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HOUSE BILL NO. 2748

Offered January 10, 2007

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A BILL to amend and reenact §§ 4.1-333, 8.01-44.5, 15.2-1716, 18.2-259.1, 18.2-266, 18.2-268.10, 18.2-269, 18.2-271, 18.2-271.1, and 18.2-272 of the Code of Virginia, relating to vehicles one may not operate following a DUI conviction.

Patrons—Hall, Amundson and Moran

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 4.1-333, 8.01-44.5, 15.2-1716, 18.2-259.1, 18.2-266, 18.2-268.10, 18.2-269, 18.2-271, 18.2-271.1, and 18.2-272 of the Code of Virginia are amended and reenacted as follows:

§ 4.1-333. Interdiction of intoxicated driver or habitual drunkard.

A. When after a hearing upon due notice it appears to the satisfaction of the circuit court of any county or city that any person, residing within such county or city, has been convicted of driving any automobile, truck, or motorcycle, ~~engine or train~~ while intoxicated or has shown himself to be an habitual drunkard, the court may enter an order of interdiction prohibiting the sale of alcoholic beverages to such person until further ordered. The court entering any such order shall file a copy of the order with the Board.

B. The court entering any order of interdiction may alter, amend or cancel such order as it deems proper. A copy of any alteration, amendment or cancellation shall be filed with the Board.

§ 8.01-44.5. Exemplary damages for persons injured by intoxicated drivers.

In any action for personal injury or death arising from the operation of a motor vehicle, ~~engine or train~~, the finder of fact may, in its discretion, award exemplary damages to the plaintiff if the evidence proves that the defendant acted with malice toward the plaintiff or the defendant's conduct was so willful or wanton as to show a conscious disregard for the rights of others.

A defendant's conduct shall be deemed sufficiently willful or wanton as to show a conscious disregard for the rights of others when the evidence proves that (i) when the incident causing the injury or death occurred, the defendant had a blood alcohol concentration of 0.15 percent or more by weight by volume or 0.15 grams or more per 210 liters of breath; (ii) at the time the defendant began drinking alcohol, or during the time he was drinking alcohol, he knew or should have known that his ability to operate a motor vehicle, ~~engine or train~~ would be impaired, or when he was operating a motor vehicle he knew or should have known that his ability to operate a motor vehicle was impaired; and (iii) the defendant's intoxication was a proximate cause of the injury to or death of the plaintiff.

However, when a defendant has unreasonably refused to submit to a test of his blood alcohol content as required by § 18.2-268.2, a defendant's conduct shall be deemed sufficiently willful or wanton as to show a conscious disregard for the rights of others when the evidence proves that (i) when the incident causing the injury or death occurred the defendant was intoxicated, which may be established by evidence concerning the conduct or condition of the defendant; (ii) at the time the defendant began drinking alcohol, or during the time he was drinking alcohol, he knew or should have known that his ability to operate a motor vehicle was impaired; and (iii) the defendant's intoxication was a proximate cause of the injury to the plaintiff or death of the plaintiff's decedent. A certified copy of a court's determination of unreasonable refusal pursuant to § 18.2-268.3 shall be prima facie evidence that the defendant unreasonably refused to submit to the test.

§ 15.2-1716. Reimbursement of expenses incurred in responding to DUI incidents and other traffic incidents.

A. Any locality may provide by ordinance that a person convicted of violating any of the following provisions shall be liable for restitution at the time of sentencing or in a separate civil action to the locality or to any responding volunteer fire or rescue squad, or both, for reasonable expenses incurred by the locality for responding law enforcement, firefighting, rescue and emergency services, including by the sheriff's office of such locality, or by any volunteer fire or rescue squad, or by any combination of the foregoing, when providing an appropriate emergency response to any accident or incident related to such violation:

1. The provisions of § 18.2-51.4, 18.2-266, 18.2-266.1, 29.1-738, 29.1-738.02, or a similar ordinance, when such operation of a motor vehicle, ~~engine, train~~ or watercraft while so impaired is the proximate cause of the accident or incident;

2. The provisions of Article 7 (§ 46.2-852 et seq.) of Chapter 8 of Title 46.2 relating to reckless

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59 driving, when such reckless driving is the proximate cause of the accident or incident;

60 3. The provisions of Article 1 (§ 46.2-300 et seq.) of Chapter 3 of Title 46.2 relating to driving
61 without a license or driving with a suspended or revoked license; and

62 4. The provisions of § 46.2-894 relating to improperly leaving the scene of an accident.

