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## HOUSE BILL NO. 1756

## FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Senator Stolle  
on February 23, 2005)

(Patron Prior to Substitute—Delegate Janis)

A BILL to amend and reenact §§ 46.2-208 and 46.2-382 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 18.2-36.2, relating to manslaughter caused by operation of watercraft; penalties.

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-208 and 46.2-382 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 18.2-36.2 as follows:

§ 18.2-36.2. Involuntary manslaughter; operating a watercraft while under the influence; penalties.

A. Any person who, as a result of operating a watercraft or motorboat in violation of clause (ii), (iii), or (iv) of subsection B of § 29.1-738 or a similar local ordinance, unintentionally causes the death of another person, is guilty of involuntary manslaughter.

B. If, in addition, the conduct of the defendant was so gross, wanton, and culpable as to show a reckless disregard for human life, he shall be guilty of aggravated involuntary manslaughter, a felony punishable by a term of imprisonment of not less than one nor more than 20 years, one year of which shall be a mandatory minimum term of imprisonment.

C. The provisions of this section shall not preclude prosecution under any other homicide statute. The court shall order any person convicted under this section not to operate a watercraft or motorboat that is underway upon the waters of the Commonwealth. After five years have passed from the date of the conviction, the convicted person may petition the court that entered the conviction for the right to operate a watercraft or motorboat upon the waters of the Commonwealth. Upon consideration of such petition, the court may restore the right to operate a watercraft or motorboat subject to such terms and conditions as the court deems appropriate, including the successful completion of a water safety alcohol rehabilitation program described in § 29.1-738.5.

§ 46.2-208. Records of Department; when open for inspection; release of privileged information.

A. All records in the office of the Department containing the specific classes of information outlined below shall be considered privileged records:

1. Personal information, including all data defined as "personal information" in § 2.2-3801;

2. Driver information, including all data that relates to driver's license status and driver activity; and

3. Vehicle information, including all descriptive vehicle data and title, registration, and vehicle activity data.

B. The Commissioner shall release such information only under the following conditions:

1. (For expiration date - see Editor's note) Notwithstanding other provisions of this section, medical data included in personal data shall be released only to a physician as provided in § 46.2-322.

1. (For effective date - see Editor's note) Notwithstanding other provisions of this section, medical data included in personal data shall be released only to a physician or nurse practitioner as provided in § 46.2-322.

2. Insurance data may be released as specified in §§ 46.2-372, 46.2-380, and 46.2-706.

3. Notwithstanding other provisions of this section, information disclosed or furnished shall be assessed a fee as specified in § 46.2-214.

4. When the person requesting the information is (i) the subject of the information, (ii) the parent or guardian of the subject of the information, (iii) the authorized representative of the subject of the information, or (iv) the owner of the vehicle that is the subject of the information, the Commissioner shall provide him with the requested information and a complete explanation of it. Requests for such information need not be made in writing or in person and may be made orally or by telephone, provided that the Department is satisfied that there is adequate verification of the requester's identity. When so requested in writing by (a) the subject of the information, (b) the parent or guardian of the subject of the information, (c) the authorized representative of the subject of the information, or (d) the owner of the vehicle that is the subject of the information, the Commissioner shall verify and, if necessary, correct the personal information provided and furnish driver and vehicle information in the form of an abstract of the record.

5. On the written request of any insurance carrier, surety, or representative of an insurance carrier or surety, the Commissioner shall furnish such insurance carrier, surety, or representative an abstract of the record of any person subject to the provisions of this title. The abstract shall include any record of any conviction of a violation of any provision of any statute or ordinance relating to the operation or ownership of a motor vehicle or of any injury or damage in which he was involved and a report of

60 which is required by § 46.2-372. No such report of any conviction or accident shall be made after 60  
61 months from the date of the conviction or accident unless the Commissioner or court used the  
62 conviction or accident as a reason for the suspension or revocation of a driver's license or driving  
63 privilege, in which case the revocation or suspension and any conviction or accident pertaining thereto  
64 shall not be reported after 60 months from the date that the driver's license or driving privilege has been  
65 reinstated. This abstract shall not be admissible in evidence in any court proceedings.

