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HOUSE BILL NO. 649**FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by Delegate Albo
on January 21, 2008)

(Patron Prior to Substitute—Delegate Hogan)

A BILL to amend and reenact §§ 18.2-35, 18.2-36, 18.2-36.1, 18.2-51.4, 18.2-268.3, 18.2-270, 18.2-272, 46.2-300, 46.2-301, 46.2-341.19, 46.2-341.28, 46.2-357, 46.2-391, 46.2-755.1, 46.2-755.2, 46.2-817, 46.2-865.1, 46.2-868, 46.2-868.1, 46.2-894, and 46.2-1086 of the Code of Virginia and to repeal § 46.2-206.1 of the Code of Virginia, relating to sources of revenue for highway and transit needs and traffic crimes.

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-35, 18.2-36, 18.2-36.1, 18.2-51.4, 18.2-268.3, 18.2-270, 18.2-272, 46.2-300, 46.2-301, 46.2-341.19, 46.2-341.28, 46.2-357, 46.2-391, 46.2-755.1, 46.2-755.2, 46.2-817, 46.2-865.1, 46.2-868, 46.2-868.1, 46.2-894, and 46.2-1086 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-35. How voluntary manslaughter punished.

Voluntary manslaughter is punishable as a Class 5 felony. *In addition, where the death of a person was proximately caused by the defendant's operation of a motor vehicle, there shall be a mandatory minimum fine of \$2,500.*

§ 18.2-36. How involuntary manslaughter punished.

Involuntary manslaughter is punishable as a Class 5 felony. *In addition, where the death of a person was proximately caused by the defendant's operation of a motor vehicle, there shall be a mandatory minimum fine of \$2,500.*

§ 18.2-36.1. Certain conduct punishable as involuntary manslaughter.

A. Any person who, as a result of driving under the influence in violation of clause (ii), (iii), or (iv) of § 18.2-266 or any local ordinance substantially similar thereto unintentionally causes the death of another person, shall be guilty of involuntary manslaughter.

B. If, in addition, the conduct of the defendant was so gross, wanton and culpable as to show a reckless disregard for human life, he shall be guilty of aggravated involuntary manslaughter, a felony punishable by a term of imprisonment of not less than one nor more than 20 years, one year of which shall be a mandatory minimum term of imprisonment.

C. The provisions of this section shall not preclude prosecution under any other homicide statute. This section shall not preclude any other revocation or suspension required by law. The driver's license of any person convicted under this section shall be revoked pursuant to subsection B of § 46.2-391.

D. *Any person violating any provision of this section shall be assessed a mandatory minimum fine of \$2,500.*

§ 18.2-51.4. Maiming, etc., of another resulting from driving while intoxicated.

A. Any person who, as a result of driving while intoxicated in violation of § 18.2-266 or any local ordinance substantially similar thereto in a manner so gross, wanton and culpable as to show a reckless disregard for human life, unintentionally causes the serious bodily injury of another person resulting in permanent and significant physical impairment shall be guilty of a Class 6 felony. *In addition, such person shall be fined a mandatory minimum fine of \$2,500.* The driver's license of any person convicted under this section shall be revoked pursuant to subsection B of § 46.2-391.

B. The provisions of Article 2 (§ 18.2-266 et seq.) of Chapter 7 of Title 18.2 shall apply, mutatis mutandis, upon arrest for a violation of this section.

§ 18.2-268.3. Refusal of tests; penalties; procedures.

A. It shall be unlawful for a person who is arrested for a violation of § 18.2-266, 18.2-266.1, or subsection B of § 18.2-272 or of a similar ordinance to unreasonably refuse to have samples of his blood or breath or both blood and breath taken for chemical tests to determine the alcohol or drug content of his blood as required by § 18.2-268.2 and any person who so unreasonably refuses is guilty of a violation of this section.

B. When a person is arrested for a violation of § 18.2-51.4, 18.2-266, 18.2-266.1 or, subsection B of § 18.2-272 or of a similar ordinance and such person refuses to permit blood or breath or both blood and breath samples to be taken for testing as required by § 18.2-268.2, the arresting officer shall advise the person, from a form provided by the Office of the Executive Secretary of the Supreme Court, that (i) a person who operates a motor vehicle upon a highway in the Commonwealth is deemed thereby, as a condition of such operation, to have consented to have samples of his blood and breath taken for chemical tests to determine the alcohol or drug content of his blood, (ii) a finding of unreasonable refusal to consent may be admitted as evidence at a criminal trial, (iii) the unreasonable refusal to do so constitutes grounds for the revocation of the privilege of operating a motor vehicle upon the highways

60 of the Commonwealth, (iv) the criminal penalty for unreasonable refusal within 10 years of a prior
61 conviction for driving while intoxicated or unreasonable refusal is a Class 2 misdemeanor, and (v) the
62 criminal penalty for unreasonable refusal within 10 years of any two prior convictions for driving while
63 intoxicated or unreasonable refusal is a Class 1 misdemeanor. The form from which the arresting officer
64 shall advise the person arrested shall contain a brief statement of the law requiring the taking of blood
65 or breath samples, a statement that a finding of unreasonable refusal to consent may be admitted as
66 evidence at a criminal trial, and the penalties for refusal.

