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Introduced and read first time: February 12, 1999

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Alcohol Related Driving Offenses - Blood Alcohol Concentration Levels -**
3 **Qualification for Federal Transportation Funding**

4 FOR the purpose of reducing the level of alcohol concentration required for a
5 determination of driving while intoxicated per se; making conforming changes to
6 the level of alcohol concentration regarding driving while under the influence of
7 alcohol; reducing the level of alcohol concentration that will result in the
8 suspension of a driver's license under certain circumstances; providing for the
9 applicability of certain alcohol concentration results in certain situations;
10 reducing the level of alcohol concentration that will result in the crime of
11 homicide by motor vehicle or vessel while intoxicated per se and the crime of life
12 threatening injury by motor vehicle or vessel while intoxicated per se; providing
13 for the construction of this Act to qualify for certain federal transportation
14 funds; providing that this Act shall be interpreted to apply prospectively for
15 certain offenses occurring after a certain date; authorizing the adoption of
16 certain regulations and forms; defining a certain term; and generally relating to
17 alcohol related driving offenses, alcohol concentration levels, and qualification
18 for federal transportation funding.

19 BY repealing and reenacting, with amendments,
20 Article 27 - Crimes and Punishments
21 Section 388A(a) and 388B(a)
22 Annotated Code of Maryland
23 (1996 Replacement Volume and 1998 Supplement)

24 BY repealing and reenacting, with amendments,
25 Article - Courts and Judicial Proceedings
26 Section 10-307
27 Annotated Code of Maryland

1 (1998 Replacement Volume)
2 BY repealing and reenacting, with amendments,
3 Article - Transportation
4 Section 11-127.1 and 16-205.1
5 Annotated Code of Maryland
6 (1998 Replacement Volume and 1998 Supplement)

7 BY repealing and reenacting, without amendments,
8 Article - Transportation
9 Section 21-902
10 Annotated Code of Maryland
11 (1998 Replacement Volume and 1998 Supplement)

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

14 **Article 27 - Crimes and Punishments**

15 388A.

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

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

20 (ii) If the alcohol concentration is measured by milligrams of
21 alcohol per deciliter of blood or milligrams of alcohol per 100 milliliters of blood, a
22 court shall convert the measurement into grams of alcohol per 100 milliliters of blood
23 by dividing the measurement by 1000.] HAS THE MEANING INDICATED IN AND IS
24 SUBJECT TO THE SAME PRESUMPTIONS AND EVIDENTIARY RULES OF § 10-307 OF
25 THE COURTS ARTICLE REGARDING DRIVING WHILE INTOXICATED PER SE UNDER §§
26 11-127.1 AND 21-902(A) OF THE TRANSPORTATION ARTICLE.

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

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

34 (5) "Under the influence of a controlled dangerous substance" means
35 under the influence of a controlled dangerous substance, as that term is defined in §
36 279 of this article, if the person is not entitled to use the controlled dangerous
37 substance under the laws of this State.

1 388B.

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

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

6 (ii) If the alcohol concentration is measured by milligrams of
7 alcohol per deciliter of blood or milligrams of alcohol per 100 milliliters of blood, a
8 court shall convert the measurement into grams of alcohol per 100 milliliters of blood
9 by dividing the measurement by 1000.] HAS THE MEANING INDICATED IN AND IS
10 SUBJECT TO THE SAME PRESUMPTIONS AND EVIDENTIARY RULES OF § 10-307 OF
11 THE COURTS ARTICLE REGARDING DRIVING WHILE INTOXICATED PER SE UNDER §§
12 11-127.1 AND 21-902(A) OF THE TRANSPORTATION ARTICLE.

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

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

20 (5) "Under the influence of a controlled dangerous substance" means
21 under the influence of a controlled dangerous substance, as that term is defined in §
22 279 of this article, if the person is not entitled to use the controlled dangerous
23 substance under the laws of this State.

24 **Article - Courts and Judicial Proceedings**

25 10-307.

26 (a) (1) In a proceeding in which a person is [charged with] ALLEGED TO
27 HAVE COMMITTED AN ACT THAT WOULD CONSTITUTE a violation of Article 27, § 388,
28 § 388A, or § 388B of the Code, or with driving or attempting to drive a vehicle in
29 violation of § 16-113(a)(2), § 16-813, or § 21-902 of the Transportation Article, the
30 amount of alcohol in the person's breath or blood shown by analysis as provided in
31 this subtitle is admissible in evidence and has the effect set forth in subsections (b)
32 through [(e)] (G) of this section.

