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HOUSE BILL NO. 1102

Offered January 24, 2000

A BILL to amend and reenact § 18.2-271.1 of the Code of Virginia, relating to alcohol safety action programs.

Patrons—Albo and Moran

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-271.1 of the Code of Virginia is amended and reenacted as follows:

§ 18.2-271.1. Probation, education and rehabilitation of person charged or convicted; person convicted under law of another state.

A. Any person convicted of a first or second offense of § 18.2-266 (i), (ii), (iii) or (iv), or any ordinance of a county, city, or town similar to the provisions thereof, or provisions of subsection A of § 46.2-341.24, shall be required by court order, as a condition of probation or otherwise, to enter into and successfully complete an alcohol safety action program in the judicial district in which such charge is brought or in any other judicial district upon such terms and conditions as the court may set forth. However, upon motion of a person convicted of any such offense following an assessment of the person conducted by an alcohol safety action program, the court, for good cause, may decline to order participation in such a program. In no event shall such persons be permitted to enter any such program which is not certified as meeting minimum standards and criteria established by the Commission on the Virginia Alcohol Safety Action Program (VASAP) pursuant to subsection H of this section and to § 18.2-271.2. *However, any person charged with a violation of a first or second offense of § 18.2-266 (i), (ii), (iii) or (iv), or any ordinance of a county, city, or town similar to the provisions thereof, or provisions of subsection A of § 46.2-341.24, may, at any time prior to trial, enter into an alcohol safety action program in the judicial district in which such charge is brought or in any other judicial district.*

B. The court shall require the person entering such program under the provisions of this section to pay a fee of no less than \$250 but no more than \$300. A reasonable portion of such fee, as may be determined by the Commission on VASAP, but not to exceed ten percent, shall be forwarded monthly to be deposited with the State Treasurer for expenditure by the Commission on VASAP, and the balance shall be held in a separate fund for local administration of driver alcohol rehabilitation programs. Upon a positive finding that the defendant is indigent, the court may reduce or waive the fee. In addition to the costs of the proceeding, fees as may reasonably be required of defendants referred for intervention under any such program may be charged.

C. Upon conviction of a violation of § 18.2-266 or any ordinance of a county, city or town similar to the provisions thereof, or subsection A of § 46.2-341.24, the court shall impose the sentence authorized by § 18.2-270 or § 46.2-341.28 and the license revocation as authorized by § 18.2-271. Upon a finding that a person so convicted is required to participate in the program described herein, the court shall enter the conviction on the warrant, and shall note that the person so convicted has been referred to such program. The court may then proceed to issue an order in accordance with subsection E of this section, if the court finds that the person so convicted is eligible for a restricted license. If the court finds good cause for a person not to participate in such program or subsequently that such person has violated, without good cause, any of the conditions set forth by the court in entering the program, the court shall dispose of the case as if no program had been entered, in which event the revocation provisions of § 46.2-389 and subsection A of § 46.2-391 shall be applicable to the conviction. The court shall, upon final disposition of the case, send a copy of its order to the Commissioner of the Department of Motor Vehicles. If such order provides for the issuance of a restricted license, the Commissioner of the Department of Motor Vehicles, upon receipt thereof, shall issue a restricted license. Appeals from any such disposition shall be allowed as provided by law. The time within which an appeal may be taken shall be calculated from the date of the final disposition of the case or any motion for rehearing, whichever is later.

D. Any person who has been convicted in another state of the violation of a law of such state substantially similar to the provisions of § 18.2-266 or subsection A of § 46.2-341.24, and whose privilege to operate a motor vehicle in this Commonwealth is subject to revocation under the provisions of § 46.2-389 and subsection A of § 46.2-391, may petition the general district court of the county or city in which he resides that he be given probation and assigned to a program as provided in subsection A of this section and that, upon entry into such program, he be issued an order in accordance with subsection E of this section. If the court finds that such person would have qualified therefor if he had

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60 been convicted in this Commonwealth of a violation of § 18.2-266 or subsection A of § 46.2-341.24, the
61 court may grant the petition and may issue an order in accordance with subsection E of this section as
62 to the period of license suspension or revocation imposed pursuant to § 46.2-389 or subsection A of
63 § 46.2-391. Such order shall be conditioned upon the successful completion of a program by the
64 petitioner. If the court subsequently finds that such person has violated any of the conditions set forth by
65 the court, the court shall dispose of the case as if no program had been entered and shall notify the
66 Commissioner, who shall revoke the person's license in accordance with the provisions of § 46.2-389 or
67 subsection A of § 46.2-391. A copy of the order granting the petition or subsequently revoking or
68 suspending such person's license to operate a motor vehicle shall be forthwith sent to the Commissioner
69 of the Department of Motor Vehicles.

70 No period of license suspension or revocation shall be imposed pursuant to this subsection which,
71 when considered together with any period of license suspension or revocation previously imposed for the
72 same offense in any state, results in such person's license being suspended for a period in excess of the
73 maximum periods specified in this subsection.

