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SENATE BILL NO. 1149

Offered January 12, 2005

Prefiled January 12, 2005

A BILL to amend and reenact § 18.2-285 of the Code of Virginia, relating to hunting while intoxicated.

Patron—Stolle

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 18.2-285 of the Code of Virginia is amended and reenacted as follows:**

§ 18.2-285. Hunting with firearms while under influence of intoxicant or narcotic drug; analysis of breath; consent to test; penalty.

A. It shall be unlawful for any person to hunt wild birds and wild animals with ~~firearms~~ a firearm, bow and arrow, or crossbow in the Commonwealth of Virginia while such person (i) has a blood alcohol concentration of 0.08 percent or more by weight by volume or 0.08 grams or more per 210 liters of breath as indicated by a chemical test administered as provided in this section; (ii) is under the influence of alcohol, ~~or while~~ (iii) under the influence of any narcotic drug or any other self-administered intoxicant or drug of whatsoever nature, or any combination of such drugs, to a degree which impairs his ability to hunt with a firearm, bow and arrow, or crossbow safely; or (iv) is under the combined influence of alcohol and any drug or drugs to a degree which impairs his ability to hunt with a firearm, bow and arrow, or crossbow safely. Any person violating the provisions of this section shall be guilty of a Class 2 misdemeanor. Game wardens, sheriffs and all other law-enforcement officers shall enforce the provisions of this section.

B. Any person who is suspected of a violation of subsection A shall be entitled, if such equipment is available, to have a preliminary breath analysis for the purpose of obtaining an analysis of the probable alcohol content of his blood. The procedures and requirements of § 18.2-267 shall apply, *mutatis mutandis*.

C. A. Any person who hunts with a firearm, bow and arrow, or crossbow shall be deemed thereby, as a condition of hunting, to have consented to have samples of his blood, breath, or both blood and breath taken for a chemical test to determine the alcohol, drug, or both alcohol and drug content of his blood, if such person is arrested for hunting while intoxicated under this section, or of a similar ordinance of any county, city or town, within two hours of the alleged offense. Any person so arrested for a violation of clause (i) or (ii), or both, of subsection A, or of a similar ordinance, shall submit to a breath test. If the breath test is not available, or the person is physically unable to submit to the breath test, a blood test shall be given. The accused shall, prior to administration of the test, be advised by the person administering the test that he has the right to observe the process of analysis and to see the blood-alcohol reading on the equipment used to perform the breath test. If such equipment automatically produces a written printout of the breath test result, this written printout, or a copy thereof, shall be given to the accused in each case.

D. Any person, after having been arrested for a violation of clause (iii) or (iv) of subsection A, or of a similar ordinance, may be required to submit to a blood test to determine the drug or both drug and alcohol content of his blood. When a person, after having been arrested for a violation of clause (i) or (ii) of subsection A, or both, submits to a breath test, in accordance with subsection A of this section, or refuses to take or is incapable of taking such a breath test, he may be required to submit to tests to determine the drug or both drug and alcohol content of his blood if the law-enforcement officer has reasonable cause to believe the person was hunting with a firearm, bow and arrow, or crossbow under the influence of any drug or combination of drugs, or the combined influence of alcohol and drugs.

E. If a person, after being arrested for a violation of subsection A, or of a similar ordinance of any county, city or town and after having been advised by the arresting officer that a person who hunts with a firearm, bow and arrow, or crossbow shall be deemed thereby, as a condition of such hunting, to have consented to have a sample of his blood and breath taken for a chemical test to determine the alcohol or drug content of his blood, and that the unreasonable refusal to do so constitutes grounds for a court to order him not to hunt with a firearm, bow and arrow, or crossbow, then refuses to permit the taking of a sample of his blood or breath or both blood and breath samples for such tests, the arresting officer shall take the person arrested before a committing magistrate. If the person is unable to be taken before a magistrate because the person is taken to a medical facility for treatment or evaluation of his medical condition, the arresting officer at a medical facility, in the presence of a witness other than a law-enforcement officer, shall again advise the person, at the medical facility, of the law requiring blood

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59 or breath samples to be taken and the penalty for refusal. If he again so refuses after having been
60 further advised by such magistrate or by the arresting officer at a medical facility of the law requiring a
61 blood or breath sample to be taken and the penalty for refusal, and so declares again his refusal in
62 writing upon a form provided by the Supreme Court of Virginia, or refuses or fails to so declare in
63 writing and such fact is certified as prescribed in § 18.2-268.3, then no blood or breath sample shall be
64 taken even though he may thereafter request same.

65 F. When any person is arrested for hunting with a firearm, bow and arrow, or crossbow in violation
66 of subsection A, the procedures and requirements of §§ 18.2-268.1 through 18.2-268.11 shall apply,
67 mutatis mutandis, to this section.

68 G. If the court or jury finds the defendant guilty of unreasonably refusing to permit a blood or
69 breath sample to be taken, the court shall order such person not to hunt with a firearm, bow and arrow,
70 or crossbow for a period of 12 months for a first offense and for 24 months for a second or subsequent
71 offense of refusal within five years of the first or other such refusal. However, if the defendant pleads
72 guilty to a violation of subsection A, the court may dismiss the refusal warrant.