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HOUSE BILL NO. 862

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on March 3, 2010)

(Patron Prior to Substitute—Delegate Cline)

*A BILL to amend and reenact § 16.1-278.9 of the Code of Virginia, relating to punishment of a juvenile for possession, etc., of alcohol.***Be it enacted by the General Assembly of Virginia:****1. That § 16.1-278.9 of the Code of Virginia is amended and reenacted as follows:**

§ 16.1-278.9. Delinquent children; loss of driving privileges for alcohol, firearm and drug offenses; truancy.

A. If a court has found facts which would justify a finding that a child at least 13 years of age at the time of the offense is delinquent and such finding involves (i) a violation of § 18.2-266 or of a similar ordinance of any county, city or town, (ii) a refusal to take a blood or breath test in violation of § 18.2-268.2, (iii) a felony violation of § 18.2-248, 18.2-248.1 or 18.2-250, (iv) a misdemeanor violation of § 18.2-248, 18.2-248.1, or 18.2-250 or a violation of § 18.2-250.1, (v) the unlawful purchase, possession or consumption of alcohol in violation of § 4.1-305 or the unlawful drinking or possession of alcoholic beverages in or on public school grounds in violation of § 4.1-309, (vi) public intoxication in violation of § 18.2-388 or a similar ordinance of a county, city or town, (vii) the unlawful use or possession of a handgun or possession of a "streetsweeper" as defined below, or (viii) a violation of § 18.2-83, the court shall order, in addition to any other penalty that it may impose as provided by law for the offense, that the child be denied a driver's license. In addition to any other penalty authorized by this section, if the offense involves a violation designated under clause (i) and the child was transporting a person 17 years of age or younger, the court shall impose the additional fine and order community service as provided in § 18.2-270. If the offense involves a violation designated under clause (i), (ii), (iii) or (viii), the denial of a driver's license shall be for a period of one year or until the juvenile reaches the age of 17, whichever is longer, for a first such offense or for a period of one year or until the juvenile reaches the age of 18, whichever is longer, for a second or subsequent such offense. If the offense involves a violation designated under clause (iv), (v) or (vi) the denial of driving privileges shall be for a period of six months unless the offense is committed by a child under the age of 16 years and three months, in which case the child's ability to apply for a driver's license shall be delayed for a period of six months following the date he reaches the age of 16 and three months. If the offense involves a violation designated under clause (v) or (vi), the court shall impose the license sanction *and may enter a judgment of guilt or*, without entering a judgment of guilt *and shall, may defer disposition* of the delinquency charge until such time as the court disposes of the case pursuant to subsection F of this section. If the offense involves a violation designated under clause (iii) or (iv), the court shall impose the license sanction and shall dispose of the delinquency charge pursuant to the provisions of this chapter or § 18.2-251. If the offense involves a violation designated under clause (vii), the denial of driving privileges shall be for a period of not less than 30 days, except when the offense involves possession of a concealed handgun or a striker 12, commonly called a "streetsweeper," or any semi-automatic folding stock shotgun of like kind with a spring tension drum magazine capable of holding 12 shotgun shells, in which case the denial of driving privileges shall be for a period of two years unless the offense is committed by a child under the age of 16 years and three months, in which event the child's ability to apply for a driver's license shall be delayed for a period of two years following the date he reaches the age of 16 and three months.

A1. If a court finds that a child at least 13 years of age has failed to comply with school attendance and meeting requirements as provided in § 22.1-258, the court shall order the denial of the child's driving privileges for a period of not less than 30 days. If such failure to comply involves a child under the age of 16 years and three months, the child's ability to apply for a driver's license shall be delayed for a period of not less than 30 days following the date he reaches the age of 16 and three months.

If the court finds a second or subsequent such offense, it may order the denial of a driver's license for a period of one year or until the juvenile reaches the age of 18, whichever is longer, or delay the child's ability to apply for a driver's license for a period of one year following the date he reaches the age of 16 and three months, as may be appropriate.

