

CHAPTER 3.**DRIVING UNDER THE INFLUENCE****ARRANGEMENT OF SECTIONS****Section**

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An Act detailing the prohibition on driving under the influence.

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§301. Short Title.

This Chapter shall be known as the Driving Under the Influence Act. [For ease of reference this legislation was excerpted, along with that Chapter's definitions, from Chapter 1 and assigned its own Chapter. A short title was supplied by the Reviser. Note, the tense and style of language differs significantly from the remainder of the Code. Section numbering style modified]

§302. Interpretation.

In this Chapter, unless the context otherwise requires:

- (a) "chauffeur's license" means an operator's license issued to a person permitting him to operate:
 - (i) any motor vehicle of a capacity of ten (10) or more passengers while in use in conveying school children to and from school; or
 - (ii) any motor vehicle in use as a passenger-carrying conveyance for hire.
- (b) "Chief of Police" means the Chief of Police of the Republic:
- (c) "crosswalk" means that portion of a roadway included within the prolongation or connection of curb lines or lateral boundary lines of highways and property lines at intersections, or any other portion of a roadway clearly indicated for pedestrian crossing by lines or other marking on the surface:
- (d) "drug" means any substance that affects a person's mental or physical state, including gasoline, narcotics, marijuana, prescription medication, nonprescription medication, or any illegal substance:
- (e) "foreign vehicle" means any motor vehicle or trailer which shall be brought into the Republic and which has not been registered therein:
- (f) "intersection" means the area embraced within the prolongation or connection of the

lateral curb lines or, if none, then the lateral boundary lines of two or more highways which join one another at an angle, whether or not one highway crosses the other;

(g) “local government” means Local Government Council established under the Local Government Act 1980;

(h) “metal tires” means all tires the surfaces of which are in contact with the highway and are wholly or partly of metal or other hard, non-resilient material;

(i) “motor vehicle” means any vehicle, as defined in this Section, which is self-propelled;

(j) “official traffic sign” means all signs and markings not inconsistent with this Chapter and placed or erected by authority of a public body or official having jurisdiction for the purpose of guiding, directing, warning or regulating traffic;

(k) “operator” means any person who is in actual physical control of a motor vehicle upon a highway;

(l) “owner” means a person who holds the legal title to a vehicle. If a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or if a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed to be the owner for the purpose of this Chapter:

(m) “person” means any natural person, firm, co-partnership, association or corporation;

(n) “policeman” means any member of the Police Force of the Republic and includes a member of the Police Force of any Local Government Council:

(o) “right of way” means the privilege of the immediate use of the highway;

(p) “street” or highway” means any way or place of whatever nature open to the use of the public, as a matter of right, for purposes of vehicular travel;

(q) “trailer” means any vehicle without motor power designed to carry property or passengers;

(r) “vehicle” means any device in, upon or by which any person or property is or may be transported or drawn upon a public highway, except devices moved by human power or used exclusively upon stationary rails or tracks;

(s) “you” includes a natural person, firm, partnership, corporation, association, or any legal entity. [P.L. 1986-5, §2, amended by P L. 1993-46, §1.]

§303. Defined.

(1) It is a crime if you drive a vehicle on a street and you -

(a) have 0.1 percent of alcohol by weight in your blood system as measured by a blood or breath test; or

(b) are under the influence of alcohol and/or drugs which renders you unable to drive with the caution characteristic of a sober person.

(2) If you fail a breath test and have 0.1 percent or more of alcohol in your blood within two hours after being arrested for driving under the influence you will be presumed to be under the influence at the time you were driving. [P.L. 1993-46, §4, 41(1)].

§304. Implied Consent.

(1) If you drive a vehicle on a street you must take a breath test if asked to do so by a policeman. If a policeman believes that a breath test is not available, is not practical, is not possible, if the testing machine is not working properly, or may harm someone you must take a blood test. A policeman may ask you to take a test only if he has reasonable grounds to believe you were driving under the influence and only after you are lawfully arrested and told that you are required to take a test and what the penalty is for not taking it.

(2) If you are unconscious or unable to refuse a test it will be presumed that you have agreed to a test as under subsection (1). [P.L. 1993-46, §4, 41(2)].

