

VIRGINIA ACTS OF ASSEMBLY -- 1995 RECONVENED SESSION

CHAPTER 799

An Act to amend and reenact §§ 16.1-77, 46.2-351.1 through 46.2-358, 46.2-360 and 46.2-361 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 46.2-351.2, relating to the Habitual Offender Act; administrative process.

[S 828]

Approved April 6, 1995

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-77, 46.2-351.1 through 46.2-358, 46.2-360 and 46.2-361 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 46.2-351.2 as follows:

§ 16.1-77. Civil jurisdiction of general district courts.

Except as provided in Article 5 (§ 16.1-122.1 et seq.) of this chapter, each general district court shall have, within the limits of the territory it serves, civil jurisdiction as follows:

(1) Exclusive original jurisdiction of any claim to specific personal property or to any debt, fine or other money, or to damages for breach of contract or for injury done to property, real or personal, or for any injury to the person, which would be recoverable by action at law or suit in equity, when the amount of such claim does not exceed \$1,000 exclusive of interest and any attorney's fees contracted for in the instrument, and concurrent jurisdiction with the circuit courts having jurisdiction in such territory of any such claim when the amount thereof exceeds \$1,000 but does not exceed \$10,000, exclusive of interest and any attorney's fees contracted for in the instrument. However, this \$10,000 limit shall not apply with respect to distress warrants under the provisions of § 55-230.

(2) Jurisdiction to try and decide attachment cases when the amount of the plaintiff's claim does not exceed \$10,000 exclusive of interest and any attorney's fees contracted for in the instrument.

(3) Jurisdiction of actions of unlawful entry or detainer as provided in Article 13 (§ 8.01-124 et seq.) of Chapter 3 of Title 8.01, and in Chapter 13 (§ 55-217 et seq.) of Title 55, and the maximum jurisdictional limits prescribed in subdivision (1) shall not apply to any claim for damages sustained or rent proved to be owing where the premises were used by the occupant primarily for business, commercial or agricultural purposes.

(4) Except where otherwise specifically provided, all jurisdiction, power and authority over any civil action or proceeding conferred upon any general district court judge or magistrate under or by virtue of any provisions of the Code of Virginia.

(5) Jurisdiction to try and decide suits in interpleader involving personal property where the amount of money or value of the property is not more than the maximum jurisdictional limits of the general district court. The action shall be brought in accordance with the procedures for interpleader as set forth in § 8.01-364. However, the general district court shall not have any power to issue injunctions. Actions in interpleader may be brought by either the stakeholder or any of the claimants. The initial pleading shall be either by motion for judgment or by warrant in debt. The initial pleading shall briefly set forth the circumstances of the claim and shall name as defendant all parties in interest who are not parties plaintiff.

(6) Jurisdiction to try and decide any cases pursuant to § 2.1-346 of the Virginia Freedom of Information Act (§ 2.1-340 et seq.), for writs of mandamus or for injunctions.

(7) *Concurrent jurisdiction with the circuit courts having jurisdiction in such territory to adjudicate habitual offenders pursuant to the provisions of Article 9 (§ 46.2-351 et seq.) of Chapter 3 of Title 46.2.*

§ 46.2-351.1. Intervention required for certain offenders; fee; penalty; notice.

A. Upon receiving notification of any conviction entered on or after ~~January 1, 1994~~ July 1, 1995, which will result in the offender's being subject to ~~adjudication determination~~ as an habitual offender if convicted of one additional offense, the Commissioner shall, if any offense which may be used for such ~~adjudication determination~~ is alcohol related or drug related, notify the person that he shall report to an alcohol safety action program within sixty days of the date of such notice for intervention. Intervention shall be in accordance with § 18.2-271.1. The program shall provide the Commissioner with information of compliance.

