

HOUSE BILL 770

M1, R3

4r1679
CF SB 740

By: **Delegates Schmidt and Simmons**

Introduced and read first time: January 31, 2024

Assigned to: Environment and Transportation

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 24, 2024

CHAPTER _____

1 AN ACT concerning

2 **Operating a Vessel While Under the Influence of Alcohol – Enforcement**
3 **(Nick’s Law)**

4 FOR the purpose of altering the time period within which a court may prohibit a person
5 convicted under certain circumstances of operating a vessel while under the
6 influence of alcohol from operating a vessel on the waters of the State; requiring the
7 Department of Natural Resources, in coordination with the Natural Resources Police
8 Force, to establish and maintain a database of persons prohibited from operating a
9 vessel on the waters of the State due to a conviction under certain circumstances for
10 operating a vessel while under the influence of alcohol; prohibiting a person from
11 operating a vessel on the waters of the State under certain circumstances; and
12 generally relating to enforcement of the offense of operating a vessel while under the
13 influence of alcohol.

14 BY repealing and reenacting, with amendments,
15 Article – Natural Resources
16 Section 8–738
17 Annotated Code of Maryland
18 (2023 Replacement Volume and 2023 Supplement)

19 BY adding to
20 Article – Natural Resources
21 Section 8–738.3
22 Annotated Code of Maryland
23 (2023 Replacement Volume and 2023 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



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

3 **Article – Natural Resources**

4 8–738.

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

7 (1) Is under the influence of alcohol;

8 (2) Is impaired by alcohol;

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

11 (4) Is impaired by any controlled dangerous substance, as defined in §
12 5–101 of the Criminal Law Article, unless the person is entitled to use the controlled
13 dangerous substance under the laws of the State.

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

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

22 (3) Any person who operates or attempts to operate a vessel on the waters
23 of the State is deemed to have consented, subject to §§ 10–302 through 10–309 of the Courts
24 Article, to take a test, as defined in § 16–205.1 of the Transportation Article, if the person
25 is detained by a police officer who has reasonable grounds to believe that the person has
26 been operating or attempting to operate a vessel while under the influence of alcohol, while
27 impaired by alcohol, while so far impaired by any drug, any combination of drugs, or a
28 combination of one or more drugs and alcohol that the person could not operate the vessel
29 safely, or while impaired by a controlled dangerous substance.

30 (c) (1) Except as provided in § 8–738.1 of this subtitle, a person may not be
31 compelled to take a test, as defined in § 16–205.1 of the Transportation Article.

32 (2) The detaining police officer shall advise a person who is requested to
33 take a test that, on receipt of a sworn statement from the officer that the person was
34 requested to take a test and refused or was tested and the result indicated an alcohol

1 concentration of 0.08 or more, the court may, on conviction and in addition to other
2 penalties, prohibit the person from operating a vessel on the waters of the State for up to 1
3 year.

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

9 (e) (1) (i) Notwithstanding any other provision of this title, a person who
10 violates subsection (a)(1) of this section is guilty of a misdemeanor and upon conviction:

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

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

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

17 (ii) For the purpose of determining subsequent offender penalties for
18 a violation of this section, a prior conviction under subsection (a) of this section or § 21–902
19 of the Transportation Article shall be considered a prior conviction.

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

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

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

27 (ii) For the purpose of determining subsequent offender penalties for
28 a violation of this section, a prior conviction under subsection (a) of this section or § 21–902
29 of the Transportation Article shall be considered a prior conviction.

30 (3) (I) Notwithstanding any other provision of this title **AND SUBJECT**
31 **TO SUBPARAGRAPH (II) OF THIS PARAGRAPH**, the court may prohibit a person convicted
32 of a violation of subsection (a)(1) of this section from operating a vessel on the waters of the
33 State [for up to 1 year] if the person:

1 [(i)] 1. Refused to take a test, as defined in § 16–205.1 of the
2 Transportation Article, when requested by a police officer under subsection (b)(3) of this
3 section; or

4 [(ii)] 2. Was tested and the result indicated an alcohol
5 concentration of 0.08 or more.

