

SENATE BILL 638

R3
SB 800/07 – JPR

8lr2689

By: **Senator Jacobs**
Introduced and read first time: February 1, 2008
Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Drunk and Drugged Driving – Refusal to Take a Blood or Breath Test –**
3 **Prohibition**

4 FOR the purpose of prohibiting a person who is detained for certain alcohol– or
5 drug–related driving offenses from knowingly refusing to take a certain blood or
6 breath test if the person was detained previously for certain alcohol– or
7 drug–related driving offenses and refused to take a certain blood or breath test;
8 providing for certain criminal penalties; and generally relating to establishing a
9 criminal offense of refusal to take a certain blood or breath test under certain
10 circumstances.

11 BY repealing and reenacting, without amendments,
12 Article – Transportation
13 Section 21–902 and 27–101(x)
14 Annotated Code of Maryland
15 (2006 Replacement Volume and 2007 Supplement)

16 BY adding to
17 Article – Transportation
18 Section 21–902.2 and 27–101(bb)
19 Annotated Code of Maryland
20 (2006 Replacement Volume and 2007 Supplement)

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

23 **Article – Transportation**

24 21–902.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.



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

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

5 (3) A person may not violate paragraph (1) or (2) of this subsection
6 while transporting a minor.

7 (b) (1) A person may not drive or attempt to drive any vehicle while
8 impaired by alcohol.

9 (2) A person may not violate paragraph (1) of this subsection while
10 transporting a minor.

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

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

19 (3) A person may not violate paragraph (1) or (2) of this subsection
20 while transporting a minor.

21 (d) (1) A person may not drive or attempt to drive any vehicle while the
22 person is impaired by any controlled dangerous substance, as that term is defined in
23 § 5–101 of the Criminal Law Article, if the person is not entitled to use the controlled
24 dangerous substance under the laws of this State.

25 (2) A person may not violate paragraph (1) of this subsection while
26 transporting a minor.

27 (e) For purposes of the application of subsequent offender penalties under
28 § 27–101 of this article, a conviction for a crime committed in another state or federal
29 jurisdiction that, if committed in this State, would constitute a violation of subsection
30 (a), (b), (c), or (d) of this section shall be considered a violation of subsection (a), (b), (c),
31 or (d) of this section.

32 **21–902.2.**

33 **A PERSON DETAINED FOR A SUSPECTED VIOLATION OF § 21–902 OF THIS**
34 **SUBTITLE MAY NOT KNOWINGLY REFUSE TO TAKE A TEST UNDER § 16–205.1 OF**
35 **THIS ARTICLE IF THE PERSON HAS BEEN DETAINED PREVIOUSLY FOR A**

1 **SUSPECTED VIOLATION OF § 21-902 OF THIS SUBTITLE AND REFUSED TO TAKE**
2 **A TEST UNDER § 16-205.1 OF THIS ARTICLE.**

3 27-101.

4 (x) (1) In this section, "test" has the meaning stated in § 16-205.1 of this
5 article.

6 (2) The penalties in this subsection are in addition to any other
7 penalty under this title imposed for a violation of § 21-902 of this article.

8 (3) Subject to paragraph (4) of this subsection, if a person is convicted
9 of a violation of § 21-902 of this article and the trier of fact finds beyond a reasonable
10 doubt that the person knowingly refused to take a test arising out of the same
11 circumstances as the violation, the person is subject to a fine of not more than \$500 or
12 imprisonment for not more than 2 months or both.

13 (4) A court may not impose an additional penalty under this
14 subsection unless the State's Attorney serves notice of the alleged test refusal on the
15 defendant or the defendant's counsel before the acceptance of a plea of guilty or nolo
16 contendere or at least 15 days before trial in a circuit court or 5 days before trial in the
17 District Court, whichever is earlier.

18 **(BB) IN ADDITION TO ANY PENALTY THAT MAY BE IMPOSED FOR A**
19 **CONVICTION FOR A VIOLATION OF § 21-902 OF THIS ARTICLE OR ANY**
20 **ADDITIONAL PENALTY THAT MAY BE IMPOSED UNDER SUBSECTION (X) OF THIS**
21 **SECTION, A PERSON WHO IS CONVICTED OF A VIOLATION OF § 21-902.2 OF THIS**
22 **ARTICLE IS SUBJECT TO A FINE OF NOT MORE THAN \$1,000 OR IMPRISONMENT**
23 **FOR NOT MORE THAN 1 YEAR OR BOTH.**

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
25 October 1, 2008.