33 (2) Alcohol concentration as used in this section shall be measured by:

34 (i) Grams of alcohol per 100 milliliters of blood; or

35 (ii) Grams of alcohol per 210 liters of breath.

36 (3) If the amount of alcohol in the person's blood shown by analysis as
37 provided in this subtitle is measured by milligrams of alcohol per deciliters of blood or

1 milligrams of alcohol per 100 milliliters of blood, a court or an administrative law
2 judge, as the case may be, shall convert the measurement into grams of alcohol per
3 100 milliliters of blood by dividing the measurement by 1000.

4 (b) If at the time of testing a person has an alcohol concentration of 0.05 or
5 less, as determined by an analysis of the person's blood or breath, it shall be presumed
6 that the [defendant] PERSON was not intoxicated OR INTOXICATED PER SE and that
7 the [defendant] PERSON was not driving while under the influence of alcohol.

8 (c) If at the time of testing a person has an alcohol concentration of more than
9 0.05 but less than 0.07, as determined by an analysis of the person's blood or breath,
10 this fact may not give rise to any presumption that the [defendant] PERSON was or
11 was not intoxicated OR INTOXICATED PER SE or that the [defendant] PERSON was or
12 was not driving while under the influence of alcohol, but this fact may be considered
13 with other competent evidence in determining the [guilt or innocence] SOBRIETY of
14 the [defendant] PERSON DRIVING.

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

19 (e) If at the time of testing a person has an alcohol concentration of 0.02 or
20 more, as determined by an analysis of the person's blood or breath, it shall be prima
21 facie evidence that the [defendant] PERSON was driving with alcohol in the
22 [defendant's] PERSON'S blood.

23 (f) If at the time of testing a person has an alcohol concentration of 0.02 or
24 more, as determined by an analysis of the person's blood or breath, it shall be prima
25 facie evidence that a [defendant] PERSON was driving in violation of § 16-113(b) of
26 the Transportation Article.

27 (G) IF AT THE TIME OF TESTING, A PERSON HAS AN ALCOHOL
28 CONCENTRATION OF 0.08 OR MORE, AS DETERMINED BY AN ANALYSIS OF THE
29 PERSON'S BLOOD OR BREATH, THE PERSON SHALL BE CONSIDERED INTOXICATED
30 PER SE AS DEFINED IN § 11-127.1 OF THE TRANSPORTATION ARTICLE.

31 **Article - Transportation**

32 11-127.1.

33 (a) "Intoxicated per se" means having an alcohol concentration at the time of
34 testing of [0.10] 0.08 or more as measured by grams of alcohol per 100 milliliters of
35 blood or grams of alcohol per 210 liters of breath.

36 (b) If the alcohol concentration is measured by milligrams of alcohol per
37 deciliter of blood or milligrams of alcohol per 100 milliliters of blood, a court or an
38 administrative law judge, as the case may be, shall convert the measurement into
39 grams of alcohol per 100 milliliters of blood by dividing the measurement by 1000.

1 16-205.1.

2 (a) (1) (i) In this section, the following words have the meanings
3 indicated.

4 (II) "INTOXICATED" INCLUDES INTOXICATED PER SE AS DEFINED
5 BY § 11-127.1 OF THIS ARTICLE.

6 [(ii)] (III) "Specimen of blood" and "1 specimen of blood" means 1
7 sample of blood that is taken, in a single procedure, in 2 or more portions in 2 or more
8 separate vials.

9 [(iii)] (IV) "Test" means:

10 1. A test of a person's breath or of 1 specimen of a person's
11 blood to determine alcohol concentration;

12 2. A test or tests of 1 specimen of a person's blood to
13 determine the drug or controlled dangerous substance content of the person's blood; or

14 3. Both:

15 A. A test of a person's breath or a test of 1 specimen of a
16 person's blood, to determine alcohol concentration; and

17 B. A test or tests of 1 specimen of a person's blood to
18 determine the drug or controlled dangerous substance content of the person's blood.

