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HOUSE BILL NO. 150

Offered January 14, 2004

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A BILL to amend and reenact §§ 18.2-270, 18.2-271.1 and 53.1-131.3 of the Code of Virginia, relating to fees paid by those convicted of DUI.

Patrons—Albo, Athey, Bell, Gear, Hurt, Janis and Jones, S.C.

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-270, 18.2-271.1 and 53.1-131.3 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 *to include a mandatory minimum term of confinement in jail of three days that shall not be suspended by the court.* 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 mandatory, minimum period of five days or, if the level was more than 0.25, for an additional mandatory, minimum period of 10 days. The additional mandatory, minimum period of confinement shall not be suspended by the court. In addition, such person shall be fined a mandatory, minimum fine of \$250, which 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 mandatory, minimum fine of \$500, which shall not be suspended by the court, 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 mandatory, minimum fine of \$500, which shall not be suspended by the court, and by confinement in jail for not less than one month.

3. Upon conviction of a second offense within 10 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 10 days or, if the level was more than 0.25, for an additional mandatory, minimum period of 20 days. The additional mandatory, minimum period of confinement shall not be suspended by the court. In addition, such person shall be fined a mandatory, minimum fine of \$500, which shall not be suspended by the court.

C. Any person convicted of three or more offenses of § 18.2-266 committed within a 10-year period shall upon conviction of the third offense be guilty of a Class 6 felony, and the sentence shall include a mandatory, minimum sentence of confinement for 10 days that shall not be subject to suspension by the court. In addition, such person shall be fined a mandatory, minimum fine of \$1,000, which shall not be suspended 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 mandatory, minimum sentence of confinement for 30 days that shall not be subject to suspension by the court. In addition, such person shall be fined a mandatory, minimum fine of \$1,000, which shall not be suspended by the court. The punishment of any person convicted of a fourth or subsequent offense committed within a 10-year period shall, upon conviction, include a mandatory, minimum term of imprisonment of one year, none of which may be suspended in whole or in part. In addition, such person shall be fined a mandatory, minimum fine of \$1,000, which shall not be suspended by the court. 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 17 years of age or younger shall be (i) fined an additional minimum of \$500 and not more than \$1000 and (ii) sentenced to a mandatory, minimum period of confinement of five days.

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

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§ 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.

§ 18.2-271.1. 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~~ \$180 but no more than ~~\$300~~ \$230. 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 the date of the final disposition of the case or any motion for rehearing, whichever is later.

D. Any person who has been convicted in another state of the violation of a law of such state substantially similar to the provisions of § 18.2-266 or subsection A of § 46.2-341.24, and whose privilege to operate a motor vehicle in this Commonwealth is subject to revocation under the provisions of § 46.2-389 and subsection A of § 46.2-391, may petition the general district court of the county or city in which he resides that he be given probation and assigned to a program as provided in subsection A of this section and that, upon entry into such program, he be issued an order in accordance with subsection E of this section. If the court finds that such person would have qualified therefor if he had been convicted in this Commonwealth of a violation of § 18.2-266 or subsection A of § 46.2-341.24, the court may grant the petition and may issue an order in accordance with subsection E of this section as

to the period of license suspension or revocation imposed pursuant to § 46.2-389 or subsection A of § 46.2-391. Such order shall be conditioned upon the successful completion of a program by the petitioner. If the court subsequently finds that such person has violated any of the conditions set forth by the court, the court shall dispose of the case as if no program had been entered and shall notify the Commissioner, who shall revoke the person's license in accordance with the provisions of § 46.2-389 or subsection A of § 46.2-391. A copy of the order granting the petition or subsequently revoking or suspending such person's license to operate a motor vehicle shall be forthwith sent to the Commissioner of the Department of Motor Vehicles.

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

E. Except as otherwise provided herein, whenever a person enters a certified program pursuant to this section, and such person's license to operate a motor vehicle, engine or train in the Commonwealth has been suspended or revoked, the court may, in its discretion and for good cause shown, provide that such person be issued a restricted permit to operate a motor vehicle for any of the following purposes: (i) travel to and from his place of employment; (ii) travel to and from an alcohol rehabilitation or safety action program; (iii) travel during the hours of such person's employment if the operation of a motor vehicle is a necessary incident of such employment; (iv) travel to and from school if such person is a student, upon proper written verification to the court that such person is enrolled in a continuing program of education; (v) travel for health care services, including medically necessary transportation of an elderly parent with a serious medical problem upon written verification of need by a licensed health professional; (vi) travel necessary to transport a minor child under the care of such person to and from school, day care, and facilities housing medical service providers; (vii) travel to and from court-ordered visitation with a child of such person; or (viii) travel to a screening, evaluation and education program entered pursuant to § 18.2-251 or subsection H of § 18.2-258.1. No restricted license issued pursuant to this subsection shall permit any person to operate a commercial motor vehicle as defined in the Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.). The court shall order the surrender of such person's license to operate a motor vehicle to be disposed of in accordance with the provisions of § 46.2-398 and shall forward to the Commissioner of the Department of Motor Vehicles a copy of its order entered pursuant to this subsection, which shall specifically enumerate the restrictions imposed and 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. 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 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

182 grounds for revocation of such privilege. Notice of revocation under this subsection shall be sent
183 forthwith to the Commissioner of the Department of Motor Vehicles.