66 6. On the written request of any business organization or its agent, in the conduct of its business, the  
67 Commissioner shall compare personal information supplied by the business organization or agent with  
68 that contained in the Department's records and, when the information supplied by the business  
69 organization or agent is different from that contained in the Department's records, provide the business  
70 organization or agent with correct information as contained in the Department's records. Personal  
71 information provided under this subdivision shall be used solely for the purpose of pursuing remedies  
72 that require locating an individual.

73 7. The Commissioner shall provide vehicle information to any business organization or agent on such  
74 business' or agent's written request. Disclosures made under this subdivision shall not include any  
75 personal information and shall not be subject to the limitations contained in subdivision 6 of this  
76 subsection.

77 8. On the written request of any motor vehicle rental or leasing company or its designated agent, the  
78 Commissioner shall (i) compare personal information supplied by the company or agent with that  
79 contained in the Department's records and, when the information supplied by the company or agent is  
80 different from that contained in the Department's records, provide the company or agent with correct  
81 information as contained in the Department's records and (ii) provide the company or agent with driver  
82 information in the form of an abstract of any person subject to the provisions of this title. Such abstract  
83 shall include any record of any conviction of a violation of any provision of any statute or ordinance  
84 relating to the operation or ownership of a motor vehicle or of any injury or damage in which the  
85 subject of the abstract was involved and a report of which is required by § 46.2-372. No such abstract  
86 shall include any record of any conviction or accident more than 60 months after the date of such  
87 conviction or accident unless the Commissioner or court used the conviction or accident as a reason for  
88 the suspension or revocation of a driver's license or driving privilege, in which case the revocation or  
89 suspension and any conviction or accident pertaining thereto shall cease to be included in such abstract  
90 after 60 months from the date on which the driver's license or driving privilege was reinstated. No  
91 abstract released under this subdivision shall be admissible in evidence in any court proceedings.

92 9. On the request of any federal, state, or local governmental entity, law-enforcement officer, attorney  
93 for the Commonwealth, court, or the authorized agent of any of the foregoing, the Commissioner shall  
94 (i) compare personal information supplied by the governmental entity, officer, attorney for the  
95 Commonwealth, court, or the authorized agent of any of the foregoing, with that contained in the  
96 Department's records and, when the information supplied by the governmental entity, officer, attorney  
97 for the Commonwealth, court, or the authorized agent of any of the foregoing, is different from that  
98 contained in the Department's records, provide the governmental entity, officer, attorney for the  
99 Commonwealth, court, or the authorized agent of any of the foregoing, with correct information as  
100 contained in the Department's records and (ii) provide driver and vehicle information in the form of an  
101 abstract of the record showing all convictions, accidents, driver's license suspensions or revocations, and  
102 other appropriate information as the governmental entity, officer, attorney for the Commonwealth, court,  
103 or the authorized agent of any of the foregoing, may require in order to carry out its official functions.

104 10. On request of the driver licensing authority in any other state or foreign country, the  
105 Commissioner shall provide whatever classes of information the requesting authority shall require in  
106 order to carry out its official functions.

107 11. On the written request of any employer, prospective employer, or authorized agent of either, and  
108 with the written consent of the individual concerned, the Commissioner shall (i) compare personal  
109 information supplied by the employer, prospective employer, or agent with that contained in the  
110 Department's records and, when the information supplied by the employer, prospective employer, or  
111 agent is different from that contained in the Department's records, provide the employer, prospective  
112 employer, or agent with correct information as contained in the Department's records and (ii) provide the  
113 employer, prospective employer, or agent with driver information in the form of an abstract of an  
114 individual's record showing all convictions, accidents, driver's license suspensions or revocations, and  
115 any type of driver's license that the individual currently possesses, provided that the individual's position  
116 or the position that the individual is being considered for involves the operation of a motor vehicle.