67 C. The arresting officer shall, under oath before the magistrate, execute the form and certify, (i) that
68 the defendant has refused to permit blood or breath or both blood and breath samples to be taken for
69 testing; (ii) that the officer has read the portion of the form described in subsection B to the arrested
70 person; (iii) that the arrested person, after having had the portion of the form described in subsection B
71 read to him, has refused to permit such sample or samples to be taken; and (iv) how many, if any,
72 violations of this section, § 18.2-266, or any offense described in subsection E of § 18.2-270 the arrested
73 person has been convicted of within the last 10 years. Such sworn certification shall constitute probable
74 cause for the magistrate to issue a warrant or summons charging the person with unreasonable refusal.
75 The magistrate shall attach the executed and sworn advisement form to the warrant or summons. The
76 warrant or summons for a first offense under this section shall be executed in the same manner as a
77 criminal warrant or summons. If the person arrested has been taken to a medical facility for treatment or
78 evaluation of his medical condition, the arresting officer may read the advisement form to the person at
79 the medical facility, and issue, on the premises of the medical facility, a summons for a violation of this
80 section in lieu of securing a warrant or summons from the magistrate. The magistrate or arresting
81 officer, as the case may be, shall forward the executed advisement form and warrant or summons to the
82 appropriate court.

83 D. A first violation of this section is a civil offense and subsequent violations are criminal offenses.
84 For a first offense the court shall suspend the defendant's privilege to drive for a period of one year.
85 This suspension period is in addition to the suspension period provided under § 46.2-391.2.

86 If a person is found to have violated this section and within 10 years prior to the date of the refusal
87 he was found guilty of any of the following: a violation of this section, a violation of § 18.2-266, or a
88 violation of any offense listed in subsection E of § 18.2-270, arising out of separate occurrences or
89 incidents, he is guilty of a Class 2 misdemeanor and the court shall suspend the defendant's privilege to
90 drive for a period of three years. This suspension period is in addition to the suspension period provided
91 under § 46.2-391.2.

92 If a person is found guilty of a violation of this section and within 10 years prior to the date of the
93 refusal he was found guilty of any two of the following: a violation of this section, a violation of
94 § 18.2-266, or a violation of any offense listed in subsection E of § 18.2-270 arising out of separate
95 occurrences or incidents, he is guilty of a Class 1 misdemeanor and the court shall suspend the
96 defendant's privilege to drive for a period of three years. This suspension period is in addition to the
97 suspension period provided under § 46.2-391.2.

98 E. Any person convicted of any criminal violation under this section shall be fined a mandatory
99 minimum fine of \$1,050.

100 § 18.2-270. Penalty for driving while intoxicated; subsequent offense; prior conviction.

101 A. Except as otherwise provided herein, any person violating any provision of § 18.2-266 shall be
102 guilty of a Class 1 misdemeanor with a mandatory minimum fine of ~~\$250~~ \$2,250. If the person's blood
103 alcohol level as indicated by the chemical test administered as provided in this article was at least 0.15,
104 but not more than 0.20, he shall be confined in jail for an additional mandatory minimum period of five
105 days or, if the level was more than 0.20, for an additional mandatory minimum period of 10 days.

106 B. 1. Any person convicted of a second offense committed within less than five years after a prior
107 offense under § 18.2-266 shall upon conviction of the second offense be punished by a mandatory
108 minimum fine of ~~\$500~~ \$2,250 and by confinement in jail for not less than one month nor more than one
109 year. Twenty days of such confinement shall be a mandatory minimum sentence.

110 2. Any person convicted of a second offense committed within a period of five to 10 years of a prior
111 offense under § 18.2-266 shall upon conviction of the second offense be punished by a mandatory
112 minimum fine of ~~\$500~~ \$2,250 and by confinement in jail for not less than one month. Ten days of such
113 confinement shall be a mandatory minimum sentence.

114 3. Upon conviction of a second offense within 10 years of a prior offense, if the person's blood
115 alcohol level as indicated by the chemical test administered as provided in this article was at least 0.15,
116 but not more than 0.20, he shall be confined in jail for an additional mandatory minimum period of 10
117 days or, if the level was more than 0.20, for an additional mandatory minimum period of 20 days. In
118 addition, such person shall be fined a mandatory minimum fine of ~~\$500~~ \$2,250.

119 C. 1. Any person convicted of three offenses of § 18.2-266 committed within a 10-year period shall
120 upon conviction of the third offense be guilty of a Class 6 felony. The sentence of any person convicted
121 of three offenses of § 18.2-266 committed within a 10-year period shall include a mandatory minimum

122 sentence of 90 days, unless the three offenses were committed within a five-year period, in which case
 123 the sentence shall include a mandatory minimum sentence of confinement for six months. In addition,
 124 such person shall be fined a mandatory minimum fine of ~~\$1,000~~ \$2,500.

125 2. The punishment of any person convicted of a fourth or subsequent offense of § 18.2-266
 126 committed within a 10-year period shall, upon conviction, include a mandatory minimum term of
 127 imprisonment of one year. In addition, such person shall be fined a mandatory minimum fine of ~~\$1,000~~
 128 \$2,500. Unless otherwise modified by the court, the defendant shall remain on probation and under the
 129 terms of any suspended sentence for the same period as his operator's license was suspended, not to
 130 exceed three years.

131 3. The vehicle solely owned and operated by the accused during the commission of a felony
 132 violation of § 18.2-266 shall be subject to seizure and forfeiture. After an arrest for a felony violation of
 133 § 18.2-266, the Commonwealth may file an information in accordance with § 19.2-386.1. If the
 134 information is filed, the Commonwealth shall notify the Commissioner of the Department of Motor
 135 Vehicles that the property is subject to seizure. The Commissioner shall act upon such notification
 136 pursuant to the provisions for certification and notice applicable to a seizure under § 19.2-375, except
 137 that the Commissioner shall serve the written notice of the seizure upon the registered owner and lienor
 138 in accordance with the requirements of § 8.01-296. Any seizure shall be stayed until conviction and the
 139 exhaustion of all appeals at which time, if the information has been filed, the Commonwealth shall
 140 immediately commence seizure of the property in accordance with § 19.2-386.2.

