

SB0312/478978/1

BY: Judicial Proceedings Committee

AMENDMENTS TO SENATE BILL 312
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 2, strike “Vehicle Laws –”; in the same line, strike “ – Felonies” and substitute “and Punitive Damages”; strike beginning with “increasing” in line 4 down through “have” in line 5 and substitute “providing that a person who causes personal injury or wrongful death while operating or attempting to operate a motor vehicle and who has a certain alcohol concentration in the person’s blood or breath or who refuses to submit to a certain test for alcohol concentration is liable for punitive damages under certain circumstances; requiring a party who seeks to recover punitive damages under this Act to plead certain facts with particularity; providing for a standard of proof of clear and convincing evidence for a claim of punitive damages under this Act; providing that punitive damages under this Act may not be awarded in the absence of an award of compensatory damages; providing that evidence of a defendant’s financial means is not admissible until there has been a finding of liability and that punitive damages under this Act are supportable under the facts; limiting liability for punitive damages under this Act to the person operating or attempting to operate the motor vehicle; prohibiting an individual from committing a certain drunk and drugged driving offense if the individual has”; in line 6, after “making” insert “a”; and strike beginning with “offenses” in line 6 down through “offenses” in line 8 and substitute “offense a felony; defining a certain term; making certain conforming changes; providing for the application of certain provisions of this Act; providing for the effective date of this Act”.

AMENDMENT NO. 2

On page 1, strike in their entirety lines 10 through 14, inclusive; and in line 17, strike “4-301(b)(26)” and substitute “10-913.1”.

On page 2, after line 9, insert:

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“BY repealing and reenacting, with amendments,

Article – Transportation

Section 21-902(a) through (d)

Annotated Code of Maryland

(2012 Replacement Volume and 2016 Supplement)

(As enacted by Chapter ____ (S.B. 165) of the Acts of the General Assembly of 2017)

BY adding to

Article – Transportation

Section 21-902(h)

Annotated Code of Maryland

(2012 Replacement Volume and 2016 Supplement)

(As enacted by Chapter ____ (S.B. 165) of the Acts of the General Assembly of 2017)”.

AMENDMENT NO. 3

On page 2, strike in their entirety lines 13 through 33, inclusive, and substitute:

“10-913.1.

(A) IN THIS SECTION, “MOTOR VEHICLE” HAS THE MEANING STATED IN § 11-135 OF THE TRANSPORTATION ARTICLE.

(B) THIS SECTION DOES NOT AFFECT THE PROVISIONS OF:

(1) THE LOCAL GOVERNMENT TORT CLAIMS ACT UNDER TITLE 5, SUBTITLE 3 OF THIS ARTICLE; OR

(2) THE MARYLAND TORT CLAIMS ACT UNDER TITLE 12, SUBTITLE 1 OF THE STATE GOVERNMENT ARTICLE.

(C) SUBJECT TO THE PROVISIONS OF THIS SECTION, IN ADDITION TO ANY LIABILITY FOR ACTUAL DAMAGES, A PERSON IS LIABLE FOR PUNITIVE DAMAGES IF THE PERSON:

(1) (i) CAUSES PERSONAL INJURY OR WRONGFUL DEATH WHILE OPERATING OR ATTEMPTING TO OPERATE A MOTOR VEHICLE WHILE HAVING AN ALCOHOL CONCENTRATION OF 0.15 OR MORE AS MEASURED BY GRAMS OF ALCOHOL PER 100 MILLILITERS OF BLOOD OR GRAMS OF ALCOHOL PER 210 LITERS OF BREATH; OR

(ii) 1. CAUSES PERSONAL INJURY OR WRONGFUL DEATH WHILE OPERATING OR ATTEMPTING TO OPERATE A MOTOR VEHICLE;

2. IS DETAINED BY A POLICE OFFICER WHO HAS REASONABLE GROUNDS TO BELIEVE THAT THE PERSON HAS BEEN OPERATING OR ATTEMPTING TO OPERATE A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL, WHILE IMPAIRED BY ALCOHOL, OR IN VIOLATION OF § 16-813 OF THE TRANSPORTATION ARTICLE; AND

3. REFUSES TO SUBMIT TO A CHEMICAL TEST TO DETERMINE ALCOHOL CONCENTRATION; AND

(2) WITHIN THE PAST 10 YEARS, WAS CONVICTED:

(i) UNDER § 21-902 OF THE TRANSPORTATION ARTICLE;

(ii) UNDER § 2-503, § 2-504, § 2-505, § 2-506, OR § 3-211 OF THE CRIMINAL LAW ARTICLE; OR

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(III) FOR AN OFFENSE COMPARABLE TO THE OFFENSES SPECIFIED IN ITEM (I) OR (II) OF THIS ITEM UNDER A FEDERAL OR OTHER STATE STATUTE.

