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SENATE BILL NO. 300

Offered January 13, 2010

Prefiled January 12, 2010

A BILL to amend and reenact §§ 16.1-278.9, 18.2-36.1, 18.2-51.4, 18.2-266.1, as it is currently effective and as it may become effective, and 18.2-270 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 18.2-270.02, relating to driving under the influence; penalties.

Patron—Miller, J.C.

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-278.9, 18.2-36.1, 18.2-51.4, 18.2-266.1, as it is currently effective and as it may become effective, and 18.2-270 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 18.2-270.02 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 without entering a judgment of guilt and shall 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

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59 age of 16 and three months, as may be appropriate.

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

63 C. The court shall report any order issued under this section to the Department of Motor Vehicles,
64 which shall preserve a record thereof. The report and the record shall include a statement as to whether
65 the child was represented by or waived counsel or whether the order was issued pursuant to subsection
66 A1 of this section. Notwithstanding the provisions of Article 12 (§ 16.1-299 et seq.) of this chapter or
67 the provisions of Title 46.2, this record shall be available only to all law-enforcement officers, attorneys
68 for the Commonwealth and courts. No other record of the proceeding shall be forwarded to the
69 Department of Motor Vehicles unless the proceeding results in an adjudication of guilt pursuant to
70 subsection F.

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

74 D. If the finding as to the child involves a violation designated under clause (i), (ii), (iii) or (vi) of
75 subsection A, the child may be referred to a certified alcohol safety action program in accordance with
76 § 18.2-271.1 upon such terms and conditions as the court may set forth. If the finding as to such child
77 involves a violation designated under clause (iii), (iv), (v), (vii) or (viii) of subsection A, such child may
78 be referred to appropriate rehabilitative or educational services upon such terms and conditions as the
79 court may set forth.

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

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

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

107 § 18.2-36.1. Certain conduct punishable as involuntary manslaughter.

108 A. Any person who, as a result of driving under the influence in violation of clause (ii), (iii), or (iv)
109 of § 18.2-266 or any local ordinance substantially similar thereto unintentionally causes the death of
110 another person, shall be guilty of involuntary manslaughter.

111 B. If, in addition, the conduct of the defendant was so gross, wanton and culpable as to show a
112 reckless disregard for human life, he shall be guilty of aggravated involuntary manslaughter, a felony
113 punishable by a term of imprisonment of not less than one nor more than 20 years, one year of which
114 shall be a mandatory minimum term of imprisonment.

115 C. *If, in addition to the provisions of subsection A, the deceased was 18 years of age or younger at*
116 *the time of death, the defendant shall be guilty of aggravated involuntary manslaughter, a felony*
117 *punishable by a term of imprisonment of not less than one nor more than 20 years, one year of which*
118 *shall be a mandatory minimum term of imprisonment.*

119 D. *If, in addition to the provisions of subsection A, the conduct of the defendant was so gross,*
120 *wanton and culpable as to show a reckless disregard for human life and the deceased was 18 years of*

age or younger at the time of death, he shall be guilty of aggravated involuntary manslaughter, a felony punishable by a term of imprisonment of not less than two nor more than 20 years, one year of which shall be a mandatory minimum term of imprisonment.

E. The provisions of this section shall not preclude prosecution under any other homicide statute. This section shall not preclude any other revocation or suspension required by law. The driver's license of any person convicted under this section shall be revoked pursuant to subsection B of § 46.2-391.

§ 18.2-51.4. Maiming, etc., of another resulting from driving while intoxicated.

A. Any person who, as a result of driving while intoxicated in violation of § 18.2-266 or any local ordinance substantially similar thereto in a manner so gross, wanton and culpable as to show a reckless disregard for human life, unintentionally causes the serious bodily injury of another person resulting in permanent and significant physical impairment shall be guilty of a Class 6 felony *and if the injured person is 18 years of age or younger shall be guilty of a Class 5 felony*. The driver's license of any person convicted under this section shall be revoked pursuant to subsection B of § 46.2-391.

B. The provisions of Article 2 (§ 18.2-266 et seq.) of Chapter 7 of Title 18.2 shall apply, mutatis mutandis, upon arrest for a violation of this section.

§ 18.2-266.1. (Expires July 1, 2010) 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 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 in violation of this section.

B. A violation of this section is a Class 1 misdemeanor. Punishment shall include (i) forfeiture of such person's license to operate a motor vehicle for a period of one year from the date of conviction and (ii) a mandatory minimum fine of \$500 or performance of a mandatory minimum of 50 hours of community service. 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, 18.2-270.02 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.

§ 18.2-266.1. (Effective July 1, 2010) 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 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 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, 18.2-270.02 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.

§ 18.2-270. 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.

