

HOUSE BILL 3

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R3

2001 Regular Session  
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(PRE-FILED)

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By: **Delegates D. Davis, Taylor, Dewberry, Hurson, Busch, Harrison, Hixson,  
Kopp, Menes, Owings, Rawlings, and Rosenberg**

Requested: November 15, 2000

Introduced and read first time: January 10, 2001

Assigned to: Judiciary

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A BILL ENTITLED

1 AN ACT concerning

2 **Alcohol Concentration - "0.08"**

3 FOR the purpose of reducing the level of alcohol concentration required for a  
4 determination of being intoxicated per se; making conforming changes to the  
5 level of alcohol concentration concerning a certain presumption of being under  
6 the influence of alcohol; expanding the applicability of certain evidentiary  
7 provisions concerning alcohol concentration levels to juvenile and civil  
8 proceedings; reducing the level of alcohol concentration for a certain  
9 administrative offense that results in the suspension of a driver's license under  
10 certain circumstances; reducing the level of alcohol concentration required for  
11 the crime of homicide by motor vehicle or vessel while intoxicated per se and for  
12 the crime of life threatening injury by motor vehicle or vessel while intoxicated  
13 per se; providing for the application of this Act; providing for the effective date of  
14 this Act; and generally relating to certain alcohol concentration levels and  
15 certain proceedings.

16 BY repealing and reenacting, without amendments,  
17 Article 27 - Crimes and Punishments  
18 Section 388A(a)(1) and 388B(a)(1)  
19 Annotated Code of Maryland  
20 (1996 Replacement Volume and 2000 Supplement)

21 BY repealing and reenacting, with amendments,  
22 Article 27 - Crimes and Punishments  
23 Section 388A(a)(2) and 388B(a)(2)  
24 Annotated Code of Maryland  
25 (1996 Replacement Volume and 2000 Supplement)

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

1 (1998 Replacement Volume and 2000 Supplement)

2 BY repealing and reenacting, with amendments,

3 Article - Transportation

4 Section 11-127.1, 16-117(b)(2) and (5), and 16-205.1(a)(1), (b), (f)(1), (4)(i), (7),

5 and (8)(i) and (v), and (h)

6 Annotated Code of Maryland

7 (1999 Replacement Volume and 2000 Supplement)

8 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

9 MARYLAND, That the Laws of Maryland read as follows:

10 **Article 27 - Crimes and Punishments**

11 388A.

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

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

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

20 388B.

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

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

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

29 **Article - Courts and Judicial Proceedings**

30 10-307.

31 (a) (1) In [a] ANY CRIMINAL, JUVENILE, OR CIVIL proceeding in which a  
32 person is [charged with] ALLEGED TO HAVE COMMITTED AN ACT THAT WOULD  
33 CONSTITUTE a violation of Article 27, § 388, § 388A, or § 388B of the Code, or with  
34 driving or attempting to drive a vehicle in violation of § 16-113, § 16-813, or § 21-902  
35 of the Transportation Article, the amount of alcohol in the person's breath or blood

1 shown by analysis as provided in this subtitle is admissible in evidence and has the  
2 effect set forth in subsections (b) through [(e)] (G) of this section.

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

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

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

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

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

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

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] THE PERSON was driving in violation of an alcohol  
34 restriction under § 16-113 of 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 16-117.

11 (b) (2) The Administration shall keep convenient records or make suitable  
12 notations showing the convictions or traffic accidents in which each licensee has been  
13 involved and every probation before judgment disposition of any violation of the  
14 Maryland Vehicle Law. A record or notation of a probation before judgment  
15 disposition, or a first offense of driving with an alcohol concentration of [0.10] 0.08 or  
16 more under § 16-205.1 of this title, shall be segregated by the Administration and  
17 shall be available only to the Administration, the courts, criminal justice agencies,  
18 and the defendant or the defendant's attorney. However, a record or notation of a  
19 probation before judgment, or a first offense of driving with an alcohol concentration  
20 of [0.10] 0.08 or more under § 16-205.1 of this title, may not be received or considered  
21 by the courts until a plea of guilty or nolo contendere is made by the defendant or a  
22 finding of guilty is made by the court.

23 (5) Except as provided in this section, an employee of the Administration  
24 may not disclose any records or information regarding probation before judgment, or  
25 a first offense of driving with an alcohol concentration of [0.10] 0.08 or more under §  
26 16-205.1 of this title.

27 16-205.1.

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

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

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

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

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



1                                    B.            For a second or subsequent offense, suspend the person's  
2 driving privilege for 1 year; and

3                                    (iii)        In addition to any applicable driver's license suspensions  
4 authorized under this section, in the case of a person operating a commercial motor  
5 vehicle who refuses to take a test:

6                                    1.            Disqualify the person's commercial driver's license for a  
7 period of 1 year for a first offense, 3 years for a first offense which occurs while  
8 transporting hazardous materials required to be placarded, and disqualify for life for  
9 a second or subsequent offense which occurs while operating any commercial motor  
10 vehicle; or

11                                  2.            If the person is licensed as a commercial driver by another  
12 state, disqualify the person's privilege to operate a commercial motor vehicle and  
13 report the refusal and disqualification to the person's resident state which may result  
14 in further penalties imposed by the person's resident state.

