
By: **Senator Giannetti**

Introduced and read first time: February 4, 2005

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Drunk and Drugged Driving - Evidence - Tests for Alcohol, Drugs, or**
3 **Controlled Dangerous Substances**

4 FOR the purpose of repealing the right of a person under certain circumstances to not
5 be compelled to submit to a certain test for alcohol, drugs, or controlled
6 dangerous substances under certain circumstances; making a refusal of a person
7 to submit to a certain test for alcohol, drugs, or controlled dangerous substances
8 under certain circumstances a misdemeanor; providing for certain penalties;
9 requiring the Motor Vehicle Administration to assess a certain number of points
10 against the driver's license of a person who is convicted of refusing to submit to
11 a certain test for alcohol, drugs, or controlled dangerous substances; prohibiting
12 a court from staying the entry of judgment and placing a defendant on probation
13 if the defendant has been convicted of or placed on probation for certain offenses
14 within a certain number of years; and generally relating to a person's refusal to
15 submit to a certain test for alcohol, drugs, or controlled dangerous substances
16 for certain alcohol- or drug-related driving offenses under certain
17 circumstances.

18 BY repealing and reenacting, with amendments,
19 Article - Courts and Judicial Proceedings
20 Section 10-309(a)
21 Annotated Code of Maryland
22 (2002 Replacement Volume and 2004 Supplement)

23 BY repealing and reenacting, with amendments,
24 Article - Criminal Procedure
25 Section 6-220(d)
26 Annotated Code of Maryland
27 (2001 Volume and 2004 Supplement)

28 BY repealing and reenacting, with amendments,
29 Article - Transportation
30 Section 16-205.1(a), (b), and (c)
31 Annotated Code of Maryland

1 (2002 Replacement Volume and 2004 Supplement)

2 BY repealing and reenacting, without amendments,
 3 Article - Transportation
 4 Section 16-205.1(d) and (g)
 5 Annotated Code of Maryland
 6 (2002 Replacement Volume and 2004 Supplement)

7 BY adding to
 8 Article - Transportation
 9 Section 16-205.1(o), 16-402(a)(38), and 27-101(x)
 10 Annotated Code of Maryland
 11 (2002 Replacement Volume and 2004 Supplement)

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

14 **Article - Courts and Judicial Proceedings**

15 10-309.

16 (a) (1) (i) [Except as provided in § 16-205.1(c) of the Transportation
 17 Article, a] A person may [not] be compelled to submit to a test or tests provided for in
 18 this subtitle.

19 (ii) Evidence of a test or analysis provided for in this subtitle is not
 20 admissible in a prosecution for a violation of § 16-113 or § 21-902 of the
 21 Transportation Article, § 8-738 of the Natural Resources Article, or Title 2, Subtitle 5,
 22 § 2-209, or § 3-211 of the Criminal Law Article if obtained contrary to the provisions
 23 of this subtitle.

24 (2) The fact of refusal to submit is admissible in evidence at the trial.

25 **Article - Criminal Procedure**

26 6-220.

27 (d) Notwithstanding subsections (b) and (c) of this section, a court may not
 28 stay the entering of judgment and place a defendant on probation for:

29 (1) a violation of § 16-205.1(O) OR § 21-902 of the Transportation Article
 30 or § 2-503, § 2-504, § 2-505, § 2-506, or § 3-211 of the Criminal Law Article, if within
 31 the preceding 5 years the defendant has been convicted under § 16-205.1(O) OR §
 32 21-902 of the Transportation Article or § 2-503, § 2-504, § 2-505, § 2-506, or § 3-211
 33 of the Criminal Law Article, or has been placed on probation in accordance with this
 34 section, after being charged with a violation of § 16-205.1(O) OR § 21-902 of the
 35 Transportation Article or § 2-503, § 2-504, § 2-505, § 2-506, or § 3-211 of the
 36 Criminal Law Article;

1 (2) a second or subsequent controlled dangerous substance crime under
2 Title 5 of the Criminal Law Article; or

3 (3) a violation of any of the provisions of §§ 3-303 through 3-307 of the
4 Criminal Law Article for a crime involving a person under the age of 16 years.

