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HOUSE BILL NO. 957

Offered January 11, 2012

Prefiled January 11, 2012

A BILL to amend and reenact §§ 18.2-272, 46.2-389, and 46.2-391 of the Code of Virginia, relating to zero tolerance (0.02 percent BAC) for two-year period following restoration of driving privilege after DUI conviction.

Patrons—Bell, Robert B. and Dudenhefer

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-272, 46.2-389, and 46.2-391 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-272. Driving after forfeiture of license.

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of an offense set forth in subsection E of § 18.2-270, (ii) by § 18.2-271 or 46.2-391.2, (iii) after his license has been revoked pursuant to § 46.2-389 or 46.2-391, or (iv) in violation of the terms of a restricted license issued pursuant to subsection E of § 18.2-271.1, is guilty of a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

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

B. Regardless of compliance with any other restrictions on his privilege to drive or operate a motor vehicle, it shall be a violation of this section for any person whose privilege to drive or operate a motor vehicle has been restricted, suspended or revoked because of a violation of § 18.2-36.1, 18.2-51.4, 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 drive or operate a motor vehicle while he has a blood alcohol content of 0.02 percent or more. *Additionally, such blood alcohol content restriction (i) shall continue for two years following restoration of driving privileges otherwise restricted under a restricted license issued pursuant to subsection E of § 18.2-271.1 or (ii) when no restricted license is issued, shall be imposed for two years upon restoration of driving privileges following a suspension or revocation. The court shall order such blood alcohol content restriction at the time of conviction and shall transmit such order to the Department of Motor Vehicles. The Department shall note such restriction on the person's driver's license.*

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

C. Any person who drives or operates a motor vehicle without a certified ignition interlock system as required by § 46.2-391.01 is guilty of a Class 1 misdemeanor and is subject to administrative revocation of his driver's license pursuant to §§ 46.2-389 and 46.2-391.

§ 46.2-389. Required revocation for one year upon conviction or finding of guilty of certain offenses; exceptions.

A. The Commissioner shall forthwith revoke, and not thereafter reissue for a period of time specified in subsection B, except as provided in § 18.2-271 or § 18.2-271.1, the driver's license of any resident or nonresident on receiving a record of his conviction or a record of his having been found guilty in the case of a juvenile of any of the following crimes, committed in violation of a state law or a valid county, city, or town ordinance or law of the United States, or a law of any other state, substantially paralleling and substantially conforming to a like state law and to all changes and amendments of it:

1. Voluntary or involuntary manslaughter resulting from the driving of a motor vehicle;

2. Violation of § 18.2-266 or § 18.2-272, or subsection A of § 46.2-341.24 or violation of a substantially similar local ordinance;

3. Perjury or the making of a false affidavit to the Department under this chapter or any other law of the Commonwealth requiring the registration of motor vehicles or regulating their operation on the highways;

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59 4. The making of a false statement to the Department on any application for a driver's license;
60 5. Any crime punishable as a felony under the motor vehicle laws of the Commonwealth or any
61 other felony in the commission of which a motor vehicle is used;

62 6. Failure to stop and disclose his identity at the scene of the accident, on the part of a driver of a
63 motor vehicle involved in an accident resulting in the death of or injury to another person; or

64 7. Violation of § 18.2-36.1 or § 18.2-51.4.

65 B. Upon conviction of an offense set forth in subsection A, the person's driver's license shall be
66 revoked for one year; however, for a violation of subdivision A 1 or A 7, the driver's license shall be
67 revoked as provided in subsection B of § 46.2-391. However, in no such event shall the Commissioner
68 reinstate the driver's license of any person convicted of a violation of § 18.2-266, or of a substantially
69 similar valid local ordinance or law of another jurisdiction, until receipt of notification that such person
70 has successfully completed an alcohol safety action program if such person was required by a court to
71 do so unless the requirement for completion of the program has been waived by the court for good
72 cause shown.

73 C. *When a driver's license is revoked pursuant to this section for a violation of § 18.2-36.1,*
74 *18.2-51.4, 18.2-266, 18.2-272, or 46.2-341.24, or of a substantially similar valid local ordinance or law*
75 *of another jurisdiction, the provisions of subsection B of § 18.2-272 shall apply.*

76 § 46.2-391. Revocation of license for multiple convictions of driving while intoxicated; exception;
77 petition for restoration of privilege.

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

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

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

104 1. For restoration of his privilege to drive a motor vehicle in the Commonwealth after the expiration
105 of five years from the date of his last conviction. On such petition, and for good cause shown, the court
106 may, in its discretion, restore to the person the privilege to drive a motor vehicle in the Commonwealth
107 on condition that such person install an ignition interlock system in accordance with § 18.2-270.1 on all
108 motor vehicles, as defined in § 46.2-100, owned by or registered to him, in whole or in part, for a
109 period of at least six months, and upon whatever other conditions the court may prescribe, subject to the
110 provisions of law relating to issuance of driver's licenses, if the court is satisfied from the evidence
111 presented that: (i) at the time of his previous convictions, the petitioner was addicted to or
112 psychologically dependent on the use of alcohol or other drugs; (ii) at the time of the hearing on the
113 petition, he is no longer addicted to or psychologically dependent on the use of alcohol or other drugs;
114 and (iii) the defendant does not constitute a threat to the safety and welfare of himself or others with
115 regard to the driving of a motor vehicle. However, prior to acting on the petition, the court shall order
116 that an evaluation of the person, to include an assessment of his degree of alcohol abuse and the
117 appropriate treatment therefor, if any, be conducted by a Virginia Alcohol Safety Action Program and
118 recommendations therefrom be submitted to the court. The court may, in lieu of restoring the person's
119 privilege to drive, authorize the issuance of a restricted license for a period not to exceed five years in
120 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 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.

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

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

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

188 *I. When a driver's license is revoked pursuant to this section for a violation of § 18.2-36.1,*
189 *18.2-51.4, 18.2-266, 18.2-272, or 46.2-341.24, or of a substantially similar valid local ordinance or law*
190 *of another jurisdiction, the provisions of subsection B of § 18.2-272 shall apply.*

191 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
192 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**
193 **be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter**
194 **890 of the Acts of Assembly of 2011 requires the Virginia Criminal Sentencing Commission to**
195 **assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated amount of the**
196 **necessary appropriation is \$0 for periods of commitment to the custody of the Department of**
197 **Juvenile Justice.**