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SENATE BILL NO. 39

Offered January 13, 2016

Prefiled December 15, 2015

A BILL to amend and reenact §§ 4.1-305, 16.1-278.9, and 18.2-251.03 of the Code of Virginia, relating to unlawful transport of alcoholic beverages; penalty.

Patron—Carrico (By Request)

Referred to Committee on Rehabilitation and Social Services

Be it enacted by the General Assembly of Virginia:

1. That §§ 4.1-305, 16.1-278.9, and 18.2-251.03 of the Code of Virginia are amended and reenacted as follows:

§ 4.1-305. Consuming, purchasing, possessing, or transporting alcoholic beverages unlawful in certain cases; venue; exceptions; penalty; forfeiture; deferred proceedings; treatment and education services.

A. No person to whom an alcoholic beverage may not lawfully be sold under § 4.1-304 shall consume, purchase ~~or~~, possess, *or transport*, or attempt to consume, purchase ~~or~~, possess, *or transport*, any alcoholic beverage, except (i) pursuant to subdivisions 1 through 7 of § 4.1-200; (ii) where possession *or transportation* of the alcoholic beverages by a person less than 21 years of age is due to such person's making a delivery of alcoholic beverages in pursuance of his employment or an order of his parent; or (iii) by any state, federal, or local law-enforcement officer or his agent when possession of an alcoholic beverage is necessary in the performance of his duties. Such person may be prosecuted either in the county or city in which the alcohol was *purchased*, possessed, *transported*, or consumed, or in the county or city in which the person exhibits evidence of physical indicia of consumption of alcohol. It shall be an affirmative defense to a charge of a violation of this subsection if the defendant shows that such consumption or possession was pursuant to subdivision 7 of § 4.1-200.

B. No person under the age of 21 years shall use or attempt to use any (i) altered, fictitious, facsimile or simulated license to operate a motor vehicle, (ii) altered, fictitious, facsimile or simulated document, including, but not limited to a birth certificate or student identification card, or (iii) motor vehicle operator's license, birth certificate or student identification card of another person in order to establish a false identification or false age for himself to consume, purchase or attempt to consume or purchase an alcoholic beverage.

C. Any person found guilty of a violation of this section shall be guilty of a Class 1 misdemeanor; and upon conviction, (i) such person shall be ordered to pay a mandatory minimum fine of \$500 or ordered to perform a mandatory minimum of 50 hours of community service as a condition of probation supervision and (ii) the license to operate a motor vehicle in the Commonwealth of any such person age 18 or older shall be suspended for a period of not less than six months and not more than one year; the license to operate a motor vehicle in the Commonwealth of any juvenile shall be handled in accordance with the provisions of § 16.1-278.9. The court, in its discretion and upon a demonstration of hardship, may authorize an adult convicted of a violation of this section the use of a restricted permit to operate a motor vehicle in accordance with the provisions of subsection E of § 18.2-271.1 or when referred to a local community-based probation services agency established pursuant to Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1. During the period of license suspension, the court may require an adult who is issued a restricted permit under the provisions of this subsection to be (a) monitored by an alcohol safety action program, or (b) supervised by a local community-based probation services agency established pursuant to Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1, if one has been established for the locality. The alcohol safety action program or local community-based probation services agency shall report to the court any violation of the terms of the restricted permit, the required alcohol safety action program monitoring or local community-based probation services and any condition related thereto or any failure to remain alcohol-free during the suspension period.

D. Any alcoholic beverage purchased ~~or~~, possessed, *or transported* in violation of this section shall be deemed contraband and forfeited to the Commonwealth in accordance with § 4.1-338.

E. Any retail licensee who in good faith promptly notifies the Board or any state or local law-enforcement agency of a violation or suspected violation of this section shall be accorded immunity from an administrative penalty for a violation of § 4.1-304.

