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**HOUSE BILL NO. 957****AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee for Courts of Justice  
on February 3, 2012)

(Patron Prior to Substitute—Delegate, Bell, Robert B.)

A *BILL to amend and reenact §§ 18.2-272 and 46.2-391 of the Code of Virginia, relating to zero tolerance (0.02 percent BAC) restriction following DUI conviction.*

**Be it enacted by the General Assembly of Virginia:****1. That §§ 18.2-272 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or of an offense set forth in subsection E of § 18.2-270, (ii) by § 18.2-271 or 46.2-391.2, (iii) after his license has been revoked pursuant to § 46.2-389 or 46.2-391, or (iv) in violation of the terms of a restricted license issued pursuant to subsection E of § 18.2-271.1, is guilty of a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 shall remain in effect, and the penalties set forth herein shall apply, for (i) three years following the suspension or revocation imposed for a violation of § 18.2-266, 18.2-268.3, 46.2-341.24, or a similar ordinance or law of another state or the United States, (ii) five years following the suspension or revocation imposed for a second offense of any violation set forth in clause (i), and (iii) two years following the restoration of driving privileges for any indefinite revocation imposed pursuant to subsection B of § 46.2-391. 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 imposed by the court or the Commissioner.*

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.

§ 46.2-391. 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

60 of another jurisdiction, until receipt of notification that such person has successfully completed an  
61 alcohol safety action program if such person was required by court order to do so unless the requirement  
62 for completion of the program has been waived by the court for good cause shown. A conviction  
63 includes a finding of not innocent in the case of a juvenile.

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

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

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

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

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

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

120 1. If such driving does not of itself endanger the life, limb, or property of another, such person shall  
121 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 when it is necessary to move the tractor from one tract of land used for agricultural purposes to another such tract of land when the distance between the tracts is no more than five miles.

H. Any person who operates 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, where the provisions of subsection D do not apply, shall be guilty of a violation of § 18.2-272.

*I. When a driver's license is revoked pursuant to this section for a violation of § 18.2-36.1, 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 of another jurisdiction, the provisions of subsection B of § 18.2-272 shall apply.*

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