

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 18.2-270, 18.2-271, and 46.2-391 of the Code of Virginia, relating to*  
 3 *penalty for driving while intoxicated; subsequent offense; license revocation; penalty.*

4 [H 1559]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**

7 **1. That §§ 18.2-270, 18.2-271, and 46.2-391 of the Code of Virginia are amended and reenacted as**  
 8 **follows:**

9 **§ 18.2-270. Penalty for driving while intoxicated; subsequent offense; prior conviction.**

10 A. Except as otherwise provided herein, any person violating any provision of § 18.2-266 shall be  
 11 guilty of a Class 1 misdemeanor with a mandatory minimum fine of \$250. If the person's blood alcohol  
 12 level as indicated by the chemical test administered as provided in this article or by any other  
 13 scientifically reliable chemical test performed on whole blood under circumstances reliably establishing  
 14 the identity of the person who is the source of the blood and the accuracy of the results (i) was at least  
 15 0.15, but not more than 0.20, he shall be confined in jail for an additional mandatory minimum period  
 16 of five days or, (ii) if the level was more than 0.20, for an additional mandatory minimum period of 10  
 17 days.

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

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

26 3. Upon conviction of a second offense within 10 years of a prior offense, if the person's blood  
 27 alcohol level as indicated by the chemical test administered as provided in this article or by any other  
 28 scientifically reliable chemical test performed on whole blood under circumstances reliably establishing  
 29 the identity of the person who is the source of the blood and the accuracy of the results (i) was at least  
 30 0.15, but not more than 0.20, he shall be confined in jail for an additional mandatory minimum period  
 31 of 10 days or, (ii) if the level was more than 0.20, for an additional mandatory minimum period of 20  
 32 days. In addition, such person shall be fined a mandatory minimum fine of \$500.

33 C. 1. Any person convicted of three offenses of § 18.2-266 committed within a 10-year period shall  
 34 upon conviction of the third offense be guilty of a Class 6 felony. The sentence of any person convicted  
 35 of three offenses of § 18.2-266 committed within a 10-year period shall include a mandatory minimum  
 36 sentence of 90 days, unless the three offenses were committed within a five-year period, in which case  
 37 the sentence shall include a mandatory minimum sentence of confinement for six months. In addition,  
 38 such person shall be fined a mandatory minimum fine of \$1,000.

39 2. *A person who has been convicted of § 18.2-36.1, 18.2-36.2, 18.2-51.4, 18.2-51.5, or a felony*  
 40 *violation of § 18.2-266 shall upon conviction of a subsequent violation of § 18.2-266 be guilty of a*  
 41 *Class 6 felony. The punishment of any person convicted of such a subsequent violation of § 18.2-266*  
 42 *shall include a mandatory minimum term of imprisonment of one year and a mandatory minimum fine of*  
 43 *\$1,000.*

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

50 3. 4. The vehicle solely owned and operated by the accused during the commission of a felony  
 51 violation of § 18.2-266 shall be subject to seizure and forfeiture. After an arrest for a felony violation of  
 52 § 18.2-266, the Commonwealth may file an information in accordance with § 19.2-386.34.

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

57 E. For the purpose of determining the number of offenses committed by, and the punishment  
58 appropriate for, a person under this section, an adult conviction of any person, or finding of guilty in the  
59 case of a juvenile, under the following shall be considered a conviction of § 18.2-266: (i) the provisions  
60 of § 18.2-36.1 or the substantially similar laws of any other state or of the United States, (ii) the  
61 provisions of §§ 18.2-51.4, 18.2-266, former § 18.1-54 (formerly § 18-75), the ordinance of any county,  
62 city or town in this Commonwealth or the laws of any other state or of the United States substantially  
63 similar to the provisions of § 18.2-51.4, or § 18.2-266, or (iii) the provisions of subsection A of  
64 § 46.2-341.24 or the substantially similar laws of any other state or of the United States.

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

70 **§ 18.2-271. Forfeiture of driver's license for driving while intoxicated.**

71 A. Except as provided in § 18.2-271.1, the judgment of conviction if for a first offense under  
72 § 18.2-266 or for a similar offense under any county, city, or town ordinance, or for a first offense  
73 under subsection A of § 46.2-341.24, shall of itself operate to deprive the person so convicted of the  
74 privilege to drive or operate any motor vehicle, engine or train in the Commonwealth for a period of  
75 one year from the date of such judgment. This suspension period shall be in addition to the suspension  
76 period provided under § 46.2-391.2.

77 B. If a person (i) is tried on a process alleging a second offense of violating § 18.2-266 or subsection  
78 A of § 46.2-341.24, or any substantially similar local ordinance, or law of any other jurisdiction, within  
79 ten years of a first offense for which the person was convicted, or found guilty in the case of a juvenile,  
80 under § 18.2-266 or subsection A of § 46.2-341.24 or any valid local ordinance or any law of any other  
81 jurisdiction substantially similar to § 18.2-266 or subsection A of § 46.2-341.24 and (ii) is convicted  
82 thereof, such conviction shall of itself operate to deprive the person so convicted of the privilege to  
83 drive or operate any motor vehicle, engine or train in the Commonwealth for a period of three years  
84 from the date of the judgment of conviction and such person shall have his license revoked as provided  
85 in subsection A of § 46.2-391. The court trying such case shall order the surrender of the person's  
86 driver's license, to be disposed of in accordance with § 46.2-398, and shall notify such person that his  
87 license has been revoked for a period of three years and that the penalty for violating that revocation is  
88 as set out in § 46.2-391. This suspension period shall be in addition to the suspension period provided  
89 under § 46.2-391.2. Any period of license suspension or revocation imposed pursuant to this section, in  
90 any case, shall run consecutively with any period of suspension for failure to permit a blood or breath  
91 sample to be taken as required by §§ 18.2-268.1 through 18.2-268.12 or §§ 46.2-341.26:1 through  
92 46.2-341.26:11 or any period of suspension for a previous violation of § 18.2-266, 18.2-266.1, or  
93 46.2-341.24.