19 (2) Any person who drives or attempts to drive a motor vehicle on a
20 highway or on any private property that is used by the public in general in this State
21 is deemed to have consented, subject to the provisions of §§ 10-302 through 10-309,
22 inclusive, of the Courts and Judicial Proceedings Article, to take a test if the person
23 should be detained on suspicion of driving or attempting to drive while intoxicated,
24 while under the influence of alcohol, while so far under the influence of any drug, any
25 combination of drugs, or a combination of one or more drugs and alcohol that the
26 person could not drive a vehicle safely, while under the influence of a controlled
27 dangerous substance, in violation of an alcohol restriction, or in violation of § 16-813
28 of this title.

29 (b) (1) Except as provided in subsection (c) of this section, a person may not
30 be compelled to take a test. However, the detaining officer shall advise the person
31 that, on receipt of a sworn statement from the officer that the person was so charged
32 and refused to take a test, or was tested and the result indicated an alcohol
33 concentration of [0.10] 0.08 or more, the Administration shall:

34 (i) In the case of a person licensed under this title:

35 1. For a test result indicating an alcohol concentration of
36 [0.10] 0.08 or more at the time of testing:

- 1 A. For a first offense, suspend the driver's license for 45 days;
2 or
- 3 B. For a second or subsequent offense, suspend the driver's
4 license for 90 days; or
- 5 2. For a test refusal:
- 6 A. For a first offense, suspend the driver's license for 120
7 days; or
- 8 B. For a second or subsequent offense, suspend the driver's
9 license for 1 year;
- 10 (ii) In the case of a nonresident or unlicensed person:
- 11 1. For a test result indicating an alcohol concentration of
12 [0.10] 0.08 or more at the time of testing:
- 13 A. For a first offense, suspend the person's driving privilege
14 for 45 days; or
- 15 B. For a second or subsequent offense, suspend the person's
16 driving privilege for 90 days; or
- 17 2. For a test refusal:
- 18 A. For a first offense, suspend the person's driving privilege
19 for 120 days; or
- 20 B. For a second or subsequent offense, suspend the person's
21 driving privilege for 1 year; and
- 22 (iii) In addition to any applicable driver's license suspensions
23 authorized under this section, in the case of a person operating a commercial motor
24 vehicle who refuses to take a test:
- 25 1. Disqualify the person's commercial driver's license for a
26 period of 1 year for a first offense, 3 years for a first offense which occurs while
27 transporting hazardous materials required to be placarded, and disqualify for life for
28 a second or subsequent offense which occurs while operating any commercial motor
29 vehicle; or
- 30 2. If the person is licensed as a commercial driver by another
31 state, disqualify the person's privilege to operate a commercial motor vehicle and
32 report the refusal and disqualification to the person's resident state which may result
33 in further penalties imposed by the person's resident state.
- 34 (2) Except as provided in subsection (c) of this section, if a police officer
35 stops or detains any person who the police officer has reasonable grounds to believe is
36 or has been driving or attempting to drive a motor vehicle while intoxicated, while

1 under the influence of alcohol, while so far under the influence of any drug, any
2 combination of drugs, or a combination of one or more drugs and alcohol that the
3 person could not drive a vehicle safely, while under the influence of a controlled
4 dangerous substance, in violation of an alcohol restriction, or in violation of § 16-813
5 of this title, and who is not unconscious or otherwise incapable of refusing to take a
6 test, the police officer shall:

7 (i) Detain the person;

8 (ii) Request that the person permit a test to be taken; and

9 (iii) Advise the person of the administrative sanctions that shall be
10 imposed for refusal to take the test, including ineligibility for modification of a
11 suspension or issuance of a restrictive license under subsection (n)(1) or (2) of this
12 section, and for test results indicating an alcohol concentration of [0.10] 0.08 or more
13 at the time of testing.

14 (3) If the person refuses to take the test or takes a test which results in
15 an alcohol concentration of [0.10] 0.08 or more at the time of testing, the police officer
16 shall:

17 (i) Confiscate the person's driver's license issued by this State;

18 (ii) Acting on behalf of the Administration, personally serve an
19 order of suspension on the person;

20 (iii) Issue a temporary license to drive;

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

23 (v) Inform the person that:

24 1. The person has a right to request, at that time or within
25 10 days, a hearing to show cause why the driver's license should not be suspended
26 concerning the refusal to take the test or for test results indicating an alcohol
27 concentration of [0.10] 0.08 or more at the time of testing, and the hearing will be
28 scheduled within 45 days; and

