

HOUSE BILL 1270

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By: **Delegates Sophocleus, Bronrott, Kipke, Krebs, McComas, McDonough, and Stocksdale**

Introduced and read first time: February 18, 2010

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: April 6, 2010

CHAPTER _____

1 AN ACT concerning

2 **Operating a Vessel While Under the Influence of or Impaired by Alcohol or**
3 **Drugs – ~~Compulsory~~ Testing**

4 FOR the purpose of specifying that certain alcohol– or drug–related offenses apply to
5 certain vessels; providing that a person who operates or attempts to operate a
6 vessel on the waters of the State is deemed to have consented to a certain test of
7 the person’s breath or blood to determine alcohol concentration or drug or
8 controlled dangerous substance content under certain circumstances;
9 establishing that a person may not be compelled to take a certain test of the
10 person’s breath or blood, except under certain circumstances; requiring a
11 detaining police officer to advise a person that if the person refuses to take a
12 certain test or takes a test with a certain result the court may prohibit the
13 person from operating a vessel on the waters of the State for a certain period of
14 time; authorizing the court to prohibit a certain person from operating a vessel
15 on the waters of the State for a certain period of time if the person refuses a
16 certain test or takes a test with a certain result; requiring a person to submit to
17 certain tests of the person’s breath or blood to determine alcohol concentration
18 or drug or controlled dangerous substance content if the person is involved in an
19 accident while operating or attempting to operate a vessel that results in the
20 death of, or life–threatening injury to, another person and the person is
21 detained by a police officer who has reasonable grounds to believe that the
22 person has been operating the vessel while under the influence of alcohol or
23 impaired by alcohol, drugs, a combination of alcohol and drugs, or a controlled
24 dangerous substance; establishing that certain provisions relating to the

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.



1 qualifications of a person administering a certain blood or breath test and the
 2 equipment used to administer the test apply under certain circumstances;
 3 providing that medical personnel who perform certain tests are not liable for
 4 civil damages under certain circumstances; providing for the admissibility of
 5 evidence of certain tests or analyses under certain circumstances; making
 6 certain conforming and stylistic changes; and generally relating to operating a
 7 vessel while under the influence of or impaired by alcohol or drugs.

8 BY renumbering

9 Article – Natural Resources

10 Section 8–738.1

11 to be Section 8–738.2

12 Annotated Code of Maryland

13 (2007 Replacement Volume and 2009 Supplement)

14 BY repealing and reenacting, with amendments,

15 Article – Courts and Judicial Proceedings

16 Section 10–309(a) and (d)

17 Annotated Code of Maryland

18 (2006 Replacement Volume and 2009 Supplement)

19 BY repealing and reenacting, with amendments,

20 Article – Natural Resources

21 Section 8–738

22 Annotated Code of Maryland

23 (2007 Replacement Volume and 2009 Supplement)

24 BY adding to

25 Article – Natural Resources

26 Section 8–738.1

27 Annotated Code of Maryland

28 (2007 Replacement Volume and 2009 Supplement)

29 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 30 MARYLAND, That Section(s) 8–738.1 of Article – Natural Resources of the Annotated
 31 Code of Maryland be renumbered to be Section(s) 8–738.2.

32 ~~SECTION 2. AND BE IT FURTHER ENACTED BY THE GENERAL~~
 33 ~~ASSEMBLY OF MARYLAND,~~ That the Laws of Maryland read as follows:

34 **Article – Courts and Judicial Proceedings**

35 10–309.

36 (a) (1) (i) Except as provided in § 16–205.1(c) of the Transportation
 37 Article ~~OR § 8–738(b)(3)~~ **8–738.1 OF THE NATURAL RESOURCES ARTICLE**, a
 38 person may not be compelled to submit to a test or tests provided for in this subtitle.

1 (ii) Evidence of a test or analysis provided for in this subtitle is
 2 not admissible in a prosecution for a violation of § 16–113 or § 21–902 of the
 3 Transportation Article, § 8–738 of the Natural Resources Article, or Title 2, Subtitle 5,
 4 § 2–209, or § 3–211 of the Criminal Law Article if obtained contrary to the provisions
 5 of this subtitle.