63 B. Personal liability under this section for reasonable expenses of an appropriate emergency response
64 shall not exceed \$1,000 in the aggregate for a particular accident or incident occurring in such locality.
65 In determining the "reasonable expenses," a locality may bill a flat fee of \$250 or a minute-by-minute
66 accounting of the actual costs incurred. As used in this section, "appropriate emergency response"
67 includes all costs of providing law-enforcement, fire-fighting, rescue, and emergency medical services.
68 The court may order as restitution the reasonable expenses incurred by the locality for responding law
69 enforcement, fire-fighting, rescue and emergency medical services. The provisions of this section shall
70 not preempt or limit any remedy available to the Commonwealth, to the locality or to any volunteer
71 rescue squad to recover the reasonable expenses of an emergency response to an accident or incident not
72 involving impaired driving, operation of a vehicle or other conduct as set forth herein.

73 § 18.2-259.1. Forfeiture of driver's license for violations of article.

74 A. In addition to any other sanction or penalty imposed for a violation of this article, the (i)
75 judgment of conviction under this article or (ii) placement on probation following deferral of further
76 proceedings under § 18.2-251 or subsection H of § 18.2-258.1 for any such offense shall of itself operate
77 to deprive the person so convicted or placed on probation after deferral of proceedings under § 18.2-251
78 or subsection H of § 18.2-258.1 of the privilege to drive or operate a motor vehicle; ~~engine, or train~~ in
79 the Commonwealth for a period of six months from the date of such judgment or placement on
80 probation. Such license forfeiture shall be in addition to and shall run consecutively with any other
81 license suspension, revocation or forfeiture in effect or imposed upon the person so convicted or placed
82 on probation. However, a juvenile who has had his license suspended or denied pursuant to § 16.1-278.9
83 shall not have his license forfeited pursuant to this section for the same offense.

84 B. The court trying the case shall order any person so convicted or placed on probation to surrender
85 his driver's license to be disposed of in accordance with the provisions of § 46.2-398 and shall notify the
86 Department of Motor Vehicles of any such conviction entered and of the license forfeiture to be
87 imposed.

88 C. In those cases where the court determines there are compelling circumstances warranting an
89 exception, the court may provide that any individual be issued a restricted license to operate a motor
90 vehicle for any of the purposes set forth in subsection E of § 18.2-271.1. No restricted license issued
91 pursuant to this subsection shall permit any person to operate a commercial motor vehicle as defined in
92 the Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.). The court shall order the surrender
93 of such person's license in accordance with the provisions of subsection B and shall forward to the
94 Commissioner of the Department of Motor Vehicles a copy of its order entered pursuant to this
95 subsection. This order shall specifically enumerate the restrictions imposed and contain such information
96 regarding the person to whom such a permit is issued as is reasonably necessary to identify such person.
97 The court shall also provide a copy of its order to such person who may operate a motor vehicle on the
98 order until receipt from the Commissioner of the Department of Motor Vehicles of a restricted license,
99 but only if the order provides for a restricted license for that period. A copy of the order and, after
100 receipt thereof, the restricted license shall be carried at all times by such person while operating a motor
101 vehicle. The court may require a person issued a restricted permit under the provisions of this subsection
102 to be monitored by an alcohol safety action program during the period of license suspension. Any
103 violation of the terms of the restricted license or of any condition set forth by the court related thereto,
104 or any failure to remain drug-free during such period shall be reported forthwith to the court by such
105 program. Any person who operates a motor vehicle in violation of any restriction imposed pursuant to
106 this section shall be guilty of a violation of § 46.2-301.

107 § 18.2-266. Driving motor vehicle while intoxicated, etc.