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

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

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

4 1. The officer had reasonable grounds to believe that the
5 person had been driving or attempting to drive a motor vehicle on a highway or on
6 any private property that is used by the public in general in this State while
7 intoxicated, while under the influence of alcohol, while so far under the influence of
8 any drug, any combination of drugs, or a combination of one or more drugs and
9 alcohol that the person could not drive a vehicle safely, while under the influence of a
10 controlled dangerous substance, in violation of an alcohol restriction, or in violation of
11 § 16-813 of this title;

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

15 3. The person was fully advised of the administrative
16 sanctions that shall be imposed, including the fact that a person who refuses to take
17 the test is ineligible for modification of a suspension or issuance of a restrictive
18 license under subsection (n)(1) or (2) of this section.

19 (c) (1) If a person is involved in a motor vehicle accident that results in the
20 death of, or a life threatening injury to, another person and the person is detained by
21 a police officer who has reasonable grounds to believe that the person has been
22 driving or attempting to drive while intoxicated, while under the influence of alcohol,
23 while so far under the influence of any drug, any combination of drugs, or a
24 combination of one or more drugs and alcohol that the person could not drive a vehicle
25 safely, while under the influence of a controlled dangerous substance, or in violation of
26 § 16-813 of this title, the person shall be required to submit to a test, as directed by
27 the officer.

28 (2) If a police officer directs that a person be tested, then the provisions
29 of § 10-304 of the Courts and Judicial Proceedings Article shall apply.

30 (3) Any medical personnel who perform any test required by this section
31 are not liable for any civil damages as the result of any act or omission related to such
32 test, not amounting to gross negligence.

33 (d) (1) If a police officer has reasonable grounds to believe that a person has
34 been driving or attempting to drive a motor vehicle while intoxicated, while under the
35 influence of alcohol, while so far under the influence of any drug, any combination of
36 drugs, or a combination of one or more drugs and alcohol that the person could not
37 drive a vehicle safely, while under the influence of a controlled dangerous substance,
38 or in violation of § 16-813 of this title, and if the police officer determines that the
39 person is unconscious or otherwise incapable of refusing to take a test, the police
40 officer shall:

41 (i) Obtain prompt medical attention for the person;

1 (ii) If necessary, arrange for removal of the person to a nearby
2 medical facility; and

3 (iii) If a test would not jeopardize the health or well-being of the
4 person, direct a qualified medical person to withdraw blood for a test.

5 (2) If a person regains consciousness or otherwise becomes capable of
6 refusing before the taking of a test, the police officer shall follow the procedure set
7 forth in subsection (b) or (c) of this section.

8 (e) (1) The tests to determine alcohol concentration may be administered by
9 an individual who has been examined and is certified by the Department of State
10 Police as sufficiently equipped and trained to administer the tests.

11 (2) The Department of State Police may adopt regulations for the
12 examination and certification of individuals trained to administer tests to determine
13 alcohol concentration.

14 (f) (1) Subject to the provisions of this subsection, at the time of, or within
15 30 days from the date of, the issuance of an order of suspension, a person may submit
16 a written request for a hearing before an officer of the Administration if:

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

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

25 2. The person refused to take a test.

26 (2) A request for a hearing made by mail shall be deemed to have been
27 made on the date of the United States Postal Service postmark on the mail.

28 (3) If the driver's license has not been previously surrendered, the
29 license must be surrendered at the time the request for a hearing is made.

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

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

33 1. For a test result indicating an alcohol concentration of
34 [0.10] 0.08 or more at the time of testing:

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

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

1 C. A witness for whom the subpoena was requested fails to
2 comply with the subpoena, for good cause shown, at an initial or subsequent hearing
3 described under this paragraph held within the 45-day period after the issuance of
4 the order of suspension.

5 (iv) If a witness is served with a subpoena for a hearing under this
6 paragraph, the witness shall comply with the subpoena within 20 days from the date
7 that the subpoena is served.

8 (v) If a hearing is postponed beyond the 45-day period after the
9 issuance of the order of suspension under the circumstances described in
10 subparagraph (iii) of this paragraph, the Administration shall stay the suspension
11 and issue a temporary license that authorizes the person to drive only until the date
12 of the rescheduled hearing described under this paragraph.

13 (vi) To the extent possible, the Administration shall expeditiously
14 reschedule a hearing that is postponed under this paragraph.

