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HOUSE BILL NO. 1639

Offered January 14, 2015

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A BILL to amend and reenact §§ 18.2-271.1 and 46.2-391.01 of the Code of Virginia, relating to DUI; persons convicted under laws of other states or federal law; restricted license; ignition interlock.

Patrons—Miller and Lindsey

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-271.1 and 46.2-391.01 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-271.1. Probation, education, and rehabilitation of person charged or convicted; person convicted under law of another state or federal law.

A. Any person convicted of a first or second offense of § 18.2-266, or any ordinance of a county, city, or town similar to the provisions thereof, or provisions of subsection A of § 46.2-341.24, shall be required by court order, as a condition of probation or otherwise, to enter into and successfully complete an alcohol safety action program in the judicial district in which such charge is brought or in any other judicial district upon such terms and conditions as the court may set forth. However, upon motion of a person convicted of any such offense following an assessment of the person conducted by an alcohol safety action program, the court, for good cause, may decline to order participation in such a program if the assessment by the alcohol safety action program indicates that intervention is not appropriate for such person. In no event shall such persons be permitted to enter any such program which is not certified as meeting minimum standards and criteria established by the Commission on the Virginia Alcohol Safety Action Program (VASAP) pursuant to this section and to § 18.2-271.2. However, any person charged with a violation of a first or second offense of § 18.2-266, or any ordinance of a county, city, or town similar to the provisions thereof, or provisions of subsection A of § 46.2-341.24, may, at any time prior to trial, enter into an alcohol safety action program in the judicial district in which such charge is brought or in any other judicial district. Any person who enters into such program prior to trial may pre-qualify with the program to have an ignition interlock system installed on any motor vehicle owned or operated by him. However, no ignition interlock company shall install an ignition interlock system on any such vehicle until a court issues to the person a restricted license with the ignition interlock restriction.

B. The court shall require the person entering such program under the provisions of this section to pay a fee of no less than \$250 but no more than \$300. A reasonable portion of such fee, as may be determined by the Commission on VASAP, but not to exceed 10 percent, shall be forwarded monthly to be deposited with the State Treasurer for expenditure by the Commission on VASAP, and the balance shall be held in a separate fund for local administration of driver alcohol rehabilitation programs. Upon a positive finding that the defendant is indigent, the court may reduce or waive the fee. In addition to the costs of the proceeding, fees as may reasonably be required of defendants referred for intervention under any such program may be charged.

C. Upon conviction of a violation of § 18.2-266 or any ordinance of a county, city or town similar to the provisions thereof, or subsection A of § 46.2-341.24, the court shall impose the sentence authorized by § 18.2-270 or 46.2-341.28 and the license revocation as authorized by § 18.2-271. In addition, if the conviction was for a second offense committed within less than 10 years after a first such offense, the court shall order that restoration of the person's license to drive be conditioned upon the installation of an ignition interlock system on each motor vehicle, as defined in § 46.2-100, owned by or registered to the person, in whole or in part, for a period of six months beginning at the end of the three year license revocation, unless such a system has already been installed for six months prior to that time pursuant to a restricted license order under subsection E of this section. Upon a finding that a person so convicted is required to participate in the program described herein, the court shall enter the conviction on the warrant, and shall note that the person so convicted has been referred to such program. The court may then proceed to issue an order in accordance with subsection E of this section, if the court finds that the person so convicted is eligible for a restricted license. If the court finds good cause for a person not to participate in such program or subsequently that such person has violated, without good cause, any of the conditions set forth by the court in entering the program, the court shall dispose of the case as if no program had been entered, in which event the revocation provisions of § 46.2-389 and subsection A of § 46.2-391 shall be applicable to the conviction. The court shall, upon final disposition of the case, send

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59 a copy of its order to the Commissioner of the Department of Motor Vehicles. If such order provides for
60 the issuance of a restricted license, the Commissioner of the Department of Motor Vehicles, upon receipt
61 thereof, shall issue a restricted license. Appeals from any such disposition shall be allowed as provided
62 by law. The time within which an appeal may be taken shall be calculated from the date of the final
63 disposition of the case or any motion for rehearing, whichever is later.

