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HOUSE BILL NO. 909

House Amendments in [] - February 10, 2020

A BILL to amend and reenact §§ 18.2-251, 46.2-410.1, 46.2-819.2, and 53.1-127.3 of the Code of Virginia and to repeal §§ 18.2-259.1, 46.2-320.2, 46.2-390.1, 46.2-416.1, and 53.1-127.4 of the Code of Virginia, relating to driver's license suspensions for certain non-driving related offenses.

Patron Prior to Engrossment—Delegate Hayes

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-251, 46.2-410.1, 46.2-819.2, and 53.1-127.3 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-251. Persons charged with first offense may be placed on probation; conditions; substance abuse screening, assessment treatment and education programs or services; drug tests; costs and fees; violations; discharge.

Whenever any person who has not previously been convicted of any offense under this article or under any statute of the United States or of any state relating to narcotic drugs, marijuana, or stimulant, depressant, or hallucinogenic drugs, or has not previously had a proceeding against him for violation of such an offense dismissed as provided in this section, pleads guilty to or enters a plea of not guilty to possession of a controlled substance under § 18.2-250 or to possession of marijuana under § 18.2-250.1, the court, upon such plea if the facts found by the court would justify a finding of guilt, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him on probation upon terms and conditions. If the court defers further proceedings, at that time the court shall determine whether the clerk of court has been provided with the fingerprint identification information or fingerprints of the person, taken by a law-enforcement officer pursuant to § 19.2-390, and, if not, shall order that the fingerprints and photograph of the person be taken by a law-enforcement officer.

As a term or condition, the court shall require the accused to undergo a substance abuse assessment pursuant to § 18.2-251.01 or 19.2-299.2, as appropriate, and enter treatment and/or education program or services, if available, such as, in the opinion of the court, may be best suited to the needs of the accused based upon consideration of the substance abuse assessment. The program or services may be located in the judicial district in which the charge is brought or in any other judicial district as the court may provide. The services shall be provided by (i) a program licensed by the Department of Behavioral Health and Developmental Services, by a similar program which is made available through the Department of Corrections, (ii) a local community-based probation services agency established pursuant to § 9.1-174, or (iii) an ASAP program certified by the Commission on VASAP.

The court shall require the person entering such program under the provisions of this section to pay all or part of the costs of the program, including the costs of the screening, assessment, testing, and treatment, based upon the accused's ability to pay unless the person is determined by the court to be indigent.

As a condition of probation, the court shall require the accused (a) to successfully complete treatment or education program or services, (b) to remain drug and alcohol free during the period of probation and submit to such tests during that period as may be necessary and appropriate to determine if the accused is drug and alcohol free, (c) to make reasonable efforts to secure and maintain employment, and (d) to comply with a plan of at least 100 hours of community service for a felony and up to 24 hours of community service for a misdemeanor. ~~In addition to any community service required by the court pursuant to clause (d), if the court does not suspend or revoke the accused's license as a term or condition of probation for a violation of § 18.2-250.1, the court shall require the accused to comply with a plan of 50 hours of community service.~~ Such testing shall be conducted by personnel of the supervising probation agency or personnel of any program or agency approved by the supervising probation agency.

Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, and upon determining that the clerk of court has been provided with the fingerprint identification information or fingerprints of such person, the court shall discharge the person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without adjudication of guilt and is a conviction only for the purposes of applying this section in subsequent proceedings.

Notwithstanding any other provision of this section, whenever a court places an individual on

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59 probation upon terms and conditions pursuant to this section, such action shall be treated as a conviction
60 for purposes of §§ ~~18.2-259.1~~, § 22.1-315, and ~~46.2-390.1~~, and the driver's license forfeiture provisions
61 of those sections shall be imposed. However, if the court places an individual on probation upon terms
62 and conditions for a violation of § ~~18.2-250.1~~, such action shall not be treated as a conviction for
63 purposes of § ~~18.2-259.1~~ or ~~46.2-390.1~~, provided that a court (1) may suspend or revoke an individual's
64 driver's license as a term or condition of probation and (2) shall suspend or revoke an individual's
65 driver's license as a term or condition of probation for a period of six months if the violation of
66 § ~~18.2-250.1~~ was committed while such person was in operation of a motor vehicle. The provisions of
67 this paragraph shall not be applicable to any offense for which a juvenile has had his license suspended
68 or denied pursuant to § 16.1-278.9 for the same offense.

