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HOUSE BILL NO. 665

Offered January 14, 2004

Prefiled January 13, 2004

A BILL to amend and reenact § 46.2-358 of the Code of Virginia, and to amend the Code of Virginia by adding in Article 9 of Chapter 3 of Subtitle II of Title 46.2 sections numbered 46.2-350.1, 46.2-350.2, 46.2-350.3, 46.2-350.4, 46.2-350.5, 46.2-350.6, and 46.2-350.7, relating to reinstatement of the habitual offender law.

Patrons—Bell and Jones, S.C.

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 46.2-358 of the Code of Virginia is amended and reenacted, and that the Code of Virginia is amended by adding in Article 9 of Chapter 3 of Subtitle II of Title 46.2 sections numbered 46.2-350.1, 46.2-350.2, 46.2-350.3, 46.2-350.4, 46.2-350.5, 46.2-350.6, and 46.2-350.7 as follows:

§ 46.2-350.1. *Habitual offender defined; petition of certain persons for restoration of privilege of operating motor vehicle.*

An habitual offender shall be any resident or nonresident person whose record, as maintained in the office of the Department, shows that he has been convicted of an accumulated three or more convictions, or of findings of not innocent in the case of a juvenile, or of findings of liability (hereinafter referred to as convictions) in the case of refusal to submit to a blood alcohol test, singularly or in combination, of the following separate offenses arising out of separate acts:

a. Driving or operating a motor vehicle while under the influence of intoxicants or drugs in violation of § 18.2-266 or subsection A of § 46.2-341.24;

b. Driving a motor vehicle while his license, permit, or privilege to drive a motor vehicle has been suspended or revoked in violation of §§ 18.2-272; or

c. Refusal to submit to a blood alcohol test under § 18.2-268.3.

These offenses shall be deemed to include offenses under any valid parallel county, city, or town ordinance and any federal law, any law of another state or any valid county, city, or town ordinance of another state substantially conforming to the aforesaid state statutory provisions.

Multiple offenses committed within a six-hour period shall, on the first such occasion, be treated for the purposes of this article as one offense provided the person charged has no record of prior offenses chargeable under this article.

§ 46.2-350.2. *Intervention required for certain offenders; fee; penalty; notice.*

A. Upon receiving notification of any conviction that will result in the offender's being subject to determination as an habitual offender if convicted of one additional offense, the Commissioner shall notify the person that he shall report to a Virginia Alcohol Safety Action Program within 60 days of the date of such notice for intervention. Intervention shall be in accordance with § 18.2-271.1. The program shall provide the Commissioner with information of compliance.

B. An interview shall be conducted by a representative of a Virginia Alcohol Safety Action Program. The representative shall review with the person attending the interview the habitual offender laws and explain the consequences of future offenses and may refer the person to any driver improvement clinic. A fee of \$30 shall be paid to the Virginia Alcohol Safety Action Program for attendance at a driver intervention interview. All fees collected by a Virginia Alcohol Safety Action Program shall be used to meet its expenses.

C. The Commissioner shall suspend the driving privilege of any person who fails to complete and pay the required fee for an intervention interview within the 60-day period. The suspension shall continue until such time as the person has completed and paid for the intervention interview.

D. Notice to report for intervention shall be sent by the Department by certified mail, return receipt requested, to the driver at the last known address supplied by the driver and on file with the Department.

E. Failure of the offender to attend as required or failure of the Department to notify the offender upon the second qualifying offense shall not prohibit determination of the person as an habitual offender upon receipt of the third qualifying offense.

§ 46.2-350.3. *Summons to show cause to be issued upon conviction of third qualifying offense.*

A. Immediately following disposition of any case involving any offense that qualifies as one that might be used for determination as an habitual offender as set forth in § 46.2-350.1, the court shall

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59 review the defendant's Department of Motor Vehicles transcript or abstract of convictions if available.
60 Upon a finding that the person may be within the definition of an habitual offender as set forth in
61 § 46.2-350.1, the court shall forthwith order the issuance of a summons that directs the defendant to
62 appear and show cause why he should not be declared an habitual offender as provided in § 46.2-350.4.
63 The show cause proceeding shall be held not less than 120 days after the date of the summons. The
64 summons shall be immediately served upon the defendant. Such service shall be deemed adequate notice
65 of the show cause proceeding, and no other notice shall be required.

