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HOUSE BILL NO. 2265

Offered January 8, 2003

Prefiled January 8, 2003

A BILL to amend and reenact §§ 18.2-270 and 19.2-81 of the Code of Virginia, relating to punishment for drunk driving; penalty.

Patrons—Bell, Albo, Athey and Rapp

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-270 and 19.2-81 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-270. Penalty for driving while intoxicated; subsequent offense; prior conviction.

A. Except as otherwise provided herein, any person violating any provision of § 18.2-266 shall be guilty of a Class 1 misdemeanor. If the person's blood alcohol level as indicated by the chemical test administered as provided in this article was at least ~~0.20~~ 0.16, but not more than ~~0.25~~ 0.24, he shall be confined in jail for an additional mandatory, minimum period of ~~five~~ 5 days or, if the level was more than ~~0.25~~ 0.24, for an additional mandatory, minimum period of ~~ten~~ 10 days. The additional mandatory, minimum period of confinement shall not be suspended by the court.

B. 1. Any person convicted of a second offense committed within less than ~~five~~ 5 years after a first offense under § 18.2-266 shall upon conviction of the second offense be punished by a fine of not less than \$200 and by confinement in jail for not less than ~~one~~ 1 month nor more than ~~one~~ 1 year. Five days of such confinement shall be a mandatory, minimum sentence not subject to suspension by the court.

2. Any person convicted of a second offense committed within a period of ~~five~~ 5 to ~~ten~~ 10 years of a first offense under § 18.2-266 shall upon conviction of the second offense be punished by a fine of not less than \$200 and by confinement in jail for not less than ~~one~~ 1 month.

3. Upon conviction of a second offense within ~~ten~~ 10 years of a first offense, if the person's blood alcohol level as indicated by the chemical test administered as provided in this article was at least ~~0.20~~ 0.16, but not more than ~~0.25~~ 0.24, he shall be confined in jail for an additional minimum, mandatory period of ~~ten~~ 10 days or, if the level was more than ~~0.25~~ 0.24, for an additional mandatory, minimum period of ~~twenty~~ 20 days. The additional mandatory, minimum period of confinement shall not be suspended by the court.

C. Any person convicted of ~~three~~ 3 or more offenses of § 18.2-266 committed within a ~~ten-year~~ period shall ~~is~~ upon conviction of the third or subsequent offense be guilty of a Class 6 felony, and the sentence upon conviction of the third offense shall include a mandatory, minimum sentence of confinement for ~~ten~~ 10 days that shall not be subject to suspension by the court. ~~Any~~ The punishment of any person convicted of a third offense of § 18.2-266 committed within five years of an offense under § 18.2-266 shall upon conviction of the third offense be guilty of a Class 6 felony, and the sentence committed within a 5-year period shall include a mandatory, minimum sentence of confinement for ~~thirty~~ 30 days that shall not be subject to suspension by the court. The punishment of any person convicted of a fourth or subsequent offense committed within a ~~ten-year~~ period shall, upon conviction, include a mandatory, minimum term of imprisonment of ~~one~~ 1 year, none of which may be suspended in whole or in part. Unless otherwise modified by the court, the defendant shall remain on probation and under the terms of any suspended sentence for the same period as his operator's license was suspended, not to exceed ~~three~~ 3 years.

D. In addition to the penalty otherwise authorized by this section or § 16.1-278.9, any person convicted of a violation of § 18.2-266 committed while transporting a ~~another~~ person ~~seventeen~~ years of age or younger shall be (i) fined an additional minimum of \$500 and not more than \$1000 and (ii) sentenced to perform forty hours of community service in a program benefiting children or, for a subsequent offense, eighty hours of community service in such a program in a motor vehicle shall be sentenced to a mandatory, minimum period of confinement of 5 days for each adult in the vehicle other than the driver and a mandatory, minimum period of confinement of 10 days for each juvenile in the vehicle other than the driver. The mandatory, minimum period of confinement shall not be subject to suspension by the court.

E. For the purpose of this section, an adult conviction of any person, or finding of guilty in the case of a juvenile, under the following shall be considered a prior conviction: (i) the provisions of § 18.2-36.1 or the substantially similar laws of any other state or of the United States, (ii) the provisions of §§ 18.2-51.4, 18.2-266, former § 18.1-54 (formerly § 18-75), the ordinance of any county, city or town in this Commonwealth or the laws of any other state or of the United States substantially similar

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59 to the provisions of § 18.2-51.4, and §§ 18.2-266 through 18.2-269, or (iii) the provisions of subsection
60 A of § 46.2-341.24 or the substantially similar laws of any other state or of the United States.

61 *F. Any person who, while in violation of § 18.2-266, causes an accident resulting in a personal*
62 *injury shall be confined in jail for an additional mandatory, minimum period of 5 days, which shall not*
63 *be subject to suspension by the court in whole or in part.*

64 *G. Under this section, punishment by confinement is cumulative and all sentences of confinement*
65 *shall be made to run consecutively.*

66 § 19.2-81. Arrest without warrant authorized in certain cases.

67 The following officers shall have the powers of arrest as provided in this section:

68 1. Members of the State Police force of the Commonwealth,

69 2. Sheriffs of the various counties and cities, and their deputies,

70 3. Members of any county police force or any duly constituted police force of any city or town of
71 the Commonwealth,

72 4. The Commissioner, members and employees of the Marine Resources Commission granted the
73 power of arrest pursuant to § 28.2-900,

74 5. Regular game wardens appointed pursuant to § 29.1-200,

75 6. United States Coast Guard and United States Coast Guard Reserve commissioned, warrant, and
76 petty officers authorized under § 29.1-205 to make arrests, and

77 7. The special policemen of the counties as provided by § 15.2-1737, provided such officers are in
78 uniform, or displaying a badge of office.

79 Such officers may arrest, without a warrant, any person who commits any crime in the presence of
80 the officer and any person whom he has reasonable grounds or probable cause to suspect of having
81 committed a felony not in his presence.

82 Any such officer may arrest without a warrant any person whom the officer has probable cause to
83 suspect of operating a watercraft or motor boat (i) while intoxicated in violation of subsection B of
84 § 29.1-738 or (ii) in violation of an order issued pursuant to § 29.1-738.4, in his presence, and may
85 thereafter transfer custody of the person suspected of the violation to another officer, who may obtain a
86 warrant based upon statements made to him by the arresting officer.

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

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

99 Such officers may arrest, without a warrant, for an alleged misdemeanor not committed in his
100 presence when the officer receives a radio message from his department or other law-enforcement
101 agency within the Commonwealth that a warrant for such offense is on file.

102 Such officers may also arrest without a warrant for an alleged misdemeanor not committed in their
103 presence involving (i) shoplifting in violation of § 18.2-96 or § 18.2-103 or a similar local ordinance, (ii)
104 carrying a weapon on school property in violation of § 18.2-308.1, (iii) assault and battery, (iv)
105 brandishing a firearm in violation of § 18.2-282, ~~or~~ (v) destruction of property in violation of
106 § 18.2-137, when such property is located on premises used for business or commercial purposes, or a
107 similar local ordinance, when any such arrest is based on probable cause upon reasonable complaint of
108 the person who observed the alleged offense, or (vi) operating a motor vehicle, engine or train in
109 violation of § 18.2-266. The arresting officer may issue a summons to any person arrested under this
110 section for a misdemeanor violation involving shoplifting.

111 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
112 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at**
113 **least \$169,103 for periods of imprisonment in state adult correctional facilities and is \$0 for**
114 **periods of commitment to the custody of the Department of Juvenile Justice.**