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SENATE BILL NO. 862

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on January 17, 2001)

(Patrons Prior to Substitute—Senators Norment, Marsh and Rerras)

*A BILL to amend and reenact §§ 18.2-259.1, 18.2-271.1, 46.2-320, 46.2-392 and 46.2-499 of the Code of Virginia, relating to restricted license.***Be it enacted by the General Assembly of Virginia:****1. That §§ 18.2-259.1, 18.2-271.1, 46.2-320, 46.2-392 and 46.2-499 of the Code of Virginia are amended and reenacted as follows:**

§ 18.2-259.1. Forfeiture of driver's license for violations of article.

A. In addition to any other sanction or penalty imposed for a violation of this article, the (i) judgment of conviction under this article or (ii) placement on probation following deferral of further proceedings under § 18.2-251 or subsection H of § 18.2-258.1 for any such offense shall of itself operate to deprive the person so convicted or placed on probation after deferral of proceedings under § 18.2-251 or subsection H of § 18.2-258.1 of the privilege to drive or operate a motor vehicle, engine, or train in the Commonwealth for a period of six months from the date of such judgment or placement on probation. Such license forfeiture shall be in addition to and shall run consecutively with any other license suspension, revocation or forfeiture in effect or imposed upon the person so convicted or placed on probation. However, a juvenile who has had his license suspended or denied pursuant to § 16.1-278.9 shall not have his license forfeited pursuant to this section for the same offense.

B. The court trying the case shall order any person so convicted or placed on probation to surrender his driver's license to be disposed of in accordance with the provisions of § 46.2-398 and shall notify the Department of Motor Vehicles of any such conviction entered and of the license forfeiture to be imposed.

C. In those cases where the court determines there are compelling circumstances warranting an exception, the court may provide that any individual be issued a restricted license to operate a motor vehicle for any or all of the following purposes (i) travel to and from his place of employment; (ii) travel to a screening, evaluation and education program entered pursuant to § 18.2-251 or subsection H of § 18.2-258.1; (iii) travel during the hours of such person's employment if the operation of a motor vehicle is a necessary incident of such employment; (iv) travel to and from school if such person is a student, upon proper written verification to the court that such person is enrolled in a continuing program of education; or (v) such other medically necessary travel as the court deems necessary and proper upon written verification of need by a licensed health professional set forth in subsection E of § 18.2-271.1. No restricted license issued pursuant to this subsection shall permit any person to operate a commercial motor vehicle as defined in the Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.). The court shall order the surrender of such person's license in accordance with the provisions of subsection B and shall forward to the Commissioner of the Department of Motor Vehicles a copy of its order entered pursuant to this subsection. This order shall specifically enumerate the restrictions imposed and contain such information regarding the person to whom such a permit is issued as is reasonably necessary to identify such person. The court shall also provide a copy of its order to such person who may operate a motor vehicle on the order until receipt from the Commissioner of the Department of Motor Vehicles of a restricted license, but only if the order provides for a restricted license for that period. A copy of the order and, after receipt thereof, the restricted license shall be carried at all times by such person while operating a motor vehicle. The court may require a person issued a restricted permit under the provisions of this subsection to be monitored by an alcohol safety action program during the period of license suspension. Any violation of the terms of the restricted license or of any condition set forth by the court related thereto, or any failure to remain drug-free during such period shall be reported forthwith to the court by such program. Any person who operates a motor vehicle in violation of any restriction imposed pursuant to this section shall be guilty of a violation of § 46.2-301.

§ 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

60 participation in such a program if the assessment by the alcohol safety action program indicates that
61 treatment is not appropriate for such person. In no event shall such persons be permitted to enter any
62 such program which is not certified as meeting minimum standards and criteria established by the
63 Commission on the Virginia Alcohol Safety Action Program (VASAP) pursuant to subsection H of this
64 section and to § 18.2-271.2. However, any person charged with a violation of a first or second offense
65 of § 18.2-266 (i), (ii), (iii) or (iv), or any ordinance of a county, city, or town similar to the provisions
66 thereof, or provisions of subsection A of § 46.2-341.24, may, at any time prior to trial, enter into an
67 alcohol safety action program in the judicial district in which such charge is brought or in any other
68 judicial district.

