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SENATE BILL NO. 1313

Senate Amendments in [] — February 5, 1999

A BILL to amend and reenact §§ 4.1-305, 16.1-278.6, 16.1-278.9, and 18.2-371.2 of the Code of Virginia, relating to loss of driving privileges for alcohol and tobacco offenses; penalties.

Patrons—Potts, Colgan, Hanger, Lucas, Mims, Puckett, Quayle, Saslaw and Stosch; Delegates: Black, Katzen, Landes, Sherwood, Wardrup and Weatherholtz

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 4.1-305, 16.1-278.6, 16.1-278.9, and 18.2-371.2 of the Code of Virginia are 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 *for a first offense, two years for a second offense and five years for a third [or subsequent] offense. [The suspension of a license to operate a motor vehicle shall not extend beyond the person's twenty-first birthday.]* 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 sentence imposed pursuant to clause (i) of this subsection shall not be suspended.

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.

§ 16.1-278.6. Status offenders.

If a child is alleged to be a status offender, including but not limited to those cases in which the juvenile is alleged to have committed a curfew violation or a violation of the law regarding tobacco, the juvenile court or the circuit court may enter any order of disposition authorized by §§ 16.1-278.4 and 16.1-278.9, as appropriate.

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

A. If a court has found facts which would justify a finding that a child at least thirteen years of age at the time of the offense is delinquent and such finding involves (i) a violation of § 18.2-266 or of a similar ordinance of any county, city or town, (ii) a refusal to take a blood or breath test in violation of § 18.2-268.2, (iii) a felony violation of §§ 18.2-248, 18.2-248.1 or § 18.2-250, (iv) a misdemeanor violation of §§ 18.2-248, 18.2-248.1, or § 18.2-250 or a violation of § 18.2-250.1, (v) the unlawful purchase or possession of alcohol in violation of § 4.1-305 or the unlawful drinking or possession of alcoholic beverages in or on public school grounds in violation of § 4.1-309, (vi) public intoxication in violation of § 18.2-388 or a similar ordinance of a county, city or town, (vii) *purchase or possession of any tobacco product in violation of § 18.2-371.2* or ~~(viii)~~ *viii* the unlawful use or possession of a handgun or possession of a "streetsweeper" as defined below, the court shall order that the child be

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60 denied a driver's license. In addition to any other penalty authorized by this section, if the offense
61 involves a violation designated under clause (i) and the child was transporting a person seventeen years
62 of age or younger, the court shall impose the additional fine and order community service as provided in
63 § 18.2-270. If the offense involves a violation designated under clause (i), (ii), or (iii), the denial of a
64 driver's license shall be for a period of one year or until the juvenile reaches the age of seventeen,
65 whichever is longer, for a first such offense or for a period of one year or until the juvenile reaches the
66 age of eighteen, whichever is longer, for a second or subsequent such offense. *If the offense involves a*
67 *violation designated under clause (vii), the denial of a driver's license shall be for a period of one year*
68 *or until the juvenile reaches the age of seventeen, whichever is longer, for a first such offense or for a*
69 *period of two years or until the juvenile reaches the age of eighteen, whichever is longer, for a second*
70 *or subsequent such offense or for a period of five years [or until the juvenile reaches the age of*
71 *eighteen, whichever is longer] for a third offense.* If the offense involves a violation designated under
72 clause (iv), (v), or (vi) the denial of driving privileges shall be for a period of six months unless the
73 offense is committed by a child under the age of sixteen, in which case the child's ability to apply for a
74 driver's license shall be delayed for a period of six months following his sixteenth birthday. If the
75 offense involves a violation designated under clause (i), (ii), (v), or (vi), the court shall impose the
76 license sanction without entering a judgment of guilt and shall defer disposition of the delinquency
77 charge until such time as the court disposes of the case pursuant to subsection F of this section. If the
78 offense involves a violation designated under clause (iii) or (iv), the court shall impose the license
79 sanction and shall dispose of the delinquency charge pursuant to the provisions of this chapter or
80 § 18.2-251. If the offense involves a violation designated under clause (~~vii~~ *viii*), the denial of driving
81 privileges shall be for a period of not less than thirty days, except when the offense involves possession
82 of a concealed handgun or a striker 12, commonly called a "streetsweeper," or any semi-automatic
83 folding stock shotgun of like kind with a spring tension drum magazine capable of holding twelve
84 shotgun shells, in which case the denial of driving privileges shall be for a period of two years unless
85 the offense is committed by a child under the age of sixteen, in which event the child's ability to apply
86 for a driver's license shall be delayed for a period of two years following his sixteenth birthday.

87 B. Any child who has a driver's license at the time of the offense shall be ordered to surrender his
88 driver's license, which shall be held in the physical custody of the court during any period of license
89 denial.

90 C. The court shall report any order issued under this section to the Department of Motor Vehicles,
91 which shall preserve a record thereof. The report and the record shall include a statement as to whether
92 the child was represented by or waived counsel. Notwithstanding the provisions of Article 12
93 (§ 16.1-299 et seq.) of this chapter or the provisions of Title 46.2, this record shall be available only to
94 all law-enforcement officers, attorneys for the Commonwealth and courts. No other record of the
95 proceeding shall be forwarded to the Department of Motor Vehicles unless the proceeding results in an
96 adjudication of guilt pursuant to subsection F.