141 An immediate family member of the owner of any motor vehicle for which an information has been
 142 filed under this section who was not the driver at the time of the violation may petition the court in
 143 which such information was filed for the release of the motor vehicle. If the immediate family member
 144 proves by a preponderance of the evidence that his immediate family has only one motor vehicle and
 145 will suffer a substantial hardship if that motor vehicle is seized and forfeited, the court, in its discretion,
 146 may release the vehicle.

147 In the event the vehicle was sold to a bona fide purchaser subsequent to the arrest but prior to
 148 seizure in order to avoid seizure and forfeiture, the Commonwealth shall have a right of action against
 149 the seller for the proceeds of the sale.

150 D. In addition to the penalty otherwise authorized by this section or § 16.1-278.9, any person
 151 convicted of a violation of § 18.2-266 committed while transporting a person 17 years of age or younger
 152 shall be (i) fined an additional minimum of \$500 and not more than \$1,000 and (ii) sentenced to a
 153 mandatory minimum period of confinement of five days.

154 E. For the purpose of determining the number of offenses committed by, and the punishment
 155 appropriate for, a person under this section, an adult conviction of any person, or finding of guilty in the
 156 case of a juvenile, under the following shall be considered a conviction of § 18.2-266: (i) the provisions
 157 of § 18.2-36.1 or the substantially similar laws of any other state or of the United States, (ii) the
 158 provisions of §§ 18.2-51.4, 18.2-266, former § 18.1-54 (formerly § 18-75), the ordinance of any county,
 159 city or town in this Commonwealth or the laws of any other state or of the United States substantially
 160 similar to the provisions of § 18.2-51.4, or § 18.2-266, or (iii) the provisions of subsection A of
 161 § 46.2-341.24 or the substantially similar laws of any other state or of the United States.

162 F. Mandatory minimum punishments imposed pursuant to this section shall be cumulative, and
 163 mandatory minimum terms of confinement shall be served consecutively. However, in no case shall
 164 punishment imposed hereunder exceed the applicable statutory maximum Class 1 misdemeanor term of
 165 confinement or fine upon conviction of a first or second offense, or Class 6 felony term of confinement
 166 or fine upon conviction of a third or subsequent offense.

167 § 18.2-272. Driving after forfeiture of license.

168 A. Any person who drives or operates any motor vehicle, engine or train in the Commonwealth
 169 during the time for which he was deprived of the right to do so (i) upon conviction of a violation of
 170 § 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,
 171 (iii) after his license has been revoked pursuant to § 46.2-389 or 46.2-391, or (iv) in violation of the
 172 terms of a restricted license issued pursuant to subsection E of § 18.2-271.1, is guilty of a Class 1
 173 misdemeanor except as otherwise provided in § 46.2-391, and is subject to administrative revocation of
 174 his driver's license pursuant to §§ 46.2-389 and 46.2-391. *In addition, such person shall be fined a*
 175 *mandatory minimum fine of \$1,050.* Any person convicted of three violations of this section committed
 176 within a 10-year period is guilty of a Class 6 felony. *In addition, such person shall be fined a*
 177 *mandatory minimum fine of \$2,500.*

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

181 B. Regardless of compliance with any other restrictions on his privilege to drive or operate a motor
 182 vehicle, it shall be a violation of this section for any person whose privilege to drive or operate a motor

183 vehicle has been restricted, suspended or revoked because of a violation of § 18.2-36.1, 18.2-51.4,
184 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
185 drive or operate a motor vehicle while he has a blood alcohol content of 0.02 percent or more.

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

191 § 46.2-300. Driving without license prohibited; penalties.

192 No person, except those expressly exempted in §§ 46.2-303 through 46.2-308, shall drive any motor
193 vehicle on any highway in the Commonwealth until such person has applied for a driver's license, as
194 provided in this article, satisfactorily passed the examination required by § 46.2-325, and obtained a
195 driver's license, nor unless the license is valid.

196 A violation of this section is a Class 2 misdemeanor. A second or subsequent violation of this
197 section is a Class 1 misdemeanor. *In addition, for a second or subsequent offense, such person shall be*
198 *fined a mandatory minimum fine of \$1,050.*

199 § 46.2-301. Driving while license, permit, or privilege to drive suspended or revoked.

200 A. In addition to any other penalty provided by this section, any motor vehicle administratively
201 impounded or immobilized under the provisions of § 46.2-301.1 may, in the discretion of the court, be
202 impounded or immobilized for an additional period of up to 90 days upon conviction of an offender for
203 driving while his driver's license, learner's permit, or privilege to drive a motor vehicle has been
204 suspended or revoked for (i) a violation of §§ 18.2-36.1, 18.2-51.4, 18.2-266 or § 46.2-341.24 or a
205 substantially similar ordinance or law in any other jurisdiction or (ii) driving after adjudication as an
206 habitual offender, where such adjudication was based in whole or in part on an alcohol-related offense,
207 or where such person's license has been administratively suspended under the provisions of § 46.2-391.2.
208 However, if, at the time of the violation, the offender was driving a motor vehicle owned by another
209 person, the court shall have no jurisdiction over such motor vehicle but may order the impoundment or
210 immobilization of a motor vehicle owned solely by the offender at the time of arrest. All costs of
211 impoundment or immobilization, including removal or storage expenses, shall be paid by the offender
212 prior to the release of his motor vehicle.