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

77 C. Upon conviction of a violation of § 18.2-266 or any ordinance of a county, city or town similar to
78 the provisions thereof, or subsection A of § 46.2-341.24, the court shall impose the sentence authorized
79 by § 18.2-270 or § 46.2-341.28 and the license revocation as authorized by § 18.2-271. In addition, if
80 the conviction was for a second offense committed within less than five years after a first such offense,
81 the court shall order that restoration of the person's license to drive be conditioned upon the installation
82 of an ignition interlock system on each motor vehicle, as defined in § 46.2-100, owned by or registered
83 to the person, in whole or in part, for a period of six months beginning at the end of the three year
84 license revocation, unless such a system has already been installed for six months prior to that time
85 pursuant to a restricted license order under subsection E of this section. Upon a finding that a person so
86 convicted is required to participate in the program described herein, the court shall enter the conviction
87 on the warrant, and shall note that the person so convicted has been referred to such program. The court
88 may then proceed to issue an order in accordance with subsection E of this section, if the court finds
89 that the person so convicted is eligible for a restricted license. If the court finds good cause for a person
90 not to participate in such program or subsequently that such person has violated, without good cause,
91 any of the conditions set forth by the court in entering the program, the court shall dispose of the case
92 as if no program had been entered, in which event the revocation provisions of § 46.2-389 and
93 subsection A of § 46.2-391 shall be applicable to the conviction. The court shall, upon final disposition
94 of the case, send a copy of its order to the Commissioner of the Department of Motor Vehicles. If such
95 order provides for the issuance of a restricted license, the Commissioner of the Department of Motor
96 Vehicles, upon receipt thereof, shall issue a restricted license. Appeals from any such disposition shall
97 be allowed as provided by law. The time within which an appeal may be taken shall be calculated from
98 the date of the final disposition of the case or any motion for rehearing, whichever is later.

99 D. Any person who has been convicted in another state of the violation of a law of such state
100 substantially similar to the provisions of § 18.2-266 or subsection A of § 46.2-341.24, and whose
101 privilege to operate a motor vehicle in this Commonwealth is subject to revocation under the provisions
102 of § 46.2-389 and subsection A of § 46.2-391, may petition the general district court of the county or
103 city in which he resides that he be given probation and assigned to a program as provided in subsection
104 A of this section and that, upon entry into such program, he be issued an order in accordance with
105 subsection E of this section. If the court finds that such person would have qualified therefor if he had
106 been convicted in this Commonwealth of a violation of § 18.2-266 or subsection A of § 46.2-341.24, the
107 court may grant the petition and may issue an order in accordance with subsection E of this section as
108 to the period of license suspension or revocation imposed pursuant to § 46.2-389 or subsection A of
109 § 46.2-391. Such order shall be conditioned upon the successful completion of a program by the
110 petitioner. If the court subsequently finds that such person has violated any of the conditions set forth by
111 the court, the court shall dispose of the case as if no program had been entered and shall notify the
112 Commissioner, who shall revoke the person's license in accordance with the provisions of § 46.2-389 or
113 subsection A of § 46.2-391. A copy of the order granting the petition or subsequently revoking or
114 suspending such person's license to operate a motor vehicle shall be forthwith sent to the Commissioner
115 of the Department of Motor Vehicles.

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

120 E. Except as otherwise provided herein, whenever a person enters a certified program pursuant to this
121 section, and such person's license to operate a motor vehicle, engine or train in the Commonwealth has

