

# VIRGINIA ACTS OF ASSEMBLY -- 1996 RECONVENED SESSION

## CHAPTER 1015

*An Act to amend and reenact §§ 19.2-81, 29.1-738 and 29.1-738.4 of the Code of Virginia, relating to operating watercraft.*

[H 1080]

Approved April 17, 1996

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 19.2-81, 29.1-738 and 29.1-738.4 of the Code of Virginia are amended and reenacted as follows:**

§ 19.2-81. Arrest without warrant authorized in certain cases.

Members of the State Police force of the Commonwealth, the sheriffs of the various counties and cities, and their deputies, the members of any county police force, the members of any duly constituted police force of any city or town of the Commonwealth, the Commissioner, members and employees of the Marine Resources Commission granted the power of arrest pursuant to § 28.2-900, regular game wardens appointed pursuant to § 29.1-200, United States Coast Guard and United States Coast Guard Reserve commissioned, warrant, and petty officers authorized under § 29.1-205 to make arrests, and the special policemen of the counties as provided by § 15.1-144, provided such officers are in uniform, or displaying a badge of office, may arrest, without a warrant, any person who commits any crime in the presence of such officer and any person whom he has reasonable grounds or probable cause to suspect of having committed a felony not in his presence. Any such officer may arrest without a warrant any person whom the officer has probable cause to suspect of operating a watercraft or motor boat (i) while intoxicated in violation of subsection B of § 29.1-738 or (ii) *in violation of an order issued pursuant to § 29.1-738.4*, in his presence, and such officer may thereafter transfer custody of the person suspected of the violation to another officer, who may obtain a warrant based upon statements made to him by the arresting officer.

Any such officer may, at the scene of any accident involving a motor vehicle, watercraft as defined in § 29.1-712 or motorboat, or at any hospital or medical facility to which any person involved in such accident has been transported, or in the apprehension of any person charged with the theft of any motor vehicle, on any of the highways or waters of the Commonwealth, upon reasonable grounds to believe, based upon personal investigation, including information obtained from eyewitnesses, that a crime has been committed by any person then and there present, apprehend such person without a warrant of arrest.

Such officers may arrest, without a warrant, persons duly charged with a crime in another jurisdiction upon receipt of a photocopy of a warrant, telegram, computer printout, facsimile printout, a radio, telephone or teletype message, in which photocopy of a warrant, telegram, computer printout, facsimile printout, radio, telephone or teletype message shall be given the name or a reasonably accurate description of such person wanted and the crime alleged.

Such officers may arrest, without a warrant, for an alleged misdemeanor not committed in his presence when the officer receives a radio message from his department or other law-enforcement agency within the Commonwealth that a warrant for such offense is on file. Such officers may also arrest without a warrant for an alleged misdemeanor not committed in their presence involving (i) shoplifting in violation of § 18.2-96 or § 18.2-103 or a similar local ordinance, (ii) carrying a weapon on school property in violation of § 18.2-308.1, (iii) assault and battery or (iv) destruction of property in violation of § 18.2-137, when such property is located on premises used for business or commercial purposes, or a similar local ordinance, when any such arrest is based on probable cause upon reasonable complaint of the person who observed the alleged offense. The arresting officer may issue a summons to any person arrested under this section for a misdemeanor violation involving shoplifting.

§ 29.1-738. Operating boat or manipulating water skis, etc., in reckless manner or while intoxicated, etc.

A. No person shall operate any motorboat or vessel, or manipulate any skis, surfboard, or similar device, or engage in any spearfishing while skin diving or scuba diving, *or engage in any other activity in or on the water* in a reckless manner so as to endanger the life, limb, or property of any person *or in a willful and intentional manner to impede the lawful fishing for any species of fish or shellfish. Fishing means all activities as defined in § 28.2-100 or § 29.1-100 for "fishing," "fisheries" or "to fish."*

B. No person shall operate any watercraft, as defined in § 29.1-712, or motorboat which is underway (i) while such person has a blood alcohol concentration at or greater than the blood alcohol concentration at which it is unlawful to drive or operate a motor vehicle as provided in § 18.2-266 as indicated by a chemical test administered in accordance with § 29.1-738.2, (ii) while such person is under the influence of alcohol, (iii) while such person 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, to a degree which impairs his ability to operate the watercraft or motorboat safely or (iv) while such person is under the combined influence of alcohol and any drug or drugs to a degree which impairs his ability to operate the watercraft or motorboat safely.

~~C. No person shall operate any watercraft or motorboat which is underway during any period for which such person has been ordered not to operate a watercraft or motorboat pursuant to this section or § 29.1-738.4.~~

~~D.~~ For purposes of this article, the word "operate" shall include being in actual physical control of a watercraft or motorboat and "underway" shall mean that a vessel is not at anchor, or made fast to the shore, or aground.

Any person who violates any provision of this section shall be guilty of a Class 1 misdemeanor.

§ 29.1-738.4. Additional penalty for reckless or intoxicated operation of a watercraft or motorboat.

In addition to any other penalties authorized by law, upon conviction of any person for violation of any provision of § 29.1-738, the court shall order such person not to operate a watercraft or motorboat which is underway upon the waters of the Commonwealth for a period of twelve months from the date of a first conviction or for a period of three years from the date of a second or subsequent conviction within ten years of a first conviction. The period specified in any such order prohibiting operation of a watercraft or motorboat which is underway imposed pursuant to this section shall run consecutively with any such order imposed for refusal to permit a blood or breath sample to be taken.

*A first offense of violating this section shall constitute a Class 2 misdemeanor. A second or subsequent offense shall constitute a Class 1 misdemeanor. In addition, the court shall suspend the person's privilege to operate a motorboat or watercraft for the same period for which it had been suspended or revoked when such person violated this section.*

The period specified in any such order prohibiting operation of a watercraft or motorboat which is underway imposed pursuant to this section may be suspended by the court only as authorized in § 29.1-738.5.

**2. That an emergency exists and this act is in force from its passage.**