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HOUSE BILL NO. 1622

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on January 27, 2017)

(Patron Prior to Substitute—Delegate Collins)

A BILL to amend and reenact § 46.2-341.28 of the Code of Virginia, relating to driving commercial vehicle while intoxicated; penalties.

Be it enacted by the General Assembly of Virginia:

1. That § 46.2-341.28 of the Code of Virginia is amended and reenacted as follows:

§ 46.2-341.28. Penalty for driving commercial motor vehicle while intoxicated; subsequent offense; prior conviction.

~~Any~~ A. Except as otherwise provided herein, any person violating any provision of subsection A of § 46.2-341.24 ~~shall be~~ is 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 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 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) was more than 0.20, he shall be confined in jail 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 first prior offense under subsection A of § 46.2-341.24 shall upon conviction of the second offense be ~~punishable~~ punished by a mandatory minimum fine of ~~not less than \$200 nor more than \$2,500~~ \$500 and by confinement in jail for not less than one month nor more than one year. ~~Five~~ 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 first prior offense under subsection A of § 46.2-341.24 shall upon conviction of the second offense be ~~punishable~~ punished by a mandatory minimum fine of ~~not less than \$200 nor more than \$2,500~~ \$500 and by confinement in jail for not less than one month ~~nor more than one year~~. 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) was more than 0.20, he shall be confined 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 a third offense or subsequent offense committed within 10 years of an offense three offenses under subsection A of § 46.2-341.24 shall be punishable by a fine of not less than \$500 nor more than \$2,500 and by confinement in jail for not less than two months nor more than one year. Thirty days of such confinement within a 10-year period is upon conviction of the third offense guilty of a Class 6 felony. The sentence of any person convicted of three offenses under subsection A of § 46.2-341.24 shall include a mandatory minimum sentence if the third or subsequent offense occurs within less than five years. Ten days of such confinement shall be a 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 if the third or subsequent offense occurs within a period of five to 10 years of a first offense of confinement for six months. In addition, such person shall be fined a mandatory minimum fine of \$1,000.

2. Any person who has been convicted of a violation of § 18.2-36.1, 18.2-36.2, 18.2-51.4, or 18.2-51.5 or a felony violation under subsection A of § 46.2-341.24 is upon conviction of a subsequent violation under subsection A of § 46.2-341.24 guilty of a Class 6 felony. The punishment of any person convicted of such a subsequent violation under subsection A of § 46.2-341.24 shall include a mandatory minimum term of imprisonment of one year and a mandatory minimum fine of \$1,000.

3. The punishment of any person convicted of a fourth or subsequent offense under subsection A of § 46.2-341.24 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.

D. In addition to the penalty otherwise authorized by this section, any person convicted of a violation of subsection A of § 46.2-341.24 committed while transporting a person 17 years of age or younger shall be (i) fined an additional minimum of \$500 and not more than \$1,000 and (ii) sentenced

60 to a mandatory minimum period of confinement of five days.

61 E. For the ~~purposes~~ purpose of determining the number of offenses committed by, and the punishment
62 appropriate for, a person under this section, a conviction of any person or finding of not innocent in the
63 case of a juvenile under the following shall be considered a conviction under subsection A of
64 § 46.2-341.24: (i) § 18.2-36.1, 18.2-51.4, or § 18.2-266, former § 18.1-54 (formerly § 18-75), or
65 subsection A of § 46.2-341.24; (ii) the ordinance of any county, city, or town in ~~this~~ the Commonwealth
66 substantially similar to the provisions of ~~§ 18.2-51.4 or § 18.2-266~~, any offense listed in clause (i); or
67 (iii) ~~subsection A of § 46.2-341.24, or~~ (iv) the laws of any other state or of the United States
68 substantially similar to the provisions of ~~§§ 18.2-51.4, 18.2-266 or subsection A of § 46.2-341.24~~, shall
69 be considered a prior conviction any offense listed in clause (i).

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

75 2. That the provisions of this act may result in a net increase in periods of imprisonment or
76 commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0
77 for periods of imprisonment in state adult correctional facilities and cannot be determined for
78 periods of commitment to the custody of the Department of Juvenile Justice.