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SENATE BILL NO. 904

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Joint Conference Committee
on February 24, 2001)

(Patron Prior to Substitute—Senator Mims)

A BILL to amend and reenact §§ 18.2-271 and 46.2-391 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 46.2-391.01 and 46.2-410.1, relating to forfeiture of driver's license, re-issuance of driver's license, issuance of restricted driver's license, and ignition interlock requirements.

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-271 and 46.2-391 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 46.2-391.01 and 46.2-410.1 as follows:

§ 18.2-271. Forfeiture of driver's license for driving while intoxicated.

A. Except as provided in § 18.2-271.1, the judgment of conviction if for a first offense under § 18.2-266 or for a similar offense under any county, city, or town ordinance, or for a first offense under subsection A of § 46.2-341.24, shall of itself operate to deprive the person so convicted of the privilege to drive or operate any motor vehicle, engine or train in the Commonwealth for a period of one year from the date of such judgment. This suspension period shall be in addition to the suspension period provided under § 46.2-391.2.

B. ~~Any adult convicted, or any juvenile found guilty, If a person (i) is tried on a process alleging a second offense of violating § 18.2-266 or subsection A of § 46.2-341.24, or any substantially similar local ordinance, or law of any other jurisdiction, two or more times in any combination within ten years shall, upon the second conviction, have his driver's license revoked as provided in subsection A of § 46.2-391 of a first offense for which the person was convicted, or found guilty in the case of a juvenile, under § 18.2-266 of subsection A of § 46.2-341.24 or any valid local ordinance or any law of any other jurisdiction substantially similar to § 18.2-266 or subsection A of § 46.2-341.24 and (ii) is convicted thereof, such conviction shall of itself operate to deprive the person so convicted of the privilege to drive or operate any motor vehicle, engine or train in the Commonwealth for a period of three years from the date of the judgment of conviction and such person shall have his license revoked as provided in subsection A of § 46.2-391. The court trying such case shall order the surrender of the person's driver's license, to be disposed of in accordance with § 46.2-398, and shall notify such person that his license has been revoked for a period of three years and that the penalty for violating that revocation is as set out in § 46.2-391.~~ This suspension period shall be in addition to the suspension period provided under § 46.2-391.2. Any period of license suspension or revocation imposed pursuant to this section, in any case, shall run consecutively with any period of suspension for failure to permit a blood or breath sample to be taken as required by §§ 18.2-268.1 through 18.2-268.12 or §§ 46.2-341.26:1 through 46.2-341.26:11.

C. ~~Any adult convicted, or any juvenile found guilty, If a person (i) is tried on a process alleging a third or subsequent offense of violating § 18.2-266 or subsection A of § 46.2-341.24, or any substantially similar local ordinance, or law of any other jurisdiction, three or more times in any combination within ten years of two other offenses for which the person was convicted, or found not guilty in the case of a juvenile, under § 18.2-266 or subsection A of § 46.2-341.24 or any valid local ordinance or any law of any other jurisdiction substantially similar to § 18.2-266 or subsection A of § 46.2-341.24 and (ii) is convicted thereof, such conviction shall of itself operate to deprive the person so convicted of the privilege to drive or operate any motor vehicle, engine or train in the Commonwealth and such person shall not be eligible for participation in a program pursuant to § 18.2-271.1 and shall, upon the third such conviction, have his license revoked as provided in subsection B of § 46.2-391. The court trying such case shall order the surrender of the person's driver's license, to be disposed of in accordance with § 46.2-398, and shall notify such person that his license has been revoked indefinitely and that the penalty for violating that revocation is as set out in § 46.2-391.~~

D. Notwithstanding any other provision of this section, the period of license revocation or suspension shall not begin to expire until the person convicted has surrendered his license to the court or to the Department of Motor Vehicles.

E. The provisions of this section shall not apply to, and shall have no effect upon, any disqualification from operating a commercial motor vehicle imposed under the provisions of the Commercial Driver's License Act (§ 46.2-341.1 et seq.).

§ 46.2-391. Revocation of license for multiple convictions of driving while intoxicated; exception; petition for restoration of privilege.