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

7 (d) Nothing in this section precludes or limits admissibility of evidence of a
 8 test or analysis to determine the alcohol concentration of a person’s blood or breath
 9 which is obtained as provided in § 16–205.1(c) of the Transportation Article **OR §**
 10 ~~8–738(b)(3)~~ **8–738.1 OF THE NATURAL RESOURCES ARTICLE.**

11 Article – Natural Resources

12 8–738.

13 (a) ~~A~~ **SUBJECT TO SUBSECTION (G) OF THIS SECTION,** A person may not
 14 operate or attempt to operate a vessel while the person:

15 (1) Is under the influence of alcohol;

16 (2) Is impaired by alcohol;

17 (3) Is so far impaired by any drug, combination of drugs, or
 18 combination of one or more drugs and alcohol that the person cannot operate a vessel
 19 safely; or

20 (4) Is impaired by any controlled dangerous substance, as defined in §
 21 5–101 of the Criminal Law Article, unless the person is entitled to use the controlled
 22 dangerous substance under the laws of the State.

23 (b) (1) Except as provided under paragraph (2) of this subsection, the
 24 evidentiary presumptions and procedures established under §§ 10–302 through
 25 ~~10–308~~ **10–309** of the Courts Article are applicable to any violation of this section.

26 (2) If at the time of testing an individual has an alcohol concentration
 27 that meets the definition of “under the influence of alcohol per se” in § 11–174.1 of the
 28 Transportation Article, as determined by an analysis of the individual’s blood or
 29 breath, it shall be prima facie evidence that the individual was operating a vessel
 30 while under the influence of alcohol.

31 ~~(3) (1) IF A PERSON IS INVOLVED IN AN ACCIDENT WHILE~~
 32 ~~OPERATING OR ATTEMPTING TO OPERATE A VESSEL THAT RESULTS IN THE~~
 33 ~~DEATH OF, OR A LIFE THREATENING INJURY TO, ANOTHER PERSON AND THE~~
 34 ~~PERSON IS DETAINED BY A POLICE OFFICER WHO HAS REASONABLE GROUNDS~~

~~TO BELIEVE THAT THE PERSON HAS BEEN OPERATING A VESSEL OR ATTEMPTING TO OPERATE A VESSEL WHILE UNDER THE INFLUENCE OF ALCOHOL, WHILE IMPAIRED BY ALCOHOL, WHILE SO FAR IMPAIRED BY ANY DRUG, ANY COMBINATION OF DRUGS, OR A COMBINATION OF ONE OR MORE DRUGS AND ALCOHOL THAT THE PERSON COULD NOT OPERATE A VESSEL SAFELY, OR WHILE IMPAIRED BY A CONTROLLED DANGEROUS SUBSTANCE, THE PERSON SHALL BE REQUIRED TO SUBMIT, AS DIRECTED BY THE OFFICER, TO A TEST OF:~~

~~1. THE PERSON'S BREATH TO DETERMINE ALCOHOL CONCENTRATION;~~

~~2. ONE SPECIMEN OF THE PERSON'S BLOOD TO DETERMINE ALCOHOL CONCENTRATION OR TO DETERMINE THE DRUG OR CONTROLLED DANGEROUS SUBSTANCE CONTENT OF THE PERSON'S BLOOD; OR~~

~~3. BOTH THE PERSON'S BREATH UNDER ITEM 1 OF THIS SUBPARAGRAPH AND ONE SPECIMEN OF THE PERSON'S BLOOD UNDER ITEM 2 OF THIS SUBPARAGRAPH.~~

~~(H) ANY MEDICAL PERSONNEL WHO PERFORM ANY TEST REQUIRED BY THIS PARAGRAPH ARE NOT LIABLE FOR ANY CIVIL DAMAGES AS THE RESULT OF ANY ACT OR OMISSION RELATED TO THE TEST, NOT AMOUNTING TO GROSS NEGLIGENCE.~~