213 B. Except as provided in §§ 46.2-304 and 46.2-357, no resident or nonresident (i) whose driver's
214 license, learner's permit, or privilege to drive a motor vehicle has been suspended or revoked or (ii) who
215 has been directed not to drive by any court or by the Commissioner, or (iii) who has been forbidden, as
216 prescribed by operation of any statute of the Commonwealth or a substantially similar ordinance of any
217 county, city or town, to operate a motor vehicle in the Commonwealth shall thereafter drive any motor
218 vehicle or any self-propelled machinery or equipment on any highway in the Commonwealth until the
219 period of such suspension or revocation has terminated or the privilege has been reinstated. A clerk's
220 notice of suspension of license for failure to pay fines or costs given in accordance with § 46.2-395 shall
221 be sufficient notice for the purpose of maintaining a conviction under this section. For the purposes of
222 this section, the phrase "motor vehicle or any self-propelled machinery or equipment" shall not include
223 mopeds.

224 C. A violation of subsection B is a Class 1 misdemeanor. A third or subsequent offense occurring
225 within a 10-year period shall include a mandatory minimum term of confinement in jail of 10 days.
226 However, the court shall not be required to impose a mandatory minimum term of confinement in any
227 case where a motor vehicle is operated in violation of this section in a situation of apparent extreme
228 emergency which requires such operation to save life or limb. *In addition, for a second or subsequent*
229 *offense occurring within a ten-year period, such person shall be fined a mandatory minimum fine of*
230 *\$1,050.*

231 D. Upon a violation of subsection B, the court shall suspend the person's license or privilege to drive
232 a motor vehicle for the same period for which it had been previously suspended or revoked. In the event
233 the person violated subsection B by driving during a period of suspension or revocation which was not
234 for a definite period of time, the court shall suspend the person's license, permit or privilege to drive for
235 an additional period not to exceed 90 days, to commence upon the expiration of the previous suspension
236 or revocation or to commence immediately if the previous suspension or revocation has expired.

237 E. Any person who operates a motor vehicle or any self-propelled machinery or equipment in
238 violation of the terms of a restricted license issued pursuant to subsection E of § 18.2-271.1 is not guilty
239 of a violation of this section but is guilty of a violation of § 18.2-272.

240 § 46.2-341.19. Controlled substance felony; disqualification.

241 No person shall use a commercial motor vehicle in the commission of any felony involving
242 manufacturing, distributing or dispensing a controlled substance or possession with intent to
243 manufacture, distribute or dispense such controlled substance. For the purpose of this section, a
244 controlled substance shall be defined as provided in § 102 (6) of the federal Controlled Substances Act

(21 U.S.C. § 802 (6)) and includes all substances listed on Schedules I through V of 21 C.F.R. Part 1308 as they may be revised from time to time.

Violation of this section shall constitute a separate and distinct offense and any person violating this section shall be guilty of a Class 1 misdemeanor. Punishment for a violation of this section shall be separate and apart from any punishment received from the commission of the primary felony. *In addition, such person shall be fined a mandatory minimum fine of \$2,250.*

The Commissioner shall, upon receiving a record of a conviction of a violation of this section, disqualify for life any person who is convicted of such violation.

§ 46.2-341.28. Penalty for driving commercial motor vehicle while intoxicated; subsequent offense; prior conviction.

Any person violating any provision of subsection A of § 46.2-341.24 shall be guilty of a Class 1 misdemeanor, *and shall be fined a mandatory minimum fine of \$2,250.*

Any person convicted of a second offense committed within less than five years after a first offense under subsection A of § 46.2-341.24 shall be punishable by a *mandatory minimum* fine of ~~not less than \$200 nor more than \$2,500~~ \$2,250, 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. Any person convicted of a second offense committed within a period of five to 10 years of a first offense under subsection A of § 46.2-341.24 shall be punishable by a *mandatory minimum* fine of ~~not less than \$200 nor more than \$2,500~~ \$2,250, and by confinement in jail for not less than one month nor more than one year. Any person convicted of a third offense or subsequent offense committed within 10 years of an offense under subsection A of § 46.2-341.24 shall be punishable by a *mandatory minimum* fine of ~~not less than \$500 nor more than \$2,500~~ \$2,250, and by confinement in jail for not less than two months nor more than one year. Thirty days of such confinement shall be a mandatory minimum sentence if the third or subsequent offense occurs within less than five years. Ten days of such confinement shall be a mandatory minimum sentence if the third or subsequent offense occurs within a period of five to 10 years of a first offense.

For the purposes of this section a conviction or finding of not innocent in the case of a juvenile under (i) § 18.2-51.4 or § 18.2-266, (ii) the ordinance of any county, city or town in this Commonwealth substantially similar to the provisions of § 18.2-51.4 or § 18.2-266, (iii) subsection A of § 46.2-341.24, or (iv) the laws of any other state substantially similar to the provisions of §§ 18.2-51.4, 18.2-266 or subsection A of § 46.2-341.24, shall be considered a prior conviction.

§ 46.2-357. Operation of motor vehicle or self-propelled machinery or equipment by habitual offender prohibited; penalty; enforcement of section.