64 D. Any person who has been convicted ~~in~~ *under the law of another state or the United States* of the
65 ~~violation of a law of such state~~ *an offense* substantially similar to the provisions of § 18.2-266 or
66 subsection A of § 46.2-341.24, and whose privilege to operate a motor vehicle in this Commonwealth is
67 subject to revocation under the provisions of § 46.2-389 and subsection A of § 46.2-391, may petition
68 the general district court of the county or city in which he resides that he be given probation and
69 assigned to a program as provided in subsection A of this section and that, upon entry into such
70 program, he be issued an order in accordance with subsection E of this section. If the court finds that
71 such person would have qualified therefor if he had been convicted in this Commonwealth of a violation
72 of § 18.2-266 or subsection A of § 46.2-341.24, the court may grant the petition and may issue an
73 order in accordance with subsection E of this section as to the period of license suspension or revocation
74 imposed pursuant to § 46.2-389 or subsection A of § 46.2-391. *The court shall, as a condition of a*
75 *restricted license, prohibit such person from operating a motor vehicle that is not equipped with a*
76 *functioning certified ignition interlock system for a period of time not to exceed the period of license*
77 *suspension and restriction, not less than six consecutive months without alcohol-related violations of*
78 *interlock requirements.* Such order shall be conditioned upon the successful completion of a program by
79 the petitioner. If the court subsequently finds that such person has violated any of the conditions set
80 forth by the court, the court shall dispose of the case as if no program had been entered and shall notify
81 the Commissioner, who shall revoke the person's license in accordance with the provisions of § 46.2-389
82 or subsection A of § 46.2-391. A copy of the order granting the petition or subsequently revoking or
83 suspending such person's license to operate a motor vehicle shall be forthwith sent to the Commissioner
84 of the Department of Motor Vehicles.

85 No period of license suspension or revocation shall be imposed pursuant to this subsection which,
86 when considered together with any period of license suspension or revocation previously imposed for the
87 same offense ~~in any~~ *under the law of another state or the United States*, results in such person's license
88 being suspended for a period in excess of the maximum periods specified in this subsection.

89 E. Except as otherwise provided herein, whenever a person enters a certified program pursuant to this
90 section, and such person's license to operate a motor vehicle, engine or train in the Commonwealth has
91 been suspended or revoked, the court may, in its discretion and for good cause shown, provide that such
92 person be issued a restricted permit to operate a motor vehicle for any of the following purposes: (i)
93 travel to and from his place of employment; (ii) travel to and from an alcohol rehabilitation or safety
94 action program; (iii) travel during the hours of such person's employment if the operation of a motor
95 vehicle is a necessary incident of such employment; (iv) travel to and from school if such person is a
96 student, upon proper written verification to the court that such person is enrolled in a continuing
97 program of education; (v) travel for health care services, including medically necessary transportation of
98 an elderly parent or, as designated by the court, any person residing in the person's household with a
99 serious medical problem upon written verification of need by a licensed health professional; (vi) travel
100 necessary to transport a minor child under the care of such person to and from school, day care, and
101 facilities housing medical service providers; (vii) travel to and from court-ordered visitation with a child
102 of such person; (viii) travel to a screening, evaluation and education program entered pursuant to
103 § 18.2-251 or subsection H of § 18.2-258.1; (ix) travel to and from court appearances in which he is a
104 subpoenaed witness or a party and appointments with his probation officer and to and from any
105 programs required by the court or as a condition of probation; (x) travel to and from a place of religious
106 worship one day per week at a specified time and place; (xi) travel to and from appointments approved
107 by the Division of Child Support Enforcement of the Department of Social Services as a requirement of
108 participation in a court-ordered intensive case monitoring program for child support for which the
109 participant maintains written proof of the appointment, including written proof of the date and time of
110 the appointment, on his person; (xii) travel to and from jail to serve a sentence when such person has
111 been convicted and sentenced to confinement in jail and pursuant to § 53.1-131.1 the time to be served
112 is on weekends or nonconsecutive days; or (xiii) travel to and from the facility that installed or monitors
113 the ignition interlock in the person's vehicle. No restricted license issued pursuant to this subsection shall
114 permit any person to operate a commercial motor vehicle as defined in the Virginia Commercial Driver's
115 License Act (§ 46.2-341.1 et seq.). The court shall order the surrender of such person's license to operate
116 a motor vehicle to be disposed of in accordance with the provisions of § 46.2-398 and shall forward to
117 the Commissioner of the Department of Motor Vehicles a copy of its order entered pursuant to this
118 subsection, which shall specifically enumerate the restrictions imposed and contain such information
119 regarding the person to whom such a permit is issued as is reasonably necessary to identify such person.
120 The court shall also provide a copy of its order to the person so convicted who may operate a motor

vehicle on the order until receipt from the Commissioner of the Department of Motor Vehicles of a restricted license, if the order provides for a restricted license for that time period. A copy of such order and, after receipt thereof, the restricted license shall be carried at all times while operating a motor vehicle. Any person who operates a motor vehicle in violation of any restrictions imposed pursuant to this section shall be guilty of a violation of § 18.2-272. Such restricted license shall be conditioned upon enrollment within 15 days in, and successful completion of, a program as described in subsection A of this section. No restricted license shall be issued during the first four months of a revocation imposed pursuant to subsection B of § 18.2-271 or subsection A of § 46.2-391 for a second offense of the type described therein committed within 10 years of a first such offense. No restricted license shall be issued during the first year of a revocation imposed pursuant to subsection B of § 18.2-271 or subsection A of § 46.2-391 for a second offense of the type described therein committed within five years of a first such offense. No restricted license shall be issued during any revocation period imposed pursuant to subsection C of § 18.2-271 or subsection B of § 46.2-391. Notwithstanding the provisions of § 46.2-411, the fee charged pursuant to § 46.2-411 for reinstatement of the driver's license of any person whose privilege or license has been suspended or revoked as a result of a violation of § 18.2-266, subsection A of § 46.2-341.24 or of any ordinance of a county, city or town, or of any federal law or the laws of any other state similar to the provisions of § 18.2-266 or subsection A of § 46.2-341.24 shall be \$105. Forty dollars of such reinstatement fee shall be retained by the Department of Motor Vehicles as provided in § 46.2-411, \$40 shall be transferred to the Commission on VASAP, and \$25 shall be transferred to the Commonwealth Neurotrauma Initiative Trust Fund.