69 **§ 46.2-410.1. Judicial review of revocation or suspension by Commissioner.**

70 A. Notwithstanding the provisions of § 46.2-410, when the Commissioner orders a revocation or
71 suspension of a person's driver's license under the provisions of this chapter, ~~unless such revocation or~~
72 ~~suspension is required under § 46.2-390.1~~, the person so aggrieved may, in cases of manifest injustice,
73 within ~~sixty~~ 60 days of receipt of notice of the suspension or revocation, petition the circuit court of the
74 jurisdiction wherein he resides for a hearing to review the Commissioner's order. Manifest injustice is
75 defined as those instances where the Commissioner's order was the result of an error or was issued
76 without authority or jurisdiction. The person shall provide notice of his petition to the attorney for the
77 Commonwealth of that jurisdiction.

78 B. At the hearing on the petition, if the court finds that the Commissioner's order is manifestly unjust
79 the court may, notwithstanding any other provision of law, order the Commissioner to modify the order
80 or issue the person a restricted license in accordance with the provisions of § 18.2-271.1. For any action
81 under this section, no appeal shall lie from the determination of the circuit court.

82 C. This section shall not apply to any disqualification of eligibility to operate a commercial motor
83 vehicle imposed by the Commissioner pursuant to Article 6.1 (§ 46.2-341.1 et seq.) of this chapter.

84 **§ 46.2-819.2. Driving a motor vehicle from establishment where motor fuel offered for sale; [**
85 **suspension of license;] penalty.**

86 A. No person shall drive a motor vehicle off the premises of an establishment at which motor fuel
87 offered for retail sale was dispensed into the fuel tank of such motor vehicle unless payment for such
88 fuel has been made.

89 B. Any person who violates this section shall be liable for a civil penalty not to exceed \$250 and
90 applicable court costs if the matter proceeds to court.

91 C. The driver's license of any person found to have violated this section (i) may be suspended, for
92 the first offense, for a period of up to 30 days and (ii) shall be suspended for a period of 30 days for
93 the second and subsequent offenses.

94 D. Nothing herein shall preclude a prosecution for larceny.

95 **§ 53.1-127.3. Deferred or installment payment agreement for unpaid fees [; suspension of**
96 **privilege to operate a motor vehicle] .**

97 If a person is unable to pay in full the fees owed to the local correctional facility or regional jail
98 pursuant to § 53.1-131.3, the sheriff or jail superintendent shall establish a deferred or installment
99 payment agreement subject to the approval of the general district court. As a condition of every such
100 agreement, a person who enters into a deferred or installment payment agreement shall promptly inform
101 the sheriff or jail superintendent of any change of mailing address during the term of the agreement. The
102 sheriff or jail superintendent shall give notice to the person at the time the deferred or installment
103 payment agreement is entered into and the person shall certify on a form prescribed by the local
104 correctional facility or regional jail that he understands that upon his failure or refusal to pay in
105 accordance with a deferred or installment payment agreement, the person's privilege to operate a motor
106 vehicle shall be suspended pursuant to the provisions of § ~~46.2-320.2~~.

107 2. That §§ 18.2-259.1, 46.2-320.2, 46.2-390.1, 46.2-416.1, and 53.1-127.4 of the Code of Virginia are
108 repealed.

109 3. [That the provisions of this act shall serve as the resolution of the General Assembly in
110 expressing its opposition to 23 U.S.C. § 159(a)(3)(A).

111 4.] That the Governor shall provide the necessary certifications required pursuant to 23 U.S.C.
112 § 159(a)(3)(B) [by September 21, 2020] .