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## HOUSE BILL NO. 2791

Offered January 17, 2005

A *BILL to amend and reenact §§ 4.1-305 and 4.1-306 of the Code of Virginia, and to amend the Code of Virginia by adding a section numbered 4.1-306.1, relating to underage persons and alcoholic beverages; penalties.*

Patrons—Albo, Bell and Jones, S.C.

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 4.1-305 and 4.1-306 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 4.1-306.1 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 mandatory minimum fine of \$500 or ordered to perform a mandatory 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) 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 or local community-based probation 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.

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 underaged 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

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59 accused. If the accused is placed on local community-based probation, the program shall be located in  
60 any of the judicial districts served by the community-based probation program or in any judicial district  
61 ordered by the court when the placement is with an alcohol safety action program. The services shall be  
62 provided by (i) a program licensed by the Department of Mental Health, Mental Retardation and  
63 Substance Abuse Services, (ii) certified by the Commission on VASAP, or (iii) by a program made  
64 available through a community-based probation program established pursuant to § 9.1-174, if one has  
65 been established for the locality. When an offender is ordered to enter a local community-based  
66 probation program rather than the alcohol safety action program, the local community-based probation  
67 program shall be responsible for providing for services or referring the offender to education or  
68 treatment services as a condition of probation.

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

73 § 4.1-306. Purchasing alcoholic beverages for one to whom they may not be sold; penalty; forfeiture.

74 A. ~~If any~~ Any person who purchases for, or otherwise gives, provides, or assists in the provision of  
75 alcoholic beverages ~~for to~~ another person, and at the time of such purchase knows or has knowing or  
76 having reason to believe that ~~the such~~ person for whom the alcoholic beverage was purchased was (i)  
77 ~~less than twenty-one years of age~~ prohibited from possessing alcohol pursuant to § 4.1-305, (ii)  
78 ~~interdicted, or (iii) intoxicated, he shall be~~ is guilty of a Class 1 misdemeanor.

79 B. In addition to any other penalty prescribed by the court, any person found guilty of a violation of  
80 this section shall, upon conviction, have his license to operate a motor vehicle in the Commonwealth  
81 suspended for a period of not more than one year. The court, in its discretion and upon a demonstration  
82 of hardship, may authorize any person convicted of a violation of this section the use of a restricted  
83 permit to operate a motor vehicle in accordance with the provisions of subsection D of § 16.1-278.9 or  
84 subsection E of § 18.2-271.1 or when referred to a local community-based probation program  
85 established pursuant to Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1. During the period of  
86 license suspension, the court may require a person issued a restricted permit under the provisions of  
87 this subsection to be (i) monitored by an alcohol safety action program, or (ii) supervised by a local  
88 community-based probation program established pursuant to Article 9 (§ 9.1-173 et seq.) of Chapter 1  
89 of Title 9.1, if one has been established for the locality. The alcohol safety action program or local  
90 community-based probation program shall report to the court any violation of the terms of the restricted  
91 permit, the required alcohol safety program monitoring or the local community-based probation and any  
92 condition related thereto or any failure to remain alcohol-free during the suspension period.

93 B-C. Any alcoholic beverages purchased in violation of this section shall be deemed contraband and  
94 forfeited to the Commonwealth in accordance with § 4.1-338.

95 D. The provisions of this section shall not prohibit any conduct permitted pursuant to subdivisions 1  
96 through 7 of § 4.1-200; nor shall this section prohibit possession of alcoholic beverages by an underage  
97 person (i) where his possession is due to his making a delivery of alcoholic beverages in pursuance of  
98 his employment or an order of his parent; (ii) by any state, federal, or local law-enforcement officer  
99 when possession of an alcoholic beverage is necessary in the performance of his duties; and (iii) in  
100 conjunction with a bona fide religious ceremony.

101 § 4.1-306.1. Additional penalties for violation of §§ 4.1-305 and 4.1-306; administrative suspension  
102 of license or privilege to operate a motor vehicle.

103 A. Upon issuance of a warrant or summons by the arresting officer, or upon issuance of a warrant  
104 by the magistrate, for a violation of § 4.1-305 or 4.1-306, the person's license to operate a motor  
105 vehicle in Virginia shall be suspended immediately or in the case of (i) an unlicensed person, (ii) a  
106 person whose license is otherwise suspended or revoked, or (iii) a person whose driver's license is from  
107 a jurisdiction other than the Commonwealth, such person's privilege to operate a motor vehicle in the  
108 Commonwealth shall be suspended immediately. The period of suspension of the person's license or  
109 privilege to drive shall be seven days unless the summons or warrant issued charges the person with a  
110 second or subsequent offense. If the person is charged with a second offense the suspension shall be for  
111 60 days. If not already expired, the period of suspension shall expire on the day and time of trial of the  
112 offense charged on the summons or warrant, except that it shall not so expire during the first seven  
113 days of the suspension. If the person is charged with a third or subsequent offense, the suspension shall  
114 be until the day and time of trial of the offense charged on the summons or warrant.