6 (II) **THE PROHIBITION AGAINST OPERATING A VESSEL ON THE**
7 **WATERS OF THE STATE UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH MAY NOT**
8 **EXCEED:**

9 1. **EXCEPT AS PROVIDED IN ITEM 2 OF THIS**
10 **SUBPARAGRAPH, 2 YEARS; OR**

11 2. **IF THE VIOLATION RESULTS IN THE DEATH OF**
12 **ANOTHER PERSON, 5 YEARS.**

13 (III) 1. **THE DEPARTMENT, IN COORDINATION WITH THE**
14 **NATURAL RESOURCES POLICE FORCE, SHALL ESTABLISH AND MAINTAIN A**
15 **DATABASE OF PERSONS PROHIBITED UNDER THIS PARAGRAPH FROM OPERATING A**
16 **VESSEL ON THE WATERS OF THE STATE.**

17 2. **THE DEPARTMENT SHALL ESTABLISH THE DATABASE**
18 **ON OR BEFORE OCTOBER 1, 2025.**

19 3. **THE DATABASE SHALL BE ACCESSIBLE TO A NATURAL**
20 **RESOURCES POLICE OFFICER IN ANY PATROL VEHICLE OR VESSEL.**

21 4. **A. A COURT SHALL ELECTRONICALLY NOTIFY THE**
22 **DEPARTMENT IF A PERSON IS PROHIBITED UNDER THIS PARAGRAPH FROM**
23 **OPERATING A VESSEL ON THE WATERS OF THE STATE.**

24 **B. NOTICE PROVIDED BY A COURT TO THE DEPARTMENT**
25 **SHALL INCLUDE THE PERSON’S NAME, ADDRESS, AND DATE OF BIRTH, AND THE TIME**
26 **PERIOD WITHIN WHICH THE PROHIBITION APPLIES.**

27 5. **ON RECEIPT OF NOTICE FROM A COURT, THE**
28 **DEPARTMENT SHALL:**

29 **A. ENTER THE INFORMATION PROVIDED INTO THE**
30 **DATABASE; AND**

31 **B. MAINTAIN THE INFORMATION PROVIDED IN THE**
32 **DATABASE UNTIL THE PROHIBITION EXPIRES.**

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

3 (g) This section applies to the following:

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

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

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

9 **8-738.3.**

10 **(A) THIS SECTION APPLIES TO THE FOLLOWING:**

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

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

16 **(3) A VESSEL FROM A FOREIGN COUNTRY USING THE WATERS OF THE**
17 **STATE.**

18 **(B) A PERSON MAY NOT OPERATE OR ATTEMPT TO OPERATE A VESSEL ON**
19 **THE WATERS OF THE STATE WHILE THE PERSON IS PROHIBITED FROM OPERATING**
20 **A VESSEL ON THE WATERS OF THE STATE UNDER § 8-738(E)(3)(I) OF THIS SUBTITLE.**

21 **(C) NOTWITHSTANDING ANY OTHER PROVISION OF THIS TITLE, A PERSON**
22 **WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION:**

23 **(1) FOR A FIRST OFFENSE, SHALL BE SUBJECT TO A FINE OF NOT**
24 **MORE THAN \$1,000 OR IMPRISONMENT FOR NOT MORE THAN 1 YEAR OR BOTH;**

25 **(2) FOR A SECOND OFFENSE, SHALL BE SUBJECT TO A FINE OF NOT**
26 **MORE THAN \$2,000 OR IMPRISONMENT FOR NOT MORE THAN 2 YEARS OR BOTH; AND**

27 **(3) FOR A THIRD OR SUBSEQUENT OFFENSE, SHALL BE SUBJECT TO A**
28 **FINE OF NOT MORE THAN \$3,000 OR IMPRISONMENT FOR NOT MORE THAN 3 YEARS**
29 **OR BOTH.**

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
2 1, 2024.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.