F. When any adult who has not previously been convicted of underaged consumption, purchase ~~or~~, possession, *or transport* of alcoholic beverages in Virginia or any other state or the United States is before the court, the court may, upon entry of a plea of guilty or not guilty, if the facts found by the

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59 court would justify a finding of guilt of a violation of subsection A, without entering a judgment of
60 guilt and with the consent of the accused, defer further proceedings and place him on probation subject
61 to appropriate conditions. Such conditions may include the imposition of the license suspension and
62 restricted license provisions in subsection C. However, in all such deferred proceedings, the court shall
63 require the accused to enter a treatment or education program or both, if available, that in the opinion of
64 the court best suits the needs of the accused. If the accused is placed on local community-based
65 probation, the program or services shall be located in any of the judicial districts served by the local
66 community-based probation services agency or in any judicial district ordered by the court when the
67 placement is with an alcohol safety action program. The services shall be provided by (i) a program
68 licensed by the Department of Behavioral Health and Developmental Services, (ii) certified by the
69 Commission on VASAP, or (iii) by a program or services made available through a community-based
70 probation services agency established pursuant to Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1,
71 if one has been established for the locality. When an offender is ordered to a local community-based
72 probation services rather than the alcohol safety action program, the local community-based probation
73 services agency shall be responsible for providing for services or referring the offender to education or
74 treatment services as a condition of probation.

75 Upon violation of a condition, the court may enter an adjudication of guilt and proceed as otherwise
76 provided. Upon fulfillment of the conditions, the court shall discharge the person and dismiss the
77 proceedings against him without an adjudication of guilt. A discharge and dismissal hereunder shall be
78 treated as a conviction for the purpose of applying this section in any subsequent proceedings.

79 When any juvenile is found to have committed a violation of subsection A, the disposition of the
80 case shall be handled according to the provisions of Article 9 (§ 16.1-278 et seq.) of Chapter 11 of Title
81 16.1.

82 **§ 16.1-278.9. Delinquent children; loss of driving privileges for alcohol, firearm, and drug**
83 **offenses; truancy.**

84 A. If a court has found facts which would justify a finding that a child at least 13 years of age at the
85 time of the offense is delinquent and such finding involves (i) a violation of § 18.2-266 or of a similar
86 ordinance of any county, city or town, (ii) a refusal to take a blood or breath test in violation of
87 § 18.2-268.2, (iii) a felony violation of § 18.2-248, 18.2-248.1 or 18.2-250, (iv) a misdemeanor violation
88 of § 18.2-248, 18.2-248.1, or 18.2-250 or a violation of § 18.2-250.1, (v) the unlawful purchase,
89 possession ~~or~~, consumption, *or transportation* of alcohol in violation of § 4.1-305 or the unlawful
90 drinking or possession of alcoholic beverages in or on public school grounds in violation of § 4.1-309,
91 (vi) public intoxication in violation of § 18.2-388 or a similar ordinance of a county, city or town, (vii)
92 the unlawful use or possession of a handgun or possession of a "streetsweeper" as defined below, or
93 (viii) a violation of § 18.2-83, the court shall order, in addition to any other penalty that it may impose
94 as provided by law for the offense, that the child be denied a driver's license. In addition to any other
95 penalty authorized by this section, if the offense involves a violation designated under clause (i) and the
96 child was transporting a person 17 years of age or younger, the court shall impose the additional fine
97 and order community service as provided in § 18.2-270. If the offense involves a violation designated
98 under clause (i), (ii), (iii) or (viii), the denial of a driver's license shall be for a period of one year or
99 until the juvenile reaches the age of 17, whichever is longer, for a first such offense or for a period of
100 one year or until the juvenile reaches the age of 18, whichever is longer, for a second or subsequent
101 such offense. If the offense involves a violation designated under clause (iv), (v) or (vi) the denial of
102 driving privileges shall be for a period of six months unless the offense is committed by a child under
103 the age of 16 years and three months, in which case the child's ability to apply for a driver's license
104 shall be delayed for a period of six months following the date he reaches the age of 16 and three
105 months. If the offense involves a first violation designated under clause (v) or (vi), the court shall
106 impose the license sanction and may enter a judgment of guilt or, without entering a judgment of guilt,
107 may defer disposition of the delinquency charge until such time as the court disposes of the case
108 pursuant to subsection F of this section. If the offense involves a violation designated under clause (iii)
109 or (iv), the court shall impose the license sanction and shall dispose of the delinquency charge pursuant
110 to the provisions of this chapter or § 18.2-251. If the offense involves a violation designated under
111 clause (vii), the denial of driving privileges shall be for a period of not less than 30 days, except when
112 the offense involves possession of a concealed handgun or a striker 12, commonly called a
113 "streetsweeper," or any semi-automatic folding stock shotgun of like kind with a spring tension drum
114 magazine capable of holding 12 shotgun shells, in which case the denial of driving privileges shall be
115 for a period of two years unless the offense is committed by a child under the age of 16 years and three
116 months, in which event the child's ability to apply for a driver's license shall be delayed for a period of
117 two years following the date he reaches the age of 16 and three months.

