
By: **Senators Giannetti and Jimeno, Jimeno, Forehand, Garagiola, and Jacobs**

Introduced and read first time: February 4, 2005
Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: March 20, 2005

CHAPTER _____

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 for certain procedures;
9 providing that an initial refusal to take a certain test that is withdrawn under
10 certain circumstances is not a refusal for certain purposes; defining a certain
11 term; and generally relating to certain enhanced criminal penalties for a
12 conviction of a violation of certain alcohol- or drug-related driving offenses if a
13 certain test is refused under 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(1)(1) and 21-902(a), (b), (c), and (d)
22 Annotated Code of Maryland
23 (2002 Replacement Volume and 2004 Supplement)

1 BY adding to
2 Article - Transportation
3 Section 27-101(x)
4 Annotated Code of Maryland
5 (2002 Replacement Volume and 2004 Supplement)

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

8 **Article - Transportation**

9 16-205.1.

10 (b) (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 under the influence
13 of alcohol, while impaired by alcohol, while so far impaired by 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 impaired by a controlled dangerous
16 substance, in violation of an alcohol restriction, or in violation of § 16-813 of this title,
17 and who is not unconscious or otherwise incapable of refusing to take a test, the police
18 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 0.08 or more at the
25 time of testing; AND

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

31 (g) (1) An initial refusal to take a test that is withdrawn as provided in this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

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

1 21-902.

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

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

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

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

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

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

20 27-101.

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

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

26 (3) ~~IF SUBJECT TO PARAGRAPH (4) OF THIS SUBSECTION, IF~~ A PERSON IS
27 CONVICTED OF A VIOLATION OF § 21-902 OF THIS ARTICLE AND THE TRIER OF FACT
28 FINDS BEYOND A REASONABLE DOUBT THAT THE PERSON KNOWINGLY REFUSED TO
29 TAKE A TEST ARISING OUT OF THE SAME CIRCUMSTANCES AS THE VIOLATION, THE
30 PERSON IS SUBJECT TO A FINE OF NOT MORE THAN \$500 OR IMPRISONMENT FOR NOT
31 MORE THAN ~~6~~ 2 MONTHS OR BOTH.

32 (4) A COURT MAY NOT IMPOSE AN ADDITIONAL PENALTY UNDER THIS
33 SUBSECTION UNLESS THE STATE'S ATTORNEY SERVES NOTICE OF THE ALLEGED
34 TEST REFUSAL ON THE DEFENDANT OR THE DEFENDANT'S COUNSEL BEFORE THE
35 ACCEPTANCE OF A PLEA OF GUILTY OR NOLO CONTENDERE OR AT LEAST 15 DAYS
36 BEFORE TRIAL IN A CIRCUIT COURT OR 5 DAYS BEFORE TRIAL IN THE DISTRICT
37 COURT, WHICHEVER IS EARLIER.

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