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SENATE BILL NO. 1272

Offered January 14, 2013

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

Patron—Norment

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

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

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

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

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

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

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

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

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 violation of § 18.2-266 shall upon conviction of a subsequent violation of § 18.2-266 be guilty of a Class 6 felony.

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

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

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

E. For the purpose of determining the number of offenses committed by, and the punishment

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appropriate for, a person under this section, an adult conviction of any person, or finding of guilty in the case of a juvenile, under the following shall be considered a conviction of § 18.2-266: (i) the provisions of § 18.2-36.1 or the substantially similar laws of any other state or of the United States, (ii) the provisions of §§ 18.2-51.4, 18.2-266, former § 18.1-54 (formerly § 18-75), the ordinance of any county, city or town in this Commonwealth or the laws of any other state or of the United States substantially similar to the provisions of § 18.2-51.4, or § 18.2-266, or (iii) the provisions of subsection A of § 46.2-341.24 or the substantially similar laws of any other state or of the United States.

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

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

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

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

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

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

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

§ 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 a *felony violation of § 18.2-266* 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

182 revoke the license.

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

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

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

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

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

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

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

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

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

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

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