(D) A CLAIM FOR PUNITIVE DAMAGES UNDER THIS SECTION:

(1) SHALL BE PLEADED, BY COMPLAINT OR AMENDMENT, WITH FACTS SUPPORTING THE CLAIM WITH SUFFICIENT PARTICULARITY TO ESTABLISH THAT THE PARTY MAY BE ENTITLED TO PUNITIVE DAMAGES UNDER THIS SECTION;

(2) SHALL BE PROVEN BY CLEAR AND CONVINCING EVIDENCE;

(3) MAY NOT BE AWARDED IN THE ABSENCE OF AN AWARD OF COMPENSATORY DAMAGES; AND

(4) SHALL COMPLY WITH THE PROVISIONS OF § 10-913 OF THIS SUBTITLE.

(E) LIABILITY FOR PUNITIVE DAMAGES UNDER THIS SECTION SHALL BE LIMITED SOLELY TO THE PERSON OPERATING OR ATTEMPTING TO OPERATE THE MOTOR VEHICLE.

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:”.

AMENDMENT NO. 4

On pages 3 and 4, strike in their entirety the lines beginning with line 29 on page 3 through line 2 on page 4, inclusive.

On page 4, strike in their entirety lines 23 through 26, inclusive.

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On page 5, strike in their entirety lines 13 through 16, inclusive.

AMENDMENT NO. 5

On page 3, after line 6, insert:

“SECTION 3. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article - Transportation”.

On page 5, strike beginning with “A” in line 18 down through “BOTH” in line 20 and substitute “A PERSON MAY NOT VIOLATE ANY PROVISION OF § 21-902 OF THIS ARTICLE”; after line 30, insert:

“(C) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 10 YEARS OR A FINE NOT EXCEEDING \$10,000 OR BOTH.

SECTION 4. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article - Transportation

21-902.

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

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

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(iii) A person convicted of a violation of this paragraph is subject to:

1. For a first offense, imprisonment not exceeding 1 year or a fine not exceeding \$1,000 or both;

2. For a second offense, imprisonment not exceeding 2 years or a fine not exceeding \$2,000 or both; and

3. For a third [or subsequent] offense, imprisonment not exceeding 3 years or a fine not exceeding \$3,000 or both.

(iv) For the purpose of determining subsequent offender penalties for a violation of this paragraph, a prior conviction under this subsection or subsection (b), (c), or (d) of this section, within 5 years before the conviction for a violation of this paragraph, shall be considered a prior conviction.

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

(ii) A person convicted of a violation of this paragraph is subject to:

1. For a first offense, imprisonment not exceeding 2 years or a fine not exceeding \$2,000 or both;

2. For a second offense, imprisonment not exceeding 3 years or a fine not exceeding \$3,000 or both; and

3. For a third [or subsequent] offense, imprisonment not exceeding 4 years or a fine not exceeding \$4,000 or both.

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(iii) For the purpose of determining subsequent offender penalties for a violation of this paragraph, a prior conviction under this paragraph or subsection (b)(2), (c)(2), or (d)(2) of this section shall be considered a prior conviction.

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

(ii) A person convicted of a violation of this paragraph is subject to:

1. For a first offense, imprisonment not exceeding 2 months or a fine not exceeding \$500 or both;

2. For a second offense, imprisonment not exceeding 1 year or a fine not exceeding \$500 or both; and

3. For a third [or subsequent] offense, imprisonment not exceeding 3 years or a fine not exceeding \$3,000 or both.

(iii) For the purpose of determining subsequent offender penalties for a violation of this paragraph, a prior conviction under this subsection or subsection (a), (c), or (d) of this section shall be considered a prior conviction.

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

(ii) A person convicted of a violation of this paragraph is subject to:

1. For a first offense, imprisonment not exceeding 6 months or a fine not exceeding \$1,000 or both;

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2. For a second offense, imprisonment not exceeding 1 year or a fine not exceeding \$2,000 or both; and

3. For a third [or subsequent] offense, imprisonment not exceeding 4 years or a fine not exceeding \$4,000 or both.

(iii) For the purpose of determining subsequent offender penalties for a violation of this paragraph, a prior conviction under this paragraph or subsection (a)(2), (c)(2), or (d)(2) of this section shall be considered a prior conviction.

