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## HOUSE BILL NO. 2791

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice  
on February 4, 2005)

(Patron Prior to Substitute—Delegate Albo)

A BILL to amend and reenact §§ 4.1-304, 4.1-305 and 4.1-306 of the Code of Virginia, relating to underage persons and alcoholic beverages; penalties.

Be it enacted by the General Assembly of Virginia:

1. That §§ 4.1-304, 4.1-305 and 4.1-306 of the Code of Virginia are amended and reenacted as follows:

§ 4.1-304. Persons to whom alcoholic beverages may not be sold; penalties.

No ~~person~~ licensee shall, except pursuant to subdivisions 1 through 5 of § 4.1-200, sell any alcoholic beverages to any person when at the time of such sale he knows or has reason to believe that the person to whom the sale is made is (i) less than ~~twenty-one~~ 21 years of age, (ii) interdicted, or (iii) intoxicated.

Any person convicted of a violation of this section ~~shall be~~ is guilty of a Class 1 misdemeanor.

§ 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.

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

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

76 § 4.1-306. Purchasing alcoholic beverages for one to whom they may not be sold; penalty; forfeiture.

77 A. ~~If any~~ Any person who purchases for, or intentionally gives, provides, or assists in the provision  
78 of alcoholic beverages for to another person, and at the time of such purchase knows or has knowing  
79 or having reason to believe that the such person for whom the alcoholic beverage was purchased was  
80 (i) less than twenty-one years of age prohibited from possessing alcohol pursuant to § 4.1-305, (ii)  
81 interdicted, or (iii) intoxicated, ~~he shall be~~ is guilty of a Class 1 misdemeanor. This subsection shall not  
82 apply to a sale of alcoholic beverages by a licensee.

83 B. In addition to any other penalty authorized by law, any person found guilty of a violation of this  
84 section shall have his license to operate a motor vehicle suspended for a period of not more than one  
85 year. The court, in its discretion, may authorize any person convicted of a violation of this section the  
86 use of a restricted permit to operate a motor vehicle in accordance with the provisions of subsection D  
87 of § 16.1-278.9 or subsection E of § 18.2-271.1.

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

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