66 B. Notice of the summons shall be transmitted to the Commissioner, along with the abstract of
67 conviction, if any, and the court shall order the Commissioner to certify the person's transcript or
68 abstract of convictions, substantially in the manner provided for in § 46.2-215, for use in the show
69 cause hearing. One copy of such certified transcript or abstract shall be sent to the attorney for the
70 Commonwealth in the jurisdiction of the court issuing the summons and one copy to the court. The
71 Commissioner shall also mail, by first class mail, one copy to the person not less than 30 days prior to
72 the date set in the court order for the show cause proceeding.

73 C. If the conviction of the third qualifying offense occurs in the general district court and is
74 appealed by the person to the circuit court, the pending show cause proceeding in the general district
75 court shall be stayed until the tenth day following the conviction. If the appeal is not withdrawn within
76 the 10-day period, the show cause proceeding shall be dismissed by the general district court. Upon
77 entry of a final order of conviction of a third qualifying offense by a circuit court, the circuit court shall
78 proceed as otherwise provided in this section.

79 If the conviction of the third qualifying offense occurs in a circuit court and is appealed by the
80 person, the pending show cause proceeding in the circuit court shall be stayed until such appeal is
81 concluded. Should the person prevail on appeal, the show cause proceeding in the circuit court shall be
82 dismissed, and the clerk of that court shall file with the Department an order of dismissal.

83 D. The Commissioner shall cause the Department's records to reflect the show cause proceeding and
84 the disposition thereof.

85 § 46.2-350.4. Commissioner to determine when person qualifies as habitual offender; when court may
86 refuse to satisfy the Commissioner's determination under § 46.2-350.7; transcript or abstract as
87 evidence.

88 A. Except when a show cause proceeding pursuant to § 46.2-350.3 followed the person's latest
89 qualifying offense, the Commissioner shall determine, from the Department's records, whether a person
90 named therein qualifies as an habitual offender, as defined in § 46.2-350.1. Upon such determination,
91 the Commissioner shall immediately cause the Department's records to indicate that the person has been
92 determined to be an habitual offender and shall revoke the person's driver's license for the period of
93 time specified in § 46.2-356. The Commissioner shall immediately notify the person of the revocation
94 and of his right to file a petition and request a hearing as provided in subsection B. Such notice shall
95 be mailed by certified mail, return receipt requested, delivered to addressee only, to the address for the
96 person contained in the Department's records. The revocation shall become effective 30 days from the
97 date on which the notice was mailed.

98 After determination of any person as an habitual offender, the Department shall not thereafter issue
99 a new or duplicate driver's license to any such person until the Department has received (i) a copy of
100 the court order reversing the determination of the Commissioner, (ii) an order of license restoration as
101 otherwise provided in this article, or (iii) a certification from the attorney for the Commonwealth that
102 there is a valid reason not to make a determination that the person is an habitual offender. Any license
103 issued in contravention of this provision shall be invalid.

104 B. At any time after receipt of the revocation notice, as provided for in subsection A, or after
105 otherwise learning of the revocation, a person who has been determined to be an habitual offender may
106 file, with the circuit court of the county or city in which he resides, or with the Circuit Court of the City
107 of Richmond if the person is not a resident of the Commonwealth, a petition for a hearing and
108 determination by the court that the person is not an habitual offender. Jurisdiction shall also lie in a
109 circuit court to which venue may be changed.

110 The clerk of the court in which the petition is filed shall forward a copy of the petition to the
111 Commissioner. Upon receiving the petition, the Commissioner shall suspend the revocation of the
112 person's driver's license and, unless otherwise prohibited, his privilege to drive shall be restored
113 pending a final determination by the court in accordance with § 46.2-350.7.

114 The court may refuse to enter an order affirming the Commissioner's determination, as provided in
115 § 46.2-350.7 if the determination was made more than five years after the date of the most recent of the
116 convictions that bring the person within the definition of habitual offender and the person would be
117 otherwise eligible for restoration of his privilege under § 46.2-360.

118 The transcript or abstract of convictions that bring the person within the definition of an habitual
119 offender may be admitted as evidence as provided in § 46.2-215 and shall be prima facie evidence that
120 the person named therein was duly convicted, or held not innocent in the case of a juvenile, by the

121 court wherein the conviction or holding was made, of each offense shown by the transcript or abstract.
 122 If the person denies any of the facts as stated therein, he shall have the burden of proving that the fact
 123 is untrue.

124 § 46.2-350.5. Commissioner to certify copy of conviction record; attorney for the Commonwealth or
 125 Attorney General to represent Commissioner.

