

# SENATE BILL 74

R3  
SB 914/22 – JPR

(PRE-FILED)

3lr0409

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By: **Senator Bailey**

Requested: September 16, 2022

Introduced and read first time: January 11, 2023

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

1 AN ACT concerning

2 **Grossly Negligent or Drunk or Drugged Operation of Vehicle or Vessel – Prior**  
3 **Convictions**

4 FOR the purpose of establishing that certain previous convictions for drunk or drugged  
5 operation of a vehicle or vessel and grossly negligent manslaughter by vehicle or  
6 vessel under certain provisions of law constitute prior convictions for the purpose of  
7 determining certain enhanced subsequent offender penalties; and generally relating  
8 to prior convictions for the grossly negligent or drunk or drugged operation of a  
9 vehicle or vessel.

10 BY repealing and reenacting, without amendments,  
11 Article – Natural Resources  
12 Section 8–738(a) and (g)  
13 Annotated Code of Maryland  
14 (2012 Replacement Volume and 2022 Supplement)

15 BY repealing and reenacting, with amendments,  
16 Article – Natural Resources  
17 Section 8–738(e)(1) and (2)  
18 Annotated Code of Maryland  
19 (2012 Replacement Volume and 2022 Supplement)

20 BY repealing and reenacting, with amendments,  
21 Article – Transportation  
22 Section 21–902(a)(1), (b)(1), (c)(1), (d)(1), (e), (h), and (i)  
23 Annotated Code of Maryland  
24 (2020 Replacement Volume and 2022 Supplement)

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

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



**Article – Natural Resources**

1  
2 8–738.

3 (a) Subject to subsection (g) of this section, a person may not operate or attempt  
4 to operate a vessel while the person:

5 (1) Is under the influence of alcohol;

6 (2) Is impaired by alcohol;

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

9 (4) Is impaired by any controlled dangerous substance, as defined in §  
10 5–101 of the Criminal Law Article, unless the person is entitled to use the controlled  
11 dangerous substance under the laws of the State.

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

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

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

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

20 **(II) FOR THE PURPOSE OF DETERMINING SUBSEQUENT**  
21 **OFFENDER PENALTIES FOR A VIOLATION OF THIS SECTION, A PRIOR CONVICTION**  
22 **UNDER SUBSECTION (A) OF THIS SECTION OR § 21–902 OF THE TRANSPORTATION**  
23 **ARTICLE SHALL BE CONSIDERED A PRIOR CONVICTION.**

24 (2) **(I)** Notwithstanding any other provision of this title, a person who  
25 violates subsection (a)(2), (3), or (4) of this section is guilty of a misdemeanor and upon  
26 conviction:

27 [(i)] **1.** For a first offense, shall be subject to a fine of not more  
28 than \$500 or imprisonment for not more than 2 months or both; and

29 [(ii)] **2.** For a second or subsequent offense, shall be subject to a  
30 fine of not more than \$1,000 or imprisonment of not more than 1 year or both.

1                   **(II) FOR THE PURPOSE OF DETERMINING SUBSEQUENT**  
 2 **OFFENDER PENALTIES FOR A VIOLATION OF THIS SECTION, A PRIOR CONVICTION**  
 3 **UNDER SUBSECTION (A) OF THIS SECTION OR § 21–902 OF THE TRANSPORTATION**  
 4 **ARTICLE SHALL BE CONSIDERED A PRIOR CONVICTION.**

5           (g)    This section applies to the following:

6                   (1)    A vessel required to be registered with the Department under this  
 7 subtitle;

8                   (2)    A vessel required to have a valid number awarded in accordance with a  
 9 federal law or a federally approved numbering system of another state; and

10                  (3)    A vessel from a foreign country using the waters of this State.

11   **Article – Transportation**

12 21–902.

13                   (a)    (1)    (i)    A person may not drive or attempt to drive any vehicle while  
 14 under the influence of alcohol.

15                                   (ii)    A person may not drive or attempt to drive any vehicle while the  
 16 person is under the influence of alcohol per se.

17                                   (iii)   A person convicted of a violation of this paragraph is subject to:

18   1.    For a first offense, imprisonment not exceeding 1 year or  
 19 a fine not exceeding \$1,000 or both; and

20   2.    For a second offense, imprisonment not exceeding 2 years  
 21 or a fine not exceeding \$2,000 or both.

22                                   (iv)    For the purpose of determining subsequent offender penalties for  
 23 a violation of this paragraph, a prior conviction under subsection (b), (c), or (d) of this section  
 24 **OR § 8–738 OF THE NATURAL RESOURCES ARTICLE**, within 5 years before the  
 25 conviction for a violation of this paragraph, shall be considered a prior conviction.

26                   (b)    (1)    (i)    A person may not drive or attempt to drive any vehicle while  
 27 impaired by alcohol.