A. The Commissioner shall forthwith revoke and not thereafter reissue for three years the driver's

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60 license of any person on receiving a record of the conviction of any person who *(i) is adjudged to be a*
61 *second offender is convicted of (i) any combination of two or more offenses, if the second or*
62 *subsequent violation occurred within ten years of the prior adjudication, in violation of the provisions of*
63 *subsection A of § 46.2-341.24 (driving a commercial motor vehicle under the influence of drugs or*
64 *intoxicants), or § 18.2-266 (driving under the influence of drugs or intoxicants), if the subsequent*
65 *violation occurred within ten years from the prior violation, or (ii) is convicted of any two or more*
66 *offenses of § 18.2-272 (driving while the driver's license has been forfeited for a conviction under*
67 *§ 18.2-266) if the second or subsequent violation occurred within ten years of the prior*
68 *adjudication offense. However, if the Commissioner has received a copy of a court order authorizing*
69 *issuance of a restricted license as provided in subsection E of § 18.2-271.1, he shall proceed as provided*
70 *in the order of the court. For the purposes of this subsection, an offense in violation of a valid local*
71 *ordinance, or law of any other jurisdiction, which ordinance or law is substantially similar to any*
72 *provision of Virginia law herein shall be considered an offense in violation of such provision of Virginia*
73 *law. Additionally, in no event shall the Commissioner reinstate the driver's license of any person*
74 *convicted of a violation of § 18.2-266, or of a substantially similar valid local ordinance or law of*
75 *another jurisdiction, until receipt of notification that such person has successfully completed an alcohol*
76 *safety action program if such person was required by court order to do so unless the requirement for*
77 *completion of the program has been waived by the court for good cause shown.*

78 B. The Commissioner shall forthwith revoke and not thereafter reissue the driver's license of any
79 person after receiving a record of the conviction of any person *(i) convicted of (i) a violation of*
80 *§ 18.2-36.1 or § 18.2-51.4 or (ii) any combination of three convictions adjudged to be a third offender*
81 *within a period of ten years of a in violation of the provisions of subsection A of § 46.2-341.24, or*
82 *§ 18.2-266 or § 18.2-272, or a substantially similar ordinance or law of any other jurisdiction.*

83 C. Any person who has had his driver's license revoked in accordance with subsection B of this
84 section may petition the circuit court of his residence, or, if a nonresident of Virginia, any circuit court:

85 1. For restoration of his privilege to drive a motor vehicle in the Commonwealth after the expiration
86 of five years from the date of his last conviction. On such petition, and for good cause shown, the court
87 may, in its discretion, restore to the person the privilege to drive a motor vehicle in the Commonwealth
88 on condition that such person install an ignition interlock system in accordance with § 18.2-270.1 on all
89 motor vehicles, as defined in § 46.2-100, owned by or registered to him, in whole or in part, for a
90 period of at least six months, and upon whatever other conditions the court may prescribe, subject to the
91 provisions of law relating to issuance of driver's licenses, if the court is satisfied from the evidence
92 presented that: (i) at the time of his previous convictions, the petitioner was addicted to or
93 psychologically dependent on the use of alcohol or other drugs; (ii) at the time of the hearing on the
94 petition, he is no longer addicted to or psychologically dependent on the use of alcohol or other drugs;
95 and (iii) the defendant does not constitute a threat to the safety and welfare of himself or others with
96 regard to the driving of a motor vehicle. However, prior to acting on the petition, the court shall order
97 that an evaluation of the person, to include an assessment of his degree of alcohol abuse and the
98 appropriate treatment therefor, if any, be conducted by a Virginia Alcohol Safety Action Program and
99 recommendations therefrom be submitted to the court. The court may, in lieu of restoring the person's
100 privilege to drive, authorize the issuance of a restricted license for a period not to exceed five years in
101 accordance with the provisions of § 18.2-270.1 and subsection E of § 18.2-271.1. The court shall notify
102 the Virginia Alcohol Safety Action Program which shall during the term of the restricted license monitor
103 the person's compliance with the terms of the restrictions imposed by the court. Any violation of the
104 restrictions shall be reported to the court, and the court may then modify the restrictions or revoke the
105 license.

106 2. For a restricted license to authorize such person to drive a motor vehicle in the Commonwealth in
107 the course of his employment and to drive a motor vehicle to and from his home to the place of his
108 employment after the expiration of three years from the date of his last conviction. The court may order
109 that a restricted license for such purposes be issued in accordance with the procedures of subsection E
110 of § 18.2-271.1, if the court is satisfied from the evidence presented that (i) at the time of the previous
111 convictions, the petitioner was addicted to or psychologically dependent on the use of alcohol or other
112 drugs; (ii) at the time of the hearing on the petition, he is no longer addicted to or psychologically
113 dependent on the use of alcohol or such other drugs; and (iii) the defendant does not constitute a threat
114 to the safety and welfare of himself and others with regard to the driving of a motor vehicle. The court
115 shall prohibit the person to whom a restricted license is issued from operating a motor vehicle that is
116 not equipped with a functioning, certified ignition interlock system during all or any part of the term for
117 which the restricted license is issued, in accordance with the provisions set forth in § 18.2-270.1.
118 However, prior to acting on the petition, the court shall order that an evaluation of the person, to
119 include an assessment of his degree of alcohol abuse and the appropriate treatment therefor, if any, be
120 conducted by a Virginia Alcohol Safety Action Program and recommendations therefrom be submitted
121 to the court. The Virginia Alcohol Safety Action Program 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.

