

SENATE BILL 312

R3

7lr0148
CF HB 371

By: The President (By Request – Administration) and Senators Bates, Brochin, Cassilly, Eckardt, Edwards, Ferguson, Jennings, Mathias, Norman, Ready, Salling, Serafini, Simonaire, and Waugh

Introduced and read first time: January 20, 2017

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 16, 2017

CHAPTER _____

1 AN ACT concerning

2 ~~Vehicle Laws~~ **Drunk and Drugged Driving – Subsequent Offenders – Felonies**
3 **and Punitive Damages**
4 **(Repeat Drunk Driving Offenders Act of 2017)**

5 FOR the purpose of ~~increasing certain penalties for drunk and drugged driving offenses for~~
6 ~~individuals who have~~ providing that a person who causes personal injury or wrongful
7 death while operating or attempting to operate a motor vehicle and who has a certain
8 alcohol concentration in the person's blood or breath or who refuses to submit to a
9 certain test for alcohol concentration is liable for punitive damages under certain
10 circumstances; requiring a party who seeks to recover punitive damages under this
11 Act to plead certain facts with particularity; providing for a standard of proof of clear
12 and convincing evidence for a claim of punitive damages under this Act; providing
13 that punitive damages under this Act may not be awarded in the absence of an award
14 of compensatory damages; providing that evidence of a defendant's financial means
15 is not admissible until there has been a finding of liability and that punitive damages
16 under this Act are supportable under the facts; limiting liability for punitive
17 damages under this Act to the person operating or attempting to operate the motor
18 vehicle; prohibiting an individual from committing a certain drunk and drugged
19 driving offense if the individual has been convicted previously for certain other
20 crimes under certain circumstances; making a certain drunk and drugged driving
21 offenses felonies; establishing that the District Court and circuit courts have
22 concurrent jurisdiction over certain drunk and drugged driving offenses offense a
23 felony; defining a certain term; making certain conforming changes; providing for

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



the application of certain provisions of this Act; providing for the effective date of this Act; and generally relating to drunk and drugged driving.

~~BY repealing and reenacting, with amendments,
Article – Courts and Judicial Proceedings
Section 4-301(b)(24) and (25) and 4-302(a) and (d)(1)
Annotated Code of Maryland
(2013 Replacement Volume and 2016 Supplement)~~

BY adding to
Article – Courts and Judicial Proceedings
Section ~~4-301(b)(26)~~ 10-913.1
Annotated Code of Maryland
(2013 Replacement Volume and 2016 Supplement)

BY repealing and reenacting, without amendments,
Article – Transportation
Section 1-101(c)
Annotated Code of Maryland
(2015 Replacement Volume and 2016 Supplement)

BY repealing and reenacting, with amendments,
Article – Transportation
Section 27-101(f), (k), and (q)
Annotated Code of Maryland
(2012 Replacement Volume and 2016 Supplement)

BY adding to
Article – Transportation
Section 27-116
Annotated Code of Maryland
(2012 Replacement Volume and 2016 Supplement)

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)

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

Article – Courts and Judicial Proceedings

~~4-301.~~

~~(b) Except as provided in § 4-302 of this subtitle, the District Court also has exclusive original jurisdiction in a criminal case in which a person at least 18 years old or a corporation is charged with:~~

~~(24) Violation of § 11-721 of Criminal Procedure Article as a second or subsequent offense; [or]~~

~~(25) Violation of § 11-303(b) of the Criminal Law Article; OR~~

~~(26) VIOLATION OF § 21-902 OF THE TRANSPORTATION ARTICLE
THAT IS PUNISHABLE UNDER § 27-116 OF THE TRANSPORTATION ARTICLE.~~

~~4-302.~~

~~(a) Except as provided in § 4-301(b)(2), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (18), (19), (20), (21), (22), (23), (24), [and] (25), AND (26) of this subtitle, the District Court does not have jurisdiction to try a criminal case charging the commission of a felony.~~

~~(d) (1) Except as provided in paragraph (2) of this subsection, the jurisdiction of the District Court is concurrent with that of the circuit court in a criminal case:~~

~~(i) In which the penalty may be confinement for 3 years or more or a fine of \$2,500 or more; or~~

~~(ii) That is a felony, as provided in § 4-301(b)(2), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (18), (19), (20), (21), (22), (23), (24), [and] (25), AND (26) of this subtitle.~~

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

(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:

Article – Transportation

1–101.

(c) “Any state” means:

(1) Any state, possession, or territory of the United States;

(2) The District of Columbia; and

(3) The Commonwealth of Puerto Rico.

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

Article – Transportation

27–101.

(f) (1) A person is subject to a fine not exceeding \$500 or imprisonment not
exceeding 1 year or both, if the person is convicted of:

(i) A violation of § 14–103 of this article (“Possession of motor
vehicle master key”); or

(ii) Except as provided in subsection (q) of this section, a second
violation of:

1. § 21–902(b) of this article (“Driving while impaired by
alcohol”); or

2. § 21–902(c) of this article (“Driving while impaired by
drugs or drugs and alcohol”).

(2) Except as provided in subsection (q) of this section, a person who is convicted of a third [or subsequent] violation of § 21-902(b) or (c) of this article is subject to a fine not exceeding \$3,000 or imprisonment not exceeding 3 years or both.

(3) Except as provided in subsection (q) of this section, for the purpose of second or [subsequent] **THIRD** offender penalties for a violation of § 21-902(b) of this article provided under paragraphs (1) and (2) of this subsection, a prior conviction of § 21-902(a), (c), or (d) of this article shall be considered a conviction of § 21-902(b) of this article.

