

HOUSE BILL 172

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HB 1423/98 - JUD

1999 Regular Session  
9lr0759

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By: **Delegate Hutchins**

Introduced and read first time: January 29, 1999

Assigned to: Judiciary

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 22, 1999

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CHAPTER \_\_\_\_\_

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)

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

3 **Article - Courts and Judicial Proceedings**

4 10-308.

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

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

13 (1) Are admissible as evidence in a criminal trial only in a prosecution  
14 [under] FOR A VIOLATION OF § 21-902 of the Transportation Article, § 8-738 OF THE  
15 NATURAL RESOURCES ARTICLE, or [a violation of] Article 27, § 388, § 388A, or § 388B  
16 of the Code and only if other admissible evidence is introduced that creates an  
17 inference that the person was ~~driving~~:

18 (I) DRIVING or attempting to drive while so far under the influence  
19 of any drug, any combination of drugs, or a combination of one or more drugs and  
20 alcohol that the person could not drive a vehicle safely, or while under the influence of  
21 a controlled dangerous substance; OR

22 (II) OPERATING OR ATTEMPTING TO OPERATE A VESSEL WHILE  
23 THE PERSON WAS SO FAR UNDER THE INFLUENCE OF ANY DRUG, ANY COMBINATION  
24 OF DRUGS, OR A COMBINATION OF ONE OR MORE DRUGS AND ALCOHOL THAT THE  
25 PERSON COULD NOT OPERATE A VESSEL SAFELY, OR WHILE UNDER THE INFLUENCE  
26 OF A CONTROLLED DANGEROUS SUBSTANCE; and

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

31 **Article - Natural Resources**

32 8-738.

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

34 (1) Is intoxicated;

35 (2) Is under the influence of alcohol;

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

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

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

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

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

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

24 (i) For a first offense, shall be subject to a fine of not more than  
25 \$1,000 or imprisonment for not more than 1 year or both;

26 (ii) For a second offense, shall be subject to a fine of not more than  
27 \$2,000 or imprisonment for not more than 2 years or both; and

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

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

33 (i) For a first offense, shall be subject to a fine of not more than  
34 \$500 or imprisonment for not more than 2 months or both; and

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

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

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