A. It shall be unlawful for any person determined or adjudicated an habitual offender to drive any motor vehicle or self-propelled machinery or equipment on the highways of the Commonwealth while the revocation of the person's driving privilege remains in effect. However, the revocation determination shall not prohibit the person from operating any farm tractor on the highways when it is necessary to move the tractor from one tract of land used for agricultural purposes to another tract of land used for agricultural purposes, provided that the distance between the said tracts of land is no more than five miles.

B. Except as provided in subsection D, any person found to be an habitual offender under this article, who is thereafter convicted of driving a motor vehicle or self-propelled machinery or equipment in the Commonwealth while the revocation determination is in effect, shall be punished as follows:

1. If such driving does not of itself endanger the life, limb, or property of another, such person shall be guilty of a Class 1 misdemeanor punishable by a mandatory minimum term of confinement in jail of 10 days except in cases wherein such operation is necessitated in situations of apparent extreme emergency that require such operation to save life or limb, the sentence, or any part thereof, may be suspended. *In addition, such person shall be fined a mandatory minimum fine of \$1,050.*

2. If such driving of itself endangers the life, limb, or property of another or takes place while such person is in violation of §§ 18.2-36.1, 18.2-51.4, 18.2-266 or § 46.2-341.24, irrespective of whether the driving of itself endangers the life, limb or property of another and the person has been previously convicted of a violation of §§ 18.2-36.1, 18.2-51.4, 18.2-266 or § 46.2-341.24, such person shall be guilty of a felony punishable by confinement in a state correctional facility for not less than one year nor more than five years, one year of which shall be a mandatory minimum term of confinement or, in the discretion of the jury or the court trying the case without a jury, by mandatory minimum confinement in jail for a period of 12 months. *In addition, such person shall be fined a mandatory minimum fine of \$3,000.* However, in cases wherein such operation is necessitated in situations of apparent extreme emergency that require such operation to save life or limb, the sentence, or any part thereof, may be suspended. For the purposes of this section, an offense in violation of a valid local ordinance, or law of any other jurisdiction, which ordinance or law is substantially similar to any provision of law herein shall be considered an offense in violation of such provision of law.

3. If the offense of driving while a determination as an habitual offender is in effect is a second or subsequent such offense, such person shall be punished as provided in subdivision 2 of this subsection, irrespective of whether the offense, of itself, endangers the life, limb, or property of another.

C. For the purpose of enforcing this section, in any case in which the accused is charged with driving a motor vehicle or self-propelled machinery or equipment while his license, permit, or privilege to drive is suspended or revoked or is charged with driving without a license, the court before hearing the charge shall determine whether the person has been determined an habitual offender and, by reason of this determination, is barred from driving a motor vehicle or self-propelled machinery or equipment on the highways in the Commonwealth. If the court determines the accused has been determined to be an habitual offender and finds there is probable cause that the alleged offense under this section is a felony, it shall certify the case to the circuit court of its jurisdiction for trial.

D. Notwithstanding the provisions of subdivisions 2 and 3 of subsection B, following conviction and prior to imposition of sentence with the consent of the defendant, the court may order the defendant to be evaluated for and to participate in the Boot Camp Incarceration Program pursuant to § 19.2-316.1, or the Detention Center Incarceration Program pursuant to § 19.2-316.2, or the Diversion Center Incarceration Program pursuant to § 19.2-316.3.

§ 46.2-391. Revocation of license for multiple convictions of driving while intoxicated; exception; petition for restoration of privilege.

A. The Commissioner shall forthwith revoke and not thereafter reissue for three years the driver's license of any person on receiving a record of the conviction of any person who (i) is adjudged to be a second offender in violation of the provisions of subsection A of § 46.2-341.24 (driving a commercial motor vehicle under the influence of drugs or intoxicants), or § 18.2-266 (driving under the influence of drugs or intoxicants), if the subsequent violation occurred within 10 years of the prior violation, or (ii) is convicted of any two or more offenses of § 18.2-272 (driving while the driver's license has been forfeited for a conviction under § 18.2-266) if the second or subsequent violation occurred within 10 years of the prior offense. However, if the Commissioner has received a copy of a court order authorizing issuance of a restricted license as provided in subsection E of § 18.2-271.1, he shall proceed as provided in the order of the court. For the purposes of this subsection, an offense in violation of a valid local ordinance, or law of any other jurisdiction, which ordinance or law is substantially similar to any provision of Virginia law herein shall be considered an offense in violation of such provision of Virginia law. Additionally, in no event shall the Commissioner reinstate the driver's license of any person convicted of a violation of § 18.2-266, or of a substantially similar valid local ordinance or law of another jurisdiction, until receipt of notification that such person has successfully completed an alcohol safety action program if such person was required by court order to do so unless the requirement for completion of the program has been waived by the court for good cause shown. A conviction includes a finding of not innocent in the case of a juvenile.

B. The Commissioner shall forthwith revoke and not thereafter reissue the driver's license of any person after receiving a record of the conviction of any person (i) convicted of a violation of § 18.2-36.1 or § 18.2-51.4 or (ii) convicted of three offenses arising out of separate incidents or occurrences within a period of 10 years in violation of the provisions of subsection A of § 46.2-341.24 or § 18.2-266, or a substantially similar ordinance or law of any other jurisdiction, or any combination of three such offenses. A conviction includes a finding of not innocent in the case of a juvenile.

