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HOUSE BILL NO. 1433

Offered January 8, 2020

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A BILL to amend and reenact §§ 4.1-305, 16.1-69.55, and 18.2-251 of the Code of Virginia, relating to destruction of criminal history information for certain charges and convictions.

Patron—Jones

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 4.1-305, 16.1-69.55, and 18.2-251 of the Code of Virginia are amended and reenacted as follows:

§ 4.1-305. Purchasing or possessing alcoholic beverages unlawful in certain cases; venue; exceptions; penalty; forfeiture; deferred proceedings; treatment and education programs and services; destruction of criminal history information.

A. No person to whom an alcoholic beverage may not lawfully be sold under § 4.1-304 shall consume, purchase or possess, or attempt to consume, purchase or possess, any alcoholic beverage, except (i) pursuant to subdivisions 1 through 7 of § 4.1-200; (ii) where possession 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 possessed 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 is 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 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 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 court would justify

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59 a finding of guilt of a violation of subsection A, without entering a judgment of guilt and with the  
60 consent of the accused, defer further proceedings and place him on probation subject to appropriate  
61 conditions. Such conditions may include the imposition of the license suspension and restricted license  
62 provisions in subsection C. However, in all such deferred proceedings, the court shall require the  
63 accused to enter a treatment or education program or both, if available, that in the opinion of the court  
64 best suits the needs of the accused. If the accused is placed on local community-based probation, the  
65 program or services shall be located in any of the judicial districts served by the local community-based  
66 probation services agency or in any judicial district ordered by the court when the placement is with an  
67 alcohol safety action program. The services shall be provided by (i) a program licensed by the  
68 Department of Behavioral Health and Developmental Services, (ii) certified by the Commission on  
69 VASAP, or (iii) by a program or services made available through a community-based probation services  
70 agency established pursuant to Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1, if one has been  
71 established for the locality. When an offender is ordered to a local community-based probation services  
72 rather than the alcohol safety action program, the local community-based probation services agency shall  
73 be responsible for providing for services or referring the offender to education or treatment services as a  
74 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, *provided*  
79 *that the records from such discharge and dismissal have not been subsequently destroyed pursuant to*  
80 *subsection G or H.*

81 When any juvenile is found to have committed a violation of subsection A, the disposition of the  
82 case shall be handled according to the provisions of Article 9 (§ 16.1-278 et seq.) of Chapter 11 of Title  
83 16.1.

84 *G. Any person who has had a charge discharged and dismissed under this section shall be entitled,*  
85 *in the absence of good cause shown to the contrary by the Commonwealth, to the destruction of the*  
86 *police and court records relating to such charge, and the court that disposed of such charge shall enter*  
87 *an order requiring the destruction of such records, including electronic records, when one year has*  
88 *passed since the date of dismissal and all court costs and fines and all orders of restitution have been*  
89 *satisfied.*

90 *H. Notwithstanding the provisions of subsection G, any person charged under this section may file a*  
91 *petition with the court that disposed of such charge for an order of destruction at any time provided*  
92 *that such charge has been discharged and dismissed and all court costs and fines and all orders of*  
93 *restitution have been satisfied. Upon hearing and for good cause shown, the court may enter an order*  
94 *of destruction.*

95 *I. Upon the entry of an order of destruction under subsection G or H, the clerk of the court shall*  
96 *cause a copy of such order to be forwarded to the Department of State Police, which shall, pursuant to*  
97 *rules and regulations adopted pursuant to § 9.1-134, direct the manner by which the appropriate*  
98 *destruction of such records shall be effected.*

99 **§ 16.1-69.55. Retention of case records; limitations on enforcement of judgments; extensions.**

100 A. Criminal and traffic infraction proceedings:

101 1. In misdemeanor and traffic infraction cases, except misdemeanor cases under § 16.1-253.2,  
102 18.2-57.2, or 18.2-60.4, *or in cases where an order of destruction has been issued pursuant to §*  
103 *4.1-305 or 18.2-251*, all documents shall be retained for 10 years, including cases sealed in  
104 expungement proceedings under § 19.2-392.2. In misdemeanor cases under § 16.1-253.2, 18.2-57.2, or  
105 18.2-60.4, all documents shall be retained for 20 years. In misdemeanor cases under §§ 18.2-67.4,  
106 18.2-67.4:1, 18.2-67.4:2, 18.2-346, 18.2-347, 18.2-348, 18.2-349, 18.2-370, 18.2-370.01, 18.2-374,  
107 18.2-386.1, 18.2-387, and 18.2-387.1, all documents shall be retained for 50 years. *In cases where an*  
108 *order of destruction has been issued pursuant to § 4.1-305 or 18.2-251, the destruction of documents*  
109 *and indices shall be destroyed as provided by those sections.* Documents in misdemeanor and traffic  
110 infraction cases for which an appeal has been made shall be returned to and filed with the clerk of the  
111 appropriate circuit court pursuant to § 16.1-135;

112 2. In felony cases that are certified to the grand jury, all documents shall be certified to the clerk of  
113 the appropriate circuit court pursuant to §§ 19.2-186 and 19.2-190. All other felony case documents shall  
114 be handled as provided in subdivision 1;

115 3. Dockets and indices shall be retained for 10 years.