94 C. If a person (i) is tried on a process alleging (a) *felony conviction of § 18.2-266* or (b) a third or  
95 subsequent offense of violating § 18.2-266 or subsection A of § 46.2-341.24, or any substantially similar  
96 local ordinance, or law of any other jurisdiction, within ~~ten~~ 10 years of two other offenses for which the  
97 person was convicted, or found not innocent in the case of a juvenile, under § 18.2-266 or subsection A  
98 of § 46.2-341.24 or any valid local ordinance or any law of any other jurisdiction substantially similar to  
99 § 18.2-266 or subsection A of § 46.2-341.24 and (ii) is convicted thereof, such conviction shall of itself  
100 operate to deprive the person so convicted of the privilege to drive or operate any motor vehicle, engine  
101 or train in the Commonwealth and such person shall not be eligible for participation in a program  
102 pursuant to § 18.2-271.1 and shall, upon such conviction, have his license revoked as provided in  
103 subsection B of § 46.2-391. The court trying such case shall order the surrender of the person's driver's  
104 license, to be disposed of in accordance with § 46.2-398, and shall notify such person that his license  
105 has been revoked indefinitely and that the penalty for violating that revocation is as set out in  
106 § 46.2-391.

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

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

113 **§ 46.2-391. Revocation of license for multiple convictions of driving while intoxicated; exception;  
114 petition for restoration of privilege.**

115 A. The Commissioner shall forthwith revoke and not thereafter reissue for three years the driver's  
116 license of any person on receiving a record of the conviction of any person who (i) is adjudged to be a  
117 second offender in violation of the provisions of subsection A of § 46.2-341.24 (driving a commercial

118 motor vehicle under the influence of drugs or intoxicants), or § 18.2-266 (driving under the influence of  
 119 drugs or intoxicants), if the subsequent violation occurred within 10 years of the prior violation, or (ii)  
 120 is convicted of any two or more offenses of § 18.2-272 (driving while the driver's license has been  
 121 forfeited for a conviction under § 18.2-266) if the second or subsequent violation occurred within 10  
 122 years of the prior offense. However, if the Commissioner has received a copy of a court order  
 123 authorizing issuance of a restricted license as provided in subsection E of § 18.2-271.1, he shall proceed  
 124 as provided in the order of the court. For the purposes of this subsection, an offense in violation of a  
 125 valid local ordinance, or law of any other jurisdiction, which ordinance or law is substantially similar to  
 126 any provision of Virginia law herein shall be considered an offense in violation of such provision of  
 127 Virginia law. Additionally, in no event shall the Commissioner reinstate the driver's license of any  
 128 person convicted of a violation of § 18.2-266, or of a substantially similar valid local ordinance or law  
 129 of another jurisdiction, until receipt of notification that such person has successfully completed an  
 130 alcohol safety action program if such person was required by court order to do so unless the requirement  
 131 for completion of the program has been waived by the court for good cause shown. A conviction  
 132 includes a finding of not innocent in the case of a juvenile.

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

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

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

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

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

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

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

190 1. If such driving does not of itself endanger the life, limb, or property of another, such person shall  
191 be guilty of a Class 1 misdemeanor punishable by a mandatory minimum term of confinement in jail of  
192 10 days except in cases wherein such operation is necessitated in situations of apparent extreme  
193 emergency that require such operation to save life or limb, the sentence, or any part thereof, may be  
194 suspended.

195 2. a. If such driving (i) of itself endangers the life, limb, or property of another or (ii) takes place  
196 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  
197 a substantially similar law or ordinance of another jurisdiction, irrespective of whether the driving of  
198 itself endangers the life, limb or property of another and the person has been previously convicted of a  
199 violation of §§ 18.2-36.1, 18.2-51.4, 18.2-266, subsection A of § 46.2-341.24, or a substantially similar  
200 local ordinance, or law of another jurisdiction, such person shall be guilty of a felony punishable by  
201 confinement in a state correctional facility for not less than one year nor more than five years, one year  
202 of which shall be a mandatory minimum term of confinement or, in the discretion of the jury or the  
203 court trying the case without a jury, by mandatory minimum confinement in jail for a period of 12  
204 months and no portion of such sentence shall be suspended or run concurrently with any other sentence.

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

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

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

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

219 G. Nothing in this section shall prohibit a person from operating any farm tractor on the highways  
220 when it is necessary to move the tractor from one tract of land used for agricultural purposes to another  
221 such tract of land when the distance between the tracts is no more than five miles.

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

226 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**  
227 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**  
228 **be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter**  
229 **3 of the Acts of Assembly of 2012, Special Session I, requires the Virginia Criminal Sentencing**  
230 **Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated**  
231 **amount of the necessary appropriation is \$0 for periods of commitment to the custody of the**  
232 **Department of Juvenile Justice.**