15                                  (2)        Except as provided in subsection (c) of this section, if a police officer  
16 stops or detains any person who the police officer has reasonable grounds to believe is  
17 or has been driving or attempting to drive a motor vehicle while intoxicated, while  
18 under the influence of alcohol, while so far under the influence of any drug, any  
19 combination of drugs, or a combination of one or more drugs and alcohol that the  
20 person could not drive a vehicle safely, while under the influence of a controlled  
21 dangerous substance, in violation of an alcohol restriction, or in violation of § 16-813  
22 of this title, and who is not unconscious or otherwise incapable of refusing to take a  
23 test, the police officer shall:

24                                  (i)        Detain the person;

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

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

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

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

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

37                                  (iii)       Issue a temporary license to drive;

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

3 (v) Inform the person that:

4 1. The person has a right to request, at that time or within  
5 10 days, a hearing to show cause why the driver's license should not be suspended  
6 concerning the refusal to take the test or for test results indicating an alcohol  
7 concentration of [0.10] 0.08 or more at the time of testing, and the hearing will be  
8 scheduled within 45 days; and

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

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

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

22 1. The officer had reasonable grounds to believe that the  
23 person had been driving or attempting to drive a motor vehicle on a highway or on  
24 any private property that is used by the public in general in this State while  
25 intoxicated, while under the influence of alcohol, while so far under the influence of  
26 any drug, any combination of drugs, or a combination of one or more drugs and  
27 alcohol that the person could not drive a vehicle safely, while under the influence of a  
28 controlled dangerous substance, in violation of an alcohol restriction, or in violation of  
29 § 16-813 of this title;

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

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

37 (f) (1) Subject to the provisions of this subsection, at the time of, or within  
38 30 days from the date of, the issuance of an order of suspension, a person may submit  
39 a written request for a hearing before an officer of the Administration if:

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

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

9 2. The person refused to take a test.

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

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

13 1. For a test result indicating an alcohol concentration of  
14 [0.10] 0.08 or more at the time of testing:

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

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

17 2. For a test refusal:

18 A. For a first offense, for 120 days; or

19 B. For a second offense or subsequent offense, for 1 year; and

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

22 1. Whether the police officer who stops or detains a person  
23 had reasonable grounds to believe the person was driving or attempting to drive while  
24 intoxicated, while under the influence of alcohol, while so far under the influence of  
25 any drug, any combination of drugs, or a combination of one or more drugs and  
26 alcohol that the person could not drive a vehicle safely, while under the influence of a  
27 controlled dangerous substance, in violation of an alcohol restriction, or in violation of  
28 § 16-813 of this title;

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

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



- 1 4. Whether the person refused to take the test;
- 2 5. Whether the person drove or attempted to drive a motor  
3 vehicle while having an alcohol concentration of [0.10] 0.08 or more at the time of  
4 testing; or
- 5 6. If the hearing involves disqualification of a commercial  
6 driver's license, whether the person was operating a commercial motor vehicle.
- 7 (ii) The sworn statement of the police officer and of the test  
8 technician or analyst shall be prima facie evidence of a test refusal or a test resulting  
9 in an alcohol concentration of [0.10] 0.08 or more at the time of testing.
- 10 (8) (i) After a hearing, the Administration shall suspend the driver's  
11 license or privilege to drive of the person charged under subsection (b) or (c) of this  
12 section if:
- 13 1. The police officer who stopped or detained the person had  
14 reasonable grounds to believe the person was driving or attempting to drive while  
15 intoxicated, while under the influence of alcohol, while so far under the influence of  
16 any drug, any combination of drugs, or a combination of one or more drugs and  
17 alcohol that the person could not drive a vehicle safely, while under the influence of a  
18 controlled dangerous substance, in violation of an alcohol restriction, or in violation of  
19 § 16-813 of this title;
- 20 2. There was evidence of the use by the person of alcohol, any  
21 drug, any combination of drugs, a combination of one or more drugs and alcohol, or a  
22 controlled dangerous substance;
- 23 3. The police officer requested a test after the person was  
24 fully advised of the administrative sanctions that shall be imposed, including the fact  
25 that a person who refuses to take the test is ineligible for modification of a suspension  
26 or issuance of a restrictive license under subsection (n)(1) and (2) of this section; and
- 27 4. A. The person refused to take the test; or  
28 B. A test to determine alcohol concentration was taken and  
29 the test result indicated an alcohol concentration of [0.10] 0.08 or more at the time of  
30 testing.
- 31 (v) The suspension imposed shall be:
- 32 1. For a test result indicating an alcohol concentration of  
33 [0.10] 0.08 or more at the time of testing:
- 34 A. For a first offense, a suspension for 45 days; or  
35 B. For a second or subsequent offense, a suspension for 90  
36 days; or