C. Any person who has had his driver's license revoked in accordance with subsection B of this section may petition the circuit court of his residence, or, if a nonresident of Virginia, any circuit court:

1. For restoration of his privilege to drive a motor vehicle in the Commonwealth after the expiration of five years from the date of his last conviction. On such petition, and for good cause shown, the court may, in its discretion, restore to the person the privilege to drive a motor vehicle in the Commonwealth on condition that such person install an ignition interlock system in accordance with § 18.2-270.1 on all motor vehicles, as defined in § 46.2-100, owned by or registered to him, in whole or in part, for a period of at least six months, and upon whatever other conditions the court may prescribe, subject to the provisions of law relating to issuance of driver's licenses, if the court is satisfied from the evidence presented that: (i) at the time of his previous convictions, the petitioner was addicted to or psychologically dependent on the use of alcohol or other drugs; (ii) at the time of the hearing on the petition, he is no longer addicted to or psychologically dependent on the use of alcohol or other drugs; and (iii) the defendant does not constitute a threat to the safety and welfare of himself or others with regard to the driving of a motor vehicle. However, prior to acting on the petition, the court shall order that an evaluation of the person, to include an assessment of his degree of alcohol abuse and the appropriate treatment therefor, if any, be conducted by a Virginia Alcohol Safety Action Program and recommendations therefrom be submitted to the court. The court may, in lieu of restoring the person's privilege to drive, authorize the issuance of a restricted license for a period not to exceed five years in accordance with the provisions of § 18.2-270.1 and subsection E of § 18.2-271.1. The court shall notify the Virginia Alcohol Safety Action Program which shall during the term of the restricted license monitor

the person's compliance with the terms of the restrictions imposed by the court. Any violation of the restrictions shall be reported to the court, and the court may then modify the restrictions or revoke the license.

2. For a restricted license to authorize such person to drive a motor vehicle in the Commonwealth in the course of his employment and to drive a motor vehicle to and from his home to the place of his employment after the expiration of three years from the date of his last conviction. The court may order that a restricted license for such purposes be issued in accordance with the procedures of subsection E of § 18.2-271.1, if the court is satisfied from the evidence presented that (i) at the time of the previous convictions, the petitioner was addicted to or psychologically dependent on the use of alcohol or other drugs; (ii) at the time of the hearing on the petition, he is no longer addicted to or psychologically dependent on the use of alcohol or such other drugs; and (iii) the defendant does not constitute a threat to the safety and welfare of himself and others with regard to the driving of a motor vehicle. The court shall prohibit the person to whom a restricted license is issued from operating a motor vehicle that is not equipped with a functioning, certified ignition interlock system during all or any part of the term for which the restricted license is issued, in accordance with the provisions set forth in § 18.2-270.1. However, prior to acting on the petition, the court shall order that an evaluation of the person, to include an assessment of his degree of alcohol abuse and the appropriate treatment therefor, if any, be conducted by a Virginia Alcohol Safety Action Program and recommendations therefrom be submitted to the court. The Virginia Alcohol Safety Action Program shall during the term of the restricted license monitor the person's compliance with the terms of the restrictions imposed by the court. Any violation of the restrictions shall be reported to the court, and the court may then modify the restrictions or revoke the license.

The ignition interlock system installation requirement under subdivisions 1 and 2 of this subsection need only be satisfied once as to any single revocation under subsection B of this section for any person seeking restoration under subdivision 1 following the granting of a restricted license under subdivision 1 or 2.

D. Any person convicted of driving a motor vehicle or any self-propelled machinery or equipment (i) while his license is revoked pursuant to subsection A or B or (ii) in violation of the terms of a restricted license issued pursuant to subsection C shall, provided such revocation was based on at least one conviction for an offense committed after July 1, 1999, be punished as follows:

1. If such driving does not of itself endanger the life, limb, or property of another, such person shall be guilty of a Class 1 misdemeanor punishable by a *mandatory minimum fine of \$1,050 and a mandatory minimum term of confinement in jail of 10 days* except in cases wherein such operation is necessitated in situations of apparent extreme emergency that require such operation to save life or limb, the sentence, or any part thereof, may be suspended.

2. a. If such driving (i) of itself endangers the life, limb, or property of another or (ii) takes place while such person is in violation of §§ 18.2-36.1, 18.2-51.4, 18.2-266, subsection A of § 46.2-341.24, or a substantially similar law or ordinance of another jurisdiction, irrespective of whether the driving of itself endangers the life, limb or property of another and the person has been previously convicted of a violation of §§ 18.2-36.1, 18.2-51.4, 18.2-266, subsection A of § 46.2-341.24, or a substantially similar local ordinance, or law of another jurisdiction, such person shall be guilty of a felony punishable by confinement in a state correctional facility for not less than one year nor more than five years, one year of which shall be a mandatory minimum term of confinement or, in the discretion of the jury or the court trying the case without a jury, by mandatory minimum confinement in jail for a period of 12 months and no portion of such sentence shall be suspended or run concurrently with any other sentence. *In addition, such person shall be fined a mandatory minimum fine of \$3,000.*

b. However, in cases wherein such operation is necessitated in situations of apparent extreme emergency that require such operation to save life or limb, the sentence, or any part thereof, may be suspended.

3. If any such offense of driving is a second or subsequent violation, such person shall be punished as provided in subdivision 2 of this subsection, irrespective of whether the offense, of itself, endangers the life, limb, or property of another.

E. Notwithstanding the provisions of subdivisions 2 and 3 of subsection D, following conviction and prior to imposition of sentence with the consent of the defendant, the court may order the defendant to be evaluated for and to participate in the Boot Camp Incarceration Program pursuant to § 19.2-316.1, or the Detention Center Incarceration Program pursuant to § 19.2-316.2, or the Diversion Center Incarceration Program pursuant to § 19.2-316.3.

