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HOUSE BILL NO. 2693

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 2, 1997)

(Patron Prior to Substitute—Delegate