

HOUSE BILL 172

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HB 1423/98 - JUD

1999 Regular Session
9lr0759

By: **Delegate Hutchins**

Introduced and read first time: January 29, 1999

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Vessels - Operating While Under the Influence of Drugs or Alcohol**

3 FOR the purpose of making the results of a test to determine the drug or controlled
4 dangerous substance content of a person's blood admissible as evidence in a
5 criminal case involving a violation of the prohibition against operating a vessel
6 while under the influence of any controlled dangerous substance or while so far
7 under the influence of any drug, combination of drugs, or combination of drugs
8 and alcohol that the person cannot operate a vessel safely; establishing that a
9 certain alcohol concentration, as determined by an analysis of the person's blood
10 or breath, is prima facie evidence that the person was operating a vessel while
11 intoxicated; making stylistic changes; and generally relating to the operation of
12 vessels while under the influence of drugs, controlled dangerous substances, or
13 alcohol.

14 BY repealing and reenacting, with amendments,
15 Article - Courts and Judicial Proceedings
16 Section 10-308
17 Annotated Code of Maryland
18 (1998 Replacement Volume)

19 BY repealing and reenacting, with amendments,
20 Article - Natural Resources
21 Section 8-738
22 Annotated Code of Maryland
23 (1990 Replacement Volume and 1998 Supplement)

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

1 **Article - Courts and Judicial Proceedings**

2 10-308.

3 (a) The evidence of the analysis does not limit the introduction of other
4 evidence bearing upon whether the defendant was intoxicated or whether the
5 defendant was driving while under the influence of alcohol, while so far under the
6 influence of any drug, any combination of drugs, or a combination of one or more
7 drugs and alcohol that the person cannot drive a vehicle safely, or while under the
8 influence of a controlled dangerous substance.

9 (b) The results of a test or tests to determine the drug or controlled dangerous
10 substance content of a person's blood:

11 (1) Are admissible as evidence in a criminal trial only in a prosecution
12 [under] FOR A VIOLATION OF § 21-902 of the Transportation Article, § 8-738 OF THE
13 NATURAL RESOURCES ARTICLE, or [a violation of] Article 27, § 388, § 388A, or § 388B
14 of the Code and only if other admissible evidence is introduced that creates an
15 inference that the person was driving or attempting to drive while so far under the
16 influence of any drug, any combination of drugs, or a combination of one or more
17 drugs and alcohol that the person could not drive a vehicle safely, or while under the
18 influence of a controlled dangerous substance; and

19 (2) Are not admissible in a prosecution other than a prosecution [under]
20 FOR A VIOLATION OF § 21-902 of the Transportation Article, § 8-738 OF THE NATURAL
21 RESOURCES ARTICLE, or [a violation of] Article 27, § 388, § 388A, or § 388B of the
22 Code.

23 **Article - Natural Resources**

24 8-738.

25 (a) A person may not operate or attempt to operate a vessel while the person:

26 (1) Is intoxicated;

27 (2) Is under the influence of alcohol;

28 (3) Is so far under the influence of any drug, combination of drugs, or
29 combination of one or more drugs and alcohol that the person cannot operate a vessel
30 safely; or

31 (4) Is under the influence of any controlled dangerous substance, as
32 defined in Article 27, § 277 of the Code, unless the person is entitled to use the
33 controlled dangerous substance under the laws of the State.

34 (b) (1) [The evidentiary requirements of] EXCEPT AS PROVIDED UNDER
35 PARAGRAPH (2) OF THIS SUBSECTION, THE EVIDENTIARY PRESUMPTIONS AND
36 PROCEDURES ESTABLISHED UNDER §§ 10-302 through [10-307] 10-308 of the
37 Courts Article are applicable to any violation of this section.

1 (2) IF AT THE TIME OF TESTING AN INDIVIDUAL HAS AN ALCOHOL
2 CONCENTRATION THAT MEETS THE INTOXICATED PER SE DEFINITION IN § 11-127.1
3 OF THE TRANSPORTATION ARTICLE, AS DETERMINED BY AN ANALYSIS OF THE
4 INDIVIDUAL'S BLOOD OR BREATH, IT SHALL BE PRIMA FACIE EVIDENCE THAT THE
5 INDIVIDUAL WAS OPERATING A VESSEL WHILE INTOXICATED.

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

11 (d) (1) Notwithstanding any other provision of this title, a person who
12 violates paragraph (1) of subsection (a) of this section is guilty of a misdemeanor and
13 upon conviction:

14 (i) For a first offense, shall be subject to a fine of not more than
15 \$1,000 or imprisonment for not more than 1 year or both;

16 (ii) For a second offense, shall be subject to a fine of not more than
17 \$2,000 or imprisonment for not more than 2 years or both; and

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

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

23 (i) For a first offense, shall be subject to a fine of not more than
24 \$500 or imprisonment for not more than 2 months or both; and

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

27 (e) If a person is charged with a violation of this section, the court may find
28 the person guilty of any lesser included offense under any subsection of this section.

29 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 October 1, 1999.