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SENATE BILL NO. 495

Offered January 13, 2010

Prefiled January 13, 2010

A *BILL to amend and reenact § 18.2-270 of the Code of Virginia, relating to analogous DUI convictions; penalties.*

Patron—Hurt

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 or by any other scientifically reliable chemical test performed on whole blood under circumstances reliably establishing the identity of the person who is the source of the blood and the accuracy of the results (i) 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, (ii) if the level was more than 0.20, for an additional mandatory minimum period of 10 days.

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 or by any other scientifically reliable chemical test performed on whole blood under circumstances reliably establishing the identity of the person who is the source of the blood and the accuracy of the results (i) 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, (ii) 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

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59 filed under this section who was not the driver at the time of the violation may petition the court in
60 which such information was filed for the release of the motor vehicle. If the immediate family member
61 proves by a preponderance of the evidence that his immediate family has only one motor vehicle and
62 will suffer a substantial hardship if that motor vehicle is seized and forfeited, the court, in its discretion,
63 may release the vehicle.

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

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

71 E. For the purpose of determining the number of offenses committed by, and the punishment appropriate for, a person under this section, an
72 adult conviction of any person, or finding of guilty in the case of a juvenile, under the following shall
73 be considered a conviction of § 18.2-266: (i) the provisions of § 18.2-36.1 *or 18.2-51.4, the provisions*
74 *of subsection A of § 46.2-341.24*, or the substantially similar laws of any other state or of the United
75 States, *or* (ii) the provisions of §§ ~~18.2-51.4~~, 18.2-266, former § 18.1-54 (formerly § 18-75), the
76 ordinance of any county, city or town in this Commonwealth or the *analogous* laws of any other state
77 or of the United States ~~substantially similar to the provisions of § 18.2-51.4, or § 18.2-266, or~~ (iii) the
78 ~~provisions of subsection A of § 46.2-341.24 or the substantially similar laws of any other state or of the~~
79 ~~United States.~~ *For the purposes of this section a law shall be deemed analogous if it criminalizes the*
80 *operation of a motor vehicle while impaired by or under the influence of intoxicants and with regard to*
81 *alcohol uses a blood alcohol concentration of 0.08 percent or more by weight by volume or 0.08 grams*
82 *or more per 210 liters of breath as its presumptive or per se level of intoxication.*

83 *A properly authenticated copy of a final order of conviction from another state or of the United*
84 *States indicating a conviction for driving or operating a motor vehicle while impaired by or under the*
85 *influence of intoxicants or with a blood alcohol concentration of 0.08 percent or more by weight by*
86 *volume or 0.08 grams or more per 210 liters of breath shall constitute prima facie evidence that such*
87 *law is analogous.*

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

93 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
94 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0**
95 **for periods of imprisonment in state adult correctional facilities and is \$0 for periods of**
96 **commitment to the custody of the Department of Juvenile Justice.**