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SENATE BILL NO. 841

Senate Amendments in [] - February 6, 2023

Prefiled December 28, 2022

A *BILL to amend and reenact §§ 18.2-271.1 and 46.2-392 of the Code of Virginia, relating to alcohol safety action programs.*

Patrons Prior to Engrossment—Senators Surovell and Stuart

Referred to Committee on Rehabilitation and Social Services**Be it enacted by the General Assembly of Virginia:****1. That §§ 18.2-271.1 and 46.2-392 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. 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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restricted license, the Commissioner of the Department of Motor Vehicles, upon receipt thereof, shall issue a restricted license. The period of time during which the person (i) is prohibited from operating a motor vehicle that is not equipped with an ignition interlock system, (ii) is required to have an ignition interlock system installed on each motor vehicle owned by or registered to the person, in whole or in part, or (iii) is required to use a remote alcohol monitoring device shall be calculated from the date the person is issued a restricted license by the court; however, such period of time shall be tolled upon the expiration of the restricted license issued by the court until such time as the person is issued a restricted license by the Department of Motor Vehicles. Appeals from any such disposition shall be allowed as provided by law. The time within which an appeal may be taken shall be calculated from the date of the final disposition of the case or any motion for rehearing, whichever is later.

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

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

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

administrative or court-ordered intensive case monitoring program for child support for which the participant maintains written proof of the appointment, including written proof of the date and time of the appointment, on his person; (xii) travel to and from jail to serve a sentence when such person has been convicted and sentenced to confinement in jail and pursuant to § 53.1-131.1 the time to be served is on weekends or nonconsecutive days; (xiii) travel to and from the facility that installed or monitors the ignition interlock in the person's vehicle; (xiv) travel to and from a job interview for which he maintains on his person written proof from the prospective employer of the date, time, and location of the job interview; or (xv) travel to and from the offices of the Virginia Employment Commission for the purpose of seeking employment. However, (a) any such person who is eligible to receive a restricted license as provided in subsection C of § 18.2-270.1 or (b) any such person ordered to use a remote alcohol monitoring device pursuant to subsection E of § 18.2-270.1 who has a functioning, certified ignition interlock system as required by law may be issued a restricted permit to operate a motor vehicle for any lawful purpose. No restricted license issued pursuant to this subsection shall permit any person to operate a commercial motor vehicle as defined in the Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.). The court shall order the surrender of such person's license to operate a motor vehicle to be disposed of in accordance with the provisions of § 46.2-398 and shall forward to the Commissioner of the Department of Motor Vehicles a copy of its order entered pursuant to this subsection, which shall specifically enumerate the restrictions imposed and contain such information regarding the person to whom such a permit is issued as is reasonably necessary to identify such person. 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 is 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. 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. Any person who is otherwise eligible to receive a restricted license issued in accordance with this subsection or as otherwise provided by law shall not be required to pay in full his fines and costs, as defined in § 19.2-354.1, before being issued such restricted license.

F. The court shall have jurisdiction over any person entering such program under any provision of this section, *or under any provision of § 46.2-392*, 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~~ *that* 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, or any reckless driving violation under Article 7 (§ 46.2-852 et seq.) of Chapter 8 of Title 46.2 [in which alcohol was a factor and such person was initially charged with 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, *or any reckless driving violation under Article 7 (§ 46.2-852 et seq.) of Chapter 8 of Title 46.2 [~~in which~~ alcohol was a factor and such person was initially charged with 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, *or* 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. *Such local independent policy board shall be* chosen in accordance with procedures approved and promulgated by the Commission on VASAP *[~~and~~ ,] shall include at least one criminal defense attorney who has specialized knowledge in representing persons charged with driving while intoxicated offenses [, and shall request a local attorney for the Commonwealth to sit on such board]* . 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 programs and local programs run in conjunction with any county, city or town and costs incurred by the Commission. The Commission shall submit an annual report as to actions taken at the close of each calendar year to the Governor and the General Assembly.

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

§ 46.2-392. Suspension of license or issuance of a restricted license on conviction of certain offenses; probationary conditions required; generally.

In addition to the penalties for careless driving and infliction of injury or death on vulnerable road users prescribed in § 46.2-816.1, the penalties for reckless driving prescribed in § 46.2-868, and the penalties for aggressive driving prescribed in § 46.2-868.1, the court may suspend the driver's license issued to a person convicted of careless driving and infliction of injury or death on vulnerable road users, reckless driving, or aggressive driving for a period of not less than 10 days nor more than six months and the court shall require the convicted person to surrender his license so suspended to the court where it will be disposed of in accordance with § 46.2-398.

Additionally, any person convicted of a reckless driving offense which the court has reason to believe is alcohol-related or drug-related may be required as a condition of probation or otherwise to enter into and successfully complete an alcohol safety action program. If the court suspends a person's driver's license for reckless driving and requires the person to enter into and successfully complete an alcohol safety action program, the Commissioner shall not reinstate the driver's license of the person until receipt of certification that the person has enrolled in ~~an~~ *and completed the* alcohol safety action program.

If a person so convicted has not obtained the license required by this chapter, or is a nonresident, the court may direct in the judgment of conviction that he shall not, for a period of not less than 10 days or more than six months as may be prescribed in the judgment, drive any motor vehicle in the Commonwealth. The court or the clerk of court shall transmit the license to the Commissioner along with the report of the conviction required to be sent to the Department.

The court may, in its discretion and for good cause shown, provide that such person be issued a restricted permit to operate a motor vehicle during the period of suspension for any of the purposes set forth in subsection E of § 18.2-271.1. The court shall order the surrender of such person's license to

244 operate a motor vehicle to be disposed of in accordance with the provisions of § 46.2-398 and shall
245 forward to the Commissioner a copy of its order entered pursuant to this subsection, which shall
246 specifically enumerate the restrictions imposed and contain such information regarding the person to
247 whom such a permit is issued as is reasonably necessary to identify such person. The court shall also
248 provide a copy of its order to the person who may operate a motor vehicle on the order until receipt
249 from the Commissioner of a restricted license. A copy of such order and, after receipt thereof, the
250 restricted license shall be carried at all times while operating a motor vehicle. Any person who operates
251 a motor vehicle in violation of any restrictions imposed pursuant to this section shall be punished as
252 provided in subsection C of § 46.2-301. No restricted license issued pursuant to this section shall permit
253 any person to operate a commercial motor vehicle as defined in the Virginia Commercial Driver's
254 License Act (§ 46.2-341.1 et seq.).

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