15 (6) (i) If a hearing request is not made at the time of, or within 10 days
16 from the date of the issuance of an order of suspension, but within 30 days of the date
17 of the issuance of an order of suspension, the person requests a hearing and
18 surrenders the driver's license or, if applicable, the person's commercial driver's
19 license, the Administration shall:

20 1. A. Make a suspension order effective suspending the
21 license for the applicable period of time described under paragraph (4)(i) of this
22 subsection; and

23 B. In the case of a person operating a commercial motor
24 vehicle who refuses to take a test, disqualify the person's commercial driver's license,
25 or privilege to operate a commercial motor vehicle in this State, for the applicable
26 period of time described under paragraph (4)(ii) of this subsection; and

27 2. Set a hearing for a date within 45 days of the receipt of a
28 request for a hearing under this paragraph.

29 (ii) A request for hearing scheduled under this paragraph does not
30 extend the period for which the person is authorized to drive, and the suspension and,
31 if applicable, the disqualification shall become effective on the expiration of the
32 45-day period that begins on the date of the issuance of the order of suspension.

33 (iii) A postponement of a hearing described under this paragraph
34 shall stay the suspension only if:

35 1. Both the person and the Administration agree to the
36 postponement;

37 2. The Administration cannot provide a hearing under this
38 paragraph within the period required under this paragraph; or

1 modification of a suspension or issuance of a restrictive license under subsection
2 (n)(1) and (2) of this section;

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

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

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

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

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

15 1. The police officer who stopped or detained the person had
16 reasonable grounds to believe the person was driving or attempting to drive while
17 intoxicated, while under the influence of alcohol, while so far under the influence of
18 any drug, any combination of drugs, or a combination of one or more drugs and
19 alcohol that the person could not drive a vehicle safely, while under the influence of a
20 controlled dangerous substance, in violation of an alcohol restriction, or in violation of
21 § 16-813 of this title;

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

25 3. The police officer requested a test after the person was
26 fully advised of the administrative sanctions that shall be imposed, including the fact
27 that a person who refuses to take the test is ineligible for modification of a suspension
28 or issuance of a restrictive license under subsection (n)(1) and (2) of this section; and

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

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

33 (ii) After a hearing, the Administration shall disqualify the person
34 from driving a commercial motor vehicle if:

35 1. The person was detained while operating a commercial
36 motor vehicle;

- 1 A. For a first offense, a suspension for 45 days; or
2 B. For a second or subsequent offense, a suspension for 90
3 days; or
4 2. For a test refusal:
5 A. For a first offense, a suspension for 120 days; or
6 B. For a second or subsequent offense, a suspension for 1
7 year.

8 (vi) A disqualification imposed under subparagraph (ii) or (iii) of
9 this paragraph shall be for a period of 1 year for a first offense, 3 years for a first
10 offense which occurs while transporting hazardous material required to be placarded,
11 and life for a second or subsequent offense which occurs while operating or
12 attempting to operate any commercial motor vehicle.

13 (vii) A disqualification of a commercial driver's license is not subject
14 to any modifications, nor may a restricted commercial driver's license be issued in
15 lieu of a disqualification.

16 (viii) A disqualification for life may be reduced if permitted by §
17 16-812(d) of this title.

18 (g) (1) An initial refusal to take a test that is withdrawn as provided in this
19 subsection is not a refusal to take a test for the purposes of this section.

20 (2) A person who initially refuses to take a test may withdraw the initial
21 refusal and subsequently consent to take the test if the subsequent consent:

- 22 (i) Is unequivocal;
23 (ii) Does not substantially interfere with the timely and efficacious
24 administration of the test; and
25 (iii) Is given by the person:
26 1. Before the delay in testing would materially affect the
27 outcome of the test; and
28 2. A. For the purpose of a test for determining alcohol
29 concentration, within 2 hours of the person's apprehension; or
30 B. For the purpose of a test for determining the drug or
31 controlled dangerous substance content of the person's blood, within 3 hours of the
32 person's apprehension.