182 B. 1. Any person convicted of a second offense committed within less than five years after a prior
183 offense under § 18.2-266 shall upon conviction of the second offense be punished by a mandatory
184 minimum fine of \$500 and by confinement in jail for not less than one month nor more than one year.
185 Twenty days of such confinement shall be a mandatory minimum sentence.

186 2. Any person convicted of a second offense committed within a period of five to 10 years of a prior
187 offense under § 18.2-266 shall upon conviction of the second offense be punished by a mandatory
188 minimum fine of \$500 and by confinement in jail for not less than one month. Ten days of such
189 confinement shall be a mandatory minimum sentence.

190 3. Upon conviction of a second offense within 10 years of a prior offense, if the person's blood
191 alcohol level as indicated by the chemical test administered as provided in this article or by any other
192 scientifically reliable chemical test performed on whole blood under circumstances reliably establishing
193 the identity of the person who is the source of the blood and the accuracy of the results (i) was at least
194 0.15, but not more than 0.20, he shall be confined in jail for an additional mandatory minimum period
195 of 10 days or, (ii) if the level was more than 0.20, for an additional mandatory minimum period of 20
196 days. In addition, such person shall be fined a mandatory minimum fine of \$500.

197 C. 1. Any person convicted of three offenses of § 18.2-266 committed within a 10-year period shall
198 upon conviction of the third offense be guilty of a Class 6 felony. The sentence of any person convicted
199 of three offenses of § 18.2-266 committed within a 10-year period shall include a mandatory minimum
200 sentence of 90 days, unless the three offenses were committed within a five-year period, in which case
201 the sentence shall include a mandatory minimum sentence of confinement for six months. In addition,
202 such person shall be fined a mandatory minimum fine of \$1,000.

203 2. The punishment of any person convicted of a fourth or subsequent offense of § 18.2-266
204 committed within a 10-year period shall, upon conviction, include a mandatory minimum term of
205 imprisonment of one year. In addition, such person shall be fined a mandatory minimum fine of \$1,000.
206 Unless otherwise modified by the court, the defendant shall remain on probation and under the terms of
207 any suspended sentence for the same period as his operator's license was suspended, not to exceed three
208 years.

209 3. The vehicle solely owned and operated by the accused during the commission of a felony
210 violation of § 18.2-266 shall be subject to seizure and forfeiture. After an arrest for a felony violation of
211 § 18.2-266, the Commonwealth may file an information in accordance with § 19.2-386.1. If the
212 information is filed, the Commonwealth shall notify the Commissioner of the Department of Motor
213 Vehicles that the property is subject to seizure. The Commissioner shall act upon such notification
214 pursuant to the provisions for certification and notice applicable to a seizure under § 19.2-375, except
215 that the Commissioner shall serve the written notice of the seizure upon the registered owner and lienor
216 in accordance with the requirements of § 8.01-296. Any seizure shall be stayed until conviction and the
217 exhaustion of all appeals at which time, if the information has been filed, the Commonwealth shall
218 immediately commence seizure of the property in accordance with § 19.2-386.2.

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

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

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

232 E. For the purpose of determining the number of offenses committed by, and the punishment
233 appropriate for, a person under this section, an adult conviction of any person, or finding of guilty in the
234 case of a juvenile, under the following shall be considered a conviction of § 18.2-266: (i) the provisions
235 of § 18.2-36.1 or the substantially similar laws of any other state or of the United States, (ii) the
236 provisions of §§ 18.2-51.4, 18.2-266, former § 18.1-54 (formerly § 18-75), the ordinance of any county,
237 city or town in this Commonwealth or the laws of any other state or of the United States substantially
238 similar to the provisions of § 18.2-51.4, or § 18.2-266, or (iii) the provisions of subsection A of
239 § 46.2-341.24 or the substantially similar laws of any other state or of the United States.

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

or fine upon conviction of a third or subsequent offense.

§ 18.2-270.02. Driving under the influence; penalty for transporting person 18 years of age or younger.

In addition to the penalty otherwise authorized by § 16.1-278.9 or 18.2-270, any person convicted of a violation of § 18.2-266 or any ordinance of a county, city or town similar to the provisions thereof, or subsection A of § 46.2-341.24 committed while transporting another person 18 years of age or younger, is guilty of a Class 1 misdemeanor and shall be fined an additional minimum of \$500 and not more than \$1,000 and sentenced to a mandatory minimum period of confinement of 10 days, and for a second conviction of a violation of § 18.2-266 or any ordinance of a county, city or town similar to the provisions thereof, or subsection A of § 46.2-341.24 committed while transporting another person 18 years of age or younger, is guilty of a Class 6 felony and shall be fined an additional minimum of \$1,000 and not more than \$2,000, and sentenced to a mandatory minimum period of confinement of 90 days.

2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 781 of the Acts of Assembly of 2009 requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.