been suspended or revoked, the court may, in its discretion and for good cause shown, provide that such person be issued a restricted permit to operate a motor vehicle for any ~~or all~~ of the following purposes: (i) travel to and from his place of employment; (ii) travel to and from an alcohol rehabilitation *or safety action* program entered pursuant to this subsection; (iii) travel during the hours of such person's employment if the operation of a motor vehicle is a necessary incident of such employment; (iv) travel to and from school if such person is a student, upon proper written verification to the court that such person is enrolled in a continuing program of education; (v) ~~such other medically necessary travel as the court deems necessary and proper for health care services, including medically necessary transportation of an elderly parent with a serious medical problem~~ upon written verification of need by a licensed health professional; ~~or~~ (vi) travel necessary to transport a minor child under the care of such person to and from school, day care, and facilities housing medical service providers; *or (vii) travel to a screening, evaluation and education program entered pursuant to § 18.2-251 or subsection H of § 18.2-258.1.* No restricted license issued pursuant to this subsection shall permit any person to operate a commercial motor vehicle as defined in the Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.). The court shall order the surrender of such person's license to operate a motor vehicle to be disposed of in accordance with the provisions of § 46.2-398 and shall forward to the Commissioner of the Department of Motor Vehicles a copy of its order entered pursuant to this subsection, which shall specifically enumerate the restrictions imposed and contain such information regarding the person to whom such a permit is issued as is reasonably necessary to identify such person. The court shall also provide a copy of its order to the person so convicted who may operate a motor vehicle on the order until receipt from the Commissioner of the Department of Motor Vehicles of a restricted license, if the order provides for a restricted license for that time period. A copy of such order and, after receipt thereof, the restricted license shall be carried at all times while operating a motor vehicle. Any person who operates a motor vehicle in violation of any restrictions imposed pursuant to this section shall be guilty of a violation of § 18.2-272. Such restricted license shall be conditioned upon enrollment within fifteen days in, and successful completion of, a program as described in subsection A of this section. No restricted license shall be issued during the first four months of a revocation imposed pursuant to subsection B of § 18.2-271 or subsection A of § 46.2-391 for a second offense of the type described therein committed within ten years of a first such offense. No restricted license shall be issued during the first year of a revocation imposed pursuant to subsection B of § 18.2-271 or subsection A of § 46.2-391 for a second offense of the type described therein committed within five years of a first such offense. No restricted license shall be issued during any revocation period imposed pursuant to subsection C of § 18.2-271 or subsection B of § 46.2-391. Notwithstanding the provisions of § 46.2-411, the fee charged pursuant to § 46.2-411 for reinstatement of the driver's license of any person whose privilege or license has been suspended or revoked as a result of a violation of § 18.2-266, subsection A of § 46.2-341.24 or of any ordinance of a county, city or town, or of any federal law or the laws of any other state similar to the provisions of § 18.2-266 or subsection A of § 46.2-341.24 shall be \$105. Forty dollars of such reinstatement fee shall be retained by the Department of Motor Vehicles as provided in § 46.2-411, forty dollars shall be transferred to the Commission on VASAP, and twenty-five dollars shall be transferred to the Commonwealth Neurotrauma Initiative Trust Fund.

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

G. The State Treasurer, the Commission on VASAP or any city or county is authorized to accept any gifts or bequests of money or property, and any grant, loan, service, payment or property from any source, including the federal government, for the purpose of driver alcohol education. Any such gifts, bequests, grants, loans or payments shall be deposited in the separate fund provided in subsection B.

H. The Commission on VASAP, or any county, city, town, or any combination thereof may establish and, if established, shall operate, in accordance with the standards and criteria required by this subsection, alcohol safety action programs in connection with highway safety. Each such program shall operate under the direction of a local independent policy board chosen in accordance with procedures approved and promulgated by the Commission on VASAP. Local sitting or retired district court judges who regularly hear or heard cases involving driving under the influence and are familiar with their local alcohol safety action programs may serve on such boards. The Commission on VASAP shall establish

183 minimum standards and criteria for the implementation and operation of such programs and shall
184 establish procedures to certify all such programs to ensure that they meet the minimum standards and
185 criteria stipulated by the Commission. The Commission shall also establish criteria for the administration
186 of such programs for public information activities, for accounting procedures, for the auditing
187 requirements of such programs and for the allocation of funds. Funds paid to the Commonwealth
188 hereunder shall be utilized in the discretion of the Commission on VASAP to offset the costs of state
189 programs and local programs run in conjunction with any county, city or town and costs incurred by the
190 Commission. The Commission shall submit an annual report as to actions taken at the close of each
191 calendar year to the Governor and the General Assembly.

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

196 § 46.2-320. Other grounds for refusal or suspension.

197 A. The Department may refuse to grant an application for a driver's license in any of the
198 circumstances set forth in § 46.2-608 as circumstances justifying the refusal of an application for the
199 registration of a motor vehicle. The Department may refuse to issue or reissue a driver's license for the
200 willful failure or refusal to pay any taxes or fees required to be collected or authorized to be collected
201 by the Department.

202 B. The Commissioner may enter into an agreement with the Department of Social Services whereby
203 the Department may suspend or refuse to renew the driver's license of any person upon receipt of notice
204 from the Department of Social Services that the person (i) is delinquent in the payment of child support
205 by ninety days or more or in an amount of \$5,000 or more or (ii) has failed to comply with a subpoena,
206 summons or warrant relating to paternity or child support proceedings. A suspension or refusal to renew
207 authorized pursuant to this section shall not be effective until thirty days after service on the delinquent
208 obligor of notice of intent to suspend or refuse to renew. The notice of intent shall be served on the
209 obligor by the Department of Social Services (i) by certified mail, return receipt requested, sent to the
210 obligor's last known addresses as shown in the records of the Department or the Department of Social
211 Services or (ii) pursuant to § 8.01-296, or (iii) service may be waived by the obligor in accordance with
212 procedures established by the Department of Social Services. The obligor shall be entitled to a judicial
213 hearing if a request for a hearing is made, in writing, to the Department of Social Services within ten
214 days from service of the notice of intent. Upon receipt of the request for a hearing, the Department of
215 Social Services shall petition the court that entered or is enforcing the order, requesting a hearing on the
216 proposed suspension or refusal to renew. The court shall authorize the suspension or refusal to renew
217 only if it finds that the obligor's noncompliance with the child support order was willful. Upon a
218 showing by the Department of Social Services that the obligor is delinquent in the payment of child
219 support by ninety days or more or in an amount of \$5,000 or more, the burden of proving that the
220 delinquency was not willful shall rest upon the obligor. The Department shall not suspend or refuse to
221 renew the driver's license until a final determination is made by the court.

222 C. At any time after service of a notice of intent, the person may petition the juvenile and domestic
223 relations district court in the jurisdiction where he resides for the issuance of a restricted license to be
224 used if the suspension or refusal to renew becomes effective. Upon such petition and a finding of good
225 cause, the court may provide that such person be issued a restricted permit to operate a motor vehicle
226 for any or all of the following purposes: ~~(i) travel to and from his place of employment and for travel~~
227 ~~during the hours of such person's employment if the operation of a motor vehicle is a necessary incident~~
228 ~~of such employment; (ii) travel to and from school if such person is a student, upon proper written~~
229 ~~verification to the court that such person is enrolled in a continuing program of education; (iii) travel to~~
230 ~~and from visitation with a child of such person; or (iv) such other medically necessary travel as the~~
231 ~~court deems necessary and proper upon written verification of need by a licensed health professional set~~
232 ~~forth in subsection E of § 18.2-271.1.~~ A restricted license issued pursuant to this subsection shall not
233 permit any person to operate a commercial motor vehicle as defined in § 46.2-341.4. The court shall
234 order the surrender of the person's license to operate a motor vehicle, to be disposed of in accordance
235 with the provisions of § 46.2-398, and shall forward to the Commissioner a copy of its order entered
236 pursuant to this subsection. The order shall specifically enumerate the restrictions imposed and contain
237 such information regarding the person to whom such a permit is issued as is reasonably necessary to
238 identify him.

239 D. The Department shall not renew a driver's license or terminate a license suspension imposed
240 pursuant to this section until it has received from the Department of Social Services a certification that
241 the person has (i) paid the delinquency in full, (ii) reached an agreement with the Department of Social
242 Services to satisfy the delinquency within a period not to exceed ten years and at least one payment,
243 representing at least five percent of the total delinquency or \$500, whichever is greater, has been made
244 pursuant to the agreement, or (iii) complied with a subpoena, summons or warrant relating to a paternity

or child support proceeding. Certification by the Department of Social Services shall be made by electronic or telephonic communication and shall be made on the same work day that payment required by clause (i) or (ii) is made.

§ 46.2-392. Suspension of license or issuance of a restricted license on conviction of reckless driving; probationary conditions required; generally.

In addition to the penalties for reckless driving prescribed in § 46.2-868 any court may suspend any license issued to a convicted person under Articles 1 through 9 (§ 46.2-300 et seq.) of this chapter for a period of not less than ten days nor more than six months and the court shall require the convicted person to surrender his license so suspended to the court where it will be disposed of in accordance with § 46.2-398. Additionally, any person convicted of a reckless driving offense which the court has reason to believe is alcohol-related or drug-related may be required as a condition of probation or otherwise to enter into and successfully complete an alcohol safety action program.

If a person so convicted has not obtained the license required by this chapter, or is a nonresident, the court may direct in the judgment of conviction that he shall not, for a period of not less than ten days or more than six months as may be prescribed in the judgment, drive any motor vehicle in the Commonwealth. The court or the clerk of court shall transmit the license to the Commissioner along with the report of the conviction required to be sent to the Department.

The court may, in its discretion and for good cause shown, provide that such person be issued a restricted permit to operate a motor vehicle during the period of suspension for any ~~or all~~ of the following purposes: (i) travel to and from his place of employment; (ii) travel during the hours of such person's employment if the operation of a motor vehicle is a necessary incident of such employment; (iii) travel to and from school if such person is a student, upon proper written verification to the court that such person is enrolled in a continuing program of education; or (iv) such other medically necessary travel as the court deems necessary and proper upon written verification of need by a licensed health professional *set forth in subsection E of § 18.2-271.1*. The court shall order the surrender of such person's license to operate a motor vehicle to be disposed of in accordance with the provisions of § 46.2-398 and shall forward to the Commissioner a copy of its order entered pursuant to this subsection, which shall specifically enumerate the restrictions imposed and contain such information regarding the person to whom such a permit is issued as is reasonably necessary to identify such person. The court shall also provide a copy of its order to the person who may operate a motor vehicle on the order until receipt from the Commissioner of a restricted license. A copy of such order and, after receipt thereof, the restricted license shall be carried at all times while operating a motor vehicle. Any person who operates a motor vehicle in violation of any restrictions imposed pursuant to this section shall be punished as provided in subsection C of § 46.2-301. No restricted license issued pursuant to this section shall permit any person to operate a commercial motor vehicle as defined in the Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.).

§ 46.2-499. Driver's license probation.

A. The Commissioner shall place on probation for a period of six months any person who has been directed to attend a driver improvement clinic pursuant to the provisions of § 46.2-498. In addition, the Commissioner shall place any person on probation for a period of six months on receiving a record of a conviction of such person of any offense for which demerit points are assessed and the offense was committed within any driver control period imposed pursuant to § 46.2-500. Whenever a person who has been placed on probation is convicted, or found not innocent in the case of a juvenile, of any offense for which demerit points are assessed, and the offense was committed during the probation period, the Commissioner shall suspend the person's license for a period of ninety days when six demerit points are assigned, for a period of sixty days when four demerit points are assigned, and for a period of forty-five days when three demerit points are assigned. In addition, the Commissioner shall again place the person on probation for a period of six months, effective on termination of the suspension imposed pursuant to this section.

B. Upon request, the Commissioner shall grant a restricted license during the first period of suspension imposed pursuant to subsection A of this section provided the person is otherwise eligible to be licensed. Any person whose driver's license is suspended for a second or subsequent time under subsection A of this section shall be eligible to receive a restricted driver's license only if the violation occurred within a probation period that was immediately preceded by a control period. A restricted license may be issued for any ~~or all~~ of the following purposes: (i) travel to and from his place of employment; (ii) travel during the hours of such person's employment if the operation of a motor vehicle is a necessary incident of such employment; (iii) travel to and from school if such person is a student; or (iv) such other medically necessary travel *set forth in subsection E of § 18.2-271.1*. Written verifications of the person's employment, continuing education or medically necessary travel shall also be required and made available to the Commissioner. Whenever a person who has been granted a restricted license pursuant to this subsection is convicted, or found not innocent in the case of a juvenile,

306 of any offense for which demerit points are assessed, and the offense was committed during the
307 restricted license period, the Commissioner shall suspend the person's license using the same demerit
308 point criteria and suspension periods set forth in subsection A of this section. No restricted license
309 issued pursuant to this subsection shall permit any person to operate a commercial motor vehicle as
310 defined in the Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.).

311 C. Whenever the Department receives notice from the court that restricted license privileges have
312 been granted to a person who has an existing restricted license issued pursuant to subsection B of this
313 section, the existing restricted license shall be cancelled, and the Commissioner shall suspend the
314 person's license for the period of time remaining on the original order of suspension. No court-granted
315 restricted license shall be issued until the end of the suspension period imposed by the Commissioner.