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HOUSE BILL NO. 668

Offered January 14, 2004

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A BILL to amend and reenact §§ 4.1-305, 16.1-278.9 and 16.1-306 of the Code of Virginia, relating to juvenile alcohol offenses.

 Patron—Bell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 4.1-305, 16.1-278.9 and 16.1-306 of the Code of Virginia are 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 *consume*, purchase or possess, or attempt to *consume*, 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 *consume* or purchase or attempt to *consume* or 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 monitored by an alcohol safety action program. The alcohol safety action program shall report to the court any violation of the terms of the restricted permit, 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 *consumption*, *purchase* or possession of alcoholic beverages in Virginia or any other state or the United States is before the court, 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 the court best suits the needs of the accused. This program may be located in the judicial district in which the charge is brought or in any judicial district ordered by the court. The services shall be provided by (i) a

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59 program licensed by the Department of Mental Health, Mental Retardation and Substance Abuse
60 Services, (ii) certified by the Commission on VASAP, or (iii) by a program made available through a
61 community-based probation program established pursuant to § 9.1-174. When an offender is ordered to
62 enter a local community-based probation program rather than the alcohol safety action program, the
63 local community-based probation program shall be responsible for providing for services or referring the
64 offender to education or treatment services as a condition of probation.

65 Upon violation of a condition, the court may enter an adjudication of guilt and proceed as otherwise
66 provided. Upon fulfillment of the conditions, the court shall discharge the person and dismiss the
67 proceedings against him without an adjudication of guilt. A discharge and dismissal hereunder shall be
68 treated as a conviction for the purpose of applying this section in any subsequent proceedings.

69 § 16.1-278.9. Delinquent children; loss of driving privileges for alcohol, firearm and drug offenses;
70 truancy.

71 A. If a court has found facts which would justify a finding that a child at least 13 years of age at the
72 time of the offense is delinquent and such finding involves (i) a violation of § 18.2-266 or of a similar
73 ordinance of any county, city or town, (ii) a refusal to take a blood or breath test in violation of
74 § 18.2-268.2, (iii) a felony violation of §§ 18.2-248, 18.2-248.1 or § 18.2-250, (iv) a misdemeanor
75 violation of §§ 18.2-248, 18.2-248.1, or § 18.2-250 or a violation of § 18.2-250.1, (v) the unlawful
76 purchase or possession of alcohol in violation of § 4.1-305 or the unlawful drinking or possession of
77 alcoholic beverages in or on public school grounds in violation of § 4.1-309, (vi) public intoxication in
78 violation of § 18.2-388 or a similar ordinance of a county, city or town, (vii) the unlawful use or
79 possession of a handgun or possession of a "streetsweeper" as defined below, or (viii) a violation of
80 § 18.2-83, the court shall order that the child be denied a driver's license. In addition to any other
81 penalty authorized by this section, if the offense involves a violation designated under clause (i) and the
82 child was transporting a person 17 years of age or younger, the court shall impose the additional fine
83 and order community service as provided in § 18.2-270. If the offense involves a violation designated
84 under clause (i), (ii), (iii) or (viii), the denial of a driver's license shall be for a period of one year or
85 until the juvenile reaches the age of 17, whichever is longer, for a first such offense or for a period of
86 one year or until the juvenile reaches the age of 18, whichever is longer, for a second or subsequent
87 such offense. If the offense involves a violation designated under clause (iv), (v) or (vi) the denial of
88 driving privileges shall be for a period of six months unless the offense is committed by a child under
89 the age of 16 years and three months, in which case the child's ability to apply for a driver's license
90 shall be delayed for a period of six months following the date he reaches the age of 16 and three
91 months. If the offense involves a violation designated under clause (v) or (vi), the court shall impose the
92 license sanction without entering a judgment of guilt and shall defer disposition of the delinquency
93 charge until such time as the court disposes of the case pursuant to subsection F of this section. If the
94 offense involves a violation designated under clause (iii) or (iv), the court shall impose the license
95 sanction and shall dispose of the delinquency charge pursuant to the provisions of this chapter or
96 § 18.2-251. If the offense involves a violation designated under clause (vii), the denial of driving
97 privileges shall be for a period of not less than 30 days, except when the offense involves possession of
98 a concealed handgun or a striker 12, commonly called a "streetsweeper," or any semi-automatic folding
99 stock shotgun of like kind with a spring tension drum magazine capable of holding 12 shotgun shells, in
100 which case the denial of driving privileges shall be for a period of two years unless the offense is
101 committed by a child under the age of 16 years and three months, in which event the child's ability to
102 apply for a driver's license shall be delayed for a period of two years following the date he reaches the
103 age of 16 and three months.

104 A1. If a court finds that a child at least 13 years of age has failed to comply with school attendance
105 and meeting requirements as provided in § 22.1-258, the court shall order the denial of the child's
106 driving privileges for a period of not less than 30 days. If such failure to comply involves a child under
107 the age of 16 years and three months, the child's ability to apply for a driver's license shall be delayed
108 for a period of not less than 30 days following the date he reaches the age of 16 and three months.

109 If the court finds a second or subsequent such offense, it may order the denial of a driver's license
110 for a period of one year or until the juvenile reaches the age of 18, whichever is longer, or delay the
111 child's ability to apply for a driver's license for a period of one year following the date he reaches the
112 age of 16 and three months, as may be appropriate.

113 B. Any child who has a driver's license at the time of the offense or at the time of the court's finding
114 as provided in subsection A1 shall be ordered to surrender his driver's license, which shall be held in
115 the physical custody of the court during any period of license denial.

