

VIRGINIA ACTS OF ASSEMBLY -- 1997 SESSION

CHAPTER 706

An Act to amend and reenact § 46.2-391 of the Code of Virginia, relating to administrative license revocation for multiple offense DUI.

[H 2069]

Approved March 21, 1997

Be it enacted by the General Assembly of Virginia:

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

§ 46.2-391. Revocation of license for conviction of driving while under influence of drugs or intoxicants; 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 is adjudged to be a second offender in violation of the provisions of subsection A of § 46.2-341.24 pertaining to driving a commercial motor vehicle under the influence of drugs or intoxicants, or of § 18.2-266 pertaining to driving under the influence of drugs or intoxicants or of § 18.2-272 pertaining to driving while the driver's license has been forfeited for a conviction under § 18.2-266, or on receiving a record of conviction as a second offender for a violation of a federal law or a law of any other state or a valid ordinance of any county, city, or town of the Commonwealth or of any other state similar to subsection A of § 46.2-341.24 pertaining to driving a commercial motor vehicle under the influence of drugs or intoxicants, or of § 18.2-266 or § 18.2-272, if the subsequent violation adjudication as a second offender is within ten years from the prior violation. However, if the Commissioner has received a copy of a court order as provided in subsection E of § 18.2-271.1, he shall proceed as provided in the order of the court.

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 adjudged to be a third offender within a period of ten years in violation of the provisions of subsection A of § 46.2-341.24 pertaining to driving a commercial motor vehicle under the influence of drugs or intoxicants, or of § 18.2-266 pertaining to driving under the influence of drugs or intoxicants or after receiving a record of conviction as a third offender within a period of ten years for a violation of federal law or a law of any other state or a valid ordinance of any county, city, or town of the Commonwealth or of any other state similar to subsection A of § 46.2-341.24 pertaining to driving a commercial motor vehicle under the influence of drugs or intoxicants, or of § 18.2-266 or § 18.2-272. At the expiration of ten years from the date of the revocation hereunder, the person may petition the circuit court in the county or city in which he resides, and for good cause shown, his license may in the discretion of the court be restored on such conditions as the court may prescribe.

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:

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 whatever 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 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 court shall notify the Virginia Alcohol Safety Action Program which 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 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 three years from the date of his last conviction. 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. The court may prohibit the person to whom a restricted license is issued from operating a motor vehicle that is not equipped with a functioning, certified ignition interlock system during all or any part of the term for which the restricted license is issued, in accordance with the provisions set forth in § 18.2-270.1. 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 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-year and three-year periods under subdivisions 1 and 2 of this subsection, such person shall be given credit for any period his driver's license was revoked under § 46.2-360 after adjudication as an habitual offender.