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HOUSE BILL NO. 1147

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 9, 2004)

(Patron Prior to Substitute—Delegate McDonnell)

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

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~~ is guilty of a Class 1 misdemeanor, ~~and the sentence shall include a mandatory minimum sentence of three days.~~ 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 subsection E~~ 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 a ~~mandatory minimum term of~~ 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 of 30 days not subject to suspension by the court.

2. Any person convicted of a second offense committed within a period of five to ~~ten~~ 10 years of a first offense under ~~§ 18.2-266 subsection E~~ 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. ~~Ten days of such confinement shall be a mandatory minimum sentence.~~

3. Upon conviction of a second offense within 10 years of a first offense ~~under subsection E~~, 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~~ a third offense of § 18.2-266 committed within a ~~10-year~~ period of five to 10 years of an offense under subsection E 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 ~~40~~ 60 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 subsection E~~ 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~~ 180 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. 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 \$1000 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 of § 18.2-266: (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,

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60 city or town in this Commonwealth or the laws of any other state or of the United States substantially
61 similar to the provisions of §§ 18.2-51.4, and 18.2-266 through 18.2-269, or (iii) the provisions of
62 subsection A of § 46.2-341.24 or the substantially similar laws of any other state or of the United States.