

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

Article - Natural Resources

8-738.

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

(1) Is intoxicated;

(2) Is under the influence of alcohol;

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

(b) (1) [The evidentiary requirements of] EXCEPT AS PROVIDED UNDER PARAGRAPH (2) OF THIS SUBSECTION, THE EVIDENTIARY PRESUMPTIONS AND PROCEDURES ESTABLISHED UNDER §§ 10-302 through [10-307] 10-308 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 INTOXICATED PER SE DEFINITION IN § 11-127.1 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 INTOXICATED.

(c) 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 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) (1) Notwithstanding any other provision of this title, a person who violates paragraph (1) of subsection (a) 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.