115 B. A law-enforcement officer, acting on behalf of the Commonwealth, shall serve a notice of  
116 suspension personally on the arrested person. When notice is served, the arresting officer shall promptly  
117 take possession of any driver's license held by the person and issued by the Commonwealth and shall  
118 promptly deliver it to the magistrate. Any driver's license taken into possession under this section shall  
119 be forwarded promptly by the magistrate to the clerk of the general district court or, as appropriate, the  
120 court with jurisdiction over juveniles of the jurisdiction in which the arrest was made together with any

121 summons or warrant and the report required by subsection C. A copy of the notice of suspension shall  
122 be forwarded forthwith to both (i) the general district court or, as appropriate, the court with  
123 jurisdiction over juveniles of the jurisdiction in which the arrest was made and (ii) the Commissioner.  
124 Transmission of this information may be made by electronic means. The clerk shall promptly return the  
125 suspended license to the person at the expiration of the suspension. Whenever a suspended license is to  
126 be returned under this section, the person may elect to have the license returned in person at the clerk's  
127 office or by mail to the address on the person's license or to such other address as he may request.

128 C. Promptly after arrest and service of the notice of suspension, the arresting officer shall forward to  
129 the magistrate a sworn report of the arrest that shall include (i) information that adequately identifies  
130 the person arrested and (ii) a statement setting forth the arresting officer's grounds for belief that the  
131 person violated § 4.1-305 or 4.1-306. The report required by this subsection shall be submitted on forms  
132 supplied by the Supreme Court.

133 D. Any person whose license or privilege to operate a motor vehicle has been suspended under this  
134 section may, during the period of the suspension, request the general district court or, as appropriate,  
135 the court with jurisdiction over juveniles of the jurisdiction in which the arrest was made to review that  
136 suspension. The court shall review the suspension within the same time period as the court hears an  
137 appeal from an order denying bail or fixing terms of bail or terms of recognizance, giving this matter  
138 precedence over all other matters on its docket. If the person proves to the court by a preponderance of  
139 the evidence that the arresting officer did not have probable cause for the arrest or that the magistrate  
140 did not have probable cause to issue the warrant, the court shall rescind the suspension, or that portion  
141 of it that exceeds seven days if there was not probable cause to charge a second offense or 60 days if  
142 there was not probable cause to charge a third or subsequent offense, and the clerk of the court shall  
143 forthwith, or at the expiration of the reduced suspension time, (i) return the suspended license, if any, to  
144 the person unless the license has been otherwise suspended or revoked, (ii) deliver to the person a  
145 notice that the suspension under this section has been rescinded or reduced, and (iii) forward to the  
146 Commissioner a copy of the notice that the suspension under this section has been rescinded or reduced.  
147 Otherwise, the court shall affirm the suspension. If the person requesting the review fails to appear  
148 without just cause, his right to review shall be waived. The court's findings are without prejudice to the  
149 person contesting the suspension or to any other potential party as to any proceedings, civil or criminal,  
150 and shall not be evidence in any proceedings, civil or criminal.

151 D. If a person whose license or privilege to operate a motor vehicle is suspended under subsection A  
152 is convicted under § 18.2-51.4, 18.2-266, or 18.2-266.1, or any similar local ordinance during the  
153 suspension imposed by subsection A, and if the court decides to issue the person a restricted permit  
154 under subsection E of § 18.2-271.1, such restricted permit shall not be issued to the person before the  
155 expiration of the first seven days of the suspension imposed under subsection A.

156 E. A notice of suspension issued pursuant to this section shall clearly specify (i) the reason and  
157 statutory grounds for the suspension, (ii) the effective date and duration of the suspension, (iii) the right  
158 of the offender to request a review of that suspension by the appropriate district court of the jurisdiction  
159 in which the arrest was made, and (iv) the procedures for requesting such a review.

160 F. Notwithstanding any other provision of law to the contrary, a subsequent dismissal or acquittal of  
161 all the charges under § 4.1-305 or 4.1-306 for the same offense for which a person's driver's license or  
162 privilege to operate a motor vehicle was suspended under this section shall result in the immediate  
163 rescission of the suspension. In any such case, the clerk of the court shall forthwith (i) return the  
164 suspended license, if any, to the person unless the license has been otherwise suspended or revoked, (ii)  
165 deliver to the person a notice that the suspension under this section has been rescinded, and (iii)  
166 forward to the Commissioner a copy of the notice that the suspension under this section has been  
167 rescinded.

168 G. The Supreme Court shall develop policies and regulations pertaining to both the notice of  
169 suspension and the notice that the suspension has been rescinded under this section, and shall furnish  
170 appropriate forms to all law-enforcement officers and district courts, respectively.