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HOUSE BILL NO. 41

Offered January 11, 2006

Prefiled December 8, 2005

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

Patrons—Albo, Callahan, Carrico, Cosgrove, Gear, Gilbert, Kilgore, Landes, Lingamfelter, McQuigg, O'Bannon, Rust, Suit and Wright

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 with a mandatory minimum fine of \$250. If the person's blood alcohol level as indicated by the chemical test administered as provided in this article was at least 0.15, but not more than 0.20, he shall be confined in jail for an additional mandatory minimum period of five days or, if the level was more than 0.20, for an additional mandatory minimum period of 10 days.

B. 1. ~~Any~~ *Except as provided in subsection C, any* person convicted of a second offense committed within less than five years after a ~~first~~ *prior* offense under § 18.2-266 shall upon conviction of the second offense be punished by a mandatory minimum fine of \$500 and by confinement in jail for not less than one month nor more than one year. Twenty days of such confinement shall be a mandatory minimum sentence.

2. Any person convicted of a second offense committed within a period of five to 10 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 and by confinement in jail for not less than one month. Ten days of such confinement shall be a mandatory minimum sentence.

3. ~~Upon conviction of a second offense within 10 years of a first offense, if the person's~~ *When a person is convicted of two or more offenses under § 18.2-266 committed within a 10-year period and his* blood alcohol level ~~upon the most recent offense~~ *as indicated by the chemical test administered as* provided in this article was at least 0.15, but not more than 0.20, he shall be confined in jail for an additional mandatory minimum period of 10 days or, if the level was more than 0.20, for an additional mandatory minimum period of 20 days. In addition, such person shall be fined a mandatory minimum fine of \$500.

C. 1. Any person convicted of three 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. The sentence of any person convicted of three offenses of § 18.2-266 committed within a 10-year period shall include a mandatory minimum sentence of 90 days, unless the three offenses were committed within a five-year period, in which case the sentence shall include a mandatory minimum sentence of confinement for six months. In addition, such person shall be fined a mandatory minimum fine of \$1,000.

2. The punishment of any person convicted of a fourth or subsequent offense of § 18.2-266 committed within a 10-year period shall, upon conviction, include a mandatory minimum term of imprisonment of one year. In addition, such person shall be fined a mandatory minimum fine of \$1,000. 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.

3. The vehicle solely owned and operated by the accused during the commission of a felony violation of § 18.2-266 shall be subject to seizure and forfeiture. After an arrest for a felony violation of § 18.2-266, the Commonwealth may file an information in accordance with § 19.2-386.1. If the information is filed, the Commonwealth shall notify the Commissioner of the Department of Motor Vehicles that the property is subject to seizure. The Commissioner shall act upon such notification pursuant to the provisions for certification and notice applicable to a seizure under § 19.2-375, except that the Commissioner shall serve the written notice of the seizure upon the registered owner and lienor in accordance with the requirements of § 8.01-296. Any seizure shall be stayed until conviction and the exhaustion of all appeals at which time, if the information has been filed, the Commonwealth shall immediately commence seizure of the property in accordance with § 19.2-386.2.

An immediate family member of the owner of any motor vehicle for which an information has been filed under this section who was not the driver at the time of the violation may petition the court in

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58 which such information was filed for the release of the motor vehicle. If the immediate family member
59 proves by a preponderance of the evidence that his immediate family has only one motor vehicle and
60 will suffer a substantial hardship if that motor vehicle is seized and forfeited, the court, in its discretion,
61 may release the vehicle.

62 In the event the vehicle was sold to a bona fide purchaser subsequent to the arrest but prior to
63 seizure in order to avoid seizure and forfeiture, the Commonwealth shall have a right of action against
64 the seller for the proceeds of the sale.

65 D. In addition to the penalty otherwise authorized by this section or § 16.1-278.9, any person
66 convicted of a violation of § 18.2-266 committed while transporting a person 17 years of age or younger
67 shall be (i) fined an additional minimum of \$500 and not more than \$1,000 and (ii) sentenced to a
68 mandatory minimum period of confinement of five days.

69 E. For the purpose of this section, an adult conviction of any person, or finding of guilty in the case
70 of a juvenile, under the following shall be considered a conviction of § 18.2-266: (i) the provisions of
71 § 18.2-36.1 or the substantially similar laws of any other state or of the United States, (ii) the provisions
72 of §§ 18.2-51.4, 18.2-266, former § 18.1-54 (formerly § 18-75), the ordinance of any county, city or
73 town in this Commonwealth or the laws of any other state or of the United States substantially similar
74 to the provisions of § 18.2-51.4, or § 18.2-266, or (iii) the provisions of subsection A of § 46.2-341.24
75 or the substantially similar laws of any other state or of the United States.