126 Upon receipt of the copy of the petition filed pursuant to § 46.2-350.4, the Commissioner shall certify
 127 the transcript or abstract, substantially in the manner provided for in § 46.2-215, to the petitioner or his
 128 attorney of record, to the court in which the petition was filed and to the attorney for the
 129 Commonwealth. The attorney for the Commonwealth, on receiving the transcript or abstract from the
 130 Commissioner, shall represent the Commissioner at the hearing on the petition. In the event the accused
 131 is an inmate of a state or local correctional facility, jurisdiction for the proceedings shall be in the
 132 locality wherein the accused is confined.

133 Venue of any case may be changed upon motion of either party.

134 § 46.2-350.6. Hearing by court; scope of hearing; procedure where conviction denied.

135 At the conclusion of the show cause proceeding pursuant to § 46.2-350.3 or the hearing on the
 136 petition filed pursuant to § 46.2-350.5, the court shall determine whether the person is the same person
 137 named in the record and whether the person was convicted of each offense shown by the transcript or
 138 abstract.

139 If the person denies he was convicted or held not innocent of any offense necessary for the
 140 determination that he is an habitual offender, and if the court cannot, on the evidence available to it,
 141 make a determination, the court may certify the decision of the issue to the court in which the
 142 conviction or holding of not innocent was made. The court to which the certification is made shall
 143 forthwith conduct a hearing to determine the issue and send a certified copy of its final order
 144 determining the issue to the court that certified the decision of the issue and to the Department.

145 § 46.2-350.7. Determination of court.

146 If, pursuant to the show cause proceeding or the hearing as provided for in § 46.2-350.3 or
 147 § 46.2-350.6, the court finds that the person (i) is not the same person named in the transcript or
 148 abstract or (ii) is not an habitual offender under this article, the court shall enter an order finding that
 149 the person is not an habitual offender and, unless otherwise prohibited, restoring his privilege to drive.
 150 If the court finds that the person is the same person named in the transcript or abstract and that the
 151 person is an habitual offender, the court shall enter an order (i) revoking the person's license if the
 152 proceeding is pursuant to § 46.2-350.3 or (ii) affirming the determination of the Commissioner and the
 153 revocation of the person's license if the proceeding is pursuant to § 46.2-350.4 and directing the person
 154 not to operate a motor vehicle on the highways in the Commonwealth and to surrender to the court all
 155 licenses or permits to drive a motor vehicle on the highways in the Commonwealth for disposal in the
 156 manner provided in § 46.2-398.

157 The clerk of the court shall file with the Department a copy of any order entered, which shall
 158 become a part of the permanent records of the Department. Unless it appears from the record of the
 159 case that the person was present at the hearing in which the court found him to be an habitual offender,
 160 the clerk shall also mail a copy of the order to the person at his last known address appearing in the
 161 records of the case. Mailing, by first class mail, shall be deemed adequate notice of the order of the
 162 court, and no other notice shall be required.

163 § 46.2-358. Restoration of privilege of driving motor vehicle; when petition may be brought; terms
 164 and conditions.

165 A. In any case where a person was declared an habitual offender prior to July 1, 1999, and the
 166 provisions of § 46.2-360 or § 46.2-361 do not apply, five years from the date of any final order of a
 167 court entered under this article, or if no such order was entered then the notice of the determination by
 168 the Commissioner finding a person to be an habitual offender and revoking his privilege to drive a
 169 motor vehicle in the Commonwealth, the person may petition the court in which he was found to be an
 170 habitual offender, or any court of record in Virginia having criminal jurisdiction in the political
 171 subdivision in which he then resides, for restoration of his privilege to drive a motor vehicle in the
 172 Commonwealth. On such petition, and for good cause shown, the court may, upon a finding that such
 173 person does not constitute a threat to the safety and welfare of himself or others with regard to the
 174 driving of a motor vehicle, (i) restore to the person the privilege to drive a motor vehicle in the
 175 Commonwealth on whatever conditions the court may prescribe or (ii) order that the person be issued a
 176 restricted license to drive a motor vehicle in the Commonwealth for any of the purposes set forth in and
 177 in accordance with the procedures of subsection E of § 18.2-271.1, subject to other provisions of law
 178 relating to the issuance of driver's licenses.

179 B. Any person declared an habitual offender pursuant to § 18.2-350.1 may petition to have his
 180 privilege to drive restored pursuant to the provisions of subsection C of § 46.2-391.