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

(ii) A person convicted of a violation of this paragraph is subject to:

1. For a first offense, imprisonment not exceeding 2 months or a fine not exceeding \$500 or both;

2. For a second offense, imprisonment not exceeding 1 year or a fine not exceeding \$500 or both; and

3. For a third [or subsequent] offense, imprisonment not exceeding 3 years or a fine not exceeding \$3,000 or both.

(iii) For the purpose of determining subsequent offender penalties for a violation of this paragraph, a prior conviction under this subsection or subsection (a), (b), or (d) of this section shall be considered a prior conviction.

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

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

(ii) A person convicted of a violation of this paragraph is subject to:

1. For a first offense, imprisonment not exceeding 6 months or a fine not exceeding \$1,000 or both;

2. For a second offense, imprisonment not exceeding 1 year or a fine not exceeding \$2,000 or both; and

3. For a third [or subsequent] offense, imprisonment not exceeding 4 years or a fine not exceeding \$4,000 or both.

(iii) For the purpose of determining subsequent offender penalties for a violation of this paragraph, a prior conviction under this paragraph or subsection (a)(2), (b)(2), or (d)(2) of this section shall be considered a prior conviction.

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

(ii) A person convicted of a violation of this paragraph is subject to:

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1. For a first offense, imprisonment not exceeding 1 year or a fine not exceeding \$1,000 or both;

2. For a second offense, imprisonment not exceeding 2 years or a fine not exceeding \$2,000 or both; and

3. For a third [or subsequent] offense, imprisonment not exceeding 3 years or a fine not exceeding \$3,000 or both.

(iii) For the purpose of determining subsequent offender penalties for a violation of this paragraph, a prior conviction under this subsection or subsection (a), (b), or (c) of this section, within 5 years before the conviction for a violation of this paragraph, shall be considered a prior conviction.

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

(ii) A person convicted of a violation of this paragraph is subject to:

1. For a first offense, imprisonment not exceeding 2 years or a fine not exceeding \$2,000 or both;

2. For a second offense, imprisonment not exceeding 3 years or a fine not exceeding \$3,000 or both; and

3. For a third [or subsequent] offense, imprisonment not exceeding 4 years or a fine not exceeding \$4,000 or both.

(iii) For the purpose of determining subsequent offender penalties for a violation of this paragraph, a prior conviction under this paragraph or subsection (a)(2), (b)(2), or (c)(2) of this section shall be considered a prior conviction.

(H) (1) A PERSON MAY NOT VIOLATE SUBSECTION (A), (B), (C), OR (D) OF THIS SECTION IF THE PERSON HAS PREVIOUSLY BEEN CONVICTED OF:

(I) THREE OR MORE VIOLATIONS OF SUBSECTION (A), (B), (C), OR (D) OF THIS SECTION; OR

(II) A VIOLATION OF § 2-209, § 2-210, § 2-503, § 2-504, § 2-505, § 2-506, OR § 3-211 OF THE CRIMINAL LAW ARTICLE.

(2) FOR PURPOSES OF THIS SUBSECTION, A CONVICTION FOR A CRIME UNDER THE LAWS OF ANY STATE OR THE UNITED STATES THAT WOULD BE A CRIME INCLUDED IN PARAGRAPH (1) OF THIS SUBSECTION IF COMMITTED IN THIS STATE SHALL BE CONSIDERED A PRIOR CONVICTION UNDER PARAGRAPH (1) OF THIS SUBSECTION.

(3) A PERSON WHO VIOLATES THIS SUBSECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 10 YEARS OR A FINE NOT EXCEEDING \$10,000 OR BOTH.

SECTION 5. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any cause of action arising before the effective date of this Act.

SECTION 6. AND BE IT FURTHER ENACTED, That Section 4 of this Act shall take effect on the taking effect of Chapter _____ (S.B. 165) of the Acts of the General

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Assembly of 2017. If Chapter (S.B. 165) does not take effect, Section 4 of this Act shall be null and void without the necessity of further action by the General Assembly. If Section 4 of this Act takes effect, Section 3 shall be null and void without the necessity of further action by the General Assembly.”;

in line 31, strike “2.” and substitute “7.”; and in the same line, after “That” insert “, subject to the provisions of Section 6 of this Act.”.