F. Any period of driver's license revocation imposed pursuant to this section shall not begin to expire until the person convicted has surrendered his license to the court or to the Department of Motor Vehicles.

G. Nothing in this section shall prohibit a person from operating any farm tractor on the highways

429 when it is necessary to move the tractor from one tract of land used for agricultural purposes to another
430 such tract of land when the distance between the tracts is no more than five miles.

431 H. Any person who operates a motor vehicle or any self-propelled machinery or equipment (i) while
432 his license is revoked pursuant to subsection A or B, or (ii) in violation of the terms of a restricted
433 license issued pursuant to subsection C, where the provisions of subsection D do not apply, shall be
434 guilty of a violation of § 18.2-272.

435 § 46.2-755.1. Additional annual license fees in certain localities.

436 In addition to taxes and license fees imposed pursuant to § 46.2-752 and to all other taxes and fees
437 permitted by law, the Hampton Roads Transportation Authority established pursuant to § 33.1-391.7 and
438 the Northern Virginia Transportation Authority established pursuant to § 15.2-4830 are authorized to
439 charge an additional non-refundable annual license fee in the amount of \$10 for each vehicle registered
440 in any county or city that is embraced by the respective Authority, for such vehicles subject to state
441 registration fees under this Title. Such additional license fees shall not, however, be charged for any
442 vehicle registered under the International Registration Plan developed by International Registration Plan,
443 Inc. *The fee authorized by this section shall not be collectable by or collected by any licensed motor*
444 *vehicle dealer.*

445 § 46.2-755.2. Additional initial registration fees in certain localities.

446 In addition to taxes and license fees imposed pursuant to § 46.2-752 and to all other taxes and fees
447 permitted by law, the Hampton Roads Transportation Authority established pursuant to § 33.1-391.7 and
448 the Northern Virginia Transportation Authority established pursuant to § 15.2-4830 are authorized to
449 charge an additional non-refundable initial, one-time registration fee on any vehicle registered in any
450 county or city that is embraced by the respective Authority, for such vehicles subject to state registration
451 fees under this Title. The fee shall be imposed at a rate of 1% of the value of the vehicle at the time
452 the vehicle is first registered in such county or city by the owner of the vehicle. The value of the
453 vehicle shall be determined on the same basis as is or would be used to determine the basis for motor
454 vehicle sales and use tax as set forth in Chapter 24 (§ 58.1-2400 et seq.) of Title 58.1. The fee
455 authorized by this section shall be assessed at the time the vehicle is first registered in the county or city
456 embraced by the respective Authority by the owner of the vehicle, and shall be imposed only once, so
457 long as the ownership of the vehicle upon which they are imposed remains unchanged. *The fee*
458 *authorized by this section shall not be collectable by or collected by any licensed motor vehicle dealer.*

459 The fee authorized by this section shall not be imposed upon (i) vehicles registered prior to January
460 1, 2008 unless the ownership of the vehicle changes on or after January 1, 2008; (ii) vehicles registered
461 under the International Registration Plan developed by International Registration Plan, Inc.; and (iii) any
462 vehicle for which the sole basis for imposing the fee would be a change in the ownership of the vehicle
463 due to (a) a gift to the spouse, son, or daughter of the transferor, (b) a transfer to a spouse, heir under
464 the will, or heir at law by intestate succession as a result of the death of the owner of the vehicle, or (c)
465 the addition or removal of a spouse.

466 § 46.2-817. Disregarding signal by law-enforcement officer to stop; eluding police; penalties.

467 A. Any person who, having received a visible or audible signal from any law-enforcement officer to
468 bring his motor vehicle to a stop, drives such motor vehicle in a willful and wanton disregard of such
469 signal or who attempts to escape or elude such law-enforcement officer, is guilty of a Class 3
470 misdemeanor. It shall be an affirmative defense to a charge of a violation of this subsection if the
471 defendant shows he reasonably believed he was being pursued by a person other than a law-enforcement
472 officer.

473 B. Any person who, having received a visible or audible signal from any law-enforcement officer to
474 bring his motor vehicle to a stop, drives such motor vehicle in a willful and wanton disregard of such
475 signal so as to interfere with or endanger the operation of the law-enforcement vehicle or endanger a
476 person is guilty of a Class 6 felony. *In addition, such person shall be fined a mandatory minimum fine*
477 *of \$2,500.* It shall be an affirmative defense to a charge of a violation of this subsection if the defendant
478 shows he reasonably believed he was being pursued by a person other than a law-enforcement officer.

479 C. When any person is convicted of an offense under this section, in addition to the other penalties
480 provided in this section, the driver's license of such person shall be suspended by the court for a period
481 of not less than thirty days nor more than one year. However, in any case where the speed of such
482 person is determined to have exceeded the maximum allowed by twenty miles per hour, his driver's
483 license shall be suspended by the court trying the case for a period of not less than ninety days. In case
484 of conviction and suspension, the court or judge shall order the surrender of the license to the court,
485 which shall dispose of it in accordance with the provisions of § 46.2-398.

486 § 46.2-865.1. Injuring another or causing the death of another while engaging in a race; penalties.