(3) ANY PERSON WHO OPERATES OR ATTEMPTS TO OPERATE A VESSEL ON THE WATERS OF THE STATE IS DEEMED TO HAVE CONSENTED, SUBJECT TO §§ 10-302 THROUGH 10-309 OF THE COURTS ARTICLE, TO TAKE A TEST, AS DEFINED IN § 16-205.1 OF THE TRANSPORTATION ARTICLE, IF THE PERSON IS DETAINED BY A POLICE OFFICER WHO HAS REASONABLE GROUNDS TO BELIEVE THAT THE PERSON HAS BEEN OPERATING OR ATTEMPTING TO OPERATE A VESSEL WHILE UNDER THE INFLUENCE OF ALCOHOL, WHILE IMPAIRED BY ALCOHOL, WHILE SO FAR IMPAIRED BY ANY DRUG, ANY COMBINATION OF DRUGS, OR A COMBINATION OF ONE OR MORE DRUGS AND ALCOHOL THAT THE PERSON COULD NOT OPERATE THE VESSEL SAFELY, OR WHILE IMPAIRED BY A CONTROLLED DANGEROUS SUBSTANCE.

(C) (1) EXCEPT AS PROVIDED IN § 8-738.1 OF THIS SUBTITLE, A PERSON MAY NOT BE COMPELLED TO TAKE A TEST, AS DEFINED IN § 16-205.1 OF THE TRANSPORTATION ARTICLE.

(2) THE DETAINING POLICE OFFICER SHALL ADVISE A PERSON WHO IS REQUESTED TO TAKE A TEST THAT, ON RECEIPT OF A SWORN STATEMENT FROM THE OFFICER THAT THE PERSON WAS REQUESTED TO TAKE A

1 TEST AND REFUSED OR WAS TESTED AND THE RESULT INDICATED AN ALCOHOL
 2 CONCENTRATION OF 0.08 OR MORE, THE COURT MAY, ON CONVICTION AND IN
 3 ADDITION TO OTHER PENALTIES, PROHIBIT THE PERSON FROM OPERATING A
 4 VESSEL ON THE WATERS OF THE STATE FOR UP TO 1 YEAR.

5 ~~(D)~~ **(D)** It is not a defense to a charge of violating subsection (a)(3) of this section
 6 that the person charged is or was entitled under the laws of this State to use the drug,
 7 combination of drugs, or combination of [1] ONE or more drugs and alcohol, unless the
 8 person was unaware that the drug or combination would make the person incapable of
 9 safely operating a vessel.

10 ~~(E)~~ **(E)** (1) Notwithstanding any other provision of this title, a person who
 11 violates [paragraph (1) of] subsection (a)**(1)** of this section is guilty of a misdemeanor
 12 and upon conviction:

13 (i) For a first offense, shall be subject to a fine of not more than
 14 \$1,000 or imprisonment for not more than 1 year or both;

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

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

19 (2) Notwithstanding any other provision of this title, a person who
 20 violates [paragraph (2), (3), or (4) of] subsection (a)**(2), (3), OR (4)** of this section is
 21 guilty of a misdemeanor and upon conviction:

22 (i) For a first offense, shall be subject to a fine of not more than
 23 \$500 or imprisonment for not more than 2 months or both; and

24 (ii) For a second or subsequent offense, shall be subject to a fine
 25 of not more than \$1,000 or imprisonment of not more than 1 year or both.

