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HOUSE BILL NO. 1769

Offered January 14, 2015

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A BILL to amend and reenact §§ 18.2-266.1, 46.2-411, and 46.2-492 of the Code of Virginia, relating to persons under age 21 driving after consuming alcohol.

Patron—Loupassi

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-266.1, 46.2-411, and 46.2-492 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-266.1. Persons under age 21 driving after 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. *It shall be an affirmative defense to a violation of this section that such person's consumption of alcohol was lawful.*

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 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.

§ 46.2-411. Reinstatement of suspended or revoked license or other privilege to operate or register a motor vehicle; proof of financial responsibility; reinstatement fee.

A. The Commissioner may refuse, after a hearing if demanded, to issue to any person whose license has been suspended or revoked any new or renewal license, or to register any motor vehicle in the name of the person, whenever he deems or in case of a hearing finds it necessary for the safety of the public on the highways in the Commonwealth.

B. Before granting or restoring a license or registration to any person whose driver's license or other privilege to drive motor vehicles or privilege to register a motor vehicle has been revoked or suspended pursuant to § 46.2-389, 46.2-391, 46.2-391.1, or 46.2-417, the Commissioner shall require proof of financial responsibility in the future as provided in Article 15 (§ 46.2-435 et seq.), but no person shall be licensed who may not be licensed under the provisions of §§ 46.2-389 through 46.2-431.

C. Whenever the driver's license or registration cards, license plates and decals, or other privilege to drive or to register motor vehicles of any resident or nonresident person is suspended or revoked by the Commissioner or by a district court or circuit court pursuant to the provisions of Title 18.2 or this title, or any valid local ordinance, the order of suspension or revocation shall remain in effect and the driver's license, registration cards, license plates and decals, or other privilege to drive or register motor vehicles shall not be reinstated and no new driver's license, registration cards, license plates and decals, or other privilege to drive or register motor vehicles shall be issued or granted unless such person, in addition to complying with all other provisions of law, pays to the Commissioner a reinstatement fee of \$30. The reinstatement fee shall be increased by \$30 whenever such suspension or revocation results from conviction of involuntary manslaughter in violation of § 18.2-36.1; conviction of maiming resulting from driving while intoxicated in violation of § 18.2-51.4; conviction of driving while intoxicated in violation of § 18.2-266 or 46.2-341.24; conviction of driving after ~~illegally~~ consuming alcohol in violation of § 18.2-266.1 or failure to comply with court imposed conditions pursuant to subsection D of § 18.2-271.1; unreasonable refusal to submit to drug or alcohol testing in violation of § 18.2-268.2; conviction of driving while a license, permit or privilege to drive was suspended or revoked in violation of § 46.2-301 or 46.2-341.21; disqualification pursuant to § 46.2-341.20; violation of driver's license

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59 probation pursuant to § 46.2-499; failure to attend a driver improvement clinic pursuant to § 46.2-503 or
60 habitual offender interventions pursuant to former § 46.2-351.1; conviction of eluding police in
61 violation of § 46.2-817; conviction of hit and run in violation of § 46.2-894; conviction of reckless
62 driving in violation of Article 7 (§ 46.2-852 et seq.) of Chapter 8 of Title 46.2 or a conviction, finding
63 or adjudication under any similar local ordinance, federal law or law of any other state. Five dollars of
64 the additional amount shall be retained by the Department as provided in this section and \$25 shall be
65 transferred to the Commonwealth Neurotrauma Initiative Trust Fund established pursuant to Article 12
66 (§ 51.5-178 et seq.) of Chapter 14 of Title 51.5. When three years have elapsed from the termination
67 date of the order of suspension or revocation and the person has complied with all other provisions of
68 law, the Commissioner may relieve him of paying the reinstatement fee.

69 D. No reinstatement fee shall be required when the suspension or revocation of license results from
70 the person's suffering from mental or physical infirmities or disabilities from natural causes not related
71 to the use of self-administered intoxicants or drugs. No reinstatement fee shall be collected from any
72 person whose license is suspended by a court of competent jurisdiction for any reason, other than a
73 cause for mandatory suspension as provided in this title, provided the court ordering the suspension is
74 not required by § 46.2-398 to forward the license to the Department during the suspended period.

