
By: **Senators Giannetti and Jimeno**
Introduced and read first time: February 4, 2005
Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Drunk and Drugged Driving - Test Refusal - Enhanced Criminal Penalties**

3 FOR the purpose of providing for certain enhanced criminal penalties that may be
4 imposed if a person is convicted of certain alcohol- or drug-related driving
5 offenses and the trier of fact finds beyond a reasonable doubt that the person
6 knowingly refused to take a certain test under certain circumstances;
7 requiring a police officer to advise a person of the enhanced criminal penalties
8 under this Act under certain circumstances; providing that an initial refusal to
9 take a certain test that is withdrawn under certain circumstances is not a
10 refusal for certain purposes; defining a certain term; and generally relating to
11 certain enhanced criminal penalties for a conviction of a violation of certain
12 alcohol- or drug-related driving offenses if a certain test is refused under
13 certain circumstances.

14 BY repealing and reenacting, with amendments,
15 Article - Transportation
16 Section 16-205.1(b)(2) and (g)(1)
17 Annotated Code of Maryland
18 (2002 Replacement Volume and 2004 Supplement)

19 BY repealing and reenacting, without amendments,
20 Article - Transportation
21 Section 16-205.1(l)(1) and 21-902(a), (b), (c), and (d)
22 Annotated Code of Maryland
23 (2002 Replacement Volume and 2004 Supplement)

24 BY adding to
25 Article - Transportation
26 Section 27-101(x)
27 Annotated Code of Maryland
28 (2002 Replacement Volume and 2004 Supplement)

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

3 **Article - Transportation**

4 16-205.1.

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

14 (i) Detain the person;

15 (ii) Request that the person permit a test to be taken; [and]

16 (iii) Advise the person of the administrative sanctions that shall be
17 imposed for refusal to take the test, including ineligibility for modification of a
18 suspension or issuance of a restrictive license under subsection (n)(1) or (2) of this
19 section, and for test results indicating an alcohol concentration of 0.08 or more at the
20 time of testing; AND

21 (IV) ADVISE THE PERSON OF THE ADDITIONAL CRIMINAL
22 PENALTIES THAT MAY BE IMPOSED UNDER § 27-101(X) OF THIS ARTICLE ON
23 CONVICTION OF A VIOLATION OF § 21-902 OF THIS ARTICLE IF THE PERSON
24 KNOWINGLY REFUSED TO TAKE A TEST ARISING OUT OF THE SAME CIRCUMSTANCES
25 AS THE VIOLATION.

26 (g) (1) An initial refusal to take a test that is withdrawn as provided in this
27 subsection is not a refusal to take a test [for the purposes of this section].

28 (l) (1) The determination of any facts by the Administration is independent
29 of the determination of the same or similar facts in the adjudication of any criminal
30 charges arising out of the same occurrence.

31 21-902.

32 (a) (1) A person may not drive or attempt to drive any vehicle while under
33 the influence of alcohol.

34 (2) A person may not drive or attempt to drive any vehicle while the
35 person is under the influence of alcohol per se.

36 (b) A person may not drive or attempt to drive any vehicle while impaired by
37 alcohol.

1 (c) (1) A person may not drive or attempt to drive any vehicle while he is so
2 far impaired by any drug, any combination of drugs, or a combination of one or more
3 drugs and alcohol that he cannot drive a vehicle safely.

4 (2) It is not a defense to any charge of violating this subsection that the
5 person charged is or was entitled under the laws of this State to use the drug,
6 combination of drugs, or combination of one or more drugs and alcohol, unless the
7 person was unaware that the drug or combination would make the person incapable
8 of safely driving a vehicle.

9 (d) A person may not drive or attempt to drive any vehicle while the person is
10 impaired by any controlled dangerous substance, as that term is defined in § 5-101 of
11 the Criminal Law Article, if the person is not entitled to use the controlled dangerous
12 substance under the laws of this State.

13 27-101.

14 (X) (1) IN THIS SECTION, "TEST" HAS THE MEANING STATED IN § 16-205.1 OF
15 THIS ARTICLE.

16 (2) THE PENALTIES IN THIS SUBSECTION ARE IN ADDITION TO ANY
17 OTHER PENALTY UNDER THIS TITLE IMPOSED FOR A VIOLATION OF § 21-902 OF THIS
18 ARTICLE.

19 (3) IF A PERSON IS CONVICTED OF A VIOLATION OF § 21-902 OF THIS
20 ARTICLE AND THE TRIER OF FACT FINDS BEYOND A REASONABLE DOUBT THAT THE
21 PERSON KNOWINGLY REFUSED TO TAKE A TEST ARISING OUT OF THE SAME
22 CIRCUMSTANCES AS THE VIOLATION, THE PERSON IS SUBJECT TO A FINE OF NOT
23 MORE THAN \$500 OR IMPRISONMENT FOR NOT MORE THAN 6 MONTHS OR BOTH.

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
25 effect October 1, 2005.