487 A. Any person who, while engaging in a race in violation of § 46.2-865 in a manner so gross,
488 wanton and culpable as to show a reckless disregard for human life:

489 1. Causes serious bodily injury to another person who is not involved in the violation of § 46.2-865
490 is guilty of a Class 6 felony. *In addition, such person shall be fined a mandatory minimum fine of*

\$2,500; or

2. Causes the death of another person is guilty of a felony punishable by a term of imprisonment of not less than one nor more than 20 years, one year of which shall be a mandatory minimum term of imprisonment. *In addition, such person shall be fined a mandatory minimum fine of \$3,000.*

B. Upon conviction, the court shall suspend the driver's license of such person for a period of not less than one year nor more than three years, and shall order the surrender of the license to be disposed of in accordance with the provisions of § 46.2-398.

§ 46.2-868. Reckless driving; penalties.

A. Every person convicted of reckless driving under the provisions of this article shall be guilty of a Class 1 misdemeanor.

B. Every person convicted of reckless driving under the provisions of this article who, when he committed the offense, (i) was driving without a valid operator's license due to a suspension or revocation for a moving violation and, (ii) as the sole and proximate result of his reckless driving, caused the death of another, is guilty of a Class 6 felony. *In addition, such person shall be fined a mandatory minimum fine of \$2,500.*

C. Every person convicted of § 46.2-852 (*Reckless driving in violation of reckless driving general rule*), where as a proximate result of such violation any person receives bodily injury; § 46.2-859 (*Reckless driving, passing a stopped school bus*); § 46.2-865 (*Reckless driving, racing*); or § 46.2-829 (*Reckless driving, passing or overtaking moving emergency vehicles*) shall be fined a mandatory minimum fine of \$2,250.

D. Every person convicted of a violation of § 46.2-862 (*Reckless driving, speeding*) shall be fined a mandatory minimum fine of \$120 for every mile per hour in excess of 25 miles per hour over the speed limit, up to a maximum of \$1,920.

§ 46.2-868.1. Aggressive driving; penalties.

A. A person is guilty of aggressive driving if (i) the person violates one or more of the following: § 46.2-802 (Drive on right side of highways), § 46.2-804 (Failure to observe lanes marked for traffic), § 46.2-816 (Following too closely), § 46.2-821 (Vehicles before entering certain highways shall stop or yield right-of-way), § 46.2-833.1 (Evasion of traffic control devices), § 46.2-838 (Passing when overtaking a vehicle), § 46.2-841 (When overtaking vehicle may pass on right), § 46.2-842 (Driver to give way to overtaking vehicle), § 46.2-842.1 (Driver to give way to certain overtaking vehicles on divided highway), § 46.2-843 (Limitations on overtaking and passing), any provision of Article 8 (§ 46.2-870 et seq.) of Chapter 8 of Title 46.2 (Speed), or § 46.2-888 (Stopping on highways); and (ii) that person is a hazard to another person or commits an offense in clause (i) with the intent to harass, intimidate, injure or obstruct another person.

B. Aggressive driving shall be punished as a Class 2 misdemeanor *with a mandatory minimum fine of \$1,000*. However, aggressive driving with the intent to injure another person shall be punished as a Class 1 misdemeanor *with a mandatory minimum fine of \$2,250*. In addition to the penalties described in this subsection, the court may require successful completion of an aggressive driving program.

§ 46.2-894. Duty of driver to stop, etc., in event of accident involving injury or death or damage to attended property; penalty.

The driver of any vehicle involved in an accident in which a person is killed or injured or in which an attended vehicle or other attended property is damaged shall immediately stop as close to the scene of the accident as possible without obstructing traffic, as provided in § 46.2-888, and report his name, address, driver's license number, and vehicle registration number forthwith to the State Police or local law-enforcement agency, to the person struck and injured if such person appears to be capable of understanding and retaining the information, or to the driver or some other occupant of the vehicle collided with or to the custodian of other damaged property. The driver shall also render reasonable assistance to any person injured in such accident, including taking such injured person to a physician, surgeon, or hospital if it is apparent that medical treatment is necessary or is requested by the injured person.

Where, because of injuries sustained in the accident, the driver is prevented from complying with the foregoing provisions of this section, the driver shall, as soon as reasonably possible, make the required report to the State Police or local law-enforcement agency and make a reasonable effort to locate the person struck, or the driver or some other occupant of the vehicle collided with, or the custodian of the damaged property, and report to such person or persons his name, address, driver's license number, and vehicle registration number.

Any person convicted of a violation of this section is guilty of (i) a Class 5 felony *with a mandatory minimum fine of \$2,500* if the accident results in injury to or the death of any person, or if the accident results in more than \$1000 of damage to property or (ii) a Class 1 misdemeanor if the accident results in damage of \$1000 or less to property.

§ 46.2-1086. Devices for emission of smoke screens, gas projectors or flame throwers; prohibited.

552 It shall be a Class 6 felony to install or to aid or abet in installing, in any manner, in or on any
553 motor vehicle any device, appliance, equipment, or instrument of any kind, character, or description, or
554 any part of such device, appliance, equipment, or instrument, designed for generating or emitting smoke,
555 thereby creating what is commonly known as a "smoke screen," or of emitting any gas or flame which
556 may be a hindrance or obstruction to traffic. It shall also be a Class 6 felony to knowingly possess or
557 drive on the highways any motor vehicle so equipped. *In addition, such person shall be fined a*
558 *mandatory minimum fine of \$2,500.*

559 Additionally, the driver's license of any person convicted of a violation of this section shall be
560 suspended for six months from the date of conviction.

561 The provisions of this section shall not apply to vehicles used in applying herbicides, insecticides, or
562 pesticides.

563 **2. That § 46.2-206.1 of the Code of Virginia is repealed.**