

SENATE BILL 108

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SB 568/00 - JPR

2001 Regular Session
11r0243

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

Introduced and read first time: January 15, 2001

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 that constitutes driving while under the
6 influence of alcohol; reducing the level of alcohol concentration that will result in
7 the suspension of a driver's license under certain circumstances; reducing the
8 level 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
10 injury 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
15 alcohol-related driving offenses, alcohol concentration levels, and qualification
16 for 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 2000 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 2000 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 2000 Supplement)

3 BY repealing and reenacting, with amendments,
4 Article - Transportation
5 Section 11-127.1 and 16-205.1(a), (b), (f)(1), (4)(i), (7), 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 proceeding in which a person is [charged with] ALLEGED TO
32 HAVE COMMITTED AN ACT THAT WOULD CONSTITUTE a violation of Article 27, § 388,
33 § 388A, or § 388B of the Code, or with driving or attempting to drive a vehicle in
34 violation of § 16-113, § 16-813, or § 21-902 of the Transportation Article, the amount
35 of alcohol in the person's breath or blood shown by analysis as provided in this

1 subtitle is admissible in evidence and has the effect set forth in subsections (b)
2 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] PERSON DRIVING.

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

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

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

34 (G) IF AT THE TIME OF TESTING A PERSON HAS AN ALCOHOL
35 CONCENTRATION OF 0.08 OR MORE, AS DETERMINED BY AN ANALYSIS OF THE
36 PERSON'S BLOOD OR BREATH, THE PERSON SHALL BE CONSIDERED INTOXICATED
37 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 (2) Any person who drives or attempts to drive a motor vehicle on a
29 highway or on any private property that is used by the public in general in this State
30 is deemed to have consented, subject to the provisions of §§ 10-302 through 10-309,
31 inclusive, of the Courts and Judicial Proceedings Article, to take a test if the person
32 should be detained on suspicion of driving or attempting to drive while intoxicated,
33 while under the influence of alcohol, while so far under the influence of any drug, any
34 combination of drugs, or a combination of one or more drugs and alcohol that the
35 person could not drive a vehicle safely, while under the influence of a controlled

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

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

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

9 1. For a test result indicating an alcohol concentration of
10 [0.10] 0.08 or more at the time of testing:

11 A. For a first offense, suspend the driver's license for 45 days;
12 or

13 B. For a second or subsequent offense, suspend the driver's
14 license for 90 days; or

15 2. For a test refusal:

16 A. For a first offense, suspend the driver's license for 120
17 days; or

18 B. For a second or subsequent offense, suspend the driver's
19 license for 1 year;

20 (ii) In the case of a nonresident or unlicensed person:

21 1. For a test result indicating an alcohol concentration of
22 [0.10] 0.08 or more at the time of testing:

23 A. For a first offense, suspend the person's driving privilege
24 for 45 days; or

25 B. For a second or subsequent offense, suspend the person's
26 driving privilege for 90 days; or

27 2. For a test refusal:

28 A. For a first offense, suspend the person's driving privilege
29 for 120 days; or

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

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

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

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

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

19 (i) Detain the person;

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

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

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

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

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

32 (iii) Issue a temporary license to drive;

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

35 (v) Inform the person that:

36 1. The person has a right to request, at that time or within
37 10 days, a hearing to show cause why the driver's license should not be suspended
38 concerning the refusal to take the test or for test results indicating an alcohol

1 concentration of [0.10] 0.08 or more at the time of testing, and the hearing will be
 2 scheduled within 45 days; and

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

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

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

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

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

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

31 (f) (1) Subject to the provisions of this subsection, at the time of, or within
 32 30 days from the date of, the issuance of an order of suspension, a person may submit
 33 a written request for a hearing before an officer of the Administration if:

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

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

- 1 2. The person refused to take a test.
- 2 (4) If a hearing request is not made at the time of or within 10 days after
3 the issuance of the order of suspension, the Administration shall:
- 4 (i) Make the suspension order effective suspending the license:
- 5 1. For a test result indicating an alcohol concentration of
6 [0.10] 0.08 or more at the time of testing:
- 7 A. For a first offense, for 45 days; or
- 8 B. For a second or subsequent offense, for 90 days; or
- 9 2. For a test refusal:
- 10 A. For a first offense, for 120 days; or
- 11 B. For a second offense or subsequent offense, for 1 year; and
- 12 (7) (i) At a hearing under this section, the person has the rights
13 described in § 12-206 of this article, but at the hearing the only issues shall be:
- 14 1. Whether the police officer who stops or detains a person
15 had reasonable grounds to believe the person was driving or attempting to drive while
16 intoxicated, while under the influence of alcohol, while so far under the influence of
17 any drug, any combination of drugs, or a combination of one or more drugs and
18 alcohol that the person could not drive a vehicle safely, while under the influence of a
19 controlled dangerous substance, in violation of an alcohol restriction, or in violation of
20 § 16-813 of this title;
- 21 2. Whether there was evidence of the use by the person of
22 alcohol, any drug, any combination of drugs, a combination of one or more drugs and
23 alcohol, or a controlled dangerous substance;
- 24 3. Whether the police officer requested a test after the
25 person was fully advised of the administrative sanctions that shall be imposed,
26 including the fact that a person who refuses to take the test is ineligible for
27 modification of a suspension or issuance of a restrictive license under subsection
28 (n)(1) and (2) of this section;
- 29 4. Whether the person refused to take the test;
- 30 5. Whether the person drove or attempted to drive a motor
31 vehicle while having an alcohol concentration of [0.10] 0.08 or more at the time of
32 testing; or
- 33 6. If the hearing involves disqualification of a commercial
34 driver's license, whether the person was operating a commercial motor vehicle.

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

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

7 1. The police officer who stopped or detained the person had
8 reasonable grounds to believe the person was driving or attempting to drive while
9 intoxicated, while under the influence of alcohol, while so far under the influence of
10 any drug, any combination of drugs, or a combination of one or more drugs and
11 alcohol that the person could not drive a vehicle safely, while under the influence of a
12 controlled dangerous substance, in violation of an alcohol restriction, or in violation of
13 § 16-813 of this title;

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

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

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

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

25 (v) The suspension imposed shall be:

26 1. For a test result indicating an alcohol concentration of
27 [0.10] 0.08 or more at the time of testing:

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

29 B. For a second or subsequent offense, a suspension for 90
30 days; or

31 2. For a test refusal:

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

33 B. For a second or subsequent offense, a suspension for 1
34 year.

35 (h) Notwithstanding any other provision of this section, if a driver's license is
36 suspended based on multiple administrative offenses of refusal to take a test, or a test

1 to determine alcohol concentration taken that indicated an alcohol concentration of
2 [0.10] 0.08 or more at the time of testing, or any combination of these administrative
3 offenses committed at the same time, or arising out of circumstances simultaneous in
4 time and place, or arising out of the same incident, the Administration:

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

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

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
10 construed to conform to the requirements of the federal government under 23 U.S.C.
11 § 163 and regulations adopted to implement federal law in order for the State to
12 obtain full incentive grant funding under the Transportation Equity Act for the 21st
13 Century.

14 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall be
15 construed only prospectively to administrative, criminal, and juvenile delinquency
16 offenses that are committed on or after September 30, 2001, and may not be applied
17 or interpreted to have any effect on administrative, criminal, and juvenile
18 delinquency offenses that are committed before September 30, 2001.

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

22 SECTION 5. AND BE IT FURTHER ENACTED, That, subject to Section 3 of
23 this Act, this Act shall take effect July 1, 2001.