

VIRGINIA ACTS OF ASSEMBLY -- 1996 SESSION

CHAPTER 631

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

[H 1313]

Approved April 5, 1996

Be it enacted by the General Assembly of Virginia:

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

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

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

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

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

Any person who is suspected of a violation of subsection B of § 29.1-738 or § 29.1-738.02 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.

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

A. Any person who operates a watercraft or motorboat which is underway upon waters of the 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 his blood, if such person is arrested for operating a watercraft or motorboat which is underway in violation of subsection B of § 29.1-738, § 29.1-738.02, 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 § 29.1-738 B, § 29.1-738.02, 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.

B. Any person, after having been arrested for a violation of clause (iii) or (iv) of § 29.1-738 B, § 29.1-738.02, 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), or both, of § 29.1-738 B, 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 operating a watercraft or motorboat under the influence of any drug or combination of drugs, or the combined influence of alcohol and drugs.

C. If a person, after being arrested for a violation of subsection B of § 29.1-738, § 29.1-738.02, or of a similar ordinance of any county, city or town and after having been advised by the arresting officer that a person who operates a watercraft or motorboat which is underway upon the waters of the Commonwealth shall be deemed thereby, as a condition of such operation, 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 operate a watercraft or motorboat which is underway upon the waters of the Commonwealth, 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 he again

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

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

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