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## HOUSE BILL NO. 564

House Amendments in [ ] — February 14, 2000

A *BILL to amend and reenact §§ 46.2-389 and 46.2-391 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 46.2-411.1, relating to requiring ASAP for reinstatement of driving privilege.*

Patron—Moran

Referred to Committee on Transportation

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 46.2-389 and 46.2-391 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 46.2-411.1 as follows:**

§ 46.2-389. Required revocation for one year upon conviction or finding of guilty of certain offenses; exceptions.

A. The Commissioner shall forthwith revoke, and not thereafter reissue for a period of time specified in subsection B, except as provided in § 18.2-271 or § 18.2-271.1, the driver's license of any resident or nonresident on receiving a record of his conviction or a record of his having been found guilty in the case of a juvenile of any of the following crimes, committed in violation of a state law or a valid county, city, or town ordinance or law of the United States, or a law of any other state, substantially paralleling and substantially conforming to a like state law and to all changes and amendments of it:

1. Voluntary or involuntary manslaughter resulting from the driving of a motor vehicle;
2. Violation of § 18.2-266 or § 18.2-272, or subsection A of § 46.2-341.24 or violation of a valid local ordinance paralleling and substantially conforming to § 18.2-266 or § 18.2-272;
3. Perjury or the making of a false affidavit to the Department under this chapter or any other law of the Commonwealth requiring the registration of motor vehicles or regulating their operation on the highways;
4. The making of a false statement to the Department on any application for a driver's license;
5. Any crime punishable as a felony under the motor vehicle laws of the Commonwealth or any other felony in the commission of which a motor vehicle is used;
6. Failure to stop and disclose his identity at the scene of the accident, on the part of a driver of a motor vehicle involved in an accident resulting in the death of or injury to another person; or
7. Violation of § 18.2-51.4.

B. For conviction of an offense set forth in subsection A, the period of revocation shall be for one year, except for a violation of subdivision A 1 or A 7, the revocation shall be for an indefinite period. *However, in no such event shall the Commissioner reinstate the driver's license of any person convicted of a violation of § 18.2-266, or of a substantially similar valid local ordinance or law of another jurisdiction, until receipt of [ written ] notification that such person has successfully completed an alcohol safety action program if such person was required by a court to do so [ or an order of the court that the completion of an alcohol safety action program has been waived ] .*

§ 46.2-391. Revocation of license for conviction of driving while under influence of drugs or intoxicants; exception; petition for restoration of privilege.

A. The Commissioner shall forthwith revoke and not thereafter reissue for three years the driver's license of any person on receiving a record of the conviction of any person who is adjudged to be a second offender in violation of the provisions of subsection A of § 46.2-341.24 (driving a commercial motor vehicle under the influence of drugs or intoxicants), § 18.2-51.4 (maiming committed while driving under the influence of drugs or intoxicants), § 18.2-266 (driving under the influence of drugs or intoxicants), § 18.2-272 (driving while the driver's license has been forfeited for a conviction under § 18.2-266), or a violation of a federal law or a law of any other state or a valid ordinance of any county, city, or town of the Commonwealth similar to subsection A of § 46.2-341.24, §§ 18.2-51.4, 18.2-266 or § 18.2-272, if the second violation adjudication occurred within ten years from the prior violation. However, if the Commissioner has received a copy of a court order as provided in subsection E of § 18.2-271.1, he shall proceed as provided in the order of the court. *Additionally, in no event shall the Commissioner reinstate the driver's license of any person convicted of a violation of § 18.2-266, or of a substantially similar valid local ordinance or law of another jurisdiction, until receipt of [ written ] notification that such person has successfully completed an alcohol safety action program if such person was required by court order to do so [ or an order of the court that the completion of an alcohol safety action program has been waived ] .*

B. The Commissioner shall forthwith revoke and not thereafter reissue the driver's license of any

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60 person after receiving a record of the conviction of any person adjudged to be a third offender within a  
61 period of ten years in violation of the provisions of subsection A of § 46.2-341.24, §§ 18.2-51.4,  
62 18.2-266, or a violation of federal law or a law of any other state or a valid ordinance of any county,  
63 city, or town of the Commonwealth similar to subsection A of § 46.2-341.24, §§ 18.2-51.4, 18.2-266 or  
64 § 18.2-272. At the expiration of ten years from the date of the revocation hereunder, the person may  
65 petition the circuit court in the county or city in which he resides, and for good cause shown, his license  
66 may in the discretion of the court be restored on such conditions as the court may prescribe.

67 C. Any person who has had his driver's license revoked in accordance with subsection B of this  
68 section may petition the circuit court of his residence:

69 1. For restoration of his privilege to drive a motor vehicle in the Commonwealth after the expiration  
70 of five years from the date of his last conviction. On such petition, and for good cause shown, the court  
71 may, in its discretion, restore to the person the privilege to drive a motor vehicle in the Commonwealth  
72 on whatever conditions the court may prescribe, subject to the provisions of law relating to issuance of  
73 driver's licenses, if the court is satisfied from the evidence presented that: (i) at the time of his previous  
74 convictions, the petitioner was addicted to or psychologically dependent on the use of alcohol or other  
75 drugs; (ii) at the time of the hearing on the petition, he is no longer addicted to or psychologically  
76 dependent on the use of alcohol or other drugs; and (iii) the defendant does not constitute a threat to the  
77 safety and welfare of himself or others with regard to the driving of a motor vehicle. However, prior to  
78 acting on the petition, the court shall order that an evaluation of the person be conducted by a Virginia  
79 Alcohol Safety Action Program and recommendations therefrom be submitted to the court. The court  
80 may, in lieu of restoring the person's privilege to drive, authorize the issuance of a restricted license for  
81 a period not to exceed five years in accordance with the provisions of subsection E of § 18.2-271.1. The  
82 court shall notify the Virginia Alcohol Safety Action Program which shall during the term of the  
83 restricted license monitor the person's compliance with the terms of the restrictions imposed by the  
84 court. Any violation of the restrictions shall be reported to the court, and the court may then modify the  
85 restrictions or revoke the license.