B. Upon receiving notification of any conviction entered on or after ~~January 1, 1994~~ July 1, 1995, which will result in the offender's being subject to ~~adjudication determination~~ as an habitual offender if convicted of one additional offense, the Commissioner shall, if none of the offenses which may be used for such ~~adjudication determination~~ is alcohol related or drug related, notify the person that he shall attend a driver intervention interview within sixty days of the date of the notice. The interview shall be conducted by a representative of the Department, to be designated by the Commissioner. The representative shall review with the person attending the interview the habitual offender laws and

explain the consequences of future offenses and may refer the person to any driver improvement program approved by the Commissioner. A fee of thirty dollars shall be paid for attendance at a driver intervention interview.

C. The Commissioner shall suspend the driving privilege of any person who fails to report for intervention within the sixty-day period. The suspension shall continue until such time as the person reports.

D. Notice to report for intervention shall be sent by the Department by certified mail, return receipt requested, to the driver at the last known address supplied by the driver and on file with the Department.

E. Failure of the offender to attend as required or failure of the Department to notify the offender upon the second qualifying offense shall not be used to prohibit adjudication determination of the person as an habitual offender upon receipt of the third qualifying offense.

§ 46.2-351.2. Show cause order to be issued upon conviction of third qualifying offense.

A. Upon conviction of a defendant in any case involving driving while intoxicated in violation of § 18.2-266 or a substantially similar local ordinance, or any other offense which qualifies as one which might be used for determination as an habitual offender as set forth in subdivision 1 of § 46.2-351, the court shall immediately review the defendant's Department of Motor Vehicles transcript or abstract of convictions if available. Upon a finding that the instant conviction may bring the defendant within the definition of an habitual offender as set forth in subdivision 1 of § 46.2-351, the court shall forthwith issue an order which directs the defendant to appear and show cause why he should not be declared an habitual offender as provided in § 46.2-354. The show cause proceeding shall be held not less than 120 days after the date of such order. This order shall be immediately served upon the defendant. Such service shall be deemed adequate notice of the show cause proceeding, and no other notice shall be required.

B. At the time the abstract of conviction is transmitted to the Commissioner, the court shall order the Commissioner to certify the defendant's transcript or abstract of convictions, substantially in the manner provided for in § 46.2-215. One copy of such certified transcript or abstract shall be sent to the attorney for the Commonwealth in the jurisdiction of the court issuing the show cause order and one copy to the court. The Commissioner shall also mail, by first class mail, one copy to the defendant not less than thirty days prior to the date set in the court order for the show cause proceeding.

C. However, if the conviction of the third qualifying offense is appealed by the defendant, the pending show cause proceeding shall be stayed until such appeal is concluded. Should the defendant prevail on appeal, the show cause proceeding shall be dismissed, and the clerk shall file with the Department an order of dismissal. When the appeal is from a district court to a circuit court and a final order of conviction is entered, the circuit court then shall proceed under this section.

D. The Commissioner shall cause the Department's records to reflect the show cause proceeding and the disposition thereof.

§ 46.2-352. Commissioner to determine when person qualifies as habitual offender; when court may refuse to satisfy the Commissioner's determination under § 46.2-355; transcript or abstract as evidence.

A. Except when a show cause proceeding pursuant to § 46.2-351.2 followed the person's latest qualifying offense, the Commissioner shall certify determine, from the Department's records, substantially in the manner provided for in § 46.2-215, three transcripts or abstracts of those conviction documents which bring the whether a person named therein within the definition of qualifies as an habitual offender, as defined in § 46.2-351, to the attorney for the Commonwealth of the political subdivision in which the person resides according to the records of the Department or the attorney for the Commonwealth of the City of Richmond if the person is not a resident of the Commonwealth. Upon such determination, the Commissioner shall immediately cause the Department's records to indicate that the person has been determined to be an habitual offender and shall revoke the person's driver's license for the period of time specified in § 46.2-356. The Commissioner shall immediately notify the person of the revocation and of his right to file a petition and request a hearing as provided in subsection B. Such notice shall be mailed by certified mail, return receipt requested, deliver to addressee only, to the address for the person contained in the Department's records. The revocation shall become effective thirty days from the date on which the notice was mailed.