33 (3) In determining whether a person has withdrawn an initial refusal for
34 the purposes of paragraph (1) of this subsection, among the factors that the
35 Administration shall consider are the following:

1 (i) Whether the test would have been administered properly:

2 1. For the purpose of a test for determining alcohol
3 concentration, within 2 hours of the person's apprehension; or

4 2. For the purpose of a test for determining the drug or
5 controlled dangerous substance content of the person's blood, within 3 hours of the
6 person's apprehension;

7 (ii) Whether a qualified person, as defined in § 10-304 of the
8 Courts Article, to administer the test and testing equipment were readily available;

9 (iii) Whether the delay in testing would have interfered with the
10 administration of a test to another person;

11 (iv) Whether the delay in testing would have interfered with the
12 attention to other duties of the arresting officer or a qualified person, as defined in §
13 10-304 of the Courts Article;

14 (v) Whether the person's subsequent consent to take the test was
15 made in good faith; and

16 (vi) Whether the consent after the initial refusal was while the
17 person was still in police custody.

18 (4) In determining whether a person has withdrawn an initial refusal for
19 the purposes of paragraph (1) of this subsection, the burden of proof rests with the
20 person to establish by a preponderance of the evidence the requirements of paragraph
21 (2) of this subsection.

22 (h) Notwithstanding any other provision of this section, if a driver's license is
23 suspended based on multiple administrative offenses of refusal to take a test, or a test
24 to determine alcohol concentration taken that indicated an alcohol concentration of
25 [0.10] 0.08 or more at the time of testing, or any combination of these administrative
26 offenses committed at the same time, or arising out of circumstances simultaneous in
27 time and place, or arising out of the same incident, the Administration:

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

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

32 (i) Notwithstanding any other provision of this section, a test for drug or
33 controlled dangerous substance content under this section:

34 (1) May not be requested as described under subsection (b) of this
35 section, required as described under subsection (c) of this section, or directed as
36 described under subsection (d) of this section, by a police officer unless the law

1 enforcement agency of which the officer is a member has the capacity to have such
2 tests conducted;

3 (2) May only be requested as described under subsection (b) of this
4 section, required as described under subsection (c) of this section, or directed as
5 described under subsection (d) of this section, by a police officer who is a trainee, has
6 been trained, or is participating directly or indirectly in a program of training that is:

7 (i) Designed to train and certify police officers as drug recognition
8 experts; and

9 (ii) Conducted by a law enforcement agency of the State, or any
10 county, municipal, or other law enforcement agency in the State described in items
11 (3)(i)1 through 12 of this subsection:

12 1. In conjunction with the National Highway Traffic Safety
13 Administration; or

14 2. As a program of training of police officers as drug
15 recognition experts that contains requirements for successful completion of the
16 training program that are the substantial equivalent of the requirements of the Drug
17 Recognition Training Program developed by the National Highway Traffic Safety
18 Administration; and

19 (3) May only be requested as described under subsection (b) of this
20 section, required as described under subsection (c) of this section, or directed as
21 described under subsection (d) of this section:

22 (i) In the case of a police officer who is a trainee, or who is
23 participating directly or indirectly in a program of training described in paragraph (2)
24 of this subsection, if the police officer is a member of, and is designated as a trainee or
25 a participant by the head of:

26 1. The Department of State Police;

27 2. The Baltimore City Police Department;

28 3. A police department, bureau, or force of a county;

29 4. A police department, bureau, or force of an incorporated
30 city or town;

31 5. The Mass Transit Administration Police Force;

32 6. The Maryland Port Administration Police Force of the
33 Department of Transportation;

34 7. The Maryland Transportation Authority Police Force;

35 8. The Police Force of the University of Maryland or Morgan
36 State University;

1 9. The police force for a State university or college under the
2 direction and control of the Board of Trustees of State Universities and Colleges;

3 10. A sheriff's department of any county or Baltimore City;

4 11. The Natural Resources Police Force or the Forest and
5 Park Service Police Force of the Department of Natural Resources; or

6 12. The security force of the Department of General Services;
7 or

8 (ii) In the case of a police officer who has been trained as a drug
9 recognition expert, if the police officer is a member of, and certified as a drug
10 recognition expert by the head of one of the law enforcement agencies described in
11 items (3)(i)1 through 12 of this subsection.

12 (j) If the Administration imposes a suspension or disqualification after a
13 hearing, the person whose license or privilege to drive has been suspended or
14 disqualified may appeal the final order of suspension as provided in Title 12, Subtitle
15 2 of this article.

16 (k) Subject to § 16-812(o) of this title, this section does not prohibit the
17 imposition of further administrative sanctions if the person is convicted for any
18 violation of the Maryland Vehicle Law arising out of the same occurrence.

