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HOUSE BILL NO. 1222

Offered January 19, 2022

A *BILL to amend and reenact §§ 46.2-391 and 46.2-391.2 of the Code of Virginia, relating to revocation of driver's licenses; completion of specialty dockets.*

Patron—Durant

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-391 and 46.2-391.2 of the Code of Virginia are amended and reenacted as follows:

§ 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.

A conviction that resulted from a final order being entered by a court after the successful completion of a Veterans Treatment Court Program, behavioral health docket, or other specialty docket established pursuant to § 18.2-254.2 or 18.2-254.3 or Rule 1:25 of the Rules of the Supreme Court of Virginia shall not be counted as a conviction for the purposes of clause (ii).

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, and the court shall give the recommendations

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59 such weight as the court deems appropriate. The court may, in lieu of restoring the person's privilege to
60 drive, authorize the issuance of a restricted license for a period not to exceed five years in accordance
61 with the provisions of § 18.2-270.1 and subsection E of § 18.2-271.1. The court shall notify the
62 Virginia Alcohol Safety Action Program which shall during the term of the restricted license monitor the
63 person's compliance with the terms of the restrictions imposed by the court. Any violation of the
64 restrictions shall be reported to the court, and the court may then modify the restrictions or revoke the
65 license.

66 2. For a restricted license to authorize such person to drive a motor vehicle in the Commonwealth in
67 the course of his employment and to drive a motor vehicle to and from his home to the place of his
68 employment after the expiration of three years from the date of his last conviction. The court may order
69 that a restricted license for such purposes be issued in accordance with the procedures of subsection E
70 of § 18.2-271.1, if the court is satisfied from the evidence presented that (i) at the time of the previous
71 convictions, the petitioner was addicted to or psychologically dependent on the use of alcohol or other
72 drugs; (ii) at the time of the hearing on the petition, he is no longer addicted to or psychologically
73 dependent on the use of alcohol or such other drugs; and (iii) the defendant does not constitute a threat
74 to the safety and welfare of himself and others with regard to the driving of a motor vehicle. The court
75 shall prohibit the person to whom a restricted license is issued from operating a motor vehicle that is
76 not equipped with a functioning, certified ignition interlock system during all or any part of the term for
77 which the restricted license is issued, in accordance with the provisions set forth in § 18.2-270.1.
78 However, prior to acting on the petition, the court shall order that an evaluation of the person, to
79 include an assessment of his degree of alcohol abuse and the appropriate treatment therefor, if any, be
80 conducted by a Virginia Alcohol Safety Action Program and recommendations therefrom be submitted
81 to the court, and the court shall give the recommendations such weight as the court deems appropriate.
82 The Virginia Alcohol Safety Action Program shall during the term of the restricted license monitor the
83 person's compliance with the terms of the restrictions imposed by the court. Any violation of the
84 restrictions shall be reported to the court, and the court may then modify the restrictions or revoke the
85 license.

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

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

94 1. If such driving does not of itself endanger the life, limb, or property of another, such person shall
95 be guilty of a Class 1 misdemeanor punishable by a mandatory minimum term of confinement in jail of
96 10 days except in cases wherein such operation is necessitated in situations of apparent extreme
97 emergency that require such operation to save life or limb, the sentence, or any part thereof, may be
98 suspended.

99 2. a. If such driving (i) of itself endangers the life, limb, or property of another or (ii) takes place
100 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
101 a substantially similar law or ordinance of another jurisdiction, irrespective of whether the driving of
102 itself endangers the life, limb or property of another and the person has been previously convicted of a
103 violation of §§ 18.2-36.1, 18.2-51.4, 18.2-266, subsection A of § 46.2-341.24, or a substantially similar
104 local ordinance, or law of another jurisdiction, such person shall be guilty of a felony punishable by
105 confinement in a state correctional facility for not less than one year nor more than five years, one year
106 of which shall be a mandatory minimum term of confinement or, in the discretion of the jury or the
107 court trying the case without a jury, by mandatory minimum confinement in jail for a period of 12
108 months and no portion of such sentence shall be suspended or run concurrently with any other sentence.

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

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

115 E. Notwithstanding the provisions of subdivisions 2 and 3 of subsection D, following conviction and
116 prior to imposition of sentence with the consent of the defendant, the court may order the defendant to
117 be evaluated for and to participate in the community corrections alternative program pursuant to
118 § 19.2-316.4.

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

Vehicles.

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

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

§ 46.2-391.2. Administrative suspension of license or privilege to operate a motor vehicle.