After certification determination of any person as an habitual offender, the Department shall not thereafter issue a new or duplicate driver's license to any such person until the Department has received (i) a show cause proceeding has been held under § 46.2-354 and a notice of dismissal has been received by the Department from the clerk of court as provided in § 46.2-355 copy of the court order reversing the determination of the Commissioner, (ii) an order of license restoration has been received by the Department as otherwise provided in this article, or (iii) receipt of a certification from the attorney for the Commonwealth that there is a valid reason not to file any information under § 46.2-353 make a determination that the person is an habitual offender. Any license issued in contravention of this provision shall be invalid.

B. In any proceeding under § 46.2-354, At any time after receipt of the revocation notice, as provided for in subsection A, or after otherwise learning of the revocation, a person who has been

determined to be an habitual offender may file, with the circuit court of the county or city in which he resides, or with the Circuit Court of the City of Richmond if the person is not a resident of the Commonwealth, a petition for a hearing and determination by the court that the person is not an habitual offender. Jurisdiction shall also lie in a circuit court to which venue may be changed.

The clerk of the court in which the petition is filed shall forward a copy of the petition to the Commissioner. Upon receiving the petition, the Commissioner shall suspend the revocation of the person's driver's license and, unless otherwise prohibited, his privilege to drive shall be restored pending a final determination by the court in accordance with § 46.2-355.

The court may refuse to enter ~~any~~ an order affirming the Commissioner's determination, as provided in § 46.2-355 if such certification the determination was made more than five years after the date of the most recent of the convictions which bring the person within the definition of habitual offender and the person would be otherwise eligible for restoration of his privilege under § 46.2-360.

The transcript or abstract of convictions which bring the person within the definition of an habitual offender may be admitted as evidence as provided in § 46.2-215 : The transcript or abstract and shall be prima facie evidence that the person named therein was duly convicted, or held not innocent in the case of a juvenile, by the court wherein the conviction or holding was made, of each offense shown by the transcript or abstract. If the person denies any of the facts as stated therein, he shall have the burden of proving that the fact is untrue.

§ 46.2-353. Commissioner to certify copy of conviction record; attorney for the Commonwealth or Attorney General to represent Commissioner.

Upon receipt of the copy of the petition filed pursuant to § 46.2-352, the Commissioner shall certify the transcript or abstract, substantially in the manner provided for in § 46.2-215, to the petitioner or his attorney of record, to the court in which the petition was filed and to the attorney for the Commonwealth. The attorney for the Commonwealth, on receiving the transcripts or abstracts transcript or abstract from the Commissioner provided for in § 46.2-352, shall forthwith file information against the person named therein in the court of record having jurisdiction of criminal offenses in the county, city, or town in which Department of Motor Vehicle records indicate to be the person's latest address. Jurisdiction also is in the court of record to which venue may be changed. In the event the person is a nonresident of the Commonwealth, the attorney for the Commonwealth of the City of Richmond shall file information against the accused person in the Circuit Court of the City of Richmond represent the Commissioner at the hearing on the petition. The clerk of the Circuit Court of the City of Richmond shall be allowed a fee of five dollars for each information filed against a nonresident accused. The fee shall be paid out of the state treasury from the appropriation for criminal charges on the certificate of the court as provided in § 19.2-334 and shall be taxed against the defendant as a part of the costs of the proceeding, if the defendant is found to be an habitual offender. In the event the accused is an inmate of a state or local correctional facility, jurisdiction for the proceedings shall be in the locality wherein the accused is confined.

Venue of any case may be changed upon motion of either party.

§ 46.2-354. Hearing by court; scope of hearing; procedure where conviction denied.

