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HOUSE BILL NO. 1143

Offered January 14, 2004

Prefiled January 14, 2004

A BILL to amend and reenact §§ 18.2-271.1 and 46.2-411 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 18.2-270.01, relating to DUI offenders; payment to Trauma Center Fund; payment to the Commonwealth Neurotrauma Initiative Trust Fund.

Patrons—McDonnell and Gear

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-271.1 and 46.2-411 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 18.2-270.01 as follows:

§ 18.2-270.01. Multiple offenders; payment to Trauma Center Fund.

A. The court shall order any person convicted of a violation of §§ 18.2-36.1, 18.2-51.4, 18.2-266, 18.2-266.1 or § 46.2-341.24 who has been convicted previously of one or more violations of any of those sections or any ordinance, any law of another state, or any law of the United States substantially similar to the provisions of those sections to pay \$250 to the Trauma Center Fund for the purpose of defraying the costs of providing emergency medical care to victims of automobile accidents attributable to alcohol or drug use.

B. There is hereby established in the state treasury a special nonreverting fund to be known as the Trauma Center Fund. The Fund shall consist of any moneys paid into it by virtue of operation of subsection A hereof and any moneys appropriated thereto by the General Assembly and designated for the Fund. Any moneys deposited to or remaining in the Fund during or at the end of each fiscal year or biennium, including interest thereon, shall not revert to the general fund but shall remain in the Fund and be available for allocation in ensuing fiscal years. The Department of Criminal Justice Services shall award and administer grants from the Trauma Center Fund to appropriate trauma centers that routinely provide emergency medical care to victims of automobile accidents attributable to alcohol or drug use. The Department of Criminal Justice Services shall develop, on or before October 1, 2004, written criteria for the awarding of such grants that shall be evaluated and, if necessary, revised on an annual basis.

§ 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 participation in such a program if the assessment by the alcohol safety action program indicates that intervention is not appropriate for such person. In no event shall such persons be permitted to enter any such program which is not certified as meeting minimum standards and criteria established by the Commission on the Virginia Alcohol Safety Action Program (VASAP) pursuant to subsection H of this section and to § 18.2-271.2. However, any person charged with a violation 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, may, at any time prior to trial, enter into an alcohol safety action program in the judicial district in which such charge is brought or in any other judicial district.

B. The court shall require the person entering such program under the provisions of this section to pay a fee of no less than \$250 but no more than \$300. A reasonable portion of such fee, as may be determined by the Commission on VASAP, but not to exceed 10 percent, shall be forwarded monthly to be deposited with the State Treasurer for expenditure by the Commission on VASAP, and the balance shall be held in a separate fund for local administration of driver alcohol rehabilitation programs. Upon a positive finding that the defendant is indigent, the court may reduce or waive the fee. In addition to the costs of the proceeding, fees as may reasonably be required of defendants referred for intervention under any such program may be charged.

C. Upon conviction of a violation of § 18.2-266 or any ordinance of a county, city or town similar to

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59 the provisions thereof, or subsection A of § 46.2-341.24, the court shall impose the sentence authorized
60 by § 18.2-270 or § 46.2-341.28 and the license revocation as authorized by § 18.2-271. In addition, if
61 the conviction was for a second offense committed within less than five years after a first such offense,
62 the court shall order that restoration of the person's license to drive be conditioned upon the installation
63 of an ignition interlock system on each motor vehicle, as defined in § 46.2-100, owned by or registered
64 to the person, in whole or in part, for a period of six months beginning at the end of the three year
65 license revocation, unless such a system has already been installed for six months prior to that time
66 pursuant to a restricted license order under subsection E of this section. Upon a finding that a person so
67 convicted is required to participate in the program described herein, the court shall enter the conviction
68 on the warrant, and shall note that the person so convicted has been referred to such program. The court
69 may then proceed to issue an order in accordance with subsection E of this section, if the court finds
70 that the person so convicted is eligible for a restricted license. If the court finds good cause for a person
71 not to participate in such program or subsequently that such person has violated, without good cause,
72 any of the conditions set forth by the court in entering the program, the court shall dispose of the case
73 as if no program had been entered, in which event the revocation provisions of § 46.2-389 and
74 subsection A of § 46.2-391 shall be applicable to the conviction. The court shall, upon final disposition
75 of the case, send a copy of its order to the Commissioner of the Department of Motor Vehicles. If such
76 order provides for the issuance of a restricted license, the Commissioner of the Department of Motor
77 Vehicles, upon receipt thereof, shall issue a restricted license. Appeals from any such disposition shall
78 be allowed as provided by law. The time within which an appeal may be taken shall be calculated from
79 the date of the final disposition of the case or any motion for rehearing, whichever is later.

