

## 1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 29.1-738.1 and 29.1-738.2 of the Code of Virginia and to amend the*  
 3 *Code of Virginia by adding a section numbered 29.1-738.02, relating to zero tolerance for drunk*  
 4 *boating; penalty.*

5 [H 1313]

6 Approved

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

8 **1. That §§ 29.1-738.1 and 29.1-738.2 of the Code of Virginia are amended and reenacted and that**  
 9 **the Code of Virginia is amended by adding a section numbered § 29.1-738.02 as follows:**

10 § 29.1-738.02. *Persons under age twenty-one operating watercraft after illegally consuming alcohol;*  
 11 *penalty.*

12 *A. It shall be unlawful for any person under the age of twenty-one to operate any watercraft or*  
 13 *motorboat upon the waters of the Commonwealth after consuming alcohol. Any such person with a*  
 14 *blood alcohol concentration of 0.02 percent or more by weight by volume or 0.02 grams or more per*  
 15 *210 liters of breath but less than 0.08 by weight by volume or less than 0.08 grams per 210 liters of*  
 16 *breath as indicated by a chemical test administered as provided in Article 2 (§ 18.2-266 et seq.) of*  
 17 *Chapter 7 of Title 18.2 shall be in violation of this section.*

18 *B. A violation of this section shall be punishable by denial by the court of such person's privilege to*  
 19 *operate a watercraft or motorboat for a period of six months from the date of conviction and by a fine*  
 20 *of not more than \$500. Any person convicted of a violation of this section shall be eligible to attend an*  
 21 *Alcohol Safety Action Program under the provisions of § 29.1-738.5.*

22 § 29.1-738.1. Analysis of breath to determine alcohol content of blood.

23 Any person who is suspected of a violation of subsection B of § 29.1-738 or § 29.1-738.02 shall be  
 24 entitled, if such equipment is available, to have a preliminary breath analysis for the purpose of  
 25 obtaining an analysis of the probable alcohol content of his blood. The procedures and requirements of  
 26 § 18.2-267 shall apply, mutatis mutandis.

27 § 29.1-738.2. Consent to blood or breath test.

28 *A. Any person who operates a watercraft or motorboat which is underway upon waters of the*  
 29 *Commonwealth shall be deemed thereby, as a condition of such operation, to have consented to have*  
 30 *samples of his blood, breath, or both blood and breath taken for a chemical test to determine the*  
 31 *alcohol, drug, or both alcohol and drug content of his blood, if such person is arrested for operating a*  
 32 *watercraft or motorboat which is underway in violation of subsection B of § 29.1-738, § 29.1-738.02, or*  
 33 *of a similar ordinance of any county, city or town, within two hours of the alleged offense. Any person*  
 34 *so arrested for a violation of clause (i) or (ii), or both, of § 29.1-738 B, § 29.1-738.02, or of a similar*  
 35 *ordinance, shall submit to a breath test. If the breath test is not available, or the person is physically*  
 36 *unable to submit to the breath test, a blood test shall be given. The accused shall, prior to administration*  
 37 *of the test, be advised by the person administering the test that he has the right to observe the process*  
 38 *of analysis and to see the blood-alcohol reading on the equipment used to perform the breath test. If*  
 39 *such equipment automatically produces a written printout of the breath test result, this written printout,*  
 40 *or a copy thereof, shall be given to the accused in each case.*

41 *B. Any person, after having been arrested for a violation of clause (iii) or (iv) of § 29.1-738 B,*  
 42 *§ 29.1-738.02, or of a similar ordinance, may be required to submit to a blood test to determine the drug*  
 43 *or both drug and alcohol content of his blood. When a person, after having been arrested for a violation*  
 44 *of clause (i) or (ii), or both, of § 29.1-738 B, submits to a breath test, in accordance with subsection A*  
 45 *of this section, or refuses to take or is incapable of taking such a breath test, he may be required to*  
 46 *submit to tests to determine the drug or both drug and alcohol content of his blood if the*  
 47 *law-enforcement officer has reasonable cause to believe the person was operating a watercraft or*  
 48 *motorboat under the influence of any drug or combination of drugs, or the combined influence of*  
 49 *alcohol and drugs.*

50 *C. If a person, after being arrested for a violation of subsection B of § 29.1-738, § 29.1-738.02, or of*  
 51 *a similar ordinance of any county, city or town and after having been advised by the arresting officer*  
 52 *that a person who operates a watercraft or motorboat which is underway upon the waters of the*  
 53 *Commonwealth shall be deemed thereby, as a condition of such operation, to have consented to have a*  
 54 *sample of his blood and breath taken for a chemical test to determine the alcohol or drug content of his*  
 55 *blood, and that the unreasonable refusal to do so constitutes grounds for a court to order him not to*  
 56 *operate a watercraft or motorboat which is underway upon the waters of the Commonwealth, then*

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

64 D. When any person is arrested for operating a watercraft or motorboat which is underway in  
65 violation of subsection B of § 29.1-738 *or* § 29.1-738.02, the procedures and requirements of  
66 §§ 18.2-268.1 through 18.2-268.11 shall apply, mutatis mutandis, to this section.

67 E. If the court or jury finds the defendant guilty of unreasonably refusing to permit a blood or breath  
68 sample to be taken, the court shall order such person not to operate a watercraft or motorboat which is  
69 underway for a period of twelve months for a first offense and for twenty-four months for a second or  
70 subsequent offense of refusal within five years of the first or other such refusal. However, if the  
71 defendant pleads guilty to a violation of subsection B of § 29.1-738, the court may dismiss the refusal  
72 warrant.