A. If a breath test is taken pursuant to § 18.2-268.2 or any similar ordinance or § 46.2-341.26:2 and (i) the results show a blood alcohol content of 0.08 percent or more by weight by volume or 0.08 grams or more per 210 liters of breath, or (ii) the results, for persons under 21 years of age, show a blood alcohol concentration of 0.02 percent or more by weight by volume or 0.02 grams or more per 210 liters of breath or (iii) the person refuses to submit to the breath or blood test in violation of § 18.2-268.3 or any similar ordinance or § 46.2-341.26:3, and upon issuance of a petition or summons, or upon issuance of a warrant by the magistrate, for a violation of § 18.2-51.4, 18.2-266, or 18.2-266.1, or any similar ordinance, or § 46.2-341.24 or upon the issuance of a warrant or summons by the magistrate or by the arresting officer at a medical facility for a violation of § 18.2-268.3, or any similar ordinance, or § 46.2-341.26:3, the person's license shall be suspended immediately or in the case of (a) an unlicensed person, (b) a person whose license is otherwise suspended or revoked, or (c) a person whose driver's license is from a jurisdiction other than the Commonwealth, such person's privilege to operate a motor vehicle in the Commonwealth shall be suspended immediately. The period of suspension of the person's license or privilege to drive shall be seven days, unless the petition, summons or warrant issued charges the person with a second or subsequent offense. If the person is charged with a second offense the suspension shall be for 60 days. If not already expired, the period of suspension shall expire on the day and time of trial of the offense charged on the petition, summons or warrant, except that it shall not so expire during the first seven days of the suspension. If the person is charged with a third or subsequent offense, the suspension shall be until *the sooner of* the day and time of trial of the offense charged on the petition, summons or warrant *or the date the court defers further proceedings upon a condition that the defendant enter and comply with the terms required by a Veterans Treatment Court Program, behavioral health docket or other specialty docket established pursuant to § 18.2-254.2 or 18.2-254.3 or Rule 1:25 of the Rules of the Supreme Court of Virginia.*

A law-enforcement officer, acting on behalf of the Commonwealth, shall serve a notice of suspension personally on the arrested person. When notice is served, the arresting officer shall promptly take possession of any driver's license held by the person and issued by the Commonwealth and shall promptly deliver it to the magistrate. Any driver's license taken into possession under this section shall be forwarded promptly by the magistrate to the clerk of the general district court or, as appropriate, the court with jurisdiction over juveniles of the jurisdiction in which the arrest was made together with any petition, summons or warrant, the results of the breath test, if any, and the report required by subsection

B. A copy of the notice of suspension shall be forwarded forthwith to both (1) the general district court or, as appropriate, the court with jurisdiction over juveniles of the jurisdiction in which the arrest was made and (2) the Commissioner. Transmission of this information may be made by electronic means.

The clerk shall promptly return the suspended license to the person at the expiration of the suspension. Whenever a suspended license is to be returned under this section or § 46.2-391.4, the person may elect to have the license returned in person at the clerk's office or by mail to the address on the person's license or to such other address as he may request.

B. Promptly after arrest and service of the notice of suspension, the arresting officer shall forward to the magistrate a sworn report of the arrest that shall include (i) information which adequately identifies the person arrested and (ii) a statement setting forth the arresting officer's grounds for belief that the person violated § 18.2-51.4, 18.2-266, or 18.2-266.1, or a similar ordinance, or § 46.2-341.24 or refused to submit to a breath or blood test in violation of § 18.2-268.3 or a similar ordinance or § 46.2-341.26:3. The report required by this subsection shall be submitted on forms supplied by the Supreme Court.

C. Any person whose license or privilege to operate a motor vehicle has been suspended under subsection A may, during the period of the suspension, request the general district court or, as appropriate, the court with jurisdiction over juveniles of the jurisdiction in which the arrest was made to review that suspension. The court shall review the suspension within the same time period as the court hears an appeal from an order denying bail or fixing terms of bail or terms of recognizance, giving this matter precedence over all other matters on its docket. If the person proves to the court by a preponderance of the evidence that the arresting officer did not have probable cause for the arrest, that the magistrate did not have probable cause to issue the warrant, or that there was not probable cause for

182 issuance of the petition, the court shall rescind the suspension, or that portion of it that exceeds seven
183 days if there was not probable cause to charge a second offense or 60 days if there was not probable
184 cause to charge a third or subsequent offense, and the clerk of the court shall forthwith, or at the
185 expiration of the reduced suspension time, (i) return the suspended license, if any, to the person unless
186 the license has been otherwise suspended or revoked, (ii) deliver to the person a notice that the
187 suspension under § 46.2-391.2 has been rescinded or reduced, and (iii) forward to the Commissioner a
188 copy of the notice that the suspension under § 46.2-391.2 has been rescinded or reduced. Otherwise, the
189 court shall affirm the suspension. If the person requesting the review fails to appear without just cause,
190 his right to review shall be waived.

191 The court's findings are without prejudice to the person contesting the suspension or to any other
192 potential party as to any proceedings, civil or criminal, and shall not be evidence in any proceedings,
193 civil or criminal.

194 D. If a person whose license or privilege to operate a motor vehicle is suspended under subsection A
195 is convicted under § 18.2-36.1, 18.2-51.4, 18.2-266, or 18.2-266.1 or subdivision A 1 or B 1 of
196 § 18.2-268.3, or any similar ordinance, or § 46.2-341.24 during the suspension imposed by subsection A,
197 and if the court decides to issue the person a restricted permit under subsection E of § 18.2-271.1 or
198 subsection E of § 18.2-268.3, such restricted permit shall not be issued to the person before the
199 expiration of the first seven days of the suspension imposed under subsection A.