184 G. For the purposes of this section, any court which has convicted a person of a violation of
185 § 18.2-266, subsection A of § 46.2-341.24 or any ordinance of a county, city or town similar to the
186 provisions of § 18.2-266 shall have continuing jurisdiction over such person during any period of license
187 revocation related to that conviction, for the limited purposes of (i) referring such person to a certified
188 alcohol safety action program, (ii) providing for a restricted permit for such person in accordance with
189 the provisions of subsection E, and (iii) imposing terms, conditions and limitations for actions taken
190 pursuant to clauses (i) and (ii), whether or not it took either such action at the time of the conviction.
191 This continuing jurisdiction is subject to the limitations of subsection E that provide that no restricted
192 license shall be issued during a revocation imposed pursuant to subsection C of § 18.2-271 or subsection
193 B of § 46.2-391 or during the first four months or first year, whichever is applicable, of the revocation
194 imposed pursuant to subsection B of § 18.2-271 or subsection A of § 46.2-391. The provisions of this
195 subsection shall apply to a person convicted of a violation of § 18.2-266, subsection A of § 46.2-341.24
196 or any ordinance of a county, city or town similar to the provisions of § 18.2-266 on, after and at any
197 time prior to July 1, 2003.

198 H. The State Treasurer, the Commission on VASAP or any city or county is authorized to accept any
199 gifts or bequests of money or property, and any grant, loan, service, payment or property from any
200 source, including the federal government, for the purpose of driver alcohol education. Any such gifts,
201 bequests, grants, loans or payments shall be deposited in the separate fund provided in subsection B.

202 I. The Commission on VASAP, or any county, city, town, or any combination thereof may establish
203 and, if established, shall operate, in accordance with the standards and criteria required by this
204 subsection, alcohol safety action programs in connection with highway safety. Each such program shall
205 operate under the direction of a local independent policy board chosen in accordance with procedures
206 approved and promulgated by the Commission on VASAP. Local sitting or retired district court judges
207 who regularly hear or heard cases involving driving under the influence and are familiar with their local
208 alcohol safety action programs may serve on such boards. The Commission on VASAP shall establish
209 minimum standards and criteria for the implementation and operation of such programs and shall
210 establish procedures to certify all such programs to ensure that they meet the minimum standards and
211 criteria stipulated by the Commission. The Commission shall also establish criteria for the administration
212 of such programs for public information activities, for accounting procedures, for the auditing
213 requirements of such programs and for the allocation of funds. Funds paid to the Commonwealth
214 hereunder shall be utilized in the discretion of the Commission on VASAP to offset the costs of state
215 programs and local programs run in conjunction with any county, city or town and costs incurred by the
216 Commission. The Commission shall submit an annual report as to actions taken at the close of each
217 calendar year to the Governor and the General Assembly.

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

222 § 53.1-131.3. Payment of costs associated with jail inmates.

223 A. Any sheriff or jail superintendent may establish a program to charge inmates a reasonable fee, not
224 to exceed \$1 per day, to defray the costs associated with the ~~prisoners'~~ inmates' keep. The Board shall
225 develop a model plan and adopt regulations for such program, and shall provide assistance, if requested,
226 to the sheriff or jail superintendent in the implementation of such program. ~~Such funds shall be retained~~
227 ~~in the locality where the funds were collected and shall be used for general jail purposes.~~

228 B. *To defray the costs associated with housing inmates convicted of any violation enumerated in*
229 *subsection E of § 18.2-270, any sheriff or jail superintendent may charge such an inmate, for each night*
230 *spent in the facility, an amount equal to the average annual cost to house an inmate for one day at that*
231 *facility, or he may charge \$70 per day, whichever is less. However, regardless of the number of nights*
232 *spent at the facility by the inmate, the sheriff or jail superintendent may not charge the inmate for more*
233 *than two nights, or \$140, whichever is less.*

234 C. *Any funds collected hereunder shall be retained in the locality where the funds were collected and*
235 *shall be used for general jail purposes.*