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HOUSE BILL NO. 1813

Offered January 13, 1999

A BILL to amend and reenact §§ 18.2-270, 18.2-323.1 and 46.2-1094 of the Code of Virginia, relating to motor vehicle offenses; penalty.

Patrons—Moran and Almand; Senator: Mims

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-270, 18.2-323.1 and 46.2-1094 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-270. Penalty for driving while intoxicated; subsequent offense; prior conviction.

Any Except as otherwise provided herein, any person violating any provision of § 18.2-266 shall be guilty of a Class 1 misdemeanor.

Any person convicted of a second offense committed within less than five years after a first offense under § 18.2-266 shall be punishable by a fine of not less than \$200 nor more than \$2,500 and by confinement in jail for not less than one month nor more than one year. Forty-eight hours of such confinement shall be a mandatory, minimum sentence not subject to suspension by the court. Any person convicted of a second offense committed within a period of five to ten years of a first offense under § 18.2-266 shall be punishable by a fine of not less than \$200 nor more than \$2,500 and by confinement in jail for not less than one month nor more than one year. Any person convicted of a third offense or subsequent offense committed within ten years of an offense under § 18.2-266 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 shall be a mandatory, minimum sentence not subject to suspension by the court if the third or subsequent offense occurs within less than five years. Ten days of such confinement shall be a mandatory, minimum sentence not subject to suspension by the court if the third or subsequent offense occurs within a period of five to ten years of a first offense guilty of a Class 6 felony. Upon conviction for such subsequent offenses, the sentence shall include a mandatory, minimum term of imprisonment of one year, none of which shall be suspended in whole or in part.

In addition to the penalty otherwise authorized by this section or § 16.1-278.9, any person convicted of a violation of § 18.2-266 committed while transporting a person seventeen years of age or younger shall be (i) fined an additional minimum of ~~\$100~~ \$1,000 and not more than ~~\$500~~ \$2,000 and (ii) sentenced to perform forty hours of community service in a program ~~benefitting~~ benefiting children or, for a subsequent offense, eighty hours of community service in such a program.

For the purpose of this section a conviction or finding of guilty in the case of a juvenile under the following shall be considered a prior conviction: (i) the provisions of § 18.2-51.4, § 18.2-266, former § 18.1-54 (formerly § 18-75), the ordinance of any county, city or town in this Commonwealth or the laws of any other state or of the United States substantially similar to the provisions of § 18.2-51.4, and §§ 18.2-266 through 18.2-269, or (ii) the provisions of subsection A of § 46.2-341.24 or the substantially similar laws of any other state or of the United States.

§ 18.2-323.1. Drinking while operating a motor vehicle; possession of alcoholic beverages in open container; penalty.

A. It shall be unlawful for any person in the passenger area of a motor vehicle to consume an alcoholic beverage while driving a the motor vehicle is upon a public highway or the right of way of a public highway of this Commonwealth. A violation of this section is punishable as a Class 4 misdemeanor.

B. It shall be unlawful for any person to possess any alcoholic beverage in the passenger area of a motor vehicle upon a public highway of this Commonwealth, or the right-of-way thereof, in other than the manufacturer's unopened, original container. A violation of this subsection shall not be deemed to be illegal transportation of alcoholic beverages as provided in § 4.1-334.

If the seal on a container of an alcoholic beverage is broken the container shall be presumed to be open. "Passenger area of a motor vehicle" means the area designed to seat the driver and passengers, and any area within the reach of a seated driver or passenger, including an unlocked glove compartment but does not mean (i) the trunk of any motor vehicle; (ii) the area behind the last upright back seat of a station wagon, hatchback, sport utility vehicle or any similar vehicle; (iii) any passenger area of a motor vehicle designed, maintained or used primarily for the transportation of persons for compensation, including a bus, taxi or limousine; or (iv) the living quarters of a house trailer or coach.

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60 *C. A violation of this section shall be punishable as a Class 4 misdemeanor.*

61 § 46.2-1094. Occupants of motor vehicles required to use safety lap belts and shoulder harnesses;
62 penalty.

63 A. Each person at least sixteen years of age and occupying the front seat of a motor vehicle
64 equipped or required by the provisions of this title to be equipped with a safety belt system, consisting
65 of lap belts, shoulder harnesses, combinations thereof or similar devices, shall wear the appropriate
66 safety belt system at all times while the motor vehicle is in motion on any public highway. A child
67 under the age of sixteen years, however, shall be protected as required by the provisions of this chapter.

68 B. This section shall not apply to:

69 1. Any person for whom a licensed physician determines that the use of such safety belt system
70 would be impractical by reason of such person's physical condition or other medical reason, provided the
71 person so exempted carries on his person or in the vehicle a signed written statement of the physician
72 identifying the exempted person and stating the grounds for the exemption; or

73 2. Any law-enforcement officer transporting persons in custody or traveling in circumstances which
74 render the wearing of such safety belt system impractical; or

75 3. Any person while driving a motor vehicle and performing the duties of a rural mail carrier for the
76 United States Postal Service; or

77 4. Any person driving a motor vehicle and performing the duties of a rural newspaper route carrier,
78 newspaper bundle hauler or newspaper rack carrier; or

79 5. Drivers of taxicabs; or

80 6. Personnel of commercial or municipal vehicles while actually engaged in the collection or delivery
81 of goods or services, including but not limited to solid waste, where such collection or delivery requires
82 the personnel to exit and enter the cab of the vehicle with such frequency and regularity so as to render
83 the use of safety belt systems impractical and the safety benefits derived therefrom insignificant. Such
84 personnel shall resume the use of safety belt systems when actual collection or delivery has ceased or
85 when the vehicle is in transit to or from a point of final disposition or disposal, including but not
86 limited to solid waste facilities, terminals, or other location where the vehicle may be principally
87 garaged; or

88 7. Any person driving a motor vehicle and performing the duties of a utility meter reader; or

89 8. Law-enforcement agency personnel driving motor vehicles to enforce laws governing motor
90 vehicle parking.

91 C. Any person who violates this section shall be subject to a civil penalty of ~~twenty-five~~ fifty dollars
92 to be paid into the state treasury and credited to the Literary Fund. No assignment of demerit points
93 shall be made under Article 19 of Chapter 3 (§ 46.2-489 et seq.) of this title and no court costs shall be
94 assessed for violations of this section.

95 D. A violation of this section shall not constitute negligence, be considered in mitigation of damages
96 of whatever nature, be admissible in evidence or be the subject of comment by counsel in any action for
97 the recovery of damages arising out of the operation, ownership, or maintenance of a motor vehicle, nor
98 shall anything in this section change any existing law, rule, or procedure pertaining to any such civil
99 action.

100 E. A violation of this section may be charged on the uniform traffic summons form.

101 F. ~~No citation for a violation of this section shall be issued unless the officer issuing such citation~~
102 ~~has cause to stop or arrest the driver of such motor vehicle for the violation of some other provision of~~
103 ~~this Code or local ordinance relating to the operation, ownership, or maintenance of a motor vehicle or~~
104 ~~any criminal statute. A law-enforcement officer may not search or inspect a motor vehicle, its contents,~~
105 ~~the driver or a passenger solely because of a violation of this section.~~

106 G. The governing body of any city having a population of at least 66,000 but no more than 67,000
107 may adopt an ordinance not inconsistent with the provisions of this section, requiring the use of safety
108 belt systems. The penalty for violating any such ordinance shall not exceed a fine or civil penalty of
109 twenty-five dollars.

110 **2. That the provisions of this act may result in a net increase in periods of imprisonment in state**
111 **correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation**
112 **is \$1,149,750 in FY 2009.**