116 C. The court shall report any order issued under this section to the Department of Motor Vehicles,
117 which shall preserve a record thereof. The report and the record shall include a statement as to whether
118 the child was represented by or waived counsel or whether the order was issued pursuant to subsection
119 A1 of this section. Notwithstanding the provisions of Article 12 (§ 16.1-299 et seq.) of this chapter or
120 the provisions of Title 46.2, this record shall be available only to all law-enforcement officers, attorneys

for the Commonwealth and courts. No other record of the proceeding shall be forwarded to the Department of Motor Vehicles unless the proceeding results in an adjudication of guilt pursuant to subsection F.

The Department of Motor Vehicles shall refuse to issue a driver's license to any child denied a driver's license until such time as is stipulated in the court order or until notification by the court of withdrawal of the order of denial under subsection E.

D. If the finding as to the child involves a violation designated under clause (i), (ii), (iii) or (vi) of subsection A, the child may be referred to a certified alcohol safety action program in accordance with § 18.2-271.1 upon such terms and conditions as the court may set forth. If the finding as to such child involves a violation designated under clause (iii), (iv), (v), (vii) or (viii) of subsection A, such child may be referred to appropriate rehabilitative or educational services upon such terms and conditions as the court may set forth.

The court, in its discretion and upon a demonstration of hardship, may authorize the use of a restricted permit to operate a motor vehicle by any child who has a driver's license at the time of the offense or at the time of the court's finding as provided in subsection A1 for any of the purposes set forth in subsection E of § 18.2-271.1 or for travel to and from school, except that no restricted license shall be issued if the finding as to such child involves a violation designated under clause (iii) or (iv) of subsection A, or if it involves a second or subsequent violation of any offense designated in subsection A or a second finding by the court of failure to comply with school attendance and meeting requirements as provided in subsection A1. The issuance of the restricted permit shall be set forth within the court order, a copy of which shall be provided to the child, and shall specifically enumerate the restrictions imposed and contain such information regarding the child as is reasonably necessary to identify him. The child may operate a motor vehicle under the court order in accordance with its terms. Any child who operates a motor vehicle in violation of any restrictions imposed pursuant to this section shall be guilty of a violation of § 46.2-301.

E. Upon petition made at least 90 days after issuance of the order, the court may review and withdraw any order of denial of a driver's license if for a first such offense or finding as provided in subsection A1. For a second or subsequent such offense or finding, the order may not be reviewed and withdrawn until one year after its issuance.

F. If the finding as to such child involves a violation designated under clause (v), (vi) or (vii) of subsection A, upon fulfillment of the terms and conditions prescribed by the court and after the child's driver's license has been restored, the court shall or, in the event the violation resulted in the injury or death of any person or if the finding involves a violation designated under clause ~~(i)~~ or (ii) of subsection A, may discharge the child and dismiss the proceedings against him. Discharge and dismissal under these provisions shall be without an adjudication of guilt but a record of the proceeding shall be retained for the purpose of applying this section in subsequent proceedings. Failure of the child to fulfill such terms and conditions shall result in an adjudication of guilt. If the finding as to such child involves a violation designated under clause (iii) or (iv) of subsection A, the charge shall not be dismissed pursuant to this subsection but shall be disposed of pursuant to the provisions of this chapter or § 18.2-251.

§ 16.1-306. Expungement of court records.

A. Notwithstanding the provisions of § 16.1-69.55, the clerk of the juvenile and domestic relations district court shall, on January 2 of each year or on a date designated by the court, destroy its files, papers and records connected with any proceeding concerning a juvenile in such court, if such juvenile has attained the age of ~~nineteen~~ 19 years and five years have elapsed since the date of the last hearing in any case of the juvenile which is subject to this section. However, if the juvenile was found guilty of an offense for which the clerk is required by § 46.2-383 to furnish an abstract to the Department of Motor Vehicles, the records shall be destroyed when the juvenile has attained the age of ~~twenty-nine~~ 29. If the juvenile was found guilty of a delinquent act which would be a felony if committed by an adult, the records shall be retained. *If the juvenile was found guilty of violating § 18.2-266, the records shall be retained.*

B. In all files in which the court records concerning a juvenile contain a finding of guilty of a delinquent act which would be a felony if committed by an adult or an offense for which the clerk is required by § 46.2-383 to furnish an abstract to the Department of Motor Vehicles together with findings of not innocent of other acts, all of the records of such juvenile subject to this section shall be retained and available for inspection as provided in § 16.1-305.

C. A person who has been the subject of a delinquency or traffic proceeding and (i) has been found innocent thereof or (ii) such proceeding was otherwise dismissed, may file a motion requesting the destruction of all records pertaining to the charge of such an act of delinquency. Notice of such motion shall be given to the attorney for the Commonwealth. Unless good cause is shown why such records should not be destroyed, the court shall grant the motion, and shall send copies of the order to all officers or agencies that are repositories of such records, and all such officers and agencies shall comply

182 with the order.

183 D. Each person shall be notified of his rights under subsections A and C of this section at the time
184 of his dispositional hearing.

185 E. Upon destruction of the records of a proceeding as provided in subsections A, B, and C, the
186 violation of law shall be treated as if it never occurred. All index references shall be deleted and the
187 court and law-enforcement officers and agencies shall reply and the person may reply to any inquiry that
188 no record exists with respect to such person.

189 F. All docket sheets shall be destroyed in the sixth year after the last hearing date recorded on the
190 docket sheet.

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