The court in which an information is filed as provided for in § 46.2-353, shall enter an order, which incorporates the transcript or abstract provided for in § 46.2-352 and is directed to the person named therein, to show cause why he should not be barred from driving a motor vehicle on the highways in the Commonwealth. A copy of the show cause order and the transcript or abstract shall be served on the person named therein in the manner prescribed by § 8.01-296 (1). The person may be served wherever he may be found in the Commonwealth. Service thereof on any nonresident of the Commonwealth may be made on the Secretary of the Commonwealth, who for this purpose shall be the statutory agent of the person. Service shall be made by leaving a copy of the order and the transcript or abstract in the hands of the Secretary or in his office in the City of Richmond, and this service shall be sufficient on the nonresident, provided that notice of the service and a copy of the order and the transcript or abstract are forthwith sent by certified or registered mail, with delivery receipt requested, by the Secretary to the person at his last known address, and an affidavit of compliance herewith by the Secretary or someone designated by him for that purpose and having knowledge of the compliance, shall forthwith be filed with the papers. For this service, a fee of seven dollars, which shall be paid into the general fund of the Commonwealth, shall be taxed against the defendant as a part of the cost of the proceeding, if he is found to be an habitual offender. At the conclusion of the show cause proceeding pursuant to § 46.2-351.2 or the hearing on the petition filed pursuant to § 46.2-353, the court shall determine whether the person is the same person named in the record and whether the person was convicted of each offense shown by the transcript or abstract.

If the person denies he was convicted or held not innocent of any offense necessary for a holding the determination that he is an habitual offender, and if the court cannot, on the evidence available to it, make a determination, the court may certify the decision of the issue to the court in which the conviction or holding of not innocent was made. The court to which the certification is made shall forthwith conduct a hearing to determine the issue and send a certified copy of its final order determining the issue to the court in which certified the information was filed decision of the issue and

to the Department.

§ 46.2-355. Determination of court.

If, pursuant to the show cause proceeding *or the hearing* as provided for in § 46.2-351.2 or § 46.2-354, the court finds that the person (i) is not the same person named in the transcript or abstract, (ii) is not an habitual offender under this article, or (iii) has qualifying offenses based solely upon convictions as set out in subdivision 1 c of § 46.2-351 ~~+~~ e resulting from a suspension or revocation ordered pursuant to § 46.2-395 for failure to pay fines and costs, or § 46.2-459 for failure to furnish proof of financial responsibility, and has paid in full all outstanding fines, costs and judgments, or if applicable has furnished proof of financial responsibility, relating to such convictions, the ~~proceeding shall be dismissed, and the clerk of the court shall file with the Department a notice of the dismissal~~ *court shall enter an order finding that the person is not an habitual offender and, unless otherwise prohibited, restoring his privilege to drive.* If the court finds that the person is the same person named in the transcript or abstract, that the person is an habitual offender and that clause (iii) above does not apply, the court shall ~~so find and by appropriate~~ *enter an order direct* (i) *revoking the person's license if the proceeding is pursuant to § 46.2-351.2 or (ii) affirming the determination of the Commissioner and the revocation of the person's license if the proceeding is pursuant to § 46.2-352 and directing the person not to operate a motor vehicle on the highways in the Commonwealth and to surrender to the court all licenses or permits to drive a motor vehicle on the highways in the Commonwealth for disposal in the manner provided in § 46.2-398.*

The clerk of the court shall file with the Department a copy of ~~the any order entered,~~ which shall become a part of the permanent records of the Department. Unless it appears from the record of the case that the person was present at the hearing in which the court found him to be an habitual offender, the clerk shall ~~cause to be mailed also mail a copy of the order to the person at his last known address appearing in the records of the case a copy of the habitual offender order.~~ *Such Mailing, by first class mail, shall be deemed adequate notice of the habitual offender order of the court , and no other notice shall be required to make the order effective if there was appropriate service of process for the show cause proceeding as provided in § 46.2-354.*

§ 46.2-356. Period during which habitual offender not to be licensed to drive motor vehicle.

No license to drive motor vehicles in Virginia shall be issued to an habitual offender; (i) for a period of ten years from the date of ~~the order of the court~~ *any final order of a court entered under this article or if no such order was entered then the notice of the determination by the Commissioner* finding the person to be an habitual offender; and (ii) until the privilege of the person to drive a motor vehicle in the Commonwealth has been restored by an order of a court ~~of record~~ entered in a proceeding as provided in this article.

§ 46.2-357. Operation of motor vehicle or self-propelled machinery or equipment by habitual offender prohibited; penalty; enforcement of section.