108 It shall be unlawful for any person to drive or operate any motor vehicle; ~~engine or train~~ (i) while
109 such person has a blood alcohol concentration of 0.08 percent or more by weight by volume or 0.08
110 grams or more per 210 liters of breath as indicated by a chemical test administered as provided in this
111 article, (ii) while such person is under the influence of alcohol, (iii) while such person is under the
112 influence of any narcotic drug or any other self-administered intoxicant or drug of whatsoever nature, or
113 any combination of such drugs, to a degree which impairs his ability to drive or operate any motor
114 vehicle; ~~engine or train~~ safely, (iv) while such person is under the combined influence of alcohol and
115 any drug or drugs to a degree which impairs his ability to drive or operate any motor vehicle; ~~engine or~~
116 ~~train~~ safely, or (v) while such person has a blood concentration of any of the following substances at a
117 level that is equal to or greater than: (a) 0.02 milligrams of cocaine per liter of blood, (b) 0.1 milligrams
118 of methamphetamine per liter of blood, (c) 0.01 milligrams of phencyclidine per liter of blood, or (d)
119 0.1 milligrams of 3,4-methylenedioxymethamphetamine per liter of blood. A charge alleging a violation
120 of this section shall support a conviction under clauses (i), (ii), (iii), (iv), or (v).

For the purposes of this article, the term "motor vehicle" includes mopeds, while operated on the public highways of this Commonwealth.

§ 18.2-268.10. Evidence of violation of driving under the influence offenses.

A. In any trial for a violation of § 18.2-266, 18.2-266.1, or subsection B of § 18.2-272 or a similar ordinance, the admission of the blood or breath test results shall not limit the introduction of any other relevant evidence bearing upon any question at issue before the court, and the court shall, regardless of the result of any blood or breath tests, consider other relevant admissible evidence of the condition of the accused. If the test results indicate the presence of any drug other than alcohol, the test results shall be admissible, except in a prosecution under clause (v) of § 18.2-266, only if other competent evidence has been presented to relate the presence of the drug or drugs to the impairment of the accused's ability to drive or operate any motor vehicle, ~~engine or train~~ safely.

B. The failure of an accused to permit a blood or breath sample to be taken to determine the alcohol or drug content of his blood is not evidence and shall not be subject to comment by the Commonwealth at the trial of the case, except in rebuttal or pursuant to subsection C; nor shall the fact that a blood or breath test had been offered the accused be evidence or the subject of comment by the Commonwealth, except in rebuttal or pursuant to subsection C.

C. Evidence of a finding against the defendant under § 18.2-268.3 for his unreasonable refusal to permit a blood or breath sample to be taken to determine the alcohol or drug content of his blood shall be admissible into evidence, upon the motion of the Commonwealth or the defendant, for the sole purpose of explaining the absence at trial of a chemical test of such sample. When admitted pursuant to this subsection such evidence shall not be considered evidence of the accused's guilt.

D. The court or jury trying the case involving a violation of clause (ii), (iii) or (iv) of § 18.2-266 or § 18.2-266.1, or a similar ordinance shall determine the innocence or guilt of the defendant from all the evidence concerning his condition at the time of the alleged offense.

§ 18.2-269. Presumptions from alcohol or drug content of blood.

A. In any prosecution for a violation of § 18.2-36.1 or clause (ii), (iii) or (iv) of § 18.2-266, or any similar ordinance, the amount of alcohol or drugs in the blood of the accused at the time of the alleged offense as indicated by a chemical analysis of a sample of the accused's blood or breath to determine the alcohol or drug content of his blood in accordance with the provisions of §§ 18.2-268.1 through 18.2-268.12 shall give rise to the following rebuttable presumptions:

(1) If there was at that time 0.05 percent or less by weight by volume of alcohol in the accused's blood or 0.05 grams or less per 210 liters of the accused's breath, it shall be presumed that the accused was not under the influence of alcohol intoxicants at the time of the alleged offense;

(2) If there was at that time in excess of 0.05 percent but less than 0.08 percent by weight by volume of alcohol in the accused's blood or 0.05 grams but less than 0.08 grams per 210 liters of the accused's breath, such facts shall not give rise to any presumption that the accused was or was not under the influence of alcohol intoxicants at the time of the alleged offense, but such facts may be considered with other competent evidence in determining the guilt or innocence of the accused;

(3) If there was at that time 0.08 percent or more by weight by volume of alcohol in the accused's blood or 0.08 grams or more per 210 liters of the accused's breath, it shall be presumed that the accused was under the influence of alcohol intoxicants at the time of the alleged offense; or

(4) If there was at that time an amount of the following substances at a level that is equal to or greater than: (a) 0.02 milligrams of cocaine per liter of blood, (b) 0.1 milligrams of methamphetamine per liter of blood, (c) 0.01 milligrams of phencyclidine per liter of blood, or (d) 0.1 milligrams of 3,4-methylenedioxymethamphetamine per liter of blood, it shall be presumed that the accused was under the influence of drugs at the time of the alleged offense to a degree which impairs his ability to drive or operate any motor vehicle, ~~engine or train~~ safely.

