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## HOUSE BILL NO. 1702

Offered January 8, 2003

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A BILL to amend and reenact §§ 18.2-270, 18.2-271 and 46.2-391 of the Code of Virginia, relating to penalty for driving while intoxicated.

Patrons—Purkey, Athey and Rapp

Referred to Committee for Courts of Justice

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

**1. That §§ 18.2-270, 18.2-271 and 46.2-391 of the Code of Virginia are amended and reenacted as follows:**

§ 18.2-270. Penalty for driving while intoxicated; subsequent offense; prior conviction.

A. Except as otherwise provided herein, any person violating any provision of § 18.2-266 shall be guilty of a Class 1 misdemeanor *and he shall be fined a minimum of \$500*. If the person's blood alcohol level as indicated by the chemical test administered as provided in this article was at least 0.20, but not more than 0.25, he shall be *fined a minimum of \$500 and* confined in jail for an additional mandatory, minimum period of five days or, if the level was more than 0.25, for an additional mandatory, minimum period of ten days. The additional mandatory, minimum period of confinement shall not be suspended by the court.

B. 1. Any person convicted of a second offense committed within less than five years after a first offense under § 18.2-266 shall upon conviction of the second offense be punished by a fine of not less than ~~\$200~~ *\$1,000* and by confinement in jail for not less than one month nor more than one year. Five days of such confinement shall be a mandatory, minimum sentence not subject to suspension by the court.

2. Any person convicted of a second offense committed within a period of five to ten years of a first offense under § 18.2-266 shall upon conviction of the second offense be punished by a fine of not less than ~~\$200~~ *\$1,000* and by confinement in jail for not less than one month.

3. Upon conviction of a second offense within ten years of a first offense, if the person's blood alcohol level as indicated by the chemical test administered as provided in this article was at least 0.20, but not more than 0.25, he shall be confined in jail for an additional minimum, mandatory period of ten days or, if the level was more than 0.25, for an additional mandatory, minimum period of twenty days. The additional mandatory, minimum period of confinement shall not be suspended by the court.

C. Any person convicted of three or more offenses of § 18.2-266 committed within a ten-year period shall upon conviction of the third offense be guilty of a Class 6 felony, and the sentence shall include a *fine of no less than \$2,500 and a mandatory, minimum sentence of confinement for ten days* that shall not be subject to suspension by the court. Any person convicted of a third offense committed within five years of an offense under § 18.2-266 shall upon conviction of the third offense be guilty of a Class 6 felony, and the sentence shall include a *fine of no less than \$2,500 and a mandatory, minimum sentence of confinement for thirty days* that shall not be subject to suspension by the court. The punishment of any person convicted of a fourth or subsequent offense committed within a ten-year period shall, upon conviction, include a *fine of no less than \$2,500 and a mandatory, minimum term of imprisonment of one year*, none of which may be suspended in whole or in part. Unless otherwise modified by the court, the defendant shall remain on probation and under the terms of any suspended sentence for the same period as his operator's license was suspended, not to exceed three years.

D. In addition to the penalty otherwise authorized by this section or § 16.1-278.9, any person convicted of a violation of § 18.2-266 committed while transporting a person seventeen years of age or younger shall be (i) fined an additional minimum of \$500 and not more than \$1000 and (ii) sentenced to perform forty hours of community service in a program benefiting children or, for a subsequent offense, eighty hours of community service in such a program.

E. For the purpose of this section, an adult conviction of any person, or finding of guilty in the case of a juvenile, under the following shall be considered a prior conviction: (i) the provisions of § 18.2-36.1 or the substantially similar laws of any other state or of the United States, (ii) the provisions of §§ 18.2-51.4, 18.2-266, former § 18.1-54 (formerly § 18-75), the ordinance of any county, city or town in this Commonwealth or the laws of any other state or of the United States substantially similar to the provisions of § 18.2-51.4, and §§ 18.2-266 through 18.2-269, or (iii) the provisions of subsection A of § 46.2-341.24 or the substantially similar laws of any other state or of the United States.

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

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59 A. Except as provided in § 18.2-271.1, the judgment of conviction if for a first offense under  
60 § 18.2-266 or for a similar offense under any county, city, or town ordinance, or for a first offense  
61 under subsection A of § 46.2-341.24, shall of itself operate to deprive the person so convicted of the  
62 privilege to drive or operate any motor vehicle, engine or train in the Commonwealth for a period of  
63 one year from the date of such judgment. This suspension period shall be in addition to the suspension  
64 period provided under § 46.2-391.2.

65 B. If a person (i) is tried on a process alleging a second offense of violating § 18.2-266 or subsection  
66 A of § 46.2-341.24, or any substantially similar local ordinance, or law of any other jurisdiction, within  
67 ten years of a first offense for which the person was convicted, or found guilty in the case of a juvenile,  
68 under § 18.2-266 or subsection A of § 46.2-341.24 or any valid local ordinance or any law of any other  
69 jurisdiction substantially similar to § 18.2-266 or subsection A of § 46.2-341.24 and (ii) is convicted  
70 thereof, such conviction shall of itself operate to deprive the person so convicted of the privilege to  
71 drive or operate any motor vehicle, engine or train in the Commonwealth for a period of three years  
72 from the date of the judgment of conviction and such person shall have his license revoked as provided  
73 in subsection A of § 46.2-391. The court trying such case shall order the surrender of the person's  
74 driver's license, to be disposed of in accordance with § 46.2-398, and shall notify such person that his  
75 license has been revoked for a period of three years and that the penalty for violating that revocation is  
76 as set out in § 46.2-391. This suspension period shall be in addition to the suspension period provided  
77 under § 46.2-391.2. Any period of license suspension or revocation imposed pursuant to this section, in  
78 any case, shall run consecutively with any period of suspension for failure to permit a blood or breath  
79 sample to be taken as required by §§ 18.2-268.1 through 18.2-268.12 or §§ 46.2-341.26:1 through  
80 46.2-341.26:11.