A. It shall be unlawful for any person to drive any motor vehicle or self-propelled machinery or equipment on the highways of the Commonwealth while the ~~order of the court prohibiting such operation~~ *revocation of the person's driving privilege* remains in effect. However, ~~an order the revocation determination~~ shall not prohibit the 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 tract of land used for agricultural purposes, provided that the distance between the said tracts of land is no more than five miles.

B. Any person found to be an habitual offender under this article, who is thereafter convicted of driving a motor vehicle or self-propelled machinery or equipment in the Commonwealth while the ~~order of the court prohibiting such driving~~ *revocation determination* is in effect, shall be punished as follows:

1. If such driving does not, of itself, endanger the life, limb, or property of another, such person shall be guilty of a misdemeanor punishable by confinement in jail for no more than ninety days and a fine of not more than \$2,500, either or both. However, ten days of any such confinement shall not be suspended except in cases designated in subdivision 2 (ii) of this ~~section~~ *subsection*.

2. If such driving, of itself, does endanger the life, limb, or property of another, such person shall be guilty of a felony punishable by confinement in ~~the a~~ state correctional facility for not less than one year nor more than five years or, in the discretion of the jury or the court trying the case without a jury, by confinement in jail for twelve months and no portion of such sentence shall be suspended except that (i) if the sentence is more than one year in ~~the a~~ state correctional facility, any portion of such sentence in excess of one year may be suspended or (ii) in cases wherein such operation is necessitated in situations of apparent extreme emergency which require such operation to save life or limb, said sentence, or any part thereof may be suspended.

3. If the offense of driving while ~~an order of adjudication~~ *a determination* as an habitual offender is in effect is a second or subsequent such offense, such person shall be punished as provided in subdivision 2 of this ~~section~~ *subsection*, irrespective of whether the offense, of itself, endangers the life, limb, or property of another.

C. For the purpose of enforcing this section, in any case in which the accused is charged with driving a motor vehicle or self-propelled machinery or equipment while his license, permit, or privilege

to drive is suspended or revoked or is charged with driving without a license, the court before hearing the charge shall determine whether the person has been ~~held determined~~ an habitual offender and, by reason of this ~~holding determination~~, is barred from driving a motor vehicle or self-propelled machinery or equipment on the highways in the Commonwealth. If the court determines the accused has been ~~held determined~~ to be an habitual offender and finds there is probable cause that the alleged offense under this section is a felony, it shall certify the case to the circuit court of its jurisdiction for trial.

§ 46.2-358. Restoration of privilege of driving motor vehicle; when petition may be brought; terms and conditions.

In any case where the provisions of § 46.2-360 or § 46.2-361 do not apply, five years from the date of any final order of a court entered under this article, *or if no such order was entered then the notice of the determination by the Commissioner* finding a person to be an habitual offender and ~~directing him not revoking his privilege~~ to drive a motor vehicle in the Commonwealth, the person may petition the court in which he was found to be an habitual offender, or any court of record in Virginia having criminal jurisdiction in the political subdivision in which he then resides, for restoration of his privilege to drive a motor vehicle in the Commonwealth. On such petition, and for good cause shown, the court may, upon a finding that such person does not constitute a threat to the safety and welfare of himself or others with regard to the driving of a motor vehicle, (i) restore to the person the privilege to drive a motor vehicle in the Commonwealth on whatever conditions the court may prescribe or (ii) order that the person be issued a restricted license to drive a motor vehicle in the Commonwealth for any of the purposes set forth in and in accordance with the procedures of subsection E of § 18.2-271.1, subject to other provisions of law relating to the issuance of driver's licenses.

§ 46.2-360. Restoration of privilege of operating motor vehicle; restoration of privilege to persons convicted under certain other provisions of Habitual Offender Act.

