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SENATE BILL NO. 43

Offered January 10, 1996

A BILL to amend and reenact § 5.1-13 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 5.1-13.1 through 5.1-13.5, relating to operation of aircraft under the influence of intoxicating drugs or liquors; implied consent; penalty.

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Referred to the Committee on Transportation

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 sections numbered 5.1-13.1 through 5.1-13.5 as follows:

§ 5.1-13. Operation of aircraft while under influence of intoxicating liquors or drugs; reckless operation.

Any person who shall operate any aircraft within the airspace over, above or upon the lands or waters of this Commonwealth, while under the influence of intoxicating liquor or of any narcotic or any habit-forming drugs, shall be guilty of a felony and shall be confined in a state correctional facility not less than one nor more than five years, or, in the discretion of the court or jury trying the case, be confined in jail ~~not exceeding no more than~~ twelve months and fined ~~not exceeding no more than~~ \$500, either or both ~~such fine and imprisonment~~.

A person shall be deemed to be in violation of this section if he has a blood or breath alcohol concentration of 0.04 percent or more by weight by volume, or if he has any measurable concentration of any narcotic or habit-forming drug as shown by a properly administered chemical test within four hours of the alleged operation of an aircraft while under the influence of any intoxicating liquor or drug, or any combination of both.

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

§ 5.1-13.1. Implied consent of operator of aircraft to submit to testing to determine drug or alcohol content of blood.

A. Any person who operates an aircraft within the airspace over, above or upon the lands or waters of this Commonwealth shall be deemed thereby, as a condition of such operation, 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 this blood, if he is arrested for violation of § 5.1-13 within four hours of the alleged offense, or if he is declared dead by competent authority, as soon as practical after death has been declared as a result of a fatal aircraft accident.

B. Any person so arrested for violation of § 5.1-13 shall elect to have either a blood or breath sample taken, but not both. If either the blood test or the breath test is not available, then the available test shall be taken and it shall not be a matter of defense if the blood test or the breath test is not available. If the accused elects a breath test, he shall be entitled, upon request, to observe the process of analysis and to see the blood-alcohol reading on the equipment used to perform the breath test. If the equipment automatically produces a written printout of the breath test result, the printout, or a copy, shall be given to the accused.

C. A person after having been arrested for a violation of § 5.1-13 may be required to submit to tests to determine the alcohol or drug content of his blood. If a person having been arrested for a violation of § 5.1-13 chooses to submit to a breath test in accordance with subsection B of this section, he may also be required to submit to tests to determine the drug content of his blood if the law-enforcement officer has reasonable cause to believe the person was operating an aircraft while under the influence of any drug or combination of drugs, or the combined influence of alcohol and drugs.

D. The consent of a person deemed to have given consent pursuant to subsection A of this section shall not be withdrawn by reason of the person's being dead, unconscious, or in any other state which renders the person incapable of consenting to examination, and the test may be given. In such event, a test of the person's blood shall be administered.

§ 5.1-13.2. Refusal of tests; procedures.

A. If a person, after having been arrested for a violation of § 5.1-13 and after having been advised by the arresting officer that a person who operates an aircraft within the airspace over, above or upon the lands or waters of this Commonwealth is deemed thereby, as a condition of such operation, to have

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consented to have samples of his blood or breath taken for chemical tests to determine the alcohol or drug content of his blood, and that the unreasonable refusal to do so constitutes grounds for the revocation of the privilege to operate an aircraft within the airspace over, above or upon the lands or waters of this Commonwealth, then refuses to permit blood or breath samples to be taken for such tests, the arresting officer shall take the person before a committing magistrate. If he again refuses after having been further advised by the magistrate of the law requiring blood or breath samples to be taken and the penalty for refusal, and so declares again his refusal in writing upon a form provided by the Supreme Court, or refuses or fails to declare in writing and such fact is certified as prescribed below, then no blood or breath samples shall be taken even though he may later request them.

B. The form shall contain a brief statement of the law requiring the taking of blood or breath samples and the penalty for refusal, a declaration of refusal, and lines for the signature of the person from whom the blood or breath sample is sought, the date, and the signature of a witness to the signing. If the person refuses or fails to execute the declaration, the magistrate shall certify such fact and the magistrate shall advise the person that a refusal to permit a blood or breath sample to be taken, if found unreasonable, constitutes grounds for the revocation of the person's privilege to operate an aircraft within the airspace over, above or upon the lands or waters of this Commonwealth. The magistrate shall promptly issue a warrant or summons charging the person with a violation of § 5.1-13. The warrant or summons shall be executed in the same manner as criminal warrants.

C. Venue for the trial of the warrant or summons shall lie in the court of the county or city in which the offense of operating an aircraft while under the influence of alcohol or drugs is to be tried. The executed declaration of refusal or the certificate of the magistrate, as the case may be, shall be attached to the warrant and shall be forwarded by the magistrate to the aforementioned court.

D. When the court receives the declaration or the certificate and the warrant or summons charging refusal, the court shall fix a date for the trial of the warrant or summons, at such time as the court designates but subsequent to the defendant's criminal trial for operating an aircraft while under the influence of alcohol or drugs.

E. The declaration or refusal or certificate of the magistrate shall be prima facie evidence that the defendant refused to allow blood or breath sample to be taken to determine the alcohol or drug content of his blood. However, this shall not prevent the defendant from introducing on his behalf evidence of the basis for his refusal. The court shall determine the reasonableness of such refusal.

F. Physical injuries or impairment to the person due to an accident which otherwise prohibits the person from being advised of the provisions of § 5.1-13.1 or this section shall not constitute a violation of this section.

§ 5.1-13.3. Appeal and trial; sanctions for refusal.

The procedure for appeal and trial shall be the same as provided by law for misdemeanors; if requested by either party on appeal to the circuit court, trial by jury shall be as provided in Article 4 (§ 19.2-260 et seq.) of Chapter 15 of Title 19.2, and the Commonwealth shall be required to prove its case beyond a reasonable doubt.

If the court or jury finds the defendant guilty as charged in the warrant or summons issued pursuant to § 5.1-13.2, the court may determine, at its discretion, a penalty equal to or concurrent with those penalties provided for a violation of § 5.1-13.

§ 5.1-13.4. Qualification and liability of persons authorized to take blood samples; procedures for taking samples.

For the purposes of this article, the qualifications and liability of those persons authorized to take blood samples and the procedure to be used for taking samples of any person suspected of violating § 5.1-13 shall be in accordance with the qualifications of and liability of those persons authorized to take blood samples and the procedure to be used as described in § 18.2-268.5.

§ 5.1-13.5. Notice to the Federal Aviation Administration.

If a court or jury finds any person guilty of a violation of § 5.1-13, the court shall immediately notify the administrator of the Federal Aviation Administration and the chairman of the National Transportation Safety Board in writing of the findings of the court or jury. If an appeal is perfected by any person originally found guilty of a violation of § 5.1-13, the court reversing the decision found in the inferior court shall immediately notify the administrator of the Federal Aviation Administration and the chairman of the National Transportation Safety Board in writing of the action taken by the court.

2. That the provisions of this act may result in a net increase in periods of imprisonment in state correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0.