81 C. If a person (i) is tried on a process alleging a third or subsequent offense of violating § 18.2-266  
82 or subsection A of § 46.2-341.24, or any substantially similar local ordinance, or law of any other  
83 jurisdiction, within ten years of two other offenses for which the person was convicted, or found not  
84 innocent in the case of a juvenile, under § 18.2-266 or subsection A of § 46.2-341.24 or any valid local  
85 ordinance or any law of any other jurisdiction substantially similar to § 18.2-266 or subsection A of  
86 § 46.2-341.24 and (ii) is convicted thereof, such conviction shall of itself operate to *permanently* deprive  
87 the person so convicted of the privilege to drive or operate any motor vehicle, engine or train in the  
88 Commonwealth and such person shall not be eligible for participation in a program pursuant to  
89 § 18.2-271.1 and shall, upon such conviction, have his license revoked as provided in subsection B of  
90 § 46.2-391. The court trying such case shall order the surrender of the person's driver's license, to be  
91 disposed of in accordance with § 46.2-398, and shall notify such person that his license has been  
92 revoked ~~indefinitely~~ *permanently* and that the penalty for violating that revocation is as set out in  
93 § 46.2-391.

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

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

100 § 46.2-391. Revocation of license for multiple convictions of driving while intoxicated; exception;  
101 petition for restoration of privilege.

102 A. The Commissioner shall forthwith revoke and not thereafter reissue for three years the driver's  
103 license of any person on receiving a record of the conviction of any person who (i) is adjudged to be a  
104 second offender in violation of the provisions of subsection A of § 46.2-341.24 (driving a commercial  
105 motor vehicle under the influence of drugs or intoxicants), or § 18.2-266 (driving under the influence of  
106 drugs or intoxicants), if the subsequent violation occurred within ten years from the prior violation, or  
107 (ii) is convicted of any two or more offenses of § 18.2-272 (driving while the driver's license has been  
108 forfeited for a conviction under § 18.2-266) if the second or subsequent violation occurred within ten  
109 years of the prior offense. However, if the Commissioner has received a copy of a court order  
110 authorizing issuance of a restricted license as provided in subsection E of § 18.2-271.1, he shall proceed  
111 as provided in the order of the court. For the purposes of this subsection, an offense in violation of a  
112 valid local ordinance, or law of any other jurisdiction, which ordinance or law is substantially similar to  
113 any provision of Virginia law herein shall be considered an offense in violation of such provision of  
114 Virginia law. Additionally, in no event shall the Commissioner reinstate the driver's license of any  
115 person convicted of a violation of § 18.2-266, or of a substantially similar valid local ordinance or law  
116 of another jurisdiction, until receipt of notification that such person has successfully completed an  
117 alcohol safety action program if such person was required by court order to do so unless the requirement  
118 for completion of the program has been waived by the court for good cause shown.

119 B. The Commissioner shall forthwith revoke and not thereafter reissue the driver's license of any  
120 person after receiving a record of the conviction of any person (i) convicted of a violation of § 18.2-36.1

or § 18.2-51.4 or (ii) 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 or § 18.2-266, or a substantially similar ordinance or law of any other jurisdiction.

C. Any person who has had his driver's license revoked in accordance with subsection B of this section *unless adjudged to be a third offender within a period of 10 years in violation of the provisions of subsection A of § 46.2-341.24 or § 18.2-266, or a substantially similar ordinance or law of any other jurisdiction*, may petition the circuit court of his residence, or, if a nonresident of Virginia, any circuit court:

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 condition that such person install an ignition interlock system in accordance with § 18.2-270.1 on all motor vehicles, as defined in § 46.2-100, owned by or registered to him, in whole or in part, for a period of at least six months, and upon whatever other 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, to include an assessment of his degree of alcohol abuse and the appropriate treatment therefor, if any, 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 § 18.2-270.1 and 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 license 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 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 such other drugs; and (iii) the defendant does not constitute a threat to the safety and welfare of himself and others with regard to the driving of a motor vehicle. The court shall prohibit the person to whom a restricted license is issued from operating a motor vehicle that is not equipped with a functioning, certified ignition interlock system during all or any part of the term for which the restricted license is issued, in accordance with the provisions set forth in § 18.2-270.1. However, prior to acting on the petition, the court shall order that an evaluation of the person, to include an assessment of his degree of alcohol abuse and the appropriate treatment therefor, if any, be conducted by a Virginia Alcohol Safety Action Program and recommendations therefrom be submitted 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

182 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  
183 a substantially similar law or ordinance of another jurisdiction, irrespective of whether the driving of  
184 itself endangers the life, limb or property of another and the person has been previously convicted of a  
185 violation of §§ 18.2-36.1, 18.2-51.4, 18.2-266, subsection A of § 46.2-341.24, or a substantially similar  
186 local ordinance, or law of another jurisdiction, such person shall be guilty of a felony punishable by  
187 confinement in a state correctional facility for not less than one year nor more than five years or, in the  
188 discretion of the jury or the court trying the case without a jury, by confinement in jail for twelve  
189 months and no portion of such sentence shall be suspended.

190 b. However, (i) if the sentence is more than one year in a state correctional facility, any portion of  
191 such sentence in excess of one year may be suspended or (ii) in cases wherein such operation is  
192 necessitated in situations of apparent extreme emergency which require such operation to save life or  
193 limb, said sentence, or any part thereof may be suspended.

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

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

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

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

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