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

100 D. If the finding as to the child involves a violation designated under clause (i), (ii), (iii), or (vi) of
101 subsection A, the child may be referred to a certified alcohol safety action program in accordance with
102 § 18.2-271.1 upon such terms and conditions as the court may set forth. If the finding as to such child
103 involves a violation designated under clause (iii), (iv), (v) or (~~vii~~ *viii*) of subsection A, such child may
104 be referred to appropriate rehabilitative or educational services upon such terms and conditions as the
105 court may set forth. The court, in its discretion and upon a demonstration of hardship, may authorize the
106 use of a restricted permit to operate a motor vehicle by any child who has a driver's license at the time
107 of the offense for any of the purposes set forth in subsection E of § 18.2-271.1 or for travel to and from
108 school, except that no restricted license shall be issued if the finding as to such child involves a
109 violation designated under clause (iii) or (iv) of subsection A, or if it involves a second or subsequent
110 violation of any offense designated in subsection A. The issuance of the restricted permit shall be set
111 forth within the court order, a copy of which shall be provided to the child, and shall specifically
112 enumerate the restrictions imposed and contain such information regarding the child as is reasonably
113 necessary to identify him. The child may operate a motor vehicle under the court order in accordance
114 with its terms. Any child who operates a motor vehicle in violation of any restrictions imposed pursuant
115 to this section shall be guilty of a violation of § 46.2-301.

116 E. Upon petition made at least ninety days after issuance of the order, the court may review and
117 withdraw any order of denial of a driver's license if for a first such offense. For a second or subsequent
118 such offense, the order may not be reviewed and withdrawn until one year after its issuance.

119 F. If the finding as to such child involves a violation designated under clause (i), (ii), (v), (vi) or (~~vii~~
120 *viii*) of subsection A, upon fulfillment of the terms and conditions prescribed by the court and after the
121 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, 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.

§ 18.2-371.2. Prohibiting purchase or possession of tobacco products by minors or sale of tobacco products to minors.

A. No person shall sell to, distribute to, purchase for or knowingly permit the purchase by any person less than eighteen years of age, knowing or having reason to believe that such person is less than eighteen years of age, any tobacco product, including but not limited to cigarettes and cigars. Tobacco products may be sold from a vending machine only if the machine is (i) posted with a notice, in a conspicuous manner and place, indicating that the purchase or possession of tobacco products by minors is unlawful and (ii) located in a place which is not open to the general public and is not generally accessible to minors. An establishment which prohibits the presence of minors unless accompanied by an adult is not open to the general public.

B. No person less than eighteen years of age shall purchase or possess any tobacco product including but not limited to cigarettes and cigars. The provisions of this subsection shall not be applicable to the possession of tobacco products by a person less than eighteen years of age making a delivery of tobacco products in pursuance of his employment.

C. No person shall sell a tobacco product to any individual who does not demonstrate, by producing a driver's license or similar photo identification issued by a government agency, that the individual is at least eighteen years of age. Such identification is not required from an individual whom the person has reason to believe is at least eighteen years of age or who the person knows is at least eighteen years of age. Proof that the person demanded, was shown, and reasonably relied upon a photo identification stating that the individual was at least eighteen years of age shall be a defense to any action brought under this subsection. In determining whether a person had reason to believe an individual is at least eighteen years of age, the trier of fact may consider, but is not limited to, proof of the general appearance, facial characteristics, behavior and manner of the individual.

This subsection shall not apply to mail order sales.

D. A violation of subsection A or C by an individual or by a separate retail establishment shall be punishable by a civil penalty not to exceed \$100 for a first violation and a civil penalty not to exceed \$200 for a second violation. However, a third or subsequent violation of subsection A shall be punishable by a civil penalty not to exceed \$500. A violation of subsection B shall be punishable by a civil penalty not to exceed \$50 for a first violation and a civil penalty not to exceed \$100 for a second or subsequent violation. ~~Upon a third or subsequent~~ *Additionally, for a violation of subsection B, the* judge in his discretion may enter an order pursuant to ~~subdivision 9 of § 16.1-278.8~~ *§ 16.1-278.9*. Any attorney for the Commonwealth of the county or city in which an alleged violation occurred may bring an action to recover the civil penalty, which shall be paid into the state treasury. Any law-enforcement officer may issue a summons for a violation of subsection A, B, or C.

E. 1. Cigarettes shall be sold only in sealed packages provided by the manufacturer, with the required health warning. The proprietor of every retail establishment which offers for sale any tobacco product, including but not limited to cigarettes and cigars, shall post in a conspicuous manner and place a sign or signs indicating that the sale of tobacco products to any person under eighteen years of age is prohibited by law. Any attorney for the county, city or town in which an alleged violation of this subsection occurred may enforce this subsection by civil action to recover a civil penalty not to exceed fifty dollars. The civil penalty shall be paid into the local treasury. No filing fee or other fee or cost shall be charged to the county, city or town which instituted the action.

2. For the purpose of compliance with regulations of the Substance Abuse and Mental Health Services Administration published at 61 Federal Register 1492, the Department of Agriculture and Consumer Services may promulgate regulations which allow the Department to undertake the activities necessary to comply with such regulations.

3. Any attorney for the county, city or town in which an alleged violation of this subsection occurred may enforce this subsection by civil action to recover a civil penalty not to exceed \$100. The civil penalty shall be paid into the local treasury. No filing fee or other fee or cost shall be charged to the county, city or town which instituted the action.

F. Nothing in this section shall be construed to create a private cause of action.

G. Agents of the Virginia Alcoholic Beverage Control Board designated pursuant to § 4.1-105 may issue a summons for any violation of this section.