

SENATE BILL 1076

R3

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By: **Senator Gladden**

Introduced and read first time: March 3, 2010

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Drunk and Drugged Driving – Subsequent Offenders – Prior Convictions**

3 FOR the purpose of clarifying that prior convictions for certain alcohol– or
4 drug–related driving offenses in this State and certain convictions under federal
5 law or a law of another state shall be considered prior convictions for the
6 purpose of certain subsequent offender penalties; making a technical change;
7 making stylistic changes; and generally relating to certain subsequent offender
8 penalties for convictions for certain alcohol– or drug–related driving offenses.

9 BY repealing and reenacting, with amendments,
10 Article – Transportation
11 Section 21–902 and 27–101(f)(2) and (3), (k), and (q)
12 Annotated Code of Maryland
13 (2009 Replacement Volume and 2009 Supplement)

14 BY repealing and reenacting, without amendments,
15 Article – Transportation
16 Section 27–101(f)(1)(ii) and (j)(2) through (5)
17 Annotated Code of Maryland
18 (2009 Replacement Volume and 2009 Supplement)

19 BY adding to
20 Article – Transportation
21 Section 27–101(j)(7)
22 Annotated Code of Maryland
23 (2009 Replacement Volume and 2009 Supplement)

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

26 **Article – Transportation**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

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

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

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

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

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

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

33 27-101.

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

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

5 1. § 21-902(b) of this article (“Driving while impaired by
6 alcohol”); or

7 2. § 21-902(c) of this article (“Driving while impaired by
8 drugs or drugs and alcohol”).

9 (2) Except as provided in subsection (q) of this section, for the purpose
10 of second or subsequent offender penalties for a violation of § 21-902(b) of this article
11 provided under paragraph (1) of this subsection, a prior conviction of [§ 21-902(a), (c),
12 or (d) of this article] **ANY PROVISION OF § 21-902 OF THIS ARTICLE OR A PRIOR
13 CONVICTION UNDER A FEDERAL LAW OR A LAW OF ANOTHER STATE THAT IS
14 SUBSTANTIALLY SIMILAR TO ANY PROVISION OF § 21-902 OF THIS ARTICLE** shall
15 be considered a **PRIOR** conviction [of § 21-902(b) of this article].

16 (3) Except as provided in subsection (q) of this section, for the purpose
17 of second or subsequent offender penalties for a violation of § 21-902(c) of this article
18 provided under paragraph (1) of this subsection, a prior conviction of [§ 21-902(a), (b),
19 or (d) of this article] **ANY PROVISION OF § 21-902 OF THIS ARTICLE OR A PRIOR
20 CONVICTION UNDER A FEDERAL LAW OR A LAW OF ANOTHER STATE THAT IS
21 SUBSTANTIALLY SIMILAR TO ANY PROVISION OF § 21-902 OF THIS ARTICLE** shall
22 be considered a **PRIOR** conviction [of § 21-902(c) of this article].

23 (j) (2) (i) A person who is convicted of a violation of § 21-902(a) of this
24 article within 5 years after a prior conviction under that subsection is subject to a
25 mandatory minimum penalty of imprisonment for not less than 5 days.

26 (ii) A person who is convicted of a third or subsequent offense
27 under § 21-902(a) of this article within 5 years is subject to a mandatory minimum
28 penalty of imprisonment for not less than 10 days.

29 (3) (i) A person who is convicted of a violation of § 21-902(d) of this
30 article within 5 years after a prior conviction under that subsection is subject to a
31 mandatory minimum penalty of imprisonment for not less than 5 days.

32 (ii) A person who is convicted of a third or subsequent offense
33 under § 21-902(d) of this article within 5 years is subject to a mandatory minimum
34 penalty of imprisonment for not less than 10 days.

35 (4) A person who is convicted of an offense under § 21-902(a) of this
36 article within 5 years of a prior conviction of any offense under that subsection shall be
37 required by the court to:

1 (i) Undergo a comprehensive alcohol abuse assessment; and

2 (ii) If recommended at the conclusion of the assessment,
3 participate in an alcohol program as ordered by the court that is:

4 1. Certified by the Department of Health and Mental
5 Hygiene;

6 2. Certified by an agency in an adjacent state that has
7 powers and duties similar to the Department of Health and Mental Hygiene; or

8 3. Approved by the court.

