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SENATE BILL NO. 1213

Offered January 13, 2021

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A *BILL to amend and reenact § 18.2-271.1 of the Code of Virginia, relating to driver's license suspensions; restricted licenses; drug offenses.*

Patrons—Edwards, DeSteph and Surovell

Referred to Committee on the Judiciary

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-271.1 of the Code of Virginia is 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. 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, 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 a copy of its order to the Commissioner of the Department of Motor Vehicles. If such order provides for the issuance of a

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59 restricted license, the Commissioner of the Department of Motor Vehicles, upon receipt thereof, shall
60 issue a restricted license. The period of time during which the person (i) is prohibited from operating a
61 motor vehicle that is not equipped with an ignition interlock system, (ii) is required to have an ignition
62 interlock system installed on each motor vehicle owned by or registered to the person, in whole or in
63 part, or (iii) is required to use a remote alcohol monitoring device shall be calculated from the date the
64 person is issued a restricted license by the court; however, such period of time shall be tolled upon the
65 expiration of the restricted license issued by the court until such time as the person is issued a restricted
66 license by the Department of Motor Vehicles. Appeals from any such disposition shall be allowed as
67 provided by law. The time within which an appeal may be taken shall be calculated from the date of the
68 final disposition of the case or any motion for rehearing, whichever is later.

69 D. Any person who has been convicted under the law of another state or the United States of an
70 offense substantially similar to the provisions of § 18.2-266 or subsection A of § 46.2-341.24, and whose
71 privilege to operate a motor vehicle in this Commonwealth is subject to revocation under the provisions
72 of § 46.2-389 and subsection A of § 46.2-391, may petition the general district court of the county or
73 city in which he resides that he be given probation and assigned to a program as provided in subsection
74 A and that, upon entry into such program, he be issued an order in accordance with subsection E. If the
75 court finds that such person would have qualified therefor if he had been convicted in this
76 Commonwealth of a violation of § 18.2-266 or subsection A of § 46.2-341.24, the court may grant the
77 petition and may issue an order in accordance with subsection E as to the period of license suspension
78 or revocation imposed pursuant to § 46.2-389 or subsection A of § 46.2-391. The court (i) shall, as a
79 condition of a restricted license, prohibit such person from operating a motor vehicle that is not
80 equipped with a functioning, certified ignition interlock system for a period of time not to exceed the
81 period of license suspension and restriction, not less than six consecutive months without alcohol-related
82 violations of interlock requirements, and (ii) may, upon request of such person and as a condition of a
83 restricted license, require such person to use a remote alcohol monitoring device in accordance with the
84 provisions of subsection E of § 18.2-270.1; as it shall become effective on July 1, 2021. Such order
85 shall be conditioned upon the successful completion of a program by the petitioner. If the court
86 subsequently finds that such person has violated any of the conditions set forth by the court, the court
87 shall dispose of the case as if no program had been entered and shall notify the Commissioner, who
88 shall revoke the person's license in accordance with the provisions of § 46.2-389 or subsection A of §
89 46.2-391. A copy of the order granting the petition or subsequently revoking or suspending such
90 person's license to operate a motor vehicle shall be forthwith sent to the Commissioner of the
91 Department of Motor Vehicles. The period of time during which the person (a) is prohibited from
92 operating a motor vehicle that is not equipped with an ignition interlock system or (b) is required to use
93 a remote alcohol monitoring device shall be calculated from the date the person is issued a restricted
94 license by the court; however, such period of time shall be tolled upon the expiration of the restricted
95 license issued by the court until such time as the person is issued a restricted license by the Department
96 of Motor Vehicles.

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

101 E. Except as otherwise provided herein, ~~whenever~~ if a person enters a certified program pursuant to
102 this section, and such person's license to operate a motor vehicle, engine, or train in the Commonwealth
103 has been suspended or revoked, *or a person's license to operate a motor vehicle, engine, or train in the*
104 *Commonwealth has been suspended or revoked pursuant to former § 18.2-259.1 or 46.2-390.1*, the court
105 may, in its discretion and for good cause shown, provide that such person be issued a restricted permit
106 to operate a motor vehicle for any of the following purposes: (i) travel to and from his place of
107 employment; (ii) travel to and from an alcohol rehabilitation or safety action program; (iii) travel during
108 the hours of such person's employment if the operation of a motor vehicle is a necessary incident of
109 such employment; (iv) travel to and from school if such person is a student, upon proper written
110 verification to the court that such person is enrolled in a continuing program of education; (v) travel for
111 health care services, including medically necessary transportation of an elderly parent or, as designated
112 by the court, any person residing in the person's household with a serious medical problem upon written
113 verification of need by a licensed health professional; (vi) travel necessary to transport a minor child
114 under the care of such person to and from school, day care, and facilities housing medical service
115 providers; (vii) travel to and from court-ordered visitation with a child of such person; (viii) travel to a
116 screening, evaluation, and education program entered pursuant to § 18.2-251 or subsection H of
117 § 18.2-258.1; (ix) travel to and from court appearances in which he is a subpoenaed witness or a party
118 and appointments with his probation officer and to and from any programs required by the court or as a
119 condition of probation; (x) travel to and from a place of religious worship one day per week at a
120 specified time and place; (xi) travel to and from appointments approved by the Division of Child