116 B. Civil proceedings:

117 1. All documents in civil proceedings in district court that are dismissed, including dismissal under  
118 § 8.01-335, shall be retained until completion of the Commonwealth's audit of the court records.  
119 Notwithstanding § 8.01-275.1, the clerks of the district courts may destroy documents in civil  
120 proceedings in which no service of process is had 24 months after the last return date;

121 2. In civil actions that result in a judgment, all documents in the possession of the general district  
122 court shall be retained for 10 years and, unless sooner satisfied, the judgment shall remain in force for a  
123 period of 10 years;

124 3. In civil cases that are appealed to the circuit court pursuant to § 16.1-112, all documents  
125 pertaining thereto shall be transferred to the circuit court in accordance with those sections;

126 4. The limitations on enforcement of general district court judgments provided in § 16.1-94.1 shall  
127 not apply if the plaintiff, prior to the expiration of that period for enforcement, pays the circuit court  
128 docketing and indexing fees on judgments from other courts together with any other required filing fees  
129 and docket the judgment in the circuit court having jurisdiction in the same geographic area as the  
130 general district court. However, a judgment debtor wishing to discharge a judgment pursuant to the  
131 provisions of § 8.01-456, when the judgment creditor cannot be located, may, prior to the expiration of  
132 that period for enforcement, pay the circuit court docketing and indexing fees on judgments from other  
133 courts together with any other required filing fees and docket the judgment in the circuit court having  
134 jurisdiction in the same geographic area as the general district court. After the expiration of the period  
135 provided in § 16.1-94.1, executions on such docketed civil judgments may issue from the general district  
136 court wherein the judgment was obtained upon the filing in the general district court of an abstract from  
137 the circuit court. In all other respects, the docketing of a general district court judgment in a circuit  
138 court confers upon such judgment the same status as if the judgment were a circuit court judgment;

139 5. Dockets for civil cases shall be retained for 10 years;

140 6. Indices in civil cases shall be retained for 10 years.

141 C. Juvenile and domestic relations district court proceedings:

142 1. In adult criminal cases, all records shall be retained as provided in subdivision A 1;

143 2. In juvenile cases, all documents and indices shall be governed by the provisions of § 16.1-306;

144 3. In all cases involving support arising under Title 16.1, 20, or 63.2, all documents and indices shall  
145 be retained until the last juvenile involved, if any, has reached 19 years of age and 10 years have  
146 elapsed from either dismissal or termination of the case by court order or by operation of law. Financial  
147 records in connection with such cases shall be subject to the provisions of § 16.1-69.56;

148 4. In all cases involving sexually violent offenses, as defined in § 37.2-900, and in all misdemeanor  
149 cases under §§ 18.2-67.4, 18.2-67.4:1, 18.2-67.4:2, 18.2-346, 18.2-347, 18.2-348, 18.2-349, 18.2-370,  
150 18.2-370.01, 18.2-374, 18.2-386.1, 18.2-387, and 18.2-387.1, all documents shall be retained for 50  
151 years;

152 5. In cases transferred to circuit court for trial as an adult or appealed to circuit court, all documents  
153 pertaining thereto shall be transferred to circuit court;

154 6. All dockets in juvenile cases shall be governed by the provisions of subsection F of § 16.1-306.

155 D. At the direction of the chief judge of a district court, the clerk of that court may cause any or all  
156 papers or documents pertaining to civil and criminal cases that have been ended to be destroyed if such  
157 records, papers, or documents will no longer have administrative, fiscal, historical, or legal value to  
158 warrant continued retention, provided such records, papers, or documents have been microfilmed or  
159 converted to an electronic format. Such microfilm and microphotographic processes and equipment shall  
160 meet state archival microfilm standards pursuant to § 42.1-82, or such electronic format shall follow  
161 state electronic records guidelines, and such records, papers, or documents so converted shall be placed  
162 in conveniently accessible files and provisions made for examining and using the same. The provisions  
163 of this subsection shall not apply to the documents for misdemeanor cases under §§ 16.1-253.2,  
164 18.2-57.2, 18.2-60.4, 18.2-67.4, 18.2-67.4:1, 18.2-67.4:2, 18.2-346, 18.2-347, 18.2-348, 18.2-349,  
165 18.2-370, 18.2-370.01, 18.2-374, 18.2-386.1, 18.2-387, and 18.2-387.1, which shall be retained as  
166 provided in subsection A.

167 **§ 18.2-251. Persons charged with first offense may be placed on probation; conditions;**  
168 **substance abuse screening, assessment treatment and education programs or services; drug tests;**  
169 **costs and fees; violations; discharge; destruction of criminal history information.**

170 A. Whenever any person who has not previously been convicted of any offense under this article or  
171 under any statute of the United States or of any state relating to narcotic drugs, marijuana, or stimulant,  
172 depressant, or hallucinogenic drugs, or has not previously had a proceeding against him for violation of  
173 such an offense dismissed as provided in this section, pleads guilty to or enters a plea of not guilty to  
174 possession of a controlled substance under § 18.2-250 or to possession of marijuana under § 18.2-250.1,  
175 the court, upon such plea if the facts found by the court would justify a finding of guilt, without  
176 entering a judgment of guilt and with the consent of the accused, may defer further proceedings and  
177 place him on probation upon terms and conditions. If the court defers further proceedings, at that time  
178 the court shall determine whether the clerk of court has been provided with the fingerprint identification  
179 information or fingerprints of the person, taken by a law-enforcement officer pursuant to § 19.2-390,  
180 and, if not, shall order that the fingerprints and photograph of the person be taken by a law-enforcement  
181 officer.

