or that the defendant was or was not driving while under the influence of alcohol, but this fact may be considered with other competent evidence in determining the guilt or innocence of the defendant.
35 36	(d) If at the time of testing a person has an alcohol concentration of at least [0.07] 0.06 but less than [0.10] 0.08, as determined by an analysis of the person's

**SENATE BILL 160** 1 blood or breath, it shall be prima facie evidence that the defendant was driving while 2 under the influence of alcohol. 3 If at the time of testing a person has an alcohol concentration of 0.02 or 4 more, as determined by an analysis of the person's blood or breath, it shall be prima 5 facie evidence that the defendant was driving with alcohol in the defendant's blood. 6 If at the time of testing a person has an alcohol concentration of 0.02 or (f) 7 more, as determined by an analysis of the person's blood or breath, it shall be prima 8 facie evidence that a defendant was driving in violation of § 16-113(b) of the 9 Transportation Article. 10 **Article 27 - Crimes and Punishments** 11 388A. 12 (a) (1) In this section the following words have the meanings indicated. 13 "Intoxicated per se" means an alcohol concentration at the time of (2) 14 testing of [0.10] 0.08 or more as measured by grams of alcohol per 100 milliliters of 15 blood or grams of alcohol per 210 liters of breath. "Under the influence of alcohol" has the meaning indicated in and is 16 (3) 17 subject to the same presumptions and evidentiary rules of § 10-307 of the Courts 18 Article regarding driving while under the influence of alcohol under § 21-902(b) of the 19 Transportation Article. "Under the influence of drugs" means so far under the influence of a 20 (4) 21 drug, a combination of drugs, or a combination of one or more drugs and alcohol that 22 a person cannot drive, operate, or control a motor vehicle or vessel safely. 23 "Under the influence of a controlled dangerous substance" means (5) 24 under the influence of a controlled dangerous substance, as that term is defined in § 25 279 of this article, if the person is not entitled to use the controlled dangerous 26 substance under the laws of this State. 27 388B. 28 In this section the following words have the meanings indicated. (a) (1) 29 "Intoxicated per se" means an alcohol concentration at the time of (2) 30 testing of [0.10] 0.08 or more as measured by grams of alcohol per 100 milliliters of 31 blood or grams of alcohol per 210 liters of breath. "Under the influence of alcohol" has the meaning indicated in and is 32 (3)

33 subject to the same presumptions and evidentiary rules of § 10-307 of the Courts 34 Article regarding driving while under the influence of alcohol under § 21-902(b) of the

35 Transportation Article.

- 1 (4) "Under the influence of drugs" means so far under the influence of a 2 drug, a combination of drugs, or a combination of one or more drugs and alcohol that
- 3 a person cannot drive, operate, or control a motor vehicle or vessel safely.
- 4 (5) "Under the influence of a controlled dangerous substance" means
- 5 under the influence of a controlled dangerous substance, as that term is defined in §
- 6 279 of this article, if the person is not entitled to use the controlled dangerous
- 7 substance under the laws of this State.
- 8 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
- 9 October 1, 1998.