19 (1) (1) The determination of any facts by the Administration is independent
20 of the determination of the same or similar facts in the adjudication of any criminal
21 charges arising out of the same occurrence.

22 (2) The disposition of those criminal charges may not affect any
23 suspension imposed under this section.

24 (m) (1) Except as otherwise provided in this subsection, a suspension
25 imposed under this section may not be stayed by the Administration pending appeal.

26 (2) If the person files an appeal and requests in writing a stay of a
27 suspension imposed under this section, the Director of the Division of Administrative
28 Adjudication of the Administration may stay a suspension imposed under this section.

29 (n) (1) The Administration may modify a suspension under this section or
30 issue a restrictive license if:

31 (i) The licensee did not refuse to take a test;

32 (ii) The licensee has not had a license suspended under this section
33 during the past 5 years;

34 (iii) The licensee has not been convicted under § 21-902 of this
35 article during the past 5 years; and

1 (iv) 1. The licensee is required to drive a motor vehicle in the
2 course of employment;

3 2. The license is required for the purpose of attending an
4 alcoholic prevention or treatment program; or

5 3. It finds that the licensee has no alternative means of
6 transportation available to or from the licensee's place of employment and, without
7 the license, the licensee's ability to earn a living would be severely impaired.

8 (2) In addition to the authority to modify a suspension or issue a
9 restrictive license under paragraph (1) or (4) of this subsection, the Administration
10 may modify a suspension under this section or issue a restrictive license, including a
11 restriction that prohibits the licensee from driving or attempting to drive a motor
12 vehicle unless the licensee is a participant in the Ignition Interlock System Program
13 established under § 16-404.1 of this title, if:

14 (i) The licensee did not refuse to take a test;

15 (ii) The licensee has not been convicted under § 21-902 of this
16 article; and

17 (iii) The license is required for the purpose of attending:

18 1. A noncollegiate educational institution as defined in §
19 2-206(a) of the Education Article; or

20 2. A regular program at an institution of postsecondary
21 education.

22 (3) If the licensee refused to take a test, the Administration may not
23 modify a suspension under this section or issue a restrictive license except as
24 provided under paragraph (4) of this subsection.

25 (4) In addition to the authority to modify a suspension or issue a
26 restrictive license under paragraph (1) or (2) of this subsection, the Administration
27 may modify a suspension under this section or issue a restrictive license to a licensee
28 who participates in the Ignition Interlock System Program established under §
29 16-404.1 of this title for at least 1 year.

30 21-902.

31 (a) (1) A person may not drive or attempt to drive any vehicle while
32 intoxicated.

33 (2) A person may not drive or attempt to drive any vehicle while the
34 person is intoxicated per se.

35 (b) A person may not drive or attempt to drive any vehicle while under the
36 influence of alcohol.

1 (c) (1) A person may not drive or attempt to drive any vehicle while he is so
2 far under the influence of any drug, any combination of drugs, or a combination of one
3 or more drugs and alcohol that he cannot drive a vehicle safely.

4 (2) It is not a defense to any charge of violating this subsection that the
5 person charged is or was entitled under the laws of this State to use the drug,
6 combination of drugs, or combination of one or more drugs and alcohol, unless the
7 person was unaware that the drug or combination would make him incapable of
8 safely driving a vehicle.

9 (d) A person may not drive or attempt to drive any vehicle while he is under
10 the influence of any controlled dangerous substance, as that term is defined in Article
11 27, § 279 of the Code, if the person is not entitled to use the controlled dangerous
12 substance under the laws of this State.

13 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
14 construed to conform to the requirements of the federal government under 23 U.S.C.
15 § 163 and regulations adopted to implement federal law in order for the State to
16 obtain full incentive grant funding under the Transportation Equity Act for the 21st
17 Century.

18 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall be
19 construed only prospectively to administrative, criminal, and juvenile delinquency
20 offenses that are committed on or after September 30, 1999 and may not be applied or
21 interpreted to have any effect on administrative, criminal, and juvenile delinquency
22 offenses that are committed before September 30, 1999.

23 SECTION 4. AND BE IT FURTHER ENACTED, That the Department of
24 Transportation and the Department of State Police may adopt regulations and forms
25 to implement this Act.

26 SECTION 5. AND BE IT FURTHER ENACTED, That, subject to Section 3 of
27 this Act, this Act shall take effect July 1, 1999.