182 As a term or condition, the court shall require the accused to undergo a substance abuse assessment  
183 pursuant to § 18.2-251.01 or 19.2-299.2, as appropriate, and enter treatment and/or education program or  
184 services, if available, such as, in the opinion of the court, may be best suited to the needs of the accused  
185 based upon consideration of the substance abuse assessment. The program or services may be located in  
186 the judicial district in which the charge is brought or in any other judicial district as the court may  
187 provide. The services shall be provided by (i) a program licensed by the Department of Behavioral  
188 Health and Developmental Services, ~~by~~ or a similar program which is made available through the  
189 Department of Corrections, (ii) a local community-based probation services agency established pursuant  
190 to § 9.1-174, or (iii) an ASAP program certified by the Commission on VASAP.

191 The court shall require the person entering such program under the provisions of this section to pay  
192 all or part of the costs of the program, including the costs of the screening, assessment, testing, and  
193 treatment, based upon the accused's ability to pay unless the person is determined by the court to be  
194 indigent.

195 As a condition of probation, the court shall require the accused (a) to successfully complete treatment  
196 or education program or services, (b) to remain drug and alcohol free during the period of probation and  
197 submit to such tests during that period as may be necessary and appropriate to determine if the accused  
198 is drug and alcohol free, (c) to make reasonable efforts to secure and maintain employment, and (d) to  
199 comply with a plan of at least 100 hours of community service for a felony and up to 24 hours of  
200 community service for a misdemeanor. In addition to any community service required by the court  
201 pursuant to clause (d), if the court does not suspend or revoke the accused's license as a term or  
202 condition of probation for a violation of § 18.2-250.1, the court shall require the accused to comply with  
203 a plan of 50 hours of community service. Such testing shall be conducted by personnel of the  
204 supervising probation agency or personnel of any program or agency approved by the supervising  
205 probation agency.

206 Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as  
207 otherwise provided. Upon fulfillment of the terms and conditions, and upon determining that the clerk of  
208 court has been provided with the fingerprint identification information or fingerprints of such person, the  
209 court shall discharge the person and dismiss the proceedings against him. Discharge and dismissal under  
210 this section shall be without adjudication of guilt and is a conviction only for the purposes of applying  
211 this section in subsequent proceedings, *provided that the records from such discharge and dismissal*  
212 *have not been subsequently destroyed pursuant to subsection B or C.*

213 Notwithstanding any other provision of this section, whenever a court places an individual on  
214 probation upon terms and conditions pursuant to this section, such action shall be treated as a conviction  
215 for purposes of §§ 18.2-259.1, 22.1-315, and 46.2-390.1, and the driver's license forfeiture provisions of  
216 those sections shall be imposed. However, if the court places an individual on probation upon terms and  
217 conditions for a violation of § 18.2-250.1, such action shall not be treated as a conviction for purposes  
218 of § 18.2-259.1 or 46.2-390.1, provided that a court (1) may suspend or revoke an individual's driver's  
219 license as a term or condition of probation and (2) shall suspend or revoke an individual's driver's  
220 license as a term or condition of probation for a period of six months if the violation of § 18.2-250.1  
221 was committed while such person was in operation of a motor vehicle. The provisions of this paragraph  
222 shall not be applicable to any offense for which a juvenile has had his license suspended or denied  
223 pursuant to § 16.1-278.9 for the same offense.

224 *B. Any person who has had a charge discharged and dismissed under this section for a violation of*  
225 *§ 18.2-250.1 shall be entitled, in the absence of good cause shown to the contrary by the*  
226 *Commonwealth, to destruction of the police and court records relating to such charge, and the court*  
227 *that dismisses such charge shall enter an order requiring the destruction of such records, including*  
228 *electronic records, when three years have passed since the date of dismissal and all court costs and*  
229 *finer and all orders of restitution have been satisfied.*

230 *C. Notwithstanding the provisions of subsection B, any person who has had a charge discharged and*  
231 *dismissed under this section for a violation of § 18.2-250.1 may file a petition with the court that*  
232 *disposed of such charge for an order of destruction at any time provided that all court costs and fines*  
233 *and all orders of restitution have been satisfied. Upon hearing and for good cause shown, the court may*  
234 *enter an order of destruction.*

235 *D. Upon the entry of an order of destruction under subsection B or C, the clerk of the court shall*  
236 *cause a copy of such order to be forwarded to the Department of State Police, which shall, pursuant to*  
237 *rules and regulations adopted pursuant to § 9.1-134, direct the manner by which the appropriate*  
238 *destruction of such records shall be effected.*