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## HOUSE BILL NO. 3049

Offered January 15, 2007

A BILL to amend and reenact §§ 18.2-266, 18.2-266.1, and 18.2-269 of the Code of Virginia, relating to time during which blood alcohol content is relevant in a DUI prosecution.

Patron—Albo

Referred to Committee for Courts of Justice

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

**1. That §§ 18.2-266, 18.2-266.1, and 18.2-269 of the Code of Virginia are amended and reenacted as follows:**

§ 18.2-266. Driving motor vehicle, engine, etc., while intoxicated, etc.

It shall be unlawful for any person to drive or operate any motor vehicle, engine or train (i) ~~while~~ *after* such person has *consumed sufficient alcohol prior to or during driving so that he has, at any time after driving,* a blood alcohol concentration of 0.08 percent or more by weight by volume or 0.08 grams or more per 210 liters of breath as indicated by a chemical test administered as provided in this article, (ii) while such person is under the influence of alcohol, (iii) while such person is under the influence of any narcotic drug or any other self-administered intoxicant or drug of whatsoever nature, or any combination of such drugs, to a degree which impairs his ability to drive or operate any motor vehicle, engine or train safely, (iv) while such person is under the combined influence of alcohol and any drug or drugs to a degree which impairs his ability to drive or operate any motor vehicle, engine or train safely, or (v) while such person has a blood concentration of any of the following substances at a level that is equal to or greater than: (a) 0.02 milligrams of cocaine per liter of blood, (b) 0.1 milligrams of methamphetamine per liter of blood, (c) 0.01 milligrams of phencyclidine per liter of blood, or (d) 0.1 milligrams of 3,4-methylenedioxymethamphetamine per liter of blood. A charge alleging a violation of this section shall support a conviction under clauses (i), (ii), (iii), (iv), or (v).

For the purposes of this article, the term "motor vehicle" includes mopeds, while operated on the public highways of this Commonwealth.

§ 18.2-266.1. Persons under age 21 driving after illegally consuming alcohol; penalty.

A. It shall be unlawful for any person under the age of 21 to operate any motor vehicle after illegally consuming alcohol. Any such person ~~with~~ *who has consumed sufficient alcohol prior to or during driving so that he has, at any time after driving,* a blood alcohol concentration of 0.02 percent or more by weight by volume or 0.02 grams or more per 210 liters of breath but less than 0.08 by weight by volume or less than 0.08 grams per 210 liters of breath as indicated by a chemical test administered as provided in this article ~~shall be~~ *is* in violation of this section.

B. A violation of this section shall be punishable by forfeiture of such person's license to operate a motor vehicle for a period of six months from the date of conviction and by a fine of not more than \$500. This suspension period shall be in addition to the suspension period provided under § 46.2-391.2. The penalties and license forfeiture provisions set forth in §§ 16.1-278.9, 18.2-270 and 18.2-271 shall not apply to a violation of this section. Any person convicted of a violation of this section shall be eligible to attend an Alcohol Safety Action Program under the provisions of § 18.2-271.1 and may, in the discretion of the court, be issued a restricted license during the term of license suspension.

C. Notwithstanding §§ 16.1-278.8 and 16.1-278.9, upon adjudicating a juvenile delinquent based upon a violation of this section, the juvenile and domestic relations district court shall order disposition as provided in subsection B.

§ 18.2-269. Presumptions from alcohol or drug content of blood.

A. In any prosecution for a violation of § 18.2-36.1 or clause (ii), (iii) or (iv) of § 18.2-266, or any similar ordinance, the amount of alcohol or drugs in the blood of the accused at ~~the any time of~~ *after* the alleged offense as indicated by a chemical analysis of a sample of the accused's blood or breath to determine the alcohol or drug content of his blood in accordance with the provisions of §§ 18.2-268.1 through 18.2-268.12 shall give rise to the following rebuttable presumptions:

(1) If there was at that time 0.05 percent or less by weight by volume of alcohol in the accused's blood or 0.05 grams or less per 210 liters of the accused's breath, it shall be presumed that the accused was not under the influence of alcohol intoxicants at the time of the alleged offense;

(2) If there was at that time in excess of 0.05 percent but less than 0.08 percent by weight by volume of alcohol in the accused's blood or 0.05 grams but less than 0.08 grams per 210 liters of the accused's breath, such facts shall not give rise to any presumption that the accused was or was not under the influence of alcohol intoxicants at the time of the alleged offense, but such facts may be considered

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59 with other competent evidence in determining the guilt or innocence of the accused;

60 (3) If there was at that time 0.08 percent or more by weight by volume of alcohol in the accused's  
61 blood or 0.08 grams or more per 210 liters of the accused's breath, it shall be presumed that the accused  
62 was under the influence of alcohol intoxicants at the time of the alleged offense; or

63 (4) If there was at that time an amount of the following substances at a level that is equal to or  
64 greater than: (a) 0.02 milligrams of cocaine per liter of blood, (b) 0.1 milligrams of methamphetamine  
65 per liter of blood, (c) 0.01 milligrams of phencyclidine per liter of blood, or (d) 0.1 milligrams of  
66 3,4-methylenedioxymethamphetamine per liter of blood, it shall be presumed that the accused was under  
67 the influence of drugs at the time of the alleged offense to a degree which impairs his ability to drive or  
68 operate any motor vehicle, engine or train safely.

69 B. The provisions of this section shall not apply to and shall not affect any prosecution for a  
70 violation of § 46.2-341.24.