F. The court shall have jurisdiction over any person entering such program under any provision of this section until such time as the case has been disposed of by either successful completion of the program, or revocation due to ineligibility or violation of a condition or conditions imposed by the court, whichever shall first occur. Revocation proceedings shall be commenced by notice to show cause why the court should not revoke the privilege afforded by this section. Such notice shall be made by first-class mail to the last known address of such person, and shall direct such person to appear before the court in response thereto on a date contained in such notice, which shall not be less than 10 days from the date of mailing of the notice. Failure to appear in response to such notice shall of itself be grounds for revocation of such privilege. Notice of revocation under this subsection shall be sent forthwith to the Commissioner of the Department of Motor Vehicles.

G. For the purposes of this section, any court which has convicted a person of a violation of § 18.2-266, subsection A of § 46.2-341.24 or any ordinance of a county, city or town similar to the provisions of § 18.2-266 shall have continuing jurisdiction over such person during any period of license revocation related to that conviction, for the limited purposes of (i) referring such person to a certified alcohol safety action program, (ii) providing for a restricted permit for such person in accordance with the provisions of subsection E, and (iii) imposing terms, conditions and limitations for actions taken pursuant to clauses (i) and (ii), whether or not it took either such action at the time of the conviction. This continuing jurisdiction is subject to the limitations of subsection E that provide that no restricted license shall be issued during a revocation imposed pursuant to subsection C of § 18.2-271 or subsection B of § 46.2-391 or during the first four months or first year, whichever is applicable, of the revocation imposed pursuant to subsection B of § 18.2-271 or subsection A of § 46.2-391. The provisions of this subsection shall apply to a person convicted of a violation of § 18.2-266, subsection A of § 46.2-341.24 or any ordinance of a county, city or town similar to the provisions of § 18.2-266 on, after and at any time prior to July 1, 2003.

H. The State Treasurer, the Commission on VASAP or any city or county is authorized to accept any gifts or bequests of money or property, and any grant, loan, service, payment or property from any source, including the federal government, for the purpose of driver alcohol education. Any such gifts, bequests, grants, loans or payments shall be deposited in the separate fund provided in subsection B.

I. The Commission on VASAP, or any county, city, town, or any combination thereof may establish and, if established, shall operate, in accordance with the standards and criteria required by this subsection, alcohol safety action programs in connection with highway safety. Each such program shall operate under the direction of a local independent policy board chosen in accordance with procedures approved and promulgated by the Commission on VASAP. Local sitting or retired district court judges who regularly hear or heard cases involving driving under the influence and are familiar with their local alcohol safety action programs may serve on such boards. The Commission on VASAP shall establish minimum standards and criteria for the implementation and operation of such programs and shall establish procedures to certify all such programs to ensure that they meet the minimum standards and criteria stipulated by the Commission. The Commission shall also establish criteria for the administration of such programs for public information activities, for accounting procedures, for the auditing requirements of such programs and for the allocation of funds. Funds paid to the Commonwealth hereunder shall be utilized in the discretion of the Commission on VASAP to offset the costs of state

182 programs and local programs run in conjunction with any county, city or town and costs incurred by the
183 Commission. The Commission shall submit an annual report as to actions taken at the close of each
184 calendar year to the Governor and the General Assembly.

185 J. Notwithstanding any other provisions of this section or of § 18.2-271, nothing in this section shall
186 permit the court to suspend, reduce, limit, or otherwise modify any disqualification from operating a
187 commercial motor vehicle imposed under the provisions of the Virginia Commercial Driver's License
188 Act (§ 46.2-341.1 et seq.).

189 **§ 46.2-391.01. Administrative enforcement of ignition interlock requirements.**

190 If the court, as a condition of license restoration or as a condition of a restricted license under
191 subsection C or D of § 18.2-271.1 or § 46.2-391, or when required by § 18.2-270.1, fails to prohibit an
192 offender from operating a motor vehicle that is not equipped with a functioning, certified ignition
193 interlock system, the Commissioner shall enforce the requirements relating to installation of such
194 systems in accordance with the provisions of § 18.2-270.1.

195 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
196 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**
197 **be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter**
198 **2 of the Acts of Assembly of 2014, Special Session I, requires the Virginia Criminal Sentencing**
199 **Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated**
200 **amount of the necessary appropriation cannot be determined for periods of commitment to the**
201 **custody of the Department of Juvenile Justice.**