26 **(3) NOTWITHSTANDING ANY OTHER PROVISION OF THIS TITLE,**
 27 **THE COURT MAY PROHIBIT A PERSON CONVICTED OF A VIOLATION OF**
 28 **SUBSECTION (A)(1) OF THIS SECTION FROM OPERATING A VESSEL ON THE**
 29 **WATERS OF THE STATE FOR UP TO 1 YEAR IF THE PERSON:**

30 **(I) REFUSED TO TAKE A TEST, AS DEFINED IN § 16-205.1**
 31 **OF THE TRANSPORTATION ARTICLE, WHEN REQUESTED BY A POLICE OFFICER**
 32 **UNDER SUBSECTION (B)(3) OF THIS SECTION; OR**

33 **(II) WAS TESTED AND THE RESULT INDICATED AN ALCOHOL**
 34 **CONCENTRATION OF 0.08 OR MORE.**

1 ~~(E)~~ **(F)** If a person is charged with a violation of this section, the court may find
2 the person guilty of any lesser included offense under any subsection of this section.

3 **(G) THIS SECTION APPLIES TO THE FOLLOWING:**

4 **(1) A VESSEL REQUIRED TO BE REGISTERED WITH THE**
5 **DEPARTMENT UNDER THIS SUBTITLE;**

6 **(2) A VESSEL REQUIRED TO HAVE A VALID NUMBER AWARDED IN**
7 **ACCORDANCE WITH A FEDERAL LAW OR A FEDERALLY APPROVED NUMBERING**
8 **SYSTEM OF ANOTHER STATE; AND**

9 **(3) A VESSEL FROM A FOREIGN COUNTRY USING THE WATERS OF**
10 **THIS STATE.**

11 **8-738.1.**

12 **(A) IF A PERSON IS INVOLVED IN AN ACCIDENT WHILE OPERATING OR**
13 **ATTEMPTING TO OPERATE A VESSEL THAT RESULTS IN THE DEATH OF, OR**
14 **LIFE-THREATENING INJURY TO, ANOTHER PERSON AND THE PERSON IS**
15 **DETAINED BY A POLICE OFFICER WHO HAS REASONABLE GROUNDS TO BELIEVE**
16 **THAT THE PERSON HAS BEEN OPERATING A VESSEL OR ATTEMPTING TO**
17 **OPERATE A VESSEL WHILE UNDER THE INFLUENCE OF ALCOHOL, WHILE**
18 **IMPAIRED BY ALCOHOL, WHILE SO FAR IMPAIRED BY ANY DRUG, ANY**
19 **COMBINATION OF DRUGS, OR A COMBINATION OF ONE OR MORE DRUGS AND**
20 **ALCOHOL THAT THE PERSON COULD NOT OPERATE A VESSEL SAFELY, OR WHILE**
21 **IMPAIRED BY A CONTROLLED DANGEROUS SUBSTANCE, THE PERSON SHALL BE**
22 **REQUIRED TO SUBMIT, AS DIRECTED BY THE OFFICER, TO A TEST OF:**

23 **(1) THE PERSON'S BREATH TO DETERMINE ALCOHOL**
24 **CONCENTRATION;**

25 **(2) ONE SPECIMEN OF THE PERSON'S BLOOD TO DETERMINE**
26 **ALCOHOL CONCENTRATION OR TO DETERMINE THE DRUG OR CONTROLLED**
27 **DANGEROUS SUBSTANCE CONTENT OF THE PERSON'S BLOOD; OR**

28 **(3) BOTH THE PERSON'S BREATH UNDER ITEM (1) OF THIS**
29 **SUBSECTION AND ONE SPECIMEN OF THE PERSON'S BLOOD UNDER ITEM (2) OF**
30 **THIS SUBSECTION.**

31 **(B) IF A POLICE OFFICER DIRECTS THAT A PERSON BE TESTED, THEN**
32 **THE PROVISIONS OF § 10-304 OF THE COURTS ARTICLE APPLY.**

33 **(C) ANY MEDICAL PERSONNEL WHO PERFORM ANY TEST REQUIRED BY**
34 **THIS SECTION ARE NOT LIABLE FOR ANY CIVIL DAMAGES AS THE RESULT OF**

1 ANY ACT OR OMISSION RELATED TO THE TEST, NOT AMOUNTING TO GROSS
2 NEGLIGENCE.

3 SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take
4 effect October 1, 2010.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.