9 (5) A person who is convicted of an offense under § 21-902(d) of this
10 article within 5 years of a prior conviction of any offense under that subsection shall be
11 required by the court to:

12 (i) Undergo a comprehensive drug abuse assessment; and

13 (ii) If recommended at the conclusion of the assessment,
14 participate in a drug program as ordered by the court that is:

15 1. Certified by the Department of Health and Mental
16 Hygiene;

17 2. Certified by an agency in an adjacent state that has
18 powers and duties similar to the Department of Health and Mental Hygiene; or

19 3. Approved by the court.

20 **(7) (I) FOR THE PURPOSE OF SECOND OR SUBSEQUENT**
21 **OFFENDER PENALTIES FOR A VIOLATION OF § 21-902(A) OF THIS ARTICLE**
22 **PROVIDED UNDER PARAGRAPHS (2) AND (4) OF THIS SUBSECTION, A PRIOR**
23 **CONVICTION OF § 21-902(A) OF THIS ARTICLE OR A PRIOR CONVICTION UNDER**
24 **A FEDERAL LAW OR A LAW OF ANOTHER STATE THAT IS SUBSTANTIALLY**
25 **SIMILAR TO THE PROVISIONS OF § 21-902(A) OF THIS ARTICLE SHALL BE**
26 **CONSIDERED A PRIOR CONVICTION.**

27 **(II) FOR THE PURPOSE OF SECOND OR SUBSEQUENT**
28 **OFFENDER PENALTIES FOR A VIOLATION OF § 21-902(D) OF THIS ARTICLE**
29 **PROVIDED UNDER PARAGRAPHS (3) AND (5) OF THIS SUBSECTION, A PRIOR**
30 **CONVICTION OF § 21-902(D) OF THIS ARTICLE OR A PRIOR CONVICTION UNDER**
31 **A FEDERAL LAW OR A LAW OF ANOTHER STATE THAT IS SUBSTANTIALLY**
32 **SIMILAR TO THE PROVISIONS OF § 21-902(D) OF THIS ARTICLE SHALL BE**
33 **CONSIDERED A PRIOR CONVICTION.**

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

6 (i) For a first offense, shall be subject to a fine of not more than
7 \$1,000, or imprisonment for not more than 1 year, or both;

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

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

12 (2) For the purpose of second or subsequent offender penalties for
13 violation of § 21–902(a) of this article provided under this subsection, a prior
14 conviction under [§ 21–902(b), (c), or (d) of this article] **ANY PROVISION OF § 21–902**
15 **OF THIS ARTICLE OR A PRIOR CONVICTION UNDER A FEDERAL LAW OR A LAW OF**
16 **ANOTHER STATE THAT IS SUBSTANTIALLY SIMILAR TO ANY PROVISION OF §**
17 **21–902 OF THIS ARTICLE**, within 5 years of the conviction for a violation of §
18 21–902(a) of this article, shall be considered a **PRIOR** conviction [under § 21–902(a) of
19 this article].

20 (3) For the purpose of second or subsequent offender penalties for
21 violation of § 21–902(d) of this article provided under this subsection, a prior
22 conviction under [§ 21–902(a), (b), or (c) of this article] **ANY PROVISION OF § 21–902**
23 **OF THIS ARTICLE OR A PRIOR CONVICTION UNDER A FEDERAL LAW OR A LAW OF**
24 **ANOTHER STATE THAT IS SUBSTANTIALLY SIMILAR TO ANY PROVISION OF §**
25 **21–902 OF THIS ARTICLE**, within 5 years of the conviction for a violation of §
26 21–902(d) of this article, shall be considered a **PRIOR** conviction [under § 21–902(d) of
27 this article].

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

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

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

34 (iii) For a third or subsequent offense, a fine of not more than
35 \$4,000 or imprisonment for not more than 4 years or both.

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

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

5 (ii) For a second or subsequent offense, a fine of not more than
6 \$2,000 or imprisonment for not more than 1 year or both.

7 (3) For the purpose of [determining] second or subsequent offender
8 penalties provided under this subsection, a prior conviction of any provision of [§
9 21-902 of this article that subjected a person to the penalties under this subsection] §
10 **21-902(A)(3), (B)(2), (C)(3), OR (D)(2) OF THIS ARTICLE OR A PRIOR**
11 **CONVICTION UNDER A FEDERAL LAW OR A LAW OF ANOTHER STATE THAT IS**
12 **SUBSTANTIALLY SIMILAR TO ANY PROVISION OF § 21-902 (A)(3), (B)(2), (C)(3),**
13 **OR (D)(2) OF THIS ARTICLE** shall be considered a prior conviction.

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
15 October 1, 2010.