

080811456

HOUSE BILL NO. 740

Offered January 9, 2008

Prefiled January 8, 2008

A BILL to amend and reenact §§ 4.1-305 and 4.1-306 of the Code of Virginia, relating to deferred proceedings and mitigation in underaged drinking cases.

Patron—Caputo (By Request)

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:**1. That §§ 4.1-305 and 4.1-306 of the Code of Virginia are amended and reenacted as follows:**

§ 4.1-305. Purchasing or possessing alcoholic beverages unlawful in certain cases; venue; exceptions; penalty; forfeiture; deferred proceedings; treatment and education programs and services.

A. No person to whom an alcoholic beverage may not lawfully be sold under § 4.1-304 shall consume, purchase or possess, or attempt to consume, purchase or possess, any alcoholic beverage, except (i) pursuant to subdivisions 1 through 7 of § 4.1-200; (ii) where possession of the alcoholic beverages by a person less than 21 years of age is due to such person's making a delivery of alcoholic beverages in pursuance of his employment or an order of his parent; or (iii) by any state, federal, or local law-enforcement officer when possession of an alcoholic beverage is necessary in the performance of his duties. Such person may be prosecuted either in the county or city in which the alcohol was possessed or consumed, or in the county or city in which the person exhibits evidence of physical indicia of consumption of alcohol.

B. No person under the age of 21 years shall use or attempt to use any (i) altered, fictitious, facsimile or simulated license to operate a motor vehicle, (ii) altered, fictitious, facsimile or simulated document, including, but not limited to a birth certificate or student identification card, or (iii) motor vehicle operator's license, birth certificate or student identification card of another person in order to establish a false identification or false age for himself to consume, purchase or attempt to consume or purchase an alcoholic beverage.

C. Any person found guilty of a violation of this section shall be guilty of a Class 1 misdemeanor; and upon conviction, (i) such person shall be ordered to pay a mandatory minimum fine of \$500 or ordered to perform a mandatory minimum of 50 hours of community service as a condition of probation supervision and (ii) the license to operate a motor vehicle in the Commonwealth of any such person age 18 or older shall be suspended for a period of not less than six months and not more than one year. The court, in its discretion and upon a demonstration of hardship, may authorize any person convicted of a violation of this section the use of a restricted permit to operate a motor vehicle in accordance with the provisions of subsection D of § 16.1-278.9 or subsection E of § 18.2-271.1 or when referred to a local community-based probation services agency established pursuant to Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1. During the period of license suspension, the court may require a person issued a restricted permit under the provisions of this subsection to be (i) monitored by an alcohol safety action program, or (ii) supervised by a local community-based probation services agency established pursuant to Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1, if one has been established for the locality. The alcohol safety action program or local community-based probation services agency shall report to the court any violation of the terms of the restricted permit, the required alcohol safety action program monitoring or local community-based probation services and any condition related thereto or any failure to remain alcohol-free during the suspension period.

D. Any alcoholic beverage purchased or possessed in violation of this section shall be deemed contraband and forfeited to the Commonwealth in accordance with § 4.1-338.

E. Any retail licensee who in good faith promptly notifies the Board or any state or local law-enforcement agency of a violation or suspected violation of this section shall be accorded immunity from an administrative penalty for a violation of § 4.1-304.

F. When any person who (i) has not previously been convicted of underaged consumption, purchase or possession of alcoholic beverages in Virginia or any other state or the United States, or (ii) has provided assistance to another is before the court, the court may, upon entry of a plea of guilty or not guilty, if the facts found by the court would justify a finding of guilt of a violation of subsection A, without entering a judgment of guilt and with the consent of the accused, defer further proceedings and place him on probation subject to appropriate conditions. Such conditions may include the imposition of the license suspension and restricted license provisions in subsection C. However, in all such deferred proceedings, the court shall require the accused to enter a treatment or education program or both, if

INTRODUCED

HB740

59 available, that in the opinion of the court best suits the needs of the accused. If the accused is placed on
60 local community-based probation, the program or services shall be located in any of the judicial districts
61 served by the local community-based probation services agency or in any judicial district ordered by the
62 court when the placement is with an alcohol safety action program. The services shall be provided by (i)
63 a program licensed by the Department of Mental Health, Mental Retardation and Substance Abuse
64 Services, (ii) certified by the Commission on VASAP, or (iii) by a program or services made available
65 through a community-based probation services agency established pursuant to Article 9 (§ 9.1-173 et
66 seq.) of Chapter 1 of Title 9.1, if one has been established for the locality. When an offender is ordered
67 to a local community-based probation services rather than the alcohol safety action program, the local
68 community-based probation services agency shall be responsible for providing for services or referring
69 the offender to education or treatment services as a condition of probation.

70 Upon violation of a condition, the court may enter an adjudication of guilt and proceed as otherwise
71 provided. Upon fulfillment of the conditions, the court shall discharge the person and dismiss the
72 proceedings against him without an adjudication of guilt. A discharge and dismissal hereunder shall be
73 treated as a conviction for the purpose of applying this section in any subsequent proceedings.

74 *A person has provided assistance to another when he summons law enforcement or emergency*
75 *medical assistance on behalf of another person who because of his consumption of alcohol, controlled*
76 *substances, or for any other reason, was in need of emergency medical assistance.*

77 § 4.1-306. Purchasing alcoholic beverages for one to whom they may not be sold; penalty; forfeiture.

78 A. Any person who purchases alcoholic beverages for another person, and at the time of such
79 purchase knows or has reason to believe that the person for whom the alcoholic beverage was purchased
80 was (i) interdicted, or (ii) intoxicated, is guilty of a Class 1 misdemeanor.

81 A1. Any person who purchases for, or otherwise gives, provides, or assists in the provision of
82 alcoholic beverages to another person, knowing that such person was less than 21 years of age, except
83 (i) pursuant to subdivisions 1 through 7 of § 4.1-200; (ii) where possession of the alcoholic beverages by
84 a person less than 21 years of age is due to such person's making a delivery of alcoholic beverages in
85 pursuance of his employment or an order of his parent; or (iii) by any state, federal, or local
86 law-enforcement officer when possession of an alcoholic beverage is necessary in the performance of his
87 duties, is guilty of a Class 1 misdemeanor.

88 *The court may consider in mitigation that a person convicted under this subsection summoned law*
89 *enforcement or emergency medical assistance on behalf of another person who because of his*
90 *consumption of alcohol, controlled substances, or for any other reason, was in need of emergency*
91 *medical assistance.*

92 B. In addition to any other penalty authorized by law, any person found guilty of a violation of this
93 section shall have his license to operate a motor vehicle suspended for a period of not more than one
94 year. The court, in its discretion, may authorize any person convicted of a violation of this section the
95 use of a restricted permit to operate a motor vehicle in accordance with the provisions of subsection D
96 of § 16.1-278.9 or subsection E of § 18.2-271.1.

97 C. Any alcoholic beverages purchased in violation of this section shall be deemed contraband and
98 forfeited to the Commonwealth in accordance with § 4.1-338.