117 12. On the written request of any member of or applicant for membership in a volunteer fire  
118 company or volunteer rescue squad, the Commissioner shall (i) compare personal information supplied  
119 by the volunteer fire company or volunteer rescue squad with that contained in the Department's records  
120 and, when the information supplied by the volunteer fire company or volunteer rescue squad is different  
121 from that contained in the Department's records, provide the volunteer fire company or volunteer rescue

squad with correct information as contained in the Department's records and (ii) provide driver information in the form of an abstract of the member's or applicant's record showing all convictions, accidents, license suspensions or revocations, and any type of driver's license that the individual currently possesses. Such abstract shall be provided free of charge if the request is accompanied by appropriate written evidence that the person is a member of or applicant for membership in a volunteer fire company or volunteer rescue squad and the abstract is needed by a volunteer fire company or volunteer rescue squad to establish the qualifications of the member or applicant to operate equipment owned by the volunteer fire company or volunteer rescue squad.

13. On the written request of any person who has applied to be a volunteer with a Virginia affiliate of Big Brothers/Big Sisters of America, the Commissioner shall (i) compare personal information supplied by a Virginia affiliate of Big Brothers/Big Sisters of America with that contained in the Department's records and, when the information supplied by a Virginia affiliate of Big Brothers/Big Sisters of America is different from that contained in the Department's records, provide the Virginia affiliate of Big Brothers/Big Sisters of America with correct information as contained in the Department's records and (ii) provide driver information in the form of an abstract of the applicant's record showing all convictions, accidents, license suspensions or revocations, and any type of driver's license that the individual currently possesses. Such abstract shall be provided free of charge if the request is accompanied by appropriate written evidence that the person has applied to be a volunteer with a Virginia affiliate of Big Brothers/Big Sisters of America.

14. On the written request of any person who has applied to be a volunteer with a court-appointed special advocate program pursuant to § 9.1-153, the Commissioner shall provide an abstract of the applicant's record showing all convictions, accidents, license suspensions or revocations, and any type of driver's license that the individual currently possesses. Such abstract shall be provided free of charge if the request is accompanied by appropriate written evidence that the person has applied to be a volunteer with a court-appointed special advocate program pursuant to § 9.1-153.

15. Upon the request of any employer, prospective employer, or authorized representative of either, the Commissioner shall (i) compare personal information supplied by the employer, prospective employer, or agent with that contained in the Department's records and, when the information supplied by the employer, prospective employer, or agent is different from that contained in the Department's records, provide the employer, prospective employer, or agent with correct information as contained in the Department's records and (ii) provide driver information in the form of an abstract of the driving record of any individual who has been issued a commercial driver's license, provided that the individual's position or the position that the individual is being considered for involves the operation of a commercial motor vehicle. Such abstract shall show all convictions, accidents, license suspensions, revocations, or disqualifications, and any type of driver's license that the individual currently possesses.

16. Upon the receipt of a completed application and payment of applicable processing fees, the Commissioner may enter into an agreement with any governmental authority or business to exchange information specified in this section by electronic or other means.

17. Upon the request of an attorney representing a person in a motor vehicle accident, the Commissioner shall provide vehicle information, including the owner's name and address, to the attorney.

18. Upon the request, in the course of business, of any authorized representative of an insurance company or of any not-for-profit entity organized to prevent and detect insurance fraud, or perform rating and underwriting activities, the Commissioner shall provide to such person (i) all vehicle information, including the owner's name and address, descriptive data and title, registration, and vehicle activity data as requested or (ii) all driver information including name, license number and classification, date of birth, and address information for each driver under the age of 22 licensed in the Commonwealth of Virginia meeting the request criteria designated by such person, with such request criteria consisting of driver's license number or address information. No such information shall be used for solicitation of sales, marketing, or other commercial purposes.

19. Upon the request of an officer authorized to issue criminal warrants, for the purpose of issuing a warrant for arrest for unlawful disposal of trash or refuse in violation of § 33.1-346, the Commissioner shall provide vehicle information, including the owner's name and address.

20. Upon written request of the compliance agent of a private security services business, as defined in § 9.1-138, which is licensed by the Department of Criminal Justice Services, the Commissioner shall provide the name and address of the owner of the vehicle under procedures determined by the Commissioner.

