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HOUSE BILL NO. 1309

Offered January 20, 2004

A BILL to amend and reenact § 4.1-305 of the Code of Virginia, relating to community-based probation for underage alcohol offenders.

Patron—Hurt

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 4.1-305 of the Code of Virginia is amended and reenacted as follows:**

§ 4.1-305. Purchasing or possessing alcoholic beverages unlawful in certain cases; venue; exceptions; penalty; forfeiture; deferred proceedings; treatment and education programs.

A. No person to whom an alcoholic beverage may not lawfully be sold under § 4.1-304 shall purchase or possess, or attempt to purchase or possess, any alcoholic beverage, except (i) pursuant to subdivisions 1 through 7 of § 4.1-200; (ii) where possession of the alcoholic beverages by a person less than 21 years of age is due to such person's making a delivery of alcoholic beverages in pursuance of his employment or an order of his parent; or (iii) by any state, federal, or local law-enforcement officer when possession of an alcoholic beverage is necessary in the performance of his duties. Such person may be prosecuted either in the county or city in which the alcohol was possessed or consumed, or in the county or city in which the person exhibits evidence of physical indicia of consumption of alcohol.

B. No person under the age of 21 years shall use or attempt to use any (i) altered, fictitious, facsimile or simulated license to operate a motor vehicle, (ii) altered, fictitious, facsimile or simulated document, including, but not limited to a birth certificate or student identification card, or (iii) motor vehicle operator's license, birth certificate or student identification card of another person in order to establish a false identification or false age for himself to purchase or attempt to purchase an alcoholic beverage.

C. Any person found guilty of a violation of this section shall be guilty of a Class 1 misdemeanor; and upon conviction, (i) such person shall be ordered to pay a fine of at least \$500 or ordered to perform a minimum of 50 hours of community service as a condition of probation supervision and (ii) such person's license to operate a motor vehicle in the Commonwealth may be suspended for a period of not more than one year. The court, in its discretion and upon a demonstration of hardship, may authorize any person convicted of a violation of this section the use of a restricted permit to operate a motor vehicle in accordance with the provisions of subsection D of § 16.1-278.9 or subsection E of § 18.2-271.1 or when referred to a local community-based probation program established pursuant to Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1. During the period of license suspension, the court may require a person issued a restricted permit under the provisions of this subsection to be (i) monitored by an alcohol safety action program, or (ii) for any person 18 years of age or older or considered an adult at the time of conviction, as a condition of probation, supervised by a local community-based probation program established pursuant to Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1, if one has been established for the locality. The alcohol safety action program shall report to the court any violation of the terms of the restricted permit, the required alcohol safety action program monitoring or the local community-based probation and any condition related thereto or any failure to remain alcohol-free during the suspension period. However, the sentence imposed pursuant to clause (i) of this subsection shall not be suspended.

D. Any alcoholic beverage purchased or possessed in violation of this section shall be deemed contraband and forfeited to the Commonwealth in accordance with § 4.1-338.

E. Any retail licensee who in good faith promptly notifies the Board or any state or local law-enforcement agency of a violation or suspected violation of this section shall be accorded immunity from an administrative penalty for a violation of § 4.1-304.

F. When any person who has not previously been convicted of under-aged possession of alcoholic beverages in Virginia or any other state or the United States is before the court, the court shall, unless done at arrest, order the accused to report to the original arresting law-enforcement agency to submit to fingerprinting and the court may, upon entry of a plea of guilty or not guilty, if the facts found by the court would justify a finding of guilt of a violation of subsection A, without entering a judgment of guilt and with the consent of the accused, defer further proceedings and place him on probation subject to appropriate conditions. Such conditions may include the imposition of the license suspension and restricted license provisions in subsection C. However, in all such deferred proceedings, the court shall require the accused to enter a treatment or education program or both, if available, that in the opinion of

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59 the court best suits the needs of the accused. ~~This~~*If the accused is placed on local community-based*
60 *probation, the program may shall be located in any of the judicial district in which the charge is*
61 ~~brought~~ *districts served by the community-based probation program or in any judicial district ordered*
62 *by the court when the placement is with an alcohol safety action program.* The services shall be
63 provided by (i) a program licensed by the Department of Mental Health, Mental Retardation and
64 Substance Abuse Services, (ii) certified by the Commission on VASAP, or (iii) by a program made
65 available through a community-based probation program established pursuant to § 9.1-174. When an
66 offender *18 years of age or older or considered an adult at the time the court deferred the proceedings*
67 *is ordered to enter a local community-based probation program rather than the alcohol safety action*
68 *program, the local community-based probation program shall be responsible for providing for services or*
69 *referring the offender to education or treatment services as a condition of probation.*
70 Upon violation of a condition, the court ~~may shall~~ enter an adjudication of guilt and proceed as
71 otherwise provided. Upon fulfillment of the conditions, the court shall discharge the person and dismiss
72 the proceedings against him without an adjudication of guilt. A discharge and dismissal hereunder shall
73 be treated as a conviction for the purpose of applying this section in any subsequent proceedings *and no*
74 *charges dismissed hereunder shall be eligible for expungement under § 19.2-392.2.*