

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

A BILL ENTITLED

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 requiring a person to submit to certain tests of the person's breath
5 or blood to determine alcohol concentration or drug or controlled dangerous
6 substance content if the person is involved in an accident while operating or
7 attempting to operate a vessel that results in the death of, or life-threatening
8 injury to, another person and the person is detained by a police officer who has
9 reasonable grounds to believe that the person has been operating the vessel
10 while under the influence of alcohol or impaired by alcohol, drugs, a
11 combination of alcohol and drugs, or a controlled dangerous substance;
12 providing that medical personnel who perform certain tests are not liable for
13 civil damages under certain circumstances; providing for the admissibility of
14 evidence of certain tests or analyses under certain circumstances; making
15 certain conforming and stylistic changes; and generally relating to operating a
16 vessel while under the influence of or impaired by alcohol or drugs.

17 BY repealing and reenacting, with amendments,
18 Article – Courts and Judicial Proceedings
19 Section 10–309(a) and (d)
20 Annotated Code of Maryland
21 (2006 Replacement Volume and 2009 Supplement)

22 BY repealing and reenacting, with amendments,
23 Article – Natural Resources
24 Section 8–738
25 Annotated Code of Maryland
26 (2007 Replacement Volume and 2009 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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 10–309.

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

8 (ii) Evidence of a test or analysis provided for in this subtitle is
9 not admissible in a prosecution for a violation of § 16–113 or § 21–902 of the
10 Transportation Article, § 8–738 of the Natural Resources Article, or Title 2, Subtitle 5,
11 § 2–209, or § 3–211 of the Criminal Law Article if obtained contrary to the provisions
12 of this subtitle.

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

14 (d) Nothing in this section precludes or limits admissibility of evidence of a
15 test or analysis to determine the alcohol concentration of a person’s blood or breath
16 which is obtained as provided in § 16–205.1(c) of the Transportation Article **OR §**
17 **8–738(B)(3) OF THE NATURAL RESOURCES ARTICLE**.

18 **Article – Natural Resources**

19 8–738.

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

21 (1) Is under the influence of alcohol;

22 (2) Is impaired by alcohol;

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

26 (4) Is impaired by any controlled dangerous substance, as defined in §
27 5–101 of the Criminal Law Article, unless the person is entitled to use the controlled
28 dangerous substance under the laws of the State.

29 (b) (1) Except as provided under paragraph (2) of this subsection, the
30 evidentiary presumptions and procedures established under §§ 10–302 through
31 10–308 of the Courts Article are applicable to any violation of this section.

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

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

18 **1. THE PERSON’S BREATH TO DETERMINE ALCOHOL**
19 **CONCENTRATION;**

20 **2. ONE SPECIMEN OF THE PERSON’S BLOOD TO**
21 **DETERMINE ALCOHOL CONCENTRATION OR TO DETERMINE THE DRUG OR**
22 **CONTROLLED DANGEROUS SUBSTANCE CONTENT OF THE PERSON’S BLOOD; OR**

23 **3. BOTH THE PERSON’S BREATH UNDER ITEM 1 OF**
24 **THIS SUBPARAGRAPH AND ONE SPECIMEN OF THE PERSON’S BLOOD UNDER**
25 **ITEM 2 OF THIS SUBPARAGRAPH.**

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

30 (c) It is not a defense to a charge of violating subsection (a)(3) of this section
31 that the person charged is or was entitled under the laws of this State to use the drug,
32 combination of drugs, or combination of [1] ONE or more drugs and alcohol, unless the
33 person was unaware that the drug or combination would make the person incapable of
34 safely operating a vessel.

35 (d) (1) Notwithstanding any other provision of this title, a person who
36 violates [paragraph (1) of] subsection (a)(1) of this section is guilty of a misdemeanor
37 and upon conviction:

1 (i) For a first offense, shall be subject to a fine of not more than
2 \$1,000 or imprisonment for not more than 1 year or both;

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

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

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

10 (i) For a first offense, shall be subject to a fine of not more than
11 \$500 or imprisonment for not more than 2 months or both; and

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

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

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