B. The provisions of this section shall not apply to and shall not affect any prosecution for a violation of § 46.2-341.24.

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

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

B. If a person (i) is tried on a process alleging a second offense of violating § 18.2-266 or subsection A of § 46.2-341.24, or any substantially similar local ordinance, or law of any other jurisdiction, within ten years of a first offense for which the person was convicted, or found guilty in the case of a juvenile, under § 18.2-266 or subsection A of § 46.2-341.24 or any valid local ordinance or any law of any other jurisdiction substantially similar to § 18.2-266 or subsection A of § 46.2-341.24 and (ii) is convicted

thereof, such conviction shall of itself operate to deprive the person so convicted of the privilege to drive or operate any motor vehicle, ~~engine or train~~ in the Commonwealth for a period of three years from the date of the judgment of conviction and such person shall have his license revoked as provided in subsection A of § 46.2-391. The court trying such case shall order the surrender of the person's driver's license, to be disposed of in accordance with § 46.2-398, and shall notify such person that his license has been revoked for a period of three years and that the penalty for violating that revocation is as set out in § 46.2-391. This suspension period shall be in addition to the suspension period provided under § 46.2-391.2. Any period of license suspension or revocation imposed pursuant to this section, in any case, shall run consecutively with any period of suspension for failure to permit a blood or breath sample to be taken as required by §§ 18.2-268.1 through 18.2-268.12 or §§ 46.2-341.26:1 through 46.2-341.26:11.

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

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

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

§ 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 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; (viii) travel to a screening, evaluation and education program entered pursuant to § 18.2-251 or subsection H of § 18.2-258.1; or (ix) travel to and from court appearances in which he is a subpoenaed witness or a party and appointments with his probation officer and to and from any programs required by the court or as a condition of probation. 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 15 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 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

367 calendar year to the Governor and the General Assembly.

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

372 § 18.2-272. Driving after forfeiture of license.

373 A. Any person who drives or operates any motor vehicle; ~~engine or train~~ in the Commonwealth
374 during the time for which he was deprived of the right to do so (i) upon conviction of a violation of
375 § 18.2-268.3 or of an offense set forth in subsection E of § 18.2-270, (ii) by § 18.2-271 or 46.2-391.2,
376 (iii) after his license has been revoked pursuant to § 46.2-389 or 46.2-391, or (iv) in violation of the
377 terms of a restricted license issued pursuant to subsection E of § 18.2-271.1, is guilty of a Class 1
378 misdemeanor except as otherwise provided in § 46.2-391, and is subject to administrative revocation of
379 his driver's license pursuant to §§ 46.2-389 and 46.2-391. Any person convicted of a third offense in 10
380 years of a violation of this section shall be guilty of a Class 6 felony.

381 Nothing in this section or § 18.2-266, 18.2-270 or 18.2-271, shall be construed as conflicting with or
382 repealing any ordinance or resolution of any city, town or county which restricts still further the right of
383 such persons to drive or operate any such vehicle or conveyance.

384 B. Regardless of compliance with any other restrictions on his privilege to drive or operate a motor
385 vehicle, it shall be a violation of this section for any person whose privilege to drive or operate a motor
386 vehicle has been restricted, suspended or revoked because of a violation of § 18.2-36.1, 18.2-51.4,
387 18.2-266, 18.2-268.3, 46.2-341.24, or a similar ordinance or law of another state or the United States to
388 drive or operate a motor vehicle while he has a blood alcohol content of 0.02 percent or more.

389 Any person suspected of a violation of this subsection shall be entitled to a preliminary breath test in
390 accordance with the provisions of § 18.2-267, shall be deemed to have given his implied consent to have
391 samples of his blood, breath or both taken for analysis pursuant to the provisions of § 18.2-268.2, and,
392 when charged with a violation of this subsection, shall be subject to the provisions of §§ 18.2-268.1
393 through 18.2-268.12.