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SENATE BILL NO. 3

Offered January 12, 2000

Prefiled November 23, 1999

A BILL to amend and reenact § 46.2-391 of the Code of Virginia, relating to revocation of driver's license for driving under influence of drugs or intoxicants.

Patron—Trumbo

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 46.2-391 of the Code of Virginia is amended and reenacted as follows:

§ 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.

B. The Commissioner shall forthwith revoke and not thereafter reissue the driver's license of any person after receiving a record of the conviction of any person adjudged to be a third offender within a period of ten years in violation of the provisions of subsection A of § 46.2-341.24, §§ 18.2-51.4, 18.2-266, 18.2-272 or a violation of 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. At the expiration of ten years from the date of the revocation hereunder, the person may petition the circuit court in the county or city in which he resides, and for good cause shown, his license may in the discretion of the court be restored on such conditions as the court may prescribe.

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

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

2. For a restricted permit to authorize such person to drive a motor vehicle in the Commonwealth in the course of his employment and to drive a motor vehicle to and from his home to the place of his employment after the expiration of three years from the date of his last conviction. The court may order that a restricted license for such purposes be issued in accordance with the procedures of subsection E of § 18.2-271.1, if the court is satisfied from the evidence presented that (i) at the time of the previous convictions, the petitioner was addicted to or psychologically dependent on the use of alcohol or other

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60 drugs; (ii) at the time of the hearing on the petition, he is no longer addicted to or psychologically
61 dependent on the use of alcohol or such other drugs; and (iii) the defendant does not constitute a threat
62 to the safety and welfare of himself and others with regard to the driving of a motor vehicle. The court
63 may prohibit the person to whom a restricted license is issued from operating a motor vehicle that is not
64 equipped with a functioning, certified ignition interlock system during all or any part of the term for
65 which the restricted license is issued, in accordance with the provisions set forth in § 18.2-270.1.
66 However, prior to acting on the petition, the court shall order that an evaluation of the person be
67 conducted by a Virginia Alcohol Safety Action Program and recommendations therefrom be submitted
68 to the court. The Virginia Alcohol Safety Action Program shall during the term of the restricted license
69 monitor the person's compliance with the terms of the restrictions imposed by the court. Any violation
70 of the restrictions shall be reported to the court, and the court may then modify the restrictions or
71 revoke the license.

72 In the computation of the five-year and three-year periods under subdivisions 1 and 2 of this
73 subsection, such person shall be given credit for any period his driver's license was revoked under
74 § 46.2-360 after adjudication as an habitual offender.

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

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

82 2. If such driving of itself endangers the life, limb, or property of another or takes place while such
83 person is in violation of § 18.2-266, irrespective of whether the driving of itself endangers the life, limb
84 or property of another and one of the offender's underlying convictions is for § 18.2-36.1, § 18.2-51.4,
85 § 18.2-266 or a parallel local ordinance, such person shall be guilty of a felony punishable by
86 confinement in a state correctional facility for not less than one year nor more than five years or, in the
87 discretion of the jury or the court trying the case without a jury, by confinement in jail for twelve
88 months and no portion of such sentence shall be suspended. However, (i) if the sentence is more than
89 one year in a state correctional facility, any portion of such sentence in excess of one year may be
90 suspended or (ii) in cases wherein such operation is necessitated in situations of apparent extreme
91 emergency which require such operation to save life or limb, said sentence, or any part thereof may be
92 suspended.

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

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