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HOUSE BILL NO. 1281

Offered January 9, 2008

Prefiled January 9, 2008

A BILL to amend and reenact § 18.2-270 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 46.2-726.1, relating to special license plates for persons convicted of DUI.

Patrons—Spruill and Hull

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-270 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 46.2-726.1 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. Any person convicted a third or subsequent time of a violation of § 18.2-266 who has a motor vehicle registered in his name in the Commonwealth shall display, on any and all such registered motor vehicles, license plates with red numerals and letters on a yellow background, issued by the Commissioner of the Department of Motor Vehicles. Such license plates shall be displayed for five years following the restoration of the person's driving privilege. If a person is convicted of a subsequent offense during the time when he is already required to display such license plates, the display periods shall run consecutively. The court shall require the person, upon conviction, to surrender to the court the license plates of any and all vehicles registered in his name.

B. 1. Any person convicted of a second offense committed within less than five years after a 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 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. Ten days of such confinement shall be a mandatory minimum sentence.

3. Upon conviction of a second offense within 10 years of a prior offense, 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 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

59 that the Commissioner shall serve the written notice of the seizure upon the registered owner and lienor
60 in accordance with the requirements of § 8.01-296. Any seizure shall be stayed until conviction and the
61 exhaustion of all appeals at which time, if the information has been filed, the Commonwealth shall
62 immediately commence seizure of the property in accordance with § 19.2-386.2.

63 An immediate family member of the owner of any motor vehicle for which an information has been
64 filed under this section who was not the driver at the time of the violation may petition the court in
65 which such information was filed for the release of the motor vehicle. If the immediate family member
66 proves by a preponderance of the evidence that his immediate family has only one motor vehicle and
67 will suffer a substantial hardship if that motor vehicle is seized and forfeited, the court, in its discretion,
68 may release the vehicle.

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

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

76 E. For the purpose of determining the number of offenses committed by, and the punishment
77 appropriate for, a person under this section, an adult conviction of any person, or finding of guilty in the
78 case of a juvenile, under the following shall be considered a conviction of § 18.2-266: (i) the provisions
79 of § 18.2-36.1 or the substantially similar laws of any other state or of the United States, (ii) the
80 provisions of §§ 18.2-51.4, 18.2-266, former § 18.1-54 (formerly § 18-75), the ordinance of any county,
81 city or town in this Commonwealth or the laws of any other state or of the United States substantially
82 similar to the provisions of § 18.2-51.4, or § 18.2-266, or (iii) the provisions of subsection A of
83 § 46.2-341.24 or the substantially similar laws of any other state or of the United States.

84 F. Mandatory minimum punishments imposed pursuant to this section shall be cumulative, and
85 mandatory minimum terms of confinement shall be served consecutively. However, in no case shall
86 punishment imposed hereunder exceed the applicable statutory maximum Class 1 misdemeanor term of
87 confinement or fine upon conviction of a first or second offense, or Class 6 felony term of confinement
88 or fine upon conviction of a third or subsequent offense.

89 § 46.2-726.1. *Special license plates; conviction for driving while intoxicated.*

90 *Notwithstanding any other provision of law, the Commissioner shall issue license plates with red*
91 *numerals and letters on a yellow background to a person having a vehicle registered in the*
92 *Commonwealth who has been convicted a third or subsequent time of a violation of § 18.2-266. Such*
93 *license plates shall be displayed for five years following the restoration of the person's driving privilege.*
94 *If a person is convicted of a subsequent offense during a period when he is already required to display*
95 *such license plates, the periods shall run consecutively. For each set of license plates issued under this*
96 *section, the Commissioner shall charge, in addition to the prescribed cost of state license plates, a fee*
97 *of \$500.*