

SENATE BILL 255

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R3

1999 Regular Session
9r0014

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

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 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.