§305. Refusing a Test

(1) Before you can be punished for refusing to take a test, a policeman must tell you that if you refuse your driver's license will immediately be taken away by the policeman and that you will not get it back for six months. If you still refuse to take a test, you will not be forced to do so, but the policeman will take your driver's license on the spot and you will not get it back for six months. The policeman will give you a receipt for your driver's license which will tell you that you may request a hearing to get it back.

(2) You may request a hearing concerning the return of your driver's license. You must request this hearing in writing and file it with the District Court within 30 days of your refusal of a test. The District Court must hold a Driver's License Hearing within 30 days of your request, or it may combine the hearing with your arraignment on your driving under the influence charge if that is sooner. The District Court will decide if your driver's license should be kept by the police department for the full six months or returned after the hearing. This hearing is separate from any hearing or trial on your driving under the influence charge. A record of the hearing will be made.

(3) The District Court will determine whether or not your refusal was lawful. It will decide:

(a) if the policeman had reasonable grounds to believe you were driving under the influence;

(b) if you were arrested;

(c) if you refused to take a test after the policemen asked you; and

(d) if you were told that if you refused to take a test your driver's license would be taken away for six months.

(4) The District Court will tell you in writing of its decision; you may appeal that decision to the High Court. If the District Court does not hold a hearing within 30 days after your request you will immediately get your license back. However, even if the District Court orders the police to return your driver's license after the hearing, the Court may take it away again if it finds you guilty of driving under the influence at your trial. [P.L. 1993-46, §4, 41(3a)].

§306. Failing a Test

(1) If you fail a test you will automatically be given a hearing concerning the return of your driver's license. This hearing will be combined with your arraignment on the driving under the influence charge, or if no charges are filed by the Attorney-General's Office within 30 days of your arrest, then at a separate hearing held within 30 days of your written request, as provided for in Subsection (2). The District Court will determine if your driver's license should be kept for the full six months or returned after your hearing. A record of the hearing will be made.

(2) The District Court will decide:

(a) if the policeman had reasonable grounds to believe you were driving under the influence: and

(b) if you failed the test.

(3) The District Court will tell you in writing of its decision: you may appeal that decision to the High Court. However, even if the District Court orders the police to return your driver's license after your hearing, the Court may take it away again if it finds you guilty of driving under the influence at your trial. [P.L. 1993-46, §4, 41(3b)]

§307. Test Results.

(1) The test results of the amount of alcohol or drugs in your blood may be used as evidence in a trial or a hearing.

(2) If you take a test you must be given the complete results of the test if you or your attorney asks for them.

(3) If you refuse to take a test the fact that you refused may be used as evidence in a trial or hearing. [P.L. 1993-46, §4, 41(4)]

§308. Punishment.

(1) The first time you are convicted of driving under the influence you shall be liable to:

(a) be put in jail for at least 3 days but not over 1 year;

(b) pay a fine of at least \$100 but not over \$1,000; and

(c) have your driver's license taken away by the Court for at least 30 days but not over 6 months.

(2) The second or more times you are convicted of driving under the influence within 5 years you shall be liable to:

(a) be put in jail for at least 20 days but not over 1 year;

(b) pay a fine of at least \$200 but not over \$1,000;

(c) have your driver's license taken away by the Court for at least 60 days but not over 6 months.

(3) The District Court must give you at least the minimum punishment listed above. The Court may however give you community service duty instead of the fine.

(4) If you are convicted of driving under the influence and you seriously injure anyone other than yourself you shall be liable to:

(a) be put in jail for at least 1 year but not over 3 years;

(b) pay a fine of at least \$200 but not over \$2,000; and

(c) have your driver's license taken away by the Court for at least 90 days but not over 2 years.

(5) The District Court must give you at least the minimum punishment listed in subsection

(4). The Court may however give you community service duty instead of a fine. [P.L. 1993-46, §4, 41(5)].

§309. Regulations; Evidence.

(1) The Police Department shall make regulations to ensure the accuracy of breath test results.

(2) Failure to follow the regulations affects the weight not the admissibility of test results

as evidence. If the regulations are followed test results are presumed accurate.

(3) The Rules of Evidence do not apply to hearings concerning the return of a driver's license.

(4) Published materials concerning the validity of testing equipment and interpretation of test results are admissible as evidence.

(5) Published materials concerning the relationship between levels of alcohol in the blood at the time of driving and test results are admissible as evidence.

(6) Published materials concerning the relationship between levels of alcohol in the blood and being under the influence are admissible as evidence.

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