74 E. Except as otherwise provided herein, whenever a person enters a certified program pursuant to this
75 section, and such person's license to operate a motor vehicle, engine or train in the Commonwealth has
76 been suspended or revoked, the court may, in its discretion and for good cause shown, provide that such
77 person be issued a restricted permit to operate a motor vehicle for any or all of the following purposes:
78 (i) travel to and from his place of employment; (ii) travel to and from an alcohol rehabilitation program
79 entered pursuant to this subsection; (iii) travel during the hours of such person's employment if the
80 operation of a motor vehicle is a necessary incident of such employment; (iv) travel to and from school
81 if such person is a student, upon proper written verification to the court that such person is enrolled in a
82 continuing program of education; (v) such other medically necessary travel as the court deems necessary
83 and proper upon written verification of need by a licensed health professional; or (vi) travel necessary to
84 transport a minor child under the care of such person to and from school, day care, and facilities
85 housing medical service providers. No restricted license issued pursuant to this subsection shall permit
86 any person to operate a commercial motor vehicle as defined in the Virginia Commercial Driver's
87 License Act (§ 46.2-341.1 et seq.). The court shall order the surrender of such person's license to operate
88 a motor vehicle to be disposed of in accordance with the provisions of § 46.2-398 and shall forward to
89 the Commissioner of the Department of Motor Vehicles a copy of its order entered pursuant to this
90 subsection, which shall specifically enumerate the restrictions imposed and contain such information
91 regarding the person to whom such a permit is issued as is reasonably necessary to identify such person.
92 The court shall also provide a copy of its order to the person so convicted who may operate a motor
93 vehicle on the order until receipt from the Commissioner of the Department of Motor Vehicles of a
94 restricted license, if the order provides for a restricted license for that time period. A copy of such order
95 and, after receipt thereof, the restricted license shall be carried at all times while operating a motor
96 vehicle. Any person who operates a motor vehicle in violation of any restrictions imposed pursuant to
97 this section shall be guilty of a violation of § 18.2-272. Such restricted license shall be conditioned upon
98 enrollment within fifteen days in, and successful completion of, a program as described in subsection A
99 of this section. No restricted license shall be issued during the first four months of a revocation imposed
100 pursuant to subsection B of § 18.2-271 or subsection A of § 46.2-391 for a second offense of the type
101 described therein committed within ten years of a first such offense. No restricted license shall be issued
102 during any revocation period imposed pursuant to subsection C of § 18.2-271 or subsection B of
103 § 46.2-391. Notwithstanding the provisions of § 46.2-411, the fee charged pursuant to § 46.2-411 for
104 reinstatement of the driver's license of any person whose privilege or license has been suspended or
105 revoked as a result of a violation of § 18.2-266, subsection A of § 46.2-341.24 or of any ordinance of a
106 county, city or town, or of any federal law or the laws of any other state similar to the provisions of
107 § 18.2-266 or subsection A of § 46.2-341.24 shall be \$105. Forty dollars of such reinstatement fee shall
108 be retained by the Department of Motor Vehicles as provided in § 46.2-411, forty dollars shall be
109 transferred to the Commission on VASAP, and twenty-five dollars shall be transferred to the
110 Commonwealth Neurotrauma Initiative Trust Fund.

111 F. The court shall have jurisdiction over any person entering such program under any provision of
112 this section until such time as the case has been disposed of by either successful completion of the
113 program, or revocation due to ineligibility or violation of a condition or conditions imposed by the
114 court, whichever shall first occur. Revocation proceedings shall be commenced by notice to show cause
115 why the court should not revoke the privilege afforded by this section. Such notice shall be made by
116 first-class mail to the last known address of such person, and shall direct such person to appear before
117 the court in response thereto on a date contained in such notice, which shall not be less than ten days
118 from the date of mailing of the notice. Failure to appear in response to such notice shall of itself be
119 grounds for revocation of such privilege. Notice of revocation under this subsection shall be sent
120 forthwith to the Commissioner of the Department of Motor Vehicles.

121 G. The State Treasurer, the Commission on VASAP or any city or county is authorized to accept any

122 gifts or bequests of money or property, and any grant, loan, service, payment or property from any
123 source, including the federal government, for the purpose of driver alcohol education. Any such gifts,
124 bequests, grants, loans or payments shall be deposited in the separate fund provided in subsection B.

125 H. The Commission on VASAP, or any county, city, town, or any combination thereof may establish
126 and, if established, shall operate, in accordance with the standards and criteria required by this
127 subsection, alcohol safety action programs in connection with highway safety. Each such program shall
128 operate under the direction of a local independent policy board chosen in accordance with procedures
129 approved and promulgated by the Commission on VASAP. Local sitting or retired district court judges
130 who regularly hear or heard cases involving driving under the influence and are familiar with their local
131 alcohol safety action programs may serve on such boards. The Commission on VASAP shall establish
132 minimum standards and criteria for the implementation and operation of such programs and shall
133 establish procedures to certify all such programs to ensure that they meet the minimum standards and
134 criteria stipulated by the Commission. The Commission shall also establish criteria for the administration
135 of such programs for public information activities, for accounting procedures, for the auditing
136 requirements of such programs and for the allocation of funds. Funds paid to the Commonwealth
137 hereunder shall be utilized in the discretion of the Commission on VASAP to offset the costs of state
138 programs and local programs run in conjunction with any county, city or town and costs incurred by the
139 Commission. The Commission shall submit an annual report as to actions taken at the close of each
140 calendar year to the Governor and the General Assembly.

141 I. Notwithstanding any other provisions of this section or of § 18.2-271, nothing in this section shall
142 permit the court to suspend, reduce, limit, or otherwise modify any disqualification from operating a
143 commercial motor vehicle imposed under the provisions of the Virginia Commercial Driver's License
144 Act (§ 46.2-341.1 et seq.).