

SENATE BILL 255

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R3

1999 Regular Session  
9r0014

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By: **Senators Ruben, Lawlah, Dyson, Forehand, Teitelbaum, Haines,  
Mitchell, Blount, Conway, Currie, Dorman, Frosh, Hoffman, Hollinger,  
Hooper, Jacobs, Madden, McCabe, McFadden, Roesser, Stoltzfus, and  
Van Hollen**

Introduced and read first time: February 3, 1999

Assigned to: Judicial Proceedings

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

17 BY repealing and reenacting, without amendments,  
18 Article 27 - Crimes and Punishments  
19 Section 388A(a)(1) and 388B(a)(1)  
20 Annotated Code of Maryland  
21 (1996 Replacement Volume and 1998 Supplement)

22 BY repealing and reenacting, with amendments,  
23 Article 27 - Crimes and Punishments  
24 Section 388A(a)(2) and 388B(a)(2)  
25 Annotated Code of Maryland  
26 (1996 Replacement Volume and 1998 Supplement)

27 BY repealing and reenacting, with amendments,  
28 Article - Courts and Judicial Proceedings

1 Section 10-307  
2 Annotated Code of Maryland  
3 (1998 Replacement Volume)

4 BY repealing and reenacting, with amendments,  
5 Article - Transportation  
6 Section 11-127.1 and 16-205.1(a)(1), (b), (f)(1), (4)(i), (7), and (8)(i) and (v), and  
7 (h)  
8 Annotated Code of Maryland  
9 (1998 Replacement Volume and 1998 Supplement)

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

12 **Article 27 - Crimes and Punishments**

13 388A.

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

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

18 (ii) If the alcohol concentration is measured by milligrams of  
19 alcohol per deciliter of blood or milligrams of alcohol per 100 milliliters of blood, a  
20 court shall convert the measurement into grams of alcohol per 100 milliliters of blood  
21 by dividing the measurement by 1000.

22 388B.

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

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

27 (ii) If the alcohol concentration is measured by milligrams of  
28 alcohol per deciliter of blood or milligrams of alcohol per 100 milliliters of blood, a  
29 court shall convert the measurement into grams of alcohol per 100 milliliters of blood  
30 by dividing the measurement by 1000.

31 **Article - Courts and Judicial Proceedings**

32 10-307.

33 (a) (1) In a proceeding in which a person is [charged with] ALLEGED TO  
34 HAVE COMMITTED AN ACT THAT WOULD CONSTITUTE a violation of Article 27, § 388,  
35 § 388A, or § 388B of the Code, or with driving or attempting to drive a vehicle in

1 violation of § 16-113(a)(2), § 16-813, or § 21-902 of the Transportation Article, the  
2 amount of alcohol in the person's breath or blood shown by analysis as provided in  
3 this subtitle is admissible in evidence and has the effect set forth in subsections (b)  
4 through [(e)] (G) of this section.

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

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

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

8 (3) If the amount of alcohol in the person's blood shown by analysis as  
9 provided in this subtitle is measured by milligrams of alcohol per deciliters of blood or  
10 milligrams of alcohol per 100 milliliters of blood, a court or an administrative law  
11 judge, as the case may be, shall convert the measurement into grams of alcohol per  
12 100 milliliters of blood by dividing the measurement by 1000.

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

17 (c) If at the time of testing a person has an alcohol concentration of more than  
18 0.05 but less than 0.07, as determined by an analysis of the person's blood or breath,  
19 this fact may not give rise to any presumption that the [defendant] PERSON was or  
20 was not intoxicated OR INTOXICATED PER SE or that the [defendant] PERSON was or  
21 was not driving while under the influence of alcohol, but this fact may be considered  
22 with other competent evidence in determining the [guilt or innocence] SOBRIETY of  
23 the [defendant] PERSON DRIVING.

24 (d) If at the time of testing a person has an alcohol concentration of at least  
25 0.07 but less than [0.10] 0.08, as determined by an analysis of the person's blood or  
26 breath, it shall be prima facie evidence that the [defendant] PERSON was driving  
27 while under the influence of alcohol.

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

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

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

1

**Article - Transportation**

2 11-127.1.

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

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

10 16-205.1.

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

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

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

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

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

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

23 3. Both:

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

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

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

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

34 1. For a test result indicating an alcohol concentration of  
35 [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 (f) (1) Subject to the provisions of this subsection, at the time of, or within  
20 30 days from the date of, the issuance of an order of suspension, a person may submit  
21 a written request for a hearing before an officer of the Administration if:

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

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

30 2. The person refused to take a test.

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

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

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

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

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

- 1                                   2.       For a test refusal:
- 2                                   A.       For a first offense, for 120 days; or
- 3                                   B.       For a second offense or subsequent offense, for 1 year; and

4                   (7)    (i)       At a hearing under this section, the person has the rights  
5 described in § 12-206 of this article, but at the hearing the only issues shall be:

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

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

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

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

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

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

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

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

33                                   1.       The police officer who stopped or detained the person had  
34 reasonable grounds to believe the person was driving or attempting to drive while  
35 intoxicated, while under the influence of alcohol, while so far under the influence of  
36 any drug, any combination of drugs, or a combination of one or more drugs and  
37 alcohol that the person could not drive a vehicle safely, while under the influence of a



1 controlled dangerous substance, in violation of an alcohol restriction, or in violation of  
2 § 16-813 of this title;

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

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

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

11                                       B.           A test to determine alcohol concentration was taken and  
12 the test result indicated an alcohol concentration of [0.10] 0.08 or more at the time of  
13 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  
19 days; 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  
23 year.

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

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

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

34       SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be  
35 construed to conform to the requirements of the federal government under 23 U.S.C.  
36 § 163 and regulations adopted to implement federal law in order for the State to

1 obtain full incentive grant funding under the Transportation Equity Act for the 21st  
2 Century.

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

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

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