21. Upon the request of the operator of a toll facility, or an authorized agent or employee of a toll facility operator, for the purpose of obtaining vehicle owner data under subsection I of § 46.2-819.1.

22. On the written request of any person who has applied to be a volunteer with a Virginia affiliate of Compeer, the Commissioner shall (i) compare personal information supplied by a Virginia affiliate of

183 Compeer with that contained in the Department's records and, when the information supplied by a  
184 Virginia affiliate of Compeer is different from that contained in the Department's records, provide the  
185 Virginia affiliate of Compeer with correct information as contained in the Department's records and (ii)  
186 provide driver information in the form of an abstract of the applicant's record showing all convictions,  
187 accidents, license suspensions or revocations, and any type of driver's license that the individual  
188 currently possesses. Such abstract shall be provided free of charge if the request is accompanied by  
189 appropriate written evidence that the person has applied to be a volunteer with a Virginia affiliate of  
190 Compeer.

191 23. Upon the request of the Department of Environmental Quality for the purpose of obtaining  
192 vehicle owner data in connection with enforcement actions involving on-road testing of motor vehicles,  
193 pursuant to § 46.2-1178.1.

194 C. Whenever the Commissioner issues an order to suspend or revoke the driver's license or driving  
195 privilege of any individual, he may notify the National Driver Register Service operated by the United  
196 States Department of Transportation and any similar national driver information system and provide  
197 whatever classes of information the authority may require.

198 D. Accident reports may be inspected under the provisions of §§ 46.2-379 and 46.2-380.

199 E. Whenever the Commissioner takes any licensing action pursuant to the provisions of the Virginia  
200 Commercial Driver's License Act (§ 46.2-341.1 et seq.), he may provide information to the Commercial  
201 Driver License Information System, or any similar national commercial driver information system,  
202 regarding such action.

203 F. In addition to the foregoing provisions of this section, vehicle information may also be inspected  
204 under the provisions of §§ 43-33, 43-34, 46.2-633, and 46.2-1200.1 through 46.2-1237.

205 G. The Department may promulgate regulations to govern the means by which personal, vehicle, and  
206 driver information is requested and disseminated.

207 H. Driving records of any person accused of an offense involving the operation of a motor vehicle  
208 shall be provided by the Commissioner upon request to any person acting as counsel for the accused. If  
209 such counsel is from the public defender's office or has been appointed by the court, such records shall  
210 be provided free of charge.

211 I. The Department shall maintain the records of persons convicted of violations of § 18.2-36.2,  
212 subsection B of § 29.1-738, and §§ 29.1-738.02, 29.1-738.2, and 29.1-738.4 which shall be forwarded by  
213 every general district court or circuit court or the clerk thereof, pursuant to § 46.2-383. Such records  
214 shall be electronically available to any law-enforcement officer as provided for under clause (ii) of  
215 subdivision B 9.

216 § 46.2-382. Courts to keep full records of certain cases.

217 Every general district court or circuit court or the clerk thereof shall keep a full record of every case  
218 in which:

219 1. A person is charged with (i) a violation of any law of the Commonwealth pertaining to the  
220 operator or operation of a motor vehicle; (ii) a violation of any ordinance of any county, city, or town  
221 pertaining to the operator or operation of any motor vehicles, except parking regulations; (iii) any theft  
222 of a motor vehicle or unauthorized use thereof or theft of any part attached to it; or (iv) a violation of  
223 § 18.2-36.2, subsection B of § 29.1-738, or §§ 29.1-738.02, 29.1-738.2, or § 29.1-738.4;

224 2. A person is charged with manslaughter or any other felony in the commission of which a motor  
225 vehicle was used; or

226 3. There is rendered a judgment for damages, the rendering and nonpayment of which under the  
227 terms of this title require the Commissioner to suspend the driver's license and registration in the name  
228 of the judgment debtor.

229 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**  
230 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**  
231 **be determined for periods of imprisonment in state adult correctional facilities and cannot be**  
232 **determined for periods of commitment to the custody of the Department of Juvenile Justice.**