5 **Article - Transportation**

6 16-205.1.

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

9 (ii) "Under the influence of alcohol" includes under the influence of
10 alcohol per se as defined by § 11-127.1 of this article.

11 (iii) "Specimen of blood" and "1 specimen of blood" means 1 sample
12 of blood that is taken, in a single procedure, in 2 or more portions in 2 or more
13 separate vials.

14 (iv) "Test" means, UNLESS THE CONTEXT REQUIRES OTHERWISE:

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

17 2. A test or tests of 1 specimen of a person's blood to
18 determine the drug or controlled dangerous substance content of the person's blood; or

19 3. Both:

20 A. A test of a person's breath or a test of 1 specimen of a
21 person's blood, to determine alcohol concentration; and

22 B. A test or tests of 1 specimen of a person's blood to
23 determine the drug or controlled dangerous substance content of the person's blood.

24 (2) Any person who drives or attempts to drive a motor vehicle on a
25 highway or on any private property that is used by the public in general in this State
26 is deemed to have consented, subject to the provisions of §§ 10-302 through 10-309,
27 inclusive, of the Courts and Judicial Proceedings Article, to take a test if the person
28 should be detained on [suspicion] REASONABLE GROUNDS of driving or attempting to
29 drive while under the influence of alcohol, while impaired by alcohol, while so far
30 impaired by any drug, any combination of drugs, or a combination of one or more
31 drugs and alcohol that the person could not drive a vehicle safely, while impaired by
32 a controlled dangerous substance, in violation of an alcohol restriction, or in violation
33 of § 16-813 of this title.

34 (b) (1) [Except as provided in subsection (c) of this section, a person may not
35 be compelled to take a test. However, the] THE detaining officer shall advise the
36 person that, on receipt of a sworn statement from the officer that the person was so

1 charged and refused to take a test, or was tested and the result indicated an alcohol
2 concentration of 0.08 or more, the Administration shall:

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

4 1. For a test result indicating an alcohol concentration of
5 0.08 or more at the time of testing:

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

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

10 2. For a test refusal:

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

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

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

16 1. For a test result indicating an alcohol concentration of
17 0.08 or more at the time of testing:

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

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

22 2. For a test refusal:

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

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

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

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

1 for test results indicating an alcohol concentration of 0.08 or more at the time of
2 testing will be scheduled, but a request made after 10 days does not extend a
3 temporary license issued by the police officer that allows the person to continue
4 driving for 45 days;

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

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

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

18 2. The person refused to take a test when [requested]
19 DIRECTED TO TAKE A TEST by the police officer or the person submitted to the test
20 which indicated an alcohol concentration of 0.08 or more at the time of testing; and

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

25 (c) (1) If a person is [involved in a motor vehicle accident that results in the
26 death of, or a life threatening injury to, another person and the person is] detained by
27 a police officer who has reasonable grounds to believe that the person has been
28 driving or attempting to drive while under the influence of alcohol, while impaired by
29 alcohol, while so far impaired by any drug, any combination of drugs, or a
30 combination of one or more drugs and alcohol that the person could not drive a vehicle
31 safely, while impaired by a controlled dangerous substance, or in violation of § 16-813
32 of this title, the person shall be required to submit, as directed by the officer, to a test
33 of:

34 (i) The person's breath to determine alcohol concentration;

35 (ii) One specimen of the person's blood, to determine alcohol
36 concentration or to determine the drug or controlled dangerous substance content of
37 the person's blood; or

38 (iii) Both the person's breath under item (i) of this paragraph and
39 one specimen of the person's blood under item (ii) of this paragraph.

1 (2) If a police officer directs that a person be tested, then the provisions
2 of § 10-304 of the Courts and Judicial Proceedings Article shall apply.