86 2. For a restricted permit to authorize such person to drive a motor vehicle in the Commonwealth in  
87 the course of his employment and to drive a motor vehicle to and from his home to the place of his  
88 employment after the expiration of three years from the date of his last conviction. The court may order  
89 that a restricted license for such purposes be issued in accordance with the procedures of subsection E  
90 of § 18.2-271.1, if the court is satisfied from the evidence presented that (i) at the time of the previous  
91 convictions, the petitioner was addicted to or psychologically dependent on the use of alcohol or other  
92 drugs; (ii) at the time of the hearing on the petition, he is no longer addicted to or psychologically  
93 dependent on the use of alcohol or such other drugs; and (iii) the defendant does not constitute a threat  
94 to the safety and welfare of himself and others with regard to the driving of a motor vehicle. The court  
95 may prohibit the person to whom a restricted license is issued from operating a motor vehicle that is not  
96 equipped with a functioning, certified ignition interlock system during all or any part of the term for  
97 which the restricted license is issued, in accordance with the provisions set forth in § 18.2-270.1.  
98 However, prior to acting on the petition, the court shall order that an evaluation of the person be  
99 conducted by a Virginia Alcohol Safety Action Program and recommendations therefrom be submitted  
100 to the court. The Virginia Alcohol Safety Action Program shall during the term of the restricted license  
101 monitor the person's compliance with the terms of the restrictions imposed by the court. Any violation  
102 of the restrictions shall be reported to the court, and the court may then modify the restrictions or  
103 revoke the license.

104 In the computation of the five-year and three-year periods under subdivisions 1 and 2 of this  
105 subsection, such person shall be given credit for any period his driver's license was revoked under  
106 § 46.2-360 after adjudication as a habitual offender.

107 D. Any person convicted of driving a motor vehicle or any self-propelled machinery or equipment (i)  
108 while his license is revoked pursuant to subsection A or B or (ii) in violation of the terms of a restricted  
109 license issued pursuant to subsection C shall be punished as follows:

110 1. If such driving does not, of itself, endanger the life, limb, or property of another, such person  
111 shall be guilty of a misdemeanor punishable by confinement in jail for no more than ninety days or a  
112 fine of not more than \$2,500, or both. However, ten days of any such confinement shall not be  
113 suspended except in cases designated in subdivision 2 (ii) of this subsection.

114 2. If such driving of itself endangers the life, limb, or property of another or takes place while such  
115 person is in violation of § 18.2-266, irrespective of whether the driving of itself endangers the life, limb,  
116 or property of another and one of the offender's underlying convictions is for § 18.2-36.1, § 18.2-51.4,  
117 § 18.2-266 or a parallel local ordinance, such person shall be guilty of a felony punishable by  
118 confinement in a state correctional facility for not less than one year nor more than five years or, in the  
119 discretion of the jury or the court trying the case without a jury, by confinement in jail for twelve  
120 months and no portion of such sentence shall be suspended. However, (i) if the sentence is more than  
121 one year in a state correctional facility, any portion of such sentence in excess of one year may be

suspended or (ii) in cases wherein such operation is necessitated in situations of apparent extreme emergency which require such operation to save life or limb, said sentence, or any part thereof may be suspended.

3. If any such offense of driving is a second or subsequent violation, such person shall be punished as provided in subdivision 2 of this subsection, irrespective of whether the offense, of itself, endangers the life, limb, or property of another.

E. Notwithstanding the provisions of subdivisions 2 and 3 of subsection D, following conviction and prior to imposition of sentence with the consent of the defendant, the court may order the defendant to be evaluated for and to participate in the Boot Camp Incarceration Program pursuant to § 19.2-316.1, or the Detention Center Incarceration Program pursuant to § 19.2-316.2, or the Diversion Center Incarceration Program pursuant to § 19.2-316.3.

*§ 46.2-411.1. Reinstatement of driver's license suspended or revoked for a conviction of driving while intoxicated.*

*A. Before restoring a driver's license to any person (i) whose license to drive a motor vehicle has been suspended or revoked as a result of a conviction for driving while intoxicated in violation of § 18.2-266, or of any substantially similar valid local ordinance or law of another jurisdiction, or of subsection A of § 46.2-341.24 and (ii) who has been required by a court order to successfully complete an alcohol safety action program pursuant to § 18.2-271.1 because of that conviction, the Commissioner shall require [ ~~written~~ ] confirmation that the person has successfully completed such program [ or an order of the court that the completion of an alcohol safety action program has been waived ] .*

*B. Any person who drives a motor vehicle in the Commonwealth after the period of license suspension has expired and after all requirements for reinstatement have been satisfied except for successful completion of such program shall be guilty of a violation of § 46.2-300.*

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