

SENATE BILL 568

Unofficial Copy
R3
SB 255/99 - JPR

2000 Regular Session
0lr0252

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

Introduced and read first time: February 4, 2000
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 1999 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 1999 Supplement)

27 BY repealing and reenacting, with amendments,
28 Article - Courts and Judicial Proceedings
29 Section 10-307

1 Annotated Code of Maryland
2 (1998 Replacement Volume and 1999 Supplement)

3 BY repealing and reenacting, with amendments,
4 Article - Transportation
5 Section 11-127.1 and 16-205.1(a)(1), (b), (f)(1), (4)(i), (7), and (8)(i) and (v), and
6 (h)
7 Annotated Code of Maryland
8 (1999 Replacement Volume and 1999 Supplement)

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

11 **Article 27 - Crimes and Punishments**

12 388A.

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

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

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

21 388B.

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

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

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

30 **Article - Courts and Judicial Proceedings**

31 10-307.

32 (a) (1) In a proceeding in which a person is [charged with] ALLEGED TO
33 HAVE COMMITTED AN ACT THAT WOULD CONSTITUTE a violation of Article 27, § 388,
34 § 388A, or § 388B of the Code, or with driving or attempting to drive a vehicle in
35 violation of § 16-113(a)(2), § 16-813, or § 21-902 of the Transportation Article, the

1 amount of alcohol in the person's breath or blood shown by analysis as provided in
2 this subtitle is admissible in evidence and has the effect set forth in subsections (b)
3 through [(e)] (G) of this section.

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

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

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

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

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

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

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

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

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

35 (G) IF AT THE TIME OF TESTING A PERSON HAS AN ALCOHOL
36 CONCENTRATION OF 0.08 OR MORE, AS DETERMINED BY AN ANALYSIS OF THE
37 PERSON'S BLOOD OR BREATH, THE PERSON SHALL BE CONSIDERED INTOXICATED
38 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, 2000 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, 2000.

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, 2000.