75 E. Except as otherwise provided in this section and § 18.2-271.1, reinstatement fees collected under
76 the provisions of this section shall be paid by the Commissioner into the state treasury and shall be set
77 aside as a special fund to be used to meet the expenses of the Department.

78 F. Before granting or restoring a license or registration to any person whose driver's license or other
79 privilege to drive motor vehicles or privilege to register a motor vehicle has been revoked or suspended,
80 the Commissioner shall collect from such person, in addition to all other fees provided for in this
81 section, an additional fee of \$40. The Commissioner shall pay all fees collected pursuant to this
82 subsection into the Trauma Center Fund, created pursuant to § 18.2-270.01, for the purpose of defraying
83 the costs of providing emergency medical care to victims of automobile accidents attributable to alcohol
84 or drug use.

85 G. Whenever any person is required to pay a reinstatement fee pursuant to subsection C or pursuant
86 to subsection E of § 18.2-271.1 and such person has more than one suspension or revocation on his
87 record for which reinstatement is required, then such person shall be required to pay one reinstatement
88 fee, the amount of which shall equal the full reinstatement fee attributable to the one of his revocations
89 or suspensions that would trigger the highest reinstatement fee, plus an additional \$5 fee for
90 administrative costs associated with compliance for each additional suspension or revocation. Fees
91 collected pursuant to this subsection shall be set aside as a special fund to be used to meet the expenses
92 of the Department.

93 **§ 46.2-492. Uniform Demerit Point System.**

94 A. The Commissioner shall assign point values to those convictions, or findings of not innocent in
95 the case of a juvenile, which are required to be reported to the Department in accordance with
96 § 46.2-383 for traffic offenses committed in violation of the laws of the Commonwealth or any county,
97 city, or town ordinance paralleling and substantially conforming to state law, provided that no
98 conviction, or finding of not innocent in the case of a juvenile for any offense, relating to registration,
99 insurance, or equipment shall be included except as otherwise provided by this title.

100 B. The Commissioner shall assign point values to those convictions received from any other state of
101 the United States, the United States, Canada or its provinces, or any territorial subdivision of any of
102 them, of an offense therein, which if committed in this Commonwealth, would be required to be
103 reported to the Department by § 46.2-383.

104 C. No point assignment shall be made for any conviction which results from a vehicle having been
105 parked or stopped, in order for the driver to sleep or rest, on the shoulder or other portion of a highway
106 not ordinarily used for vehicular traffic. The court shall make a separate finding on this issue and note
107 such finding on the conviction record.

108 D. The Uniform Demerit Point System standard for rating convictions of traffic offenses shall be
109 based on the severity of the offense and the potential hazardous exposure to other users of the highways
110 and streets. The Commissioner shall designate the point values assigned to convictions, or findings of
111 not innocent in the case of a juvenile, on a graduated scale not to exceed six demerit points for any
112 single conviction. The Commissioner shall develop point system assignments as follows:

113 1. Serious traffic offenses such as driving while intoxicated in violation of § 18.2-266, persons under
114 age twenty-one driving after illegally consuming alcohol in violation of § 18.2-266.1, reckless driving in
115 violation of § 46.2-852, speeding twenty or more miles per hour above the posted speed limit, racing in
116 violation of § 46.2-865, and other serious traffic offenses as the Commissioner may designate, shall be
117 assigned six demerit points.

118 2. Relatively serious traffic offenses such as failure to yield the right-of-way in violation of
119 §§ 46.2-820 through 46.2-823, speeding between ten and nineteen miles per hour above the posted speed
120 limit, following too closely in violation of § 46.2-816, failure to stop when entering a highway in

121 violation of § 46.2-863, aggressive driving in violation of § 46.2-868.1 and other relatively serious traffic
122 offenses as the Commissioner may designate, shall be assigned four demerit points.

123 3. Traffic offenses of a less serious nature such as improper driving in violation of § 46.2-869,
124 speeding between one and nine miles per hour above the posted speed limit, improper passing in
125 violation of § 46.2-838, failure to obey a highway sign in violation of § 46.2-830 and other offenses of a
126 less serious nature as the Commissioner may designate, shall be assigned three demerit points.

127 E. When a person is convicted of two or more traffic offenses committed on a single occasion, he
128 shall be assessed points for one offense only and if the offenses involved have different point values, he
129 shall be assessed points for the offense having the greater point value.