

# VIRGINIA ACTS OF ASSEMBLY -- 2002 SESSION

## CHAPTER 811

*An Act to amend and reenact §§ 46.2-391.01 and 46.2-410.1 of the Code of Virginia, relating to administrative enforcement of ignition interlock requirements and review of traffic convictions for manifest injustice.*

[S 521]

Approved April 8, 2002

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

**1. That §§ 46.2-391.01 and 46.2-410.1 of the Code of Virginia are amended and reenacted as follows:**

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

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

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

**2. That a court shall not transmit to the Department of Motor Vehicles (i) an order of conviction or abstract of conviction for a second violation of § 18.2-266 or a substantially similar local ordinance, as described in subsection B of § 18.2-271, unless the defendant was tried and convicted on a process alleging such a second offense, nor (ii) an order of conviction or abstract of conviction for a third or subsequent violation of § 18.2-266 or substantially similar local ordinance, as described in subsection C of § 18.2-271, unless the defendant was tried and convicted on a process alleging such a third or subsequent offense. However, when such conviction is upon a process other than as described in subsection B or C of § 18.2-271, the court shall transmit such order or abstract as an initial violation. Upon receipt of a conviction of a second offense transmitted pursuant to subsection B of § 18.2-271, the Commissioner of Motor Vehicles shall revoke the driver's license of an individual in accordance with subsection A of § 46.2-391. Upon receipt of a conviction of a third or subsequent offense transmitted pursuant to subsection C of § 18.2-271, the Commissioner shall revoke the driver's license of an individual in accordance with subsection B of § 46.2-391.**

**The Commissioner shall not revoke the driver's license of an individual under subsections A or B of § 46.2-391 if the court fails to comply with the requirements set forth in the above paragraph.**