118 A1. If a court finds that a child at least 13 years of age has failed to comply with school attendance
119 and meeting requirements as provided in § 22.1-258, the court shall order the denial of the child's
120 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 the child was represented by or waived counsel or whether the order was issued pursuant to subsection A1 of this section. Notwithstanding the provisions of Article 12 (§ 16.1-299 et seq.) of this chapter or the provisions of Title 46.2, this record shall be available only to all law-enforcement officers, attorneys for the Commonwealth and courts. No other record of the proceeding shall be forwarded to the Department of Motor Vehicles unless the proceeding results in an adjudication of guilt pursuant to subsection F.

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

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

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

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

F. If the finding as to such child involves a first violation designated under clause (vii) of subsection A, upon fulfillment of the terms and conditions prescribed by the court and after the child's driver's license has been restored, the court shall or, in the event the violation resulted in the injury or death of any person or if the finding involves a violation designated under clause (i), (ii), (v), or (vi) of subsection A, may discharge the child and dismiss the proceedings against him. Discharge and dismissal under these provisions shall be without an adjudication of guilt but a record of the proceeding shall be retained for the purpose of applying this section in subsequent proceedings. Failure of the child to fulfill such terms and conditions shall result in an adjudication of guilt. If the finding as to such child involves a violation designated under clause (iii) or (iv) of subsection A, the charge shall not be dismissed pursuant to this subsection but shall be disposed of pursuant to the provisions of this chapter or § 18.2-251. If the finding as to such child involves a second violation under clause (v), (vi) or (vii) of subsection A, the charge shall not be dismissed pursuant to this subsection but shall be disposed of under § 16.1-278.8.

§ 18.2-251.03. Safe reporting of overdoses.

A. For purposes of this section, "overdose" means a life-threatening condition resulting from the consumption or use of a controlled substance, alcohol, or any combination of such substances.

B. It shall be an affirmative defense to prosecution of an individual for the unlawful purchase,

182 possession, ~~or~~ consumption, *or transportation* of alcohol pursuant to § 4.1-305, possession of a
183 controlled substance pursuant to § 18.2-250, possession of marijuana pursuant to § 18.2-250.1,
184 intoxication in public pursuant to § 18.2-388, or possession of controlled paraphernalia pursuant to
185 § 54.1-3466 if:

186 1. Such individual, in good faith, seeks or obtains emergency medical attention for himself, if he is
187 experiencing an overdose, or for another individual, if such other individual is experiencing an overdose,
188 by contemporaneously reporting such overdose to a firefighter, as defined in § 65.2-102, emergency
189 medical services personnel, as defined in § 32.1-111.1, a law-enforcement officer, as defined in
190 § 9.1-101, or an emergency 911 system;

191 2. Such individual remains at the scene of the overdose or at any alternative location to which he or
192 the person requiring emergency medical attention has been transported until a law-enforcement officer
193 responds to the report of an overdose. If no law-enforcement officer is present at the scene of the
194 overdose or at the alternative location, then such individual shall cooperate with law enforcement as
195 otherwise set forth herein;

196 3. Such individual identifies himself to the law-enforcement officer who responds to the report of the
197 overdose;

198 4. If requested by a law-enforcement officer, such individual substantially cooperates in any
199 investigation of any criminal offense reasonably related to the controlled substance, alcohol, or
200 combination of such substances that resulted in the overdose; and

201 5. The evidence for the prosecution of an offense enumerated in this subsection was obtained as a
202 result of the individual seeking or obtaining emergency medical attention.

203 C. No individual may assert the affirmative defense provided for in this section if the person sought
204 or obtained emergency medical attention for himself or another individual during the execution of a
205 search warrant or during the conduct of a lawful search or a lawful arrest.

206 D. This section does not establish an affirmative defense for any individual or offense other than
207 those listed in subsection B.