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HOUSE BILL NO. 667

Offered January 14, 2004

Prefiled January 13, 2004

A BILL to amend and reenact § 18.2-270 of the Code of Virginia, relating to penalty for driving while intoxicated; subsequent offense; prior conviction.

Patrons—Bell, Cosgrove and Jones, S.C.

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-270 of the Code of Virginia is 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 0.200.15, but not more than 0.250.20, he shall be confined in jail for an additional mandatory, minimum period of five days or, if the level was more than 0.250.20, for an additional mandatory, minimum period of 10 days. The additional mandatory, minimum period of confinement shall not be suspended by the court. In addition, such person shall be fined a mandatory, minimum fine of \$250, which shall not be suspended by the court.

B. 1. Any person convicted of a second offense committed within less than five years after a first offense under § 18.2-266 shall upon conviction of the second offense be punished by a mandatory, minimum fine of \$500, which shall not be suspended by the court, and by confinement in jail for not less than one month nor more than one 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 to ten years of a first offense under § 18.2-266 shall upon conviction of the second offense be punished by a mandatory, minimum fine of \$500, which shall not be suspended by the court, and by confinement in jail for not less than one month.

3. Upon conviction of a second offense within 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 0.200.15, but not more than 0.250.20, he shall be confined in jail for an additional minimum, mandatory period of 10 days or, if the level was more than 0.250.20, for an additional mandatory, minimum period of 20 days. The additional mandatory, minimum period of confinement shall not be suspended by the court. In addition, such person shall be fined a mandatory, minimum fine of \$500, which shall not be suspended by the court.

C. Any person convicted of three or more offenses of § 18.2-266 committed within a 10-year period shall upon conviction of the third offense be guilty of a Class 6 felony, and the sentence shall include a mandatory, minimum sentence of confinement for 1030 days that shall not be subject to suspension by the court. In addition, such person shall be fined and a mandatory, minimum fine of \$1,000, neither of which shall not be suspended by the court. Any person convicted of a third offense 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 shall include a mandatory, minimum sentence of confinement for 30 days that shall not be subject to suspension by the court. In addition, such person shall be fined a mandatory, minimum fine of \$1,000, which shall not be suspended by the court. Additionally, the vehicle operated by any person convicted of a third or subsequent offense hereunder shall be seized and forfeited in the jurisdiction where such offense occurred in accordance with the procedures set forth in § 4.1-339 et seq., mutatis mutandis. The punishment of any person convicted of a fourth or subsequent offense committed within a 10-year period shall, upon conviction, include a mandatory, minimum term of imprisonment of one year, none of which may be suspended in whole or in part. In addition, such person shall be fined a mandatory, minimum fine of \$1,000, which shall not be suspended by the court. 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 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 person 17 years of age or younger shall be (i) fined an additional minimum of \$500 and not more than \$1000 and (ii) sentenced to a mandatory, minimum period of confinement of five days that shall not be suspended by the court.

DI. In addition to any penalty otherwise authorized by this section, any person convicted of a

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59 *violation of § 18.2-266 whose violation was the proximate cause of a bodily injury to another shall be*
60 *sentenced to a mandatory minimum period of confinement of five days that shall not be suspended by*
61 *the court.*

62 E. For the purpose of this section, an adult conviction of any person, or finding of guilty in the case
63 of a juvenile, under the following shall be considered a prior conviction: (i) the provisions of
64 § 18.2-36.1 or the substantially similar laws of any other state or of the United States, (ii) the provisions
65 of §§ 18.2-51.4, 18.2-266, *18.2-266.1*, 18.2-272, former § 18.1-54 (formerly § 18-75), the ordinance of
66 any county, city or town in this Commonwealth or the laws of any other state or of the United States
67 substantially similar to the provisions of §§ 18.2-51.4, and 18.2-266 through ~~18.2-269~~ 18.2-272, or (iii)
68 the provisions of subsection A of § 46.2-341.24 or the substantially similar laws of any other state or of
69 the United States.

70 *F. All mandatory minimum periods of incarceration imposed hereunder shall be served consecutively.*
71 *All fines imposed hereunder shall cumulate.*

72 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
73 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is**
74 **\$1,368,280 for periods of imprisonment in state adult correctional facilities and is \$0 for periods of**
75 **commitment to the custody of the Department of Juvenile Justice.**