

Chapter 307

(Senate Bill 475)

AN ACT concerning

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

FOR the purpose of *specifying that certain alcohol- or drug-related offenses apply to certain vessels; providing that a person who operates or attempts to operate a vessel on the waters of the State is deemed to have consented, subject to certain provisions of law, to take a certain test of the person's breath or blood to determine alcohol concentration or drug or controlled dangerous substance content if the person is detained under certain circumstances; providing establishing that a person may not be compelled to take a certain test, subject to a certain exception of the person's breath or blood, except under certain circumstances; requiring a detaining police officer to advise a person detained under certain circumstances that, if the person refuses to take a certain test, or takes the a test and the results indicate a certain alcohol concentration, on conviction of a certain violation with a certain result the court may prohibit the person from operating or attempting to operate a vessel on the waters of the State for a certain period of time; authorizing the court to prohibit a certain person from operating a vessel on the waters of the State for a certain period of time if the person refuses a certain test or takes a test with a certain result; requiring a person to submit to certain tests of the person's breath or blood to determine alcohol concentration or drug or controlled dangerous substance content if the person is involved in an accident while operating or attempting to operate a vessel that results in the death of, or life-threatening injury to, another person and the person is detained by a police officer who has reasonable grounds to believe that the person has been operating the vessel while under the influence of alcohol or impaired by alcohol, drugs, a combination of alcohol and drugs, or a controlled dangerous substance; establishing that certain provisions relating to the qualifications of a person administering a certain blood or breath test and the equipment used to administer the test apply under certain circumstances; providing that medical personnel who perform certain tests are not liable for civil damages under certain circumstances; providing for the admissibility of evidence of certain tests or analyses under certain circumstances; making certain conforming and stylistic changes; and generally relating to operating a vessel while under the influence of or impaired by alcohol or drugs.*

BY renumbering

Article – Natural Resources

Section 8-738.1

to be Section 8-738.2
Annotated Code of Maryland
(2007 Replacement Volume and 2009 Supplement)

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

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

BY adding to
Article – Natural Resources
Section 8-738.1
Annotated Code of Maryland
(2007 Replacement Volume and 2009 Supplement)

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

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

Article – Courts and Judicial Proceedings

10-309.

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

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

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

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

Article – Natural Resources

8-738.

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

- (1) Is under the influence of alcohol;
- (2) Is impaired by alcohol;
- (3) Is so far impaired by any drug, combination of drugs, or combination of one or more drugs and alcohol that the person cannot operate a vessel safely; or
- (4) Is impaired by any controlled dangerous substance, as defined in § 5-101 of the Criminal Law Article, unless the person is entitled to use the controlled dangerous substance under the laws of the State.

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

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

~~(3) (4) IF A PERSON IS INVOLVED IN AN ACCIDENT WHILE OPERATING OR ATTEMPTING TO OPERATE A VESSEL THAT RESULTS IN THE DEATH OF, OR A LIFE THREATENING INJURY TO, ANOTHER PERSON AND THE 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~~ ANY PERSON WHO OPERATES OR ATTEMPTS TO OPERATE A VESSEL UPON ON THE WATERS OF THE STATE IS DEEMED TO HAVE CONSENTED, SUBJECT TO THE PROVISIONS OF §§ 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 OR ATTEMPT TO OPERATE A 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) UPON CONVICTION AND IN ADDITION TO ANY OTHER PENALTIES, A COURT MAY PROHIBIT A PERSON FROM OPERATING A VESSEL ON THE WATERS OF THE STATE FOR A PERIOD OF 1 YEAR IF THE PERSON WAS DETAINED BY A POLICE OFFICER WHO HAD REASONABLE GROUNDS TO BELIEVE THAT THE PERSON WAS OPERATING 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 OR ATTEMPT TO OPERATE A VESSEL SAFELY, OR WHILE IMPAIRED BY A CONTROLLED~~

~~DANGEROUS SUBSTANCE AND THE PERSON REFUSED TO TAKE A TEST, OR WAS TESTED AND THE RESULT INDICATED AN ALCOHOL CONCENTRATION OF 0.08 OR MORE.~~

~~(3) A DETAINING OFFICER WHO HAS REASONABLE GROUNDS TO BELIEVE THAT A PERSON WAS OPERATING 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 OR ATTEMPT TO OPERATE A VESSEL SAFELY, OR WHILE IMPAIRED BY A CONTROLLED DANGEROUS SUBSTANCE SHALL ADVISE THE PERSON OF THE SANCTIONS THAT MAY BE IMPOSED BY A COURT IF THE PERSON REFUSES TO TAKE A TEST OR TAKES A TEST AND THE RESULT INDICATES AN ALCOHOL CONCENTRATION OF 0.08 OR MORE.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

(G) THIS SECTION APPLIES TO THE FOLLOWING:

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

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

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

8-738.1.

(A) IF A PERSON IS INVOLVED IN AN ACCIDENT WHILE OPERATING OR ATTEMPTING TO OPERATE A VESSEL THAT RESULTS IN THE DEATH OF, OR A LIFE-THREATENING INJURY TO, ANOTHER PERSON AND THE PERSON IS DETAINED BY A POLICE OFFICER WHO HAS REASONABLE GROUNDS TO BELIEVE THAT THE PERSON ~~WAS~~ HAS BEEN OPERATING ~~THE~~ A VESSEL OR ATTEMPTING

TO OPERATE ~~THE~~ 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~~ A VESSEL SAFELY, OR WHILE IMPAIRED BY A CONTROLLED DANGEROUS SUBSTANCE, THE PERSON SHALL BE REQUIRED TO SUBMIT, AS DIRECTED BY THE POLICE 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 SUBSECTION AND ONE SPECIMEN OF THE PERSON'S BLOOD UNDER ITEM (2) OF THIS SUBSECTION.

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

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

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

Approved by the Governor, May 4, 2010.