80 D. Any person who has been convicted in another state of the violation of a law of such state
81 substantially similar to the provisions of § 18.2-266 or subsection A of § 46.2-341.24, and whose
82 privilege to operate a motor vehicle in this Commonwealth is subject to revocation under the provisions
83 of § 46.2-389 and subsection A of § 46.2-391, may petition the general district court of the county or
84 city in which he resides that he be given probation and assigned to a program as provided in subsection
85 A of this section and that, upon entry into such program, he be issued an order in accordance with
86 subsection E of this section. If the court finds that such person would have qualified therefor if he had
87 been convicted in this Commonwealth of a violation of § 18.2-266 or subsection A of § 46.2-341.24, the
88 court may grant the petition and may issue an order in accordance with subsection E of this section as
89 to the period of license suspension or revocation imposed pursuant to § 46.2-389 or subsection A of
90 § 46.2-391. Such order shall be conditioned upon the successful completion of a program by the
91 petitioner. If the court subsequently finds that such person has violated any of the conditions set forth by
92 the court, the court shall dispose of the case as if no program had been entered and shall notify the
93 Commissioner, who shall revoke the person's license in accordance with the provisions of § 46.2-389 or
94 subsection A of § 46.2-391. A copy of the order granting the petition or subsequently revoking or
95 suspending such person's license to operate a motor vehicle shall be forthwith sent to the Commissioner
96 of the Department of Motor Vehicles.

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

101 E. Except as otherwise provided herein, whenever a person enters a certified program pursuant to this
102 section, and such person's license to operate a motor vehicle, engine or train in the Commonwealth has
103 been suspended or revoked, the court may, in its discretion and for good cause shown, provide that such
104 person be issued a restricted permit to operate a motor vehicle for any of the following purposes: (i)
105 travel to and from his place of employment; (ii) travel to and from an alcohol rehabilitation or safety
106 action program; (iii) travel during the hours of such person's employment if the operation of a motor
107 vehicle is a necessary incident of such employment; (iv) travel to and from school if such person is a
108 student, upon proper written verification to the court that such person is enrolled in a continuing
109 program of education; (v) travel for health care services, including medically necessary transportation of
110 an elderly parent with a serious medical problem upon written verification of need by a licensed health
111 professional; (vi) travel necessary to transport a minor child under the care of such person to and from
112 school, day care, and facilities housing medical service providers; (vii) travel to and from court-ordered
113 visitation with a child of such person; or (viii) travel to a screening, evaluation and education program
114 entered pursuant to § 18.2-251 or subsection H of § 18.2-258.1. No restricted license issued pursuant to
115 this subsection shall permit any person to operate a commercial motor vehicle as defined in the Virginia
116 Commercial Driver's License Act (§ 46.2-341.1 et seq.). The court shall order the surrender of such
117 person's license to operate a motor vehicle to be disposed of in accordance with the provisions of
118 § 46.2-398 and shall forward to the Commissioner of the Department of Motor Vehicles a copy of its
119 order entered pursuant to this subsection, which shall specifically enumerate the restrictions imposed and
120 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 10 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~~ \$130. Forty dollars of such reinstatement fee shall be retained by the Department of Motor Vehicles as provided in § 46.2-411, \$40 shall be transferred to the Commission on VASAP, and ~~\$25~~ \$50 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 10 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. For the purposes of this section, any court which has convicted a person of a violation of § 18.2-266, subsection A of § 46.2-341.24 or any ordinance of a county, city or town similar to the provisions of § 18.2-266 shall have continuing jurisdiction over such person during any period of license revocation related to that conviction, for the limited purposes of (i) referring such person to a certified alcohol safety action program, (ii) providing for a restricted permit for such person in accordance with the provisions of subsection E, and (iii) imposing terms, conditions and limitations for actions taken pursuant to clauses (i) and (ii), whether or not it took either such action at the time of the conviction. This continuing jurisdiction is subject to the limitations of subsection E that provide that no restricted license shall be issued during a revocation imposed pursuant to subsection C of § 18.2-271 or subsection B of § 46.2-391 or during the first four months or first year, whichever is applicable, of the revocation imposed pursuant to subsection B of § 18.2-271 or subsection A of § 46.2-391. The provisions of this subsection shall apply to a person convicted of a violation of § 18.2-266, subsection A of § 46.2-341.24 or any ordinance of a county, city or town similar to the provisions of § 18.2-266 on, after and at any time prior to July 1, 2003.

