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## HOUSE BILL NO. 128

Offered January 14, 2004

Prefiled December 23, 2003

*A BILL to amend and reenact § 18.2-271.1 of the Code of Virginia, relating to a restricted license issued to a person in VASAP.*

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Patron—Albo

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Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:****1. That § 18.2-271.1 of the Code of Virginia is amended and reenacted as follows:**

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

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59 the date of the final disposition of the case or any motion for rehearing, whichever is later.

60 D. Any person who has been convicted in another state of the violation of a law of such state  
61 substantially similar to the provisions of § 18.2-266 or subsection A of § 46.2-341.24, and whose  
62 privilege to operate a motor vehicle in this Commonwealth is subject to revocation under the provisions  
63 of § 46.2-389 and subsection A of § 46.2-391, may petition the general district court of the county or  
64 city in which he resides that he be given probation and assigned to a program as provided in subsection  
65 A of this section and that, upon entry into such program, he be issued an order in accordance with  
66 subsection E of this section. If the court finds that such person would have qualified therefor if he had  
67 been convicted in this Commonwealth of a violation of § 18.2-266 or subsection A of § 46.2-341.24, the  
68 court may grant the petition and may issue an order in accordance with subsection E of this section as  
69 to the period of license suspension or revocation imposed pursuant to § 46.2-389 or subsection A of  
70 § 46.2-391. Such order shall be conditioned upon the successful completion of a program by the  
71 petitioner. If the court subsequently finds that such person has violated any of the conditions set forth by  
72 the court, the court shall dispose of the case as if no program had been entered and shall notify the  
73 Commissioner, who shall revoke the person's license in accordance with the provisions of § 46.2-389 or  
74 subsection A of § 46.2-391. A copy of the order granting the petition or subsequently revoking or  
75 suspending such person's license to operate a motor vehicle shall be forthwith sent to the Commissioner  
76 of the Department of Motor Vehicles.

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

81 E. Except as otherwise provided herein, whenever a person enters a certified program pursuant to this  
82 section, and such person's license to operate a motor vehicle, engine or train in the Commonwealth has  
83 been suspended or revoked, the court may, in its discretion and for good cause shown, provide that such  
84 person be issued a restricted permit to operate a motor vehicle for any of the following purposes: (i)  
85 travel to and from his place of employment; (ii) travel to and from an alcohol rehabilitation or safety  
86 action program *or court-ordered probation*; (iii) travel during the hours of such person's employment if  
87 the operation of a motor vehicle is a necessary incident of such employment; (iv) travel to and from  
88 school if such person is a student, upon proper written verification to the court that such person is  
89 enrolled in a continuing program of education; (v) travel for health care services, including medically  
90 necessary transportation of an elderly parent with a serious medical problem upon written verification of  
91 need by a licensed health professional; (vi) travel necessary to transport a minor child under the care of  
92 such person to and from school, day care, and facilities housing medical service providers; (vii) travel to  
93 and from court-ordered visitation with a child of such person; or (viii) travel to a screening, evaluation  
94 and education program entered pursuant to § 18.2-251 or subsection H of § 18.2-258.1. No restricted  
95 license issued pursuant to this subsection shall permit any person to operate a commercial motor vehicle  
96 as defined in the Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.). The court shall order  
97 the surrender of such person's license to operate a motor vehicle to be disposed of in accordance with  
98 the provisions of § 46.2-398 and shall forward to the Commissioner of the Department of Motor  
99 Vehicles a copy of its order entered pursuant to this subsection, which shall specifically enumerate the  
100 restrictions imposed and contain such information regarding the person to whom such a permit is issued  
101 as is reasonably necessary to identify such person. The court shall also provide a copy of its order to the  
102 person so convicted who may operate a motor vehicle on the order until receipt from the Commissioner  
103 of the Department of Motor Vehicles of a restricted license, if the order provides for a restricted license  
104 for that time period. A copy of such order and, after receipt thereof, the restricted license shall be  
105 carried at all times while operating a motor vehicle. Any person who operates a motor vehicle in  
106 violation of any restrictions imposed pursuant to this section shall be guilty of a violation of § 18.2-272.  
107 Such restricted license shall be conditioned upon enrollment within ~~fifteen~~15 days in, and successful  
108 completion of, a program as described in subsection A of this section. No restricted license shall be  
109 issued during the first four months of a revocation imposed pursuant to subsection B of § 18.2-271 or  
110 subsection A of § 46.2-391 for a second offense of the type described therein committed within 10 years  
111 of a first such offense. No restricted license shall be issued during the first year of a revocation imposed  
112 pursuant to subsection B of § 18.2-271 or subsection A of § 46.2-391 for a second offense of the type  
113 described therein committed within five years of a first such offense. No restricted license shall be  
114 issued during any revocation period imposed pursuant to subsection C of § 18.2-271 or subsection B of  
115 § 46.2-391. Notwithstanding the provisions of § 46.2-411, the fee charged pursuant to § 46.2-411 for  
116 reinstatement of the driver's license of any person whose privilege or license has been suspended or  
117 revoked as a result of a violation of § 18.2-266, subsection A of § 46.2-341.24 or of any ordinance of a  
118 county, city or town, or of any federal law or the laws of any other state similar to the provisions of  
119 § 18.2-266 or subsection A of § 46.2-341.24 shall be \$105. Forty dollars of such reinstatement fee shall  
120 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 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.).