3 (3) Any medical personnel who perform any test required by this section
4 are not liable for any civil damages as the result of any act or omission related to such
5 test, not amounting to gross negligence.

6 (d) (1) If a police officer has reasonable grounds to believe that a person has
7 been driving or attempting to drive a motor vehicle while under the influence of
8 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, or in violation of § 16-813 of this title, and if the police officer determines
12 that the person is unconscious or otherwise incapable of refusing to take a test, the
13 police officer shall:

14 (i) Obtain prompt medical attention for the person;

15 (ii) If necessary, arrange for removal of the person to a nearby
16 medical facility; and

17 (iii) If a test would not jeopardize the health or well-being of the
18 person, direct a qualified medical person to withdraw blood for a test.

19 (2) If a person regains consciousness or otherwise becomes capable of
20 refusing before the taking of a test, the police officer shall follow the procedure set
21 forth in subsection (b) or (c) of this section.

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

24 (2) A person who initially refuses to take a test may withdraw the initial
25 refusal and subsequently consent to take the test if the subsequent consent:

26 (i) Is unequivocal;

27 (ii) Does not substantially interfere with the timely and efficacious
28 administration of the test; and

29 (iii) Is given by the person:

30 1. Before the delay in testing would materially affect the
31 outcome of the test; and

32 2. A. For the purpose of a test for determining alcohol
33 concentration, within 2 hours of the person's apprehension; or

34 B. For the purpose of a test for determining the drug or
35 controlled dangerous substance content of the person's blood, within 4 hours of the
36 person's apprehension.

1 (3) In determining whether a person has withdrawn an initial refusal for
 2 the purposes of paragraph (1) of this subsection, among the factors that the
 3 Administration shall consider are the following:

4 (i) Whether the test would have been administered properly:

5 1. For the purpose of a test for determining alcohol
 6 concentration, within 2 hours of the person's apprehension; or

7 2. For the purpose of a test for determining the drug or
 8 controlled dangerous substance content of the person's blood, within 4 hours of the
 9 person's apprehension;

10 (ii) Whether a qualified person, as defined in § 10-304 of the
 11 Courts Article, to administer the test and testing equipment were readily available;

12 (iii) Whether the delay in testing would have interfered with the
 13 administration of a test to another person;

14 (iv) Whether the delay in testing would have interfered with the
 15 attention to other duties of the arresting officer or a qualified person, as defined in §
 16 10-304 of the Courts Article;

17 (v) Whether the person's subsequent consent to take the test was
 18 made in good faith; and

19 (vi) Whether the consent after the initial refusal was while the
 20 person was still in police custody.

21 (4) In determining whether a person has withdrawn an initial refusal for
 22 the purposes of paragraph (1) of this subsection, the burden of proof rests with the
 23 person to establish by a preponderance of the evidence the requirements of paragraph
 24 (2) of this subsection.

25 (O) IF A POLICE OFFICER DIRECTS A PERSON TO TAKE A TEST UNDER
 26 SUBSECTION (B) OR (C) OF THIS SECTION, THE PERSON MAY NOT REFUSE TO TAKE
 27 THE TEST.

28 16-402.

29 (a) After the conviction of an individual for a violation of Title 2, Subtitle 5, §
 30 2-209, or § 3-211 of the Criminal Law Article, or of the vehicle laws or regulations of
 31 this State or of any local authority, points shall be assessed against the individual as
 32 of the date of violation and as follows:

33 (38) REFUSAL TO TAKE A TEST UNDER § 16-205.1(O) OF THIS
 34 ARTICLE 12 POINTS

1 27-101.

2 (X) ANY PERSON WHO IS CONVICTED OF A VIOLATION OF § 16-205.1(O) OF THIS
3 ARTICLE IS SUBJECT TO A FINE OF NOT MORE THAN \$1,000 OR IMPRISONMENT FOR
4 NOT MORE THAN 1 YEAR OR BOTH.

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