H. 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.

I. 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 minimum standards and criteria for the implementation and operation of such programs and shall establish procedures to certify all such programs to ensure that they meet the minimum standards and criteria stipulated by the Commission. The Commission shall also establish criteria for the administration of such programs for public information activities, for accounting procedures, for the auditing

requirements of such programs and for the allocation of funds. Funds paid to the Commonwealth hereunder shall be utilized in the discretion of the Commission on VASAP to offset the costs of state programs and local programs run in conjunction with any county, city or town and costs incurred by the Commission. The Commission shall submit an annual report as to actions taken at the close of each calendar year to the Governor and the General Assembly.

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

§ 46.2-411. Reinstatement of suspended or revoked license or other privilege to operate or register a motor vehicle; proof of financial responsibility; reinstatement fee.

The Commissioner may refuse, after a hearing if demanded, to issue to any person whose license has been suspended or revoked any new or renewal license, or to register any motor vehicle in the name of the person, whenever he deems or in case of a hearing finds it necessary for the safety of the public on the highways in the Commonwealth.

Before granting or restoring a license or registration to any person whose driver's license or other privilege to drive motor vehicles or privilege to register a motor vehicle has been revoked or suspended pursuant to §§ 46.2-389, 46.2-391, 46.2-391.1 or § 46.2-417, the Commissioner shall require proof of financial responsibility in the future as provided in Article 15 (§ 46.2-435 et seq.) of this chapter, but no person shall be licensed who may not be licensed under the provisions of §§ 46.2-389 through 46.2-431.

Whenever the driver's license or registration cards, license plates and decals, or other privilege to drive or to register motor vehicles of any resident or nonresident person is suspended or revoked by the Commissioner or by a district court or circuit court pursuant to the provisions of Title 18.2 or this title, or any valid local ordinance, the order of suspension or revocation shall remain in effect and the driver's license, registration cards, license plates and decals, or other privilege to drive or register motor vehicles shall not be reinstated and no new driver's license, registration cards, license plates and decals, or other privilege to drive or register motor vehicles shall be issued or granted unless such person, in addition to complying with all other provisions of law, pays to the Commissioner a reinstatement fee of thirty dollars. The reinstatement fee shall be increased by ~~thirty dollars~~ \$55 whenever such suspension or revocation results from conviction of involuntary manslaughter in violation of § 18.2-36.1; conviction of maiming resulting from driving while intoxicated in violation of § 18.2-51.4; conviction of driving while intoxicated in violation of § 18.2-266 or § 46.2-341.24; conviction of driving after illegally consuming alcohol in violation of § 18.2-266.1 or failure to comply with court imposed conditions pursuant to subsection D of § 18.2-271.1; unreasonable refusal to submit to drug or alcohol testing in violation of § 18.2-268.2; conviction of driving while a license, permit or privilege to drive was suspended or revoked in violation of § 46.2-301 or § 46.2-341.21; disqualification pursuant to § 46.2-341.20; violation of driver's license probation pursuant to § 46.2-499; failure to attend a driver improvement clinic pursuant to § 46.2-503 or habitual offender interventions pursuant to former § 46.2-351.1; conviction of eluding police in violation of § 46.2-817; conviction of hit and run in violation of § 46.2-894; conviction of reckless driving in violation of Article 7 (§ 46.2-852 et seq.) of Chapter 8 of Title 46.2 or a conviction, finding or adjudication under any similar local ordinance, federal law or law of any other state. Five dollars of the additional amount shall be retained by the Department as provided in this section and ~~twenty-five dollars~~ \$50 shall be transferred to the Commonwealth Neurotrauma Initiative Trust Fund established pursuant to Chapter 3.1 (§ 51.5-12.1 et seq.) of Title 51.5. When three years have elapsed from the termination date of the order of suspension or revocation and the person has complied with all other provisions of law, the Commissioner may relieve him of paying the reinstatement fee.

No reinstatement fee shall be required when the suspension or revocation of license results from the person's suffering from mental or physical infirmities or disabilities from natural causes not related to the use of self-administered intoxicants or drugs. No reinstatement fee shall be collected from any person whose license is suspended by a court of competent jurisdiction for any reason, other than a cause for mandatory suspension as provided in this title, provided the court ordering the suspension is not required by § 46.2-398 to forward the license to the Department during the suspended period.

Except as otherwise provided in this section and § 18.2-271.1, reinstatement fees collected under the provisions of this section shall be paid by the Commissioner into the state treasury and shall be set aside as a special fund to be used to meet the expenses of the Department.