121 Support Enforcement of the Department of Social Services as a requirement of participation in an
 122 administrative or court-ordered intensive case monitoring program for child support for which the
 123 participant maintains written proof of the appointment, including written proof of the date and time of
 124 the appointment, on his person; (xii) travel to and from jail to serve a sentence when such person has
 125 been convicted and sentenced to confinement in jail and pursuant to § 53.1-131.1 the time to be served
 126 is on weekends or nonconsecutive days; (xiii) travel to and from the facility that installed or monitors
 127 the ignition interlock in the person's vehicle; (xiv) travel to and from a job interview for which he
 128 maintains on his person written proof from the prospective employer of the date, time, and location of
 129 the job interview; or (xv) travel to and from the offices of the Virginia Employment Commission for the
 130 purpose of seeking employment. However, (a) any such person who is eligible to receive a restricted
 131 license as provided in subsection C of § 18.2-270.1 or (b) any such person ordered to use a remote
 132 alcohol monitoring device pursuant to subsection E of § 18.2-270.1; as it shall become effective on July
 133 1, 2021, who has a functioning, certified ignition interlock system as required by law may be issued a
 134 restricted permit to operate a motor vehicle for any lawful purpose. No restricted license issued pursuant
 135 to this subsection shall permit any person to operate a commercial motor vehicle as defined in the
 136 Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.). The court shall order the surrender of
 137 such person's license to operate a motor vehicle to be disposed of in accordance with the provisions of
 138 § 46.2-398 and shall forward to the Commissioner of the Department of Motor Vehicles a copy of its
 139 order entered pursuant to this subsection, which shall specifically enumerate the restrictions imposed and
 140 contain such information regarding the person to whom such a permit is issued as is reasonably
 141 necessary to identify such person. The court shall also provide a copy of its order to the person so
 142 convicted who may operate a motor vehicle on the order until receipt from the Commissioner of the
 143 Department of Motor Vehicles of a restricted license, if the order provides for a restricted license for
 144 that time period. A copy of such order and, after receipt thereof, the restricted license shall be carried at
 145 all times while operating a motor vehicle. Any person who operates a motor vehicle in violation of any
 146 restrictions imposed pursuant to this section is guilty of a violation of § 18.2-272. Such restricted license
 147 shall be conditioned upon enrollment within 15 days in, and successful completion of, a program as
 148 described in subsection A. No restricted license shall be issued during the first four months of a
 149 revocation imposed pursuant to subsection B of § 18.2-271 or subsection A of § 46.2-391 for a second
 150 offense of the type described therein committed within 10 years of a first such offense. No restricted
 151 license shall be issued during the first year of a revocation imposed pursuant to subsection B of §
 152 18.2-271 or subsection A of § 46.2-391 for a second offense of the type described therein committed
 153 within five years of a first such offense. No restricted license shall be issued during any revocation
 154 period imposed pursuant to subsection C of § 18.2-271 or subsection B of § 46.2-391. Notwithstanding
 155 the provisions of § 46.2-411, the fee charged pursuant to § 46.2-411 for reinstatement of the driver's
 156 license of any person whose privilege or license has been suspended or revoked as a result of a
 157 violation of § 18.2-266, subsection A of § 46.2-341.24 or of any ordinance of a county, city, or town, or
 158 of any federal law or the laws of any other state similar to the provisions of § 18.2-266 or subsection A
 159 of § 46.2-341.24 shall be \$105. Forty dollars of such reinstatement fee shall be retained by the
 160 Department of Motor Vehicles as provided in § 46.2-411, \$40 shall be transferred to the Commission on
 161 VASAP, and \$25 shall be transferred to the Commonwealth Neurotrauma Initiative Trust Fund.

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

172 G. For the purposes of this section, any court which has convicted a person of a violation of
 173 § 18.2-266, subsection A of § 46.2-341.24 or any ordinance of a county, city or town similar to the
 174 provisions of § 18.2-266 shall have continuing jurisdiction over such person during any period of
 175 license revocation related to that conviction, for the limited purposes of (i) referring such person to a
 176 certified alcohol safety action program, (ii) providing for a restricted permit for such person in
 177 accordance with the provisions of subsection E, and (iii) imposing terms, conditions and limitations for
 178 actions taken pursuant to clauses (i) and (ii), whether or not it took either such action at the time of the
 179 conviction. This continuing jurisdiction is subject to the limitations of subsection E that provide that no
 180 restricted license shall be issued during a revocation imposed pursuant to subsection C of § 18.2-271 or
 181 subsection B of § 46.2-391 or during the first four months or first year, whichever is applicable, of the

182 revocation imposed pursuant to subsection B of § 18.2-271 or subsection A of § 46.2-391. The
183 provisions of this subsection shall apply to a person convicted of a violation of § 18.2-266, subsection A
184 of § 46.2-341.24 or any ordinance of a county, city or town similar to the provisions of § 18.2-266 on,
185 after and at any time prior to July 1, 2003.

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

190 I. The Commission on VASAP, or any county, city, town, or any combination thereof may establish
191 and, if established, shall operate, in accordance with the standards and criteria required by this
192 subsection, alcohol safety action programs in connection with highway safety. Each such program shall
193 operate under the direction of a local independent policy board chosen in accordance with procedures
194 approved and promulgated by the Commission on VASAP. Local sitting or retired district court judges
195 who regularly hear or heard cases involving driving under the influence and are familiar with their local
196 alcohol safety action programs may serve on such boards. The Commission on VASAP shall establish
197 minimum standards and criteria for the implementation and operation of such programs and shall
198 establish procedures to certify all such programs to ensure that they meet the minimum standards and
199 criteria stipulated by the Commission. The Commission shall also establish criteria for the administration
200 of such programs for public information activities, for accounting procedures, for the auditing
201 requirements of such programs and for the allocation of funds. Funds paid to the Commonwealth
202 hereunder shall be utilized in the discretion of the Commission on VASAP to offset the costs of state
203 programs and local programs run in conjunction with any county, city or town and costs incurred by the
204 Commission. The Commission shall submit an annual report as to actions taken at the close of each
205 calendar year to the Governor and the General Assembly.

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