(4) Except as provided in subsection (q) of this section, for the purpose of second or [subsequent] **THIRD** offender penalties for a violation of § 21-902(c) of this article provided under paragraphs (1) and (2) of this subsection, a prior conviction of § 21-902(a), (b), or (d) of this article shall be considered a conviction of § 21-902(c) of this article.

~~(5) A PERSON CONVICTED OF A VIOLATION OF § 21-902(B) OR (C) OF THIS ARTICLE WHO HAS THREE OR MORE PRIOR CONVICTIONS FOR VIOLATIONS OF ANY PROVISION OF § 21-902 OF THIS ARTICLE IS SUBJECT TO THE PENALTIES PROVIDED UNDER § 27-116 OF THIS TITLE.~~

(k) (1) Except as provided in subsection (q) of this section, any person who is convicted of a violation of any of the provisions of § 21-902(a) of this article ("Driving while under the influence of alcohol or under the influence of alcohol per se") or § 21-902(d) of this article ("Driving while impaired by controlled dangerous substance"):

(i) For a first offense, shall be subject to a fine of not more than \$1,000, or imprisonment for not more than 1 year, or both;

(ii) For a second offense, shall be subject to a fine of not more than \$2,000, or imprisonment for not more than 2 years, or both; and

(iii) For a third [or subsequent] offense, shall be subject to a fine of not more than \$3,000, or imprisonment for not more than 3 years, or both.

(2) For the purpose of second or [subsequent] **THIRD** offender penalties for violation of § 21-902(a) of this article provided under this subsection, a prior conviction under § 21-902(b), (c), or (d) of this article, within 5 years of the conviction for a violation of § 21-902(a) of this article, shall be considered a conviction under § 21-902(a) of this article.

(3) For the purpose of second or [subsequent] **THIRD** offender penalties for violation of § 21-902(d) of this article provided under this subsection, a prior conviction under § 21-902(a), (b), or (c) of this article, within 5 years of the conviction for a violation of § 21-902(d) of this article, shall be considered a conviction under § 21-902(d) of this article.

~~(4) A PERSON CONVICTED OF A VIOLATION OF § 21-902(A) OR (D) OF THIS ARTICLE WHO HAS THREE OR MORE PRIOR CONVICTIONS FOR VIOLATIONS OF ANY PROVISION OF § 21-902 OF THIS ARTICLE IS SUBJECT TO THE PENALTIES PROVIDED UNDER § 27-116 OF THIS TITLE.~~

(q) (1) Any person who is convicted of a violation of § 21-902(a)(3) or (d)(2) of this article is subject to:

(i) For a first offense, a fine of not more than \$2,000 or imprisonment for not more than 2 years or both;

(ii) For a second offense, a fine of not more than \$3,000 or imprisonment for not more than 3 years or both; and

(iii) For a third [or subsequent] offense, a fine of not more than \$4,000 or imprisonment for not more than 4 years or both.

(2) Any person who is convicted of a violation of § 21-902(b)(2) or (c)(3) of this article is subject to:

(i) For a first offense, a fine of not more than \$1,000 or imprisonment for not more than 6 months or both;

(ii) For a second offense, a fine of not more than \$2,000 or imprisonment for not more than 1 year or both; and

(iii) For a third [or subsequent] offense, a fine of not more than \$4,000 or imprisonment for not more than 4 years or both.

(3) For the purpose of determining second or [subsequent] **THIRD** offender penalties provided under this subsection, a prior conviction of any provision of § 21-902 of this article that subjected a person to the penalties under this subsection shall be considered a prior conviction.

~~(4) A PERSON CONVICTED OF A VIOLATION OF § 21-902(A)(3), (B)(2), (C)(3), OR (D)(2) OF THIS ARTICLE WHO HAS THREE OR MORE PRIOR CONVICTIONS UNDER § 21-902 OF THIS ARTICLE IS SUBJECT TO THE PENALTIES PROVIDED UNDER § 27-116 OF THIS TITLE.~~

27-116.

~~(A) A PERSON WHO VIOLATES ANY PROVISION OF § 21-902 OF THIS ARTICLE 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. A PERSON MAY NOT VIOLATE ANY PROVISION OF § 21-902 OF THIS ARTICLE IF THE PERSON HAS PREVIOUSLY BEEN CONVICTED OF:~~

(1) THREE OR MORE VIOLATIONS OF ANY PROVISION OF § 21-902 OF THIS ARTICLE; OR

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

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

(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.

(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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 3. For a third [or subsequent] offense, imprisonment not
32 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:

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:

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

3 **(II) A VIOLATION OF § 2-209, § 2-210, § 2-503, § 2-504, § 2-505,**
4 **§ 2-506, OR § 3-211 OF THE CRIMINAL LAW ARTICLE.**

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

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

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

16 SECTION 6. AND BE IT FURTHER ENACTED, That Section 4 of this Act shall take
17 effect on the taking effect of Chapter _____ (S.B. 165) of the Acts of the General Assembly of
18 2017. If Chapter _____ (S.B. 165) does not take effect, Section 4 of this Act shall be null and
19 void without the necessity of further action by the General Assembly. If Section 4 of this
20 Act takes effect, Section 3 shall be null and void without the necessity of further action by
21 the General Assembly.

22 SECTION ~~2~~ 7. AND BE IT FURTHER ENACTED, That, subject to the provisions
23 of Section 6 of this Act, this Act shall take effect October 1, 2017.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.