

# VIRGINIA ACTS OF ASSEMBLY -- 2004 SESSION

## CHAPTER 957

*An Act to amend and reenact § 18.2-270 of the Code of Virginia, relating to penalty for driving while intoxicated; subsequent offense.*

[H 1107]

Approved April 15, 2004

**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 period of five days or, if the level was more than 0.25, for an additional mandatory, minimum period of 10 days. The additional mandatory, minimum period of confinement shall not be suspended by the court. In addition, such person shall be fined a mandatory, minimum fine of \$250, which 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 punished by a mandatory, minimum fine of \$500, which shall not be suspended by the court, 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 punished by a mandatory, minimum fine of \$500, which shall not be suspended by the court, and by confinement in jail for not less than one month.

3. Upon conviction of a second offense within 10 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 *minimum* period of 10 days or, if the level was more than 0.25, for an additional mandatory, minimum period of 20 days. The additional mandatory, minimum period of confinement shall not be suspended by the court. In addition, such person shall be fined a mandatory, minimum fine of \$500, which shall not be suspended by the court.

C. Any person convicted of three ~~or more~~ offenses of § 18.2-266 committed within a 10-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 10 days that shall not be subject to suspension by the court. In addition, such person shall be fined a mandatory, minimum fine of \$1,000, which shall not be suspended 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 ~~30 days~~ *six months* that shall not be subject to suspension by the court. In addition, such person shall be fined a mandatory, minimum fine of \$1,000, which shall not be suspended by the court. The punishment of any person convicted of a fourth or subsequent offense committed within a 10-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. In addition, such person shall be fined a mandatory, minimum fine of \$1,000, which shall not be suspended by the court. 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 17 years of age or younger shall be (i) fined an additional minimum of \$500 and not more than \$1,000 and (ii) sentenced to a mandatory, minimum period of confinement of five days.

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.

**2. That the provisions of this act may result in a net increase in periods of imprisonment or**

**commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0 for periods of imprisonment in state adult correctional facilities and \$0 for periods of commitment to the custody of the Department of Juvenile Justice.**