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SENATE BILL NO. 1311

Offered January 21, 2005

A *BILL to amend and reenact § 5.1-13 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 5.1-13.1, relating to acting as flight crew while under the influence of alcohol or drugs; penalties.*

Patron—Norment

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 5.1-13 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 5.1-13.1 as follows:

§ 5.1-13. Acting as flight crew while under influence of alcohol or drugs; penalties.

A. *It shall be unlawful for any person to act or attempt to act as flight crew of an aircraft within the airspace over, above or upon the lands or waters of the Commonwealth if, within two hours of the time of operation or attempted operation, he (i) has a blood alcohol concentration of 0.02 percent or more by weight by volume or 0.02 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, (iii) is under the influence of any narcotic drug or any other self-administered intoxicant or drug of whatsoever nature, or any combination of such drugs; or (iv) is under the combined influence of alcohol and any drug or drugs.*

For the purposes of this section, "flight crew" means any person who performs or is assigned to perform any duty in an aircraft during the time in which the aircraft is undergoing preflight inspection or maintenance, boarding or carrying passengers or crew, or at any time the aircraft is under power or in flight.

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. *Any person who acts or attempts to act as flight crew of an aircraft shall be deemed thereby, as a condition of acting or attempting to act as a flight crew of an aircraft, to have consented to have samples of his blood, breath, or both blood and breath taken for tests to determine the alcohol, drug, or both alcohol and drug content of his blood, if such person is arrested for a violation of subsection A within three hours of the alleged offense. Any person so arrested 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 subsection A 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 subsection A submits to a breath test 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 under the influence of any drug or combination of drugs, or the combined influence of alcohol and drugs.*

E. *A finding of unreasonable refusal shall be admissible as evidence at a criminal trial for a violation of subsection A. If a person, after being arrested for a violation of subsection A and after having been advised by the arresting officer that a person who is acting or attempting to act as flight crew shall be deemed thereby, as a condition of acting or attempting to act as flight crew, to have consented to have a sample of his blood and breath taken for tests to determine the alcohol or drug content of his blood, and that the unreasonable refusal to do so constitutes grounds for a court to revoke his privilege to act as flight crew, and is admissible as evidence at a criminal trial for a violation of subsection A, 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*

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59 *medical facility may issue, on the premises of the medical facility, a summons for unreasonable refusal*
60 *in lieu of securing a warrant.*

61 *F. Except as otherwise provided in this section, when any person is arrested for a violation of*
62 *subsection A, the procedures and requirements of §§ 18.2-268.1 through 18.2-268.11 shall apply, mutatis*
63 *mutandis, to this section.*

64 *G. If the court or jury finds the defendant guilty of unreasonably refusing to permit a blood or*
65 *breath sample to be taken, the court shall issue an order prohibiting such person from acting as flight*
66 *crew for a period of 12 months for a first offense and for 24 months for a second or subsequent offense*
67 *of refusal within five years of the first or other such refusal. However, if the defendant pleads guilty to*
68 *a violation of subsection A, the court may dismiss the refusal warrant.*

69 *If the court or jury finds the defendant guilty of a violation of subsection A, the court shall issue an*
70 *order prohibiting such person from acting as flight crew for a period of 12 months for a first offense*
71 *and for 24 months for a second or subsequent offense within five years of the prior offense.*

72 *Any person who shall operate violates subsection A is guilty of a Class 1 misdemeanor except that*
73 *any person who operates any aircraft within the airspace over, above or upon the lands or waters of this*
74 *Commonwealth, while under the influence of intoxicating liquor or of any narcotic or any habit-forming*
75 *drugs shall be is guilty of a felony and shall be confined in a state correctional facility not less than one*
76 *nor more than five years, or, in the discretion of the court or jury trying the case, be confined in jail not*
77 *exceeding twelve 12 months and fined not exceeding \$500, or both such fine and imprisonment.*

78 *Any person who shall operate any aircraft within the airspace over, above or upon the lands or*
79 *waters of this Commonwealth carelessly or heedlessly in willful or wanton disregard of the rights or*
80 *safety of others, or without due caution and circumspection and in a manner so as to endanger any*
81 *person or property, shall be guilty of a misdemeanor.*

82 *5.1-13.1. Reckless operation of aircraft; penalty.*

83 *Any person who operates any aircraft within the airspace over, above or upon the lands or waters of*
84 *this Commonwealth carelessly or heedlessly in willful or wanton disregard of the rights or safety of*
85 *others, or without due caution and circumspection and in a manner so as to endanger any person or*
86 *property, is guilty of a Class 1 misdemeanor.*