

VIRGINIA ACTS OF ASSEMBLY -- 2002 RECONVENED SESSION

CHAPTER 890

An Act to amend and reenact § 18.2-323.1 of the Code of Virginia, relating to possession of open container of alcohol in a motor vehicle; rebuttable presumption.

[S 148]

Approved May 17, 2002

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-323.1 of the Code of Virginia is amended and reenacted as follows:

§ 18.2-323.1. Drinking while operating a motor vehicle; possession of open container while operating a motor vehicle and presumption; penalty.

A. It shall be unlawful for any person to consume an alcoholic beverage while driving a motor vehicle upon a public highway of this Commonwealth.

B. A rebuttable presumption that the driver has consumed an alcoholic beverage in violation of this section shall be created if (i) an open container is located within the passenger area of the motor vehicle, (ii) the alcoholic beverage in the open container has been at least partially removed and (iii) the appearance, conduct, odor of alcohol, speech or other physical characteristic of the driver of the motor vehicle may be reasonably associated with the consumption of an alcoholic beverage.

For the purposes of this section:

"Open container" means any vessel containing an alcoholic beverage, except the originally sealed manufacturer's container.

"Passenger area" means the area designed to seat the driver of any motor vehicle, any area within the reach of the driver, including an unlocked glove compartment, and the area designed to seat passengers. This term shall not include the trunk of any passenger vehicle, the area behind the last upright seat of a passenger van, station wagon, hatchback, sport utility vehicle or any similar vehicle, the living quarters of a motor home, or the passenger area of a motor vehicle designed, maintained or used primarily for the transportation of persons for compensation, including a bus, taxi, or limousine, while engaged in the transportation of such persons.

C. A violation of this section is punishable as a Class 4 misdemeanor.