B. Any child who has a driver's license at the time of the offense or at the time of the court's finding as provided in subsection A1 shall be ordered to surrender his driver's license, which shall be held in the physical custody of the court during any period of license denial.

C. The court shall report any order issued under this section to the Department of Motor Vehicles, which shall preserve a record thereof. The report and the record shall include a statement as to whether

60 the child was represented by or waived counsel or whether the order was issued pursuant to subsection
61 A1 of this section. Notwithstanding the provisions of Article 12 (§ 16.1-299 et seq.) of this chapter or
62 the provisions of Title 46.2, this record shall be available only to all law-enforcement officers, attorneys
63 for the Commonwealth and courts. No other record of the proceeding shall be forwarded to the
64 Department of Motor Vehicles unless the proceeding results in an adjudication of guilt pursuant to
65 subsection F.

66 The Department of Motor Vehicles shall refuse to issue a driver's license to any child denied a
67 driver's license until such time as is stipulated in the court order or until notification by the court of
68 withdrawal of the order of denial under subsection E.

69 D. If the finding as to the child involves a violation designated under clause (i), (ii), (iii) or (vi) of
70 subsection A, the child may be referred to a certified alcohol safety action program in accordance with
71 § 18.2-271.1 upon such terms and conditions as the court may set forth. If the finding as to such child
72 involves a violation designated under clause (iii), (iv), (v), (vii) or (viii) of subsection A, such child may
73 be referred to appropriate rehabilitative or educational services upon such terms and conditions as the
74 court may set forth.

75 The court, in its discretion and upon a demonstration of hardship, may authorize the use of a
76 restricted permit to operate a motor vehicle by any child who has a driver's license at the time of the
77 offense or at the time of the court's finding as provided in subsection A1 for any of the purposes set
78 forth in subsection E of § 18.2-271.1 or for travel to and from school, except that no restricted license
79 shall be issued if the finding as to such child involves a violation designated under clause (iii) or (iv) of
80 subsection A, or if it involves a second or subsequent violation of any offense designated in subsection
81 A or a second finding by the court of failure to comply with school attendance and meeting
82 requirements as provided in subsection A1. The issuance of the restricted permit shall be set forth within
83 the court order, a copy of which shall be provided to the child, and shall specifically enumerate the
84 restrictions imposed and contain such information regarding the child as is reasonably necessary to
85 identify him. The child may operate a motor vehicle under the court order in accordance with its terms.
86 Any child who operates a motor vehicle in violation of any restrictions imposed pursuant to this section
87 shall be guilty of a violation of § 46.2-301.

88 E. Upon petition made at least 90 days after issuance of the order, the court may review and
89 withdraw any order of denial of a driver's license if for a first such offense or finding as provided in
90 subsection A1. For a second or subsequent such offense or finding, the order may not be reviewed and
91 withdrawn until one year after its issuance.

92 F. If the finding as to such child involves a violation designated under clause ~~(v)~~, ~~(vi)~~ or (vii) of
93 subsection A, upon fulfillment of the terms and conditions prescribed by the court and after the child's
94 driver's license has been restored, the court shall or, in the event the violation resulted in the injury or
95 death of any person or if the finding involves a violation designated under clause (i) or, (ii), (v) or (vi)
96 of subsection A, may discharge the child and dismiss the proceedings against him. Discharge and
97 dismissal under these provisions shall be without an adjudication of guilt but a record of the proceeding
98 shall be retained for the purpose of applying this section in subsequent proceedings. Failure of the child
99 to fulfill such terms and conditions shall result in an adjudication of guilt. If the finding as to such child
100 involves a violation designated under clause (iii) or (iv) of subsection A, the charge shall not be
101 dismissed pursuant to this subsection but shall be disposed of pursuant to the provisions of this chapter
102 or § 18.2-251.