28                                   (ii)    A person convicted of a violation of this paragraph is subject to:

29   1.    For a first offense, imprisonment not exceeding 2 months  
 30 or a fine not exceeding \$500 or both; and

31   2.    For a second offense, imprisonment not exceeding 1 year

1 or a fine not exceeding \$500 or both.

2 (iii) For the purpose of determining subsequent offender penalties for  
3 a violation of this paragraph, a prior conviction under this subsection or subsection (a), (c),  
4 or (d) of this section **OR § 8-738 OF THE NATURAL RESOURCES ARTICLE** shall be  
5 considered a prior conviction.

6 (c) (1) (i) A person may not drive or attempt to drive any vehicle while so  
7 far impaired by any drug, any combination of drugs, or a combination of one or more drugs  
8 and alcohol that the person cannot drive a vehicle safely.

9 (ii) A person convicted of a violation of this paragraph is subject to:

10 1. For a first offense, imprisonment not exceeding 2 months  
11 or a fine not exceeding \$500 or both; and

12 2. For a second offense, imprisonment not exceeding 1 year  
13 or a fine not exceeding \$500 or both.

14 (iii) For the purpose of determining subsequent offender penalties for  
15 a violation of this paragraph, a prior conviction under this subsection or subsection (a), (b),  
16 or (d) of this section **OR § 8-738 OF THE NATURAL RESOURCES ARTICLE** shall be  
17 considered a prior conviction.

18 (iv) It is not a defense to any charge of violating this subsection that  
19 the person charged is or was entitled under the laws of this State to use the drug,  
20 combination of drugs, or combination of one or more drugs and alcohol, unless the person  
21 was unaware that the drug or combination would make the person incapable of safely  
22 driving a vehicle.

23 (d) (1) (i) A person may not drive or attempt to drive any vehicle while the  
24 person is impaired by any controlled dangerous substance, as that term is defined in §  
25 5-101 of the Criminal Law Article, if the person is not entitled to use the controlled  
26 dangerous substance under the laws of this State.

27 (ii) A person convicted of a violation of this paragraph is subject to:

28 1. For a first offense, imprisonment not exceeding 1 year or  
29 a fine not exceeding \$1,000 or both; and

30 2. For a second offense, imprisonment not exceeding 2 years  
31 or a fine not exceeding \$2,000 or both.

32 (iii) For the purpose of determining subsequent offender penalties for  
33 a violation of this paragraph, a prior conviction under subsection (a), (b), or (c) of this section  
34 **OR § 8-738 OF THE NATURAL RESOURCES ARTICLE**, within 5 years before the  
35 conviction for a violation of this paragraph, shall be considered a prior conviction.

1 (e) For purposes of the application of subsequent offender penalties under this  
2 section, a conviction for a crime committed in another state or federal jurisdiction that, if  
3 committed in this State, would constitute a violation of subsection (a)(1) or (2), (b)(1) or (2),  
4 (c)(1) or (2), or (d)(1) or (2) of this section **OR § 8-738 OF THE NATURAL RESOURCES**  
5 **ARTICLE** shall be considered a violation of subsection (a)(1) or (2), (b)(1) or (2), (c)(1) or (2),  
6 or (d)(1) or (2) of this section **OR § 8-738 OF THE NATURAL RESOURCES ARTICLE**.

7 (h) (1) A person may not violate subsection (a), (b), (c), or (d) of this section if  
8 the person previously has been convicted of two violations of any provision of subsection  
9 (a), (b), (c), or (d) of this section **OR § 8-738 OF THE NATURAL RESOURCES ARTICLE**.

10 (2) For purposes of this subsection, a conviction for a crime under the laws  
11 of the United States that would be a crime included in paragraph (1) of this subsection if  
12 committed in this State shall be considered a prior conviction under this subsection.

13 (3) A person who violates this subsection is guilty of a misdemeanor and  
14 on conviction is subject to imprisonment not exceeding 5 years or a fine not exceeding  
15 \$5,000 or both.

16 (i) (1) A person may not violate subsection (a), (b), (c), or (d) of this section if  
17 the person previously has been convicted of:

18 (i) Three or more violations of any provision of subsection (a), (b),  
19 (c), or (d) of this section **OR § 8-738 OF THE NATURAL RESOURCES ARTICLE**; or

20 (ii) A violation of **§ 2-209**, § 2-503, § 2-504, § 2-505, § 2-506, or §  
21 3-211 of the Criminal Law Article.

22 (2) For purposes of this subsection, a conviction for a crime under the laws  
23 of the United States that would be a crime included in paragraph (1) of this subsection if  
24 committed in this State shall be considered a prior conviction under this subsection.

25 (3) A person who violates this subsection is guilty of a misdemeanor and  
26 on conviction is subject to imprisonment not exceeding 10 years or a fine not exceeding  
27 \$10,000 or both.

28 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
29 October 1, 2023.