

VIRGINIA ACTS OF ASSEMBLY -- 2002 SESSION

CHAPTER 759

An Act to amend and reenact § 18.2-270 of the Code of Virginia, relating to charging a violation of driving while intoxicated; penalty.

[H 67]

Approved April 7, 2002

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-270 of the Code of Virginia is amended and reenacted as follows:

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

A. Except as otherwise provided herein, any person violating any provision of § 18.2-266 shall be guilty of a Class 1 misdemeanor. If the person's blood alcohol level as indicated by the chemical test administered as provided in this article was at least 0.20, but not more than 0.25, he shall be confined in jail for an additional *mandatory*, minimum, ~~mandatory~~ period of five days or, if the level was more than 0.25, for an additional *mandatory*, minimum, ~~mandatory~~ period of ten days. The additional *mandatory*, minimum, ~~mandatory~~ period of confinement shall not be suspended by the court.

B. 1. Any person convicted of a second offense committed within less than five years after a first offense under § 18.2-266 shall *upon conviction of the second offense* be ~~punishable~~ *punished* 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~~. Five days of such confinement shall be a mandatory, minimum sentence not subject to suspension by the court.

2. 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 *upon conviction of the second offense* be ~~punishable~~ *punished* 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~~.

3. Upon conviction of a second offense within ten years of a first offense, if the person's blood alcohol level as indicated by the chemical test administered as provided in this article was at least 0.20, but not more than 0.25, he shall be confined in jail for an additional minimum, *mandatory* period of ten days or, if the level was more than 0.25, for an additional *mandatory*, minimum, ~~mandatory~~ period of twenty days. The additional *mandatory*, minimum, ~~mandatory~~ period of confinement shall not be suspended by the court.

C. Any person convicted of three or more offenses of § 18.2-266 committed within a ten-year period shall *upon conviction of the third offense* be guilty of a Class 6 felony, and the sentence shall include a mandatory, minimum sentence of confinement for ten days that shall not be subject to suspension by the court. Any person convicted of a third offense committed within five years of an offense under § 18.2-266 shall *upon conviction of the third offense* be guilty of a Class 6 felony, and the sentence shall include a mandatory, minimum sentence of confinement for thirty days that shall not be subject to suspension by the court. ~~Upon conviction for~~ *The punishment of any person convicted of a fourth or subsequent offense committed within ten years a ten-year period shall, upon conviction,* include a mandatory, minimum term of imprisonment of one year, none of which may be suspended in whole or in part. Unless otherwise modified by the court, the defendant shall remain on probation and under the terms of any suspended sentence for the same period as his operator's license was suspended, not to exceed three years.

D. 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 \$500 and not more than \$1000 and (ii) sentenced to perform forty hours of community service in a program benefiting children or, for a subsequent offense, eighty hours of community service in such a program.

E. For the purpose of this section, an adult conviction of any person, or finding of guilty in the case of a juvenile, under the following shall be considered a prior conviction: (i) the provisions of § 18.2-36.1 or the substantially similar laws of any other state or of the United States, (ii) 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 (iii) the provisions of subsection A of § 46.2-341.24 or the substantially similar laws of any other state or of the United States.