Any person who has been found to be an habitual offender where the adjudication was based in part and dependent on a conviction as set out in subdivision 1 b of § 46.2-351, may petition the court in which he was found to be an habitual offender, or the circuit court in the political subdivision in which he then resides:

1. ~~For restoration of~~ *Restore* his privilege to drive a motor vehicle in the Commonwealth ~~after the expiration of~~, *provided that* five years have elapsed from the date of the ~~adjudication final order of a court entered under this article, or if no such order was entered then the notice of the determination by the Commissioner.~~ 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 whatever conditions the court may prescribe, subject to other provisions of law relating to the issuance of driver's licenses, if the court is satisfied from the evidence presented that: (i) at the time of the 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 such other drug; and (iii) the ~~defendant person~~ 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 be conducted by a Virginia Alcohol Safety Action Program and recommendations therefrom be submitted to the court. The court may, in lieu of restoring the person's privilege to drive, authorize the issuance of a restricted license for a period not to exceed five years in accordance with the provisions of subsection E of § 18.2-271.1. The *local* Virginia Alcohol Safety Action Program shall during the term of the restricted license monitor the person's compliance with the terms of the restrictions imposed by the court. Any violation of the restrictions shall be reported to the court, and the court may then modify the restrictions or revoke the license.

2. ~~For~~ *Issue* a restricted permit to authorize such person to drive a motor vehicle in the Commonwealth in the course of his employment and to drive a motor vehicle to and from his home to the place of his employment ~~after the expiration of~~, *provided that* three years have elapsed from the date of the ~~final order, or if no such order was entered then the adjudication notice of the determination by the Commissioner.~~ The court may order that a restricted license for such purposes be issued in accordance with the procedures of subsection E of § 18.2-271.1, if the court is satisfied from the evidence presented that (i) at the time of the 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 such other drugs, and (iii) the defendant does not constitute a threat to the safety and welfare of himself and 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 be conducted by a Virginia Alcohol Safety Action Program and recommendations therefrom be submitted to the court. The *local* Virginia Alcohol Safety Action Program shall during the term of the restricted license monitor the person's compliance with the terms of the restrictions imposed by the court. Any violation of the restrictions shall be reported to the court, and the court may then modify the restrictions or revoke the license.

In the computation of the five- and three-year periods under subdivisions 1 and 2 of this section, such person shall be given credit for any period his driver's license was administratively revoked under

§ 46.2-391 prior to his adjudication as an habitual offender *determination* as the final order or notification by the Commissioner of the habitual offender *determination*.

§ 46.2-361. Restoration of privilege after driving while license revoked or suspended for failure to pay fines or costs or furnish proof of financial responsibility.

A. Any person who has been found to be an habitual offender, where the *adjudication determination* was based in part and dependent on a conviction as set out in subdivision 1 c of § 46.2-351, may, after three years from the date of the *adjudication final order of a court entered under this article*, or if no such order was entered then the notice of the determination by the Commissioner, petition the court in which he was found to be an habitual offender, or the circuit court in the political subdivision in which he then resides, for restoration of his privilege to drive a motor vehicle in the Commonwealth.

B. Any person who has been found to be an habitual offender, where the *adjudication determination* was based entirely upon convictions as set out in subdivision 1 c of § 46.2-351, may, after payment in full of all outstanding fines, costs and judgments relating to his *adjudication determination*, and furnishing proof of financial responsibility, if applicable, petition the court in which he was found to be an habitual offender, or the circuit court in the political subdivision in which he then resides, for restoration of his privilege to drive a motor vehicle in the Commonwealth.

C. This section shall apply only where the conviction resulted from a suspension or revocation ordered pursuant to (i) § 46.2-395 for failure to pay fines and costs, (ii) § 46.2-459 for failure to furnish proof of financial responsibility or (iii) § 46.2-417 for failure to satisfy a judgment, provided the judgment has been paid in full prior to the time of filing the petition.

D. On any such petition, the court, in its discretion, may restore to the person his privilege to drive a motor vehicle, on whatever conditions the court may prescribe, if the court is satisfied from the evidence presented that the petitioner does not constitute a threat to the safety and welfare of himself or others with respect to the operation of a motor vehicle, and that he has satisfied in full all outstanding court costs, court fines and judgments relating to his *adjudication determination as an habitual offender* and furnished proof of financial responsibility, if applicable.

2. That the provisions of this act shall become effective January 1, 1996.