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SENATE BILL NO. 299

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on March 9, 1998)

(Patron Prior to Substitute—Senator Reynolds)

*A BILL to amend and reenact § 4.1-305 of the Code of Virginia, relating to unlawful purchase or possession of alcohol.***Be it enacted by the General Assembly of Virginia:****1. That § 4.1-305 of the Code of Virginia is amended and reenacted as follows:**

§ 4.1-305. Purchasing or possessing alcoholic beverages unlawful in certain cases; exceptions; penalty; forfeiture.

A. No person to whom an alcoholic beverage may not lawfully be sold under § 4.1-304 shall purchase or possess, or attempt to 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 twenty-one 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 when possession of an alcoholic beverage is necessary in the performance of his duties.

B. No person under the age of twenty-one 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 purchase or attempt to 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 fine of at least \$500 or ordered to perform a minimum of fifty hours of community service and (ii) such person's license to operate a motor vehicle in the Commonwealth may be suspended for a period of not more than one year. The court, in its discretion and upon a demonstration of hardship, may authorize any person 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 D of § 16.1-278.9 or subsection E of § 18.2-271.1. ~~However, the~~ The sentence imposed pursuant to clause (i) of this subsection shall not be suspended.

CI. However, whenever any person between the ages of eighteen and twenty-one who has not previously been convicted of a violation of subsection A or has not previously had a proceeding against him for violation of such an offense dismissed as provided in this subsection, pleads guilty to or enters a plea of not guilty to such offense, if the facts found by the court would justify a finding of guilt and the accused consents, the court may defer further proceedings and place him on probation upon terms and conditions without entering a judgment of guilt.

As a term or condition, the court shall require the accused to enter an alcohol safety action program located in the judicial district in which the charge is brought or in any other judicial district as the court may provide. The court shall require the person entering such program to pay all or part of the costs of the program, based upon the his ability to pay, unless he is determined by the court to be indigent.

Placement on probation pursuant to this subsection shall of itself operate to deprive the person of the privilege to drive or operate a motor vehicle for the period of probation. In its discretion and upon a demonstration of hardship, the court may authorize the issuance of a restricted permit to the person in accordance with the provisions of subsection E of § 18.2-271.1.

Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without adjudication of guilt and is a conviction only for the purposes of applying this section in subsequent proceedings.

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.