The ignition interlock system installation requirement under subdivisions 1 and 2 of this subsection need only be satisfied once as to any single revocation under subsection B of this section for any person seeking restoration under subdivision 1 following the granting of a restricted license under subdivision 1 or 2.

D. Any person convicted of driving a motor vehicle or any self-propelled machinery or equipment (i) while his license is revoked pursuant to subsection A or B or (ii) in violation of the terms of a restricted license issued pursuant to subsection C shall, provided such revocation was based on at least one conviction for an offense committed after July 1, 1999, be punished as follows:

1. If such driving does not of itself endanger the life, limb, or property of another, such person shall be guilty of a Class 1 misdemeanor punishable by a minimum, mandatory term of confinement in jail for no less than ten days which shall not be suspended except in cases designated in subdivision 2 b (ii) of this subsection.

2. a. If such driving (i) of itself endangers the life, limb, or property of another or (ii) takes place while such person is in violation of §§ 18.2-36.1, 18.2-51.4, 18.2-266, subsection A of § 46.2-341.24, or a substantially similar law or ordinance of another jurisdiction, irrespective of whether the driving of itself endangers the life, limb or property of another and the person has been previously convicted of a violation of §§ 18.2-36.1, 18.2-51.4, 18.2-266, subsection A of § 46.2-341.24, or a substantially similar local ordinance, or law of another jurisdiction, such person shall be guilty of a felony punishable by confinement in a state correctional facility for not less than one year nor more than five years or, in the discretion of the jury or the court trying the case without a jury, by confinement in jail for twelve months and no portion of such sentence shall be suspended.

b. However, (i) if the sentence is more than 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.

F. Any period of driver's license revocation imposed pursuant to this section shall ~~commence with the surrender of the~~ not begin to expire until the person convicted has surrendered his license to the court or to the Department of Motor Vehicles.

G. Nothing in this section shall prohibit a person from operating any farm tractor on the highways when it is necessary to move the tractor from one tract of land used for agricultural purposes to another such tract of land when the distance between the tracts is no more than five miles.

H. Any person who operates a motor vehicle or any self-propelled machinery or equipment (i) while his license is revoked pursuant to subsection A or B, or (ii) in violation of the terms of a restricted license issued pursuant to subsection C, where the provisions of subsection D do not apply, shall be guilty of a violation of § 18.2-272.

§ 46.2-391.01. Administrative enforcement of ignition interlock requirements.

If the court, as a condition of license restoration or as a condition of a restricted license under subsection C of § 18.2-271.1 or § 46.2-391, fails to (i) prohibit an offender from operating a motor vehicle that is not equipped with a functioning, certified ignition interlock system and (ii) state in writing in its order why the ignition interlock was not required upon the offender's conviction of a second or subsequent offense under § 18.2-51.4 or § 18.2-266 or a substantially similar ordinance of any county, city or town; the Commissioner shall enforce the requirements relating to installation of such systems in accordance with the provisions of § 18.2-270.1.

§ 46.2-410.1 Judicial review of revocation or suspension by Commissioner.

A. Notwithstanding the provisions of § 46.2-410, when the Commissioner orders a revocation or suspension of a person's driver's license under the provisions of this chapter, unless such revocation or suspension is required under § 46.2-390.1, the person so aggrieved may, in cases of manifest injustice, within sixty days of receipt of notice of the suspension or revocation, petition the circuit court of the jurisdiction wherein he resides for a hearing to review the Commissioner's order. Manifest injustice is defined as those instances where the Commissioner's order was the result of an error or was issued

183 *without authority or jurisdiction, or actually conflicts with a final order of a court in the*
184 *Commonwealth. The person shall provide notice of his petition to the attorney for the Commonwealth of*
185 *that jurisdiction.*

186 *B. At the hearing on the petition, if the court finds that the Commissioner's order is manifestly unjust*
187 *the court may, notwithstanding any other provision of law, order the Commissioner to modify the order*
188 *or issue the person a restricted license in accordance with the provisions of § 18.2-271.1. For any*
189 *action under this section, no appeal shall lie from the determination of the circuit court.*

190 *C. This section shall not apply to any disqualification of eligibility to operate a commercial motor*
191 *vehicle imposed by the Commissioner pursuant to Article 6.1 (§ 46.2-341.1 et seq.) of this chapter.*