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HOUSE BILL NO. 1182

Offered January 11, 2006

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A BILL to amend and reenact §§ 18.2-266, 18.2-269, 29.1-738, 46.2-341.24, and 46.2-341.27 of the Code of Virginia, relating to driving under the influence of drugs.

Patron—Carrico

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-266, 18.2-269, 29.1-738, 46.2-341.24, and 46.2-341.27 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-266. Driving motor vehicle, engine, etc., while intoxicated, etc.

It shall be unlawful for any person to drive or operate any motor vehicle, engine or train (i) while such person has a blood alcohol concentration of 0.08 percent or more by weight by volume or 0.08 grams or more per 210 liters of breath as indicated by a chemical test administered as provided in this article, (ii) while such person is under the influence of alcohol, (iii) while such person is under the influence of any narcotic drug or any other self-administered intoxicant or drug of whatsoever nature, or any combination of such drugs, to a degree that impairs his ability to drive or operate any motor vehicle, engine or train safely, (iv) while such person is under the combined influence of alcohol and any drug or drugs to a degree that impairs his ability to drive or operate any motor vehicle, engine or train safely, or (v) while such person has a blood concentration of any of the following substances at a level that is equal to or greater than: (a) 0.02 milligrams of cocaine per liter of blood, (b) 0.1 milligrams of methamphetamine per liter of blood, (c) 0.01 milligrams of phencyclidine per liter of blood, ~~or~~ (d) 0.1 milligrams of 3,4-methylenedioxymethamphetamine per liter of blood *or (e) 0.003 milligrams of tetrahydrocannabinol per liter of blood.* A charge alleging a violation of this section shall support a conviction under clauses (i), (ii), (iii), (iv), or (v).

For the purposes of this article, the term "motor vehicle" includes mopeds, while operated on the public highways of this Commonwealth.

§ 18.2-269. Presumptions from alcohol or drug content of blood.

A. In any prosecution for a violation of § 18.2-36.1 or clause (ii), (iii) or (iv) of § 18.2-266, or any similar ordinance, the amount of alcohol or drugs in the blood of the accused at the time of the alleged offense as indicated by a chemical analysis of a sample of the accused's blood or breath to determine the alcohol or drug content of his blood in accordance with the provisions of §§ 18.2-268.1 through 18.2-268.12 shall give rise to the following rebuttable presumptions:

(1) If there was at that time 0.05 percent or less by weight by volume of alcohol in the accused's blood or 0.05 grams or less per 210 liters of the accused's breath, it shall be presumed that the accused was not under the influence of alcohol intoxicants at the time of the alleged offense;

(2) If there was at that time in excess of 0.05 percent but less than 0.08 percent by weight by volume of alcohol in the accused's blood or 0.05 grams but less than 0.08 grams per 210 liters of the accused's breath, such facts shall not give rise to any presumption that the accused was or was not under the influence of alcohol intoxicants at the time of the alleged offense, but such facts may be considered with other competent evidence in determining the guilt or innocence of the accused;

(3) If there was at that time 0.08 percent or more by weight by volume of alcohol in the accused's blood or 0.08 grams or more per 210 liters of the accused's breath, it shall be presumed that the accused was under the influence of alcohol intoxicants at the time of the alleged offense; or

(4) If there was at that time an amount of the following substances at a level that is equal to or greater than: (a) 0.02 milligrams of cocaine per liter of blood, (b) 0.1 milligrams of methamphetamine per liter of blood, (c) 0.01 milligrams of phencyclidine per liter of blood, ~~or~~ (d) 0.1 milligrams of 3,4-methylenedioxymethamphetamine per liter of blood *or (e) 0.003 milligrams of tetrahydrocannabinol per liter of blood,* it shall be presumed that the accused was under the influence of drugs at the time of the alleged offense to a degree which impairs his ability to drive or operate any motor vehicle, engine or train safely.

B. The provisions of this section shall not apply to and shall not affect any prosecution for a violation of § 46.2-341.24.

§ 29.1-738. Operating boat or manipulating water skis, etc., in reckless manner or while intoxicated, etc.

A. No person shall operate any motorboat or vessel, or manipulate any skis, surfboard, or similar

59 device, or engage in any spearfishing while skin diving or scuba diving in a reckless manner so as to
60 endanger the life, limb, or property of any person.

61 B. No person shall operate any watercraft, as defined in § 29.1-712, or motorboat which is underway
62 (i) while such person has a blood alcohol concentration at or greater than the blood alcohol
63 concentration at which it is unlawful to drive or operate a motor vehicle as provided in § 18.2-266 as
64 indicated by a chemical test administered in accordance with § 29.1-738.2, (ii) while such person is
65 under the influence of alcohol, (iii) while such person is under the influence of any narcotic drug or any
66 other self-administered intoxicant or drug of whatsoever nature, or any combination of such drugs, to a
67 degree that impairs his ability to operate the watercraft or motorboat safely, (iv) while such person is
68 under the combined influence of alcohol and any drug or drugs to a degree that impairs his ability to
69 operate the watercraft or motorboat safely, or (v) while such person has a blood concentration of any of
70 the following substances at a level that is equal to or greater than: (a) 0.02 milligrams of cocaine per
71 liter of blood, (b) 0.1 milligrams of methamphetamine per liter of blood, (c) 0.01 milligrams of
72 phencyclidine per liter of blood, or ~~(d)~~ 0.1 milligrams of 3,4-methylenedioxymethamphetamine per liter
73 of blood *or (e) 0.003 milligrams of tetrahydrocannabinol per liter of blood.*

74 C. For purposes of this article, the word "operate" shall include being in actual physical control of a
75 watercraft or motorboat and "underway" shall mean that a vessel is not at anchor, or made fast to the
76 shore, or aground.

77 Any person who violates any provision of this section shall be guilty of a Class 1 misdemeanor.

78 § 46.2-341.24. Driving a commercial motor vehicle while intoxicated, etc.

79 A. It shall be unlawful for any person to drive or operate any commercial motor vehicle (i) while
80 such person has a blood alcohol concentration of 0.08 percent or more by weight by volume or 0.08
81 grams per 210 liters of breath as indicated by a chemical test administered as provided in this article;
82 (ii) while such person is under the influence of alcohol; (iii) while such person is under the influence of
83 any narcotic drug or any other self-administered intoxicant or drug of whatsoever nature, or any
84 combination of such drugs, to a degree that impairs his ability to drive or operate any commercial motor
85 vehicle safely; (iv) while such person is under the combined influence of alcohol and any drug or drugs
86 to a degree that impairs his ability to drive or operate any commercial motor vehicle safely; or (v) while
87 such person has a blood concentration of any of the following substances at a level that is equal to or
88 greater than: (a) 0.02 milligrams of cocaine per liter of blood, (b) 0.1 milligrams of methamphetamine
89 per liter of blood, (c) 0.01 milligrams of phencyclidine per liter of blood, ~~or~~ (d) 0.1 milligrams of
90 3,4-methylenedioxymethamphetamine per liter of blood *or (e) 0.003 milligrams of tetrahydrocannabinol*
91 *per liter of blood.*

92 B. It shall be unlawful and a lesser included offense of an offense under provision (i), (ii), or (iv) of
93 subsection A of this section for a person to drive or operate a commercial motor vehicle while such
94 person has a blood alcohol concentration of 0.04 percent or more by weight by volume or 0.04 grams or
95 more per 210 liters of breath as indicated by a chemical test administered in accordance with the
96 provisions of this article.

97 § 46.2-341.27. Presumptions from alcohol and drug content of blood.

98 In any prosecution for a violation of provision (ii), (iii) or (iv) of subsection A of § 46.2-341.24, the
99 amount of alcohol or drugs in the blood of the accused at the time of the alleged offense as indicated by
100 a chemical analysis of a sample of the suspect's blood or breath to determine the alcohol or drug content
101 of his blood in accordance with the provisions of §§ 46.2-341.26:1 through 46.2-341.26:11 shall give
102 rise to the following rebuttable presumptions:

103 A. If there was at that time 0.08 percent or more by weight by volume of alcohol in the accused's
104 blood or 0.08 grams or more per 210 liters of the accused's breath, it shall be presumed that the accused
105 was under the influence of alcoholic intoxicants.

106 B. If there was at that time less than 0.08 percent by weight by volume of alcohol in the accused's
107 blood or 0.08 grams or more per 210 liters of the accused's breath, such fact shall not give rise to any
108 presumption that the accused was or was not under the influence of alcoholic intoxicants, but such fact
109 may be considered with other competent evidence in determining the guilt or innocence of the accused.

110 C. If there was at that time an amount of the following substances at a level that is equal to or
111 greater than: (a) 0.02 milligrams of cocaine per liter of blood, (b) 0.1 milligrams of methamphetamine
112 per liter of blood, (c) 0.01 milligrams of phencyclidine per liter of blood, ~~or~~ (d) 0.1 milligrams of
113 3,4-methylenedioxymethamphetamine per liter of blood *or (e) 0.003 milligrams of tetrahydrocannabinol*
114 *per liter of blood,* it shall be presumed that the accused was under the influence of drugs to a degree
115 that impairs his ability to drive or operate any commercial motor vehicle safely.

116 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
117 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**
118 **be determined for periods of imprisonment in state adult correctional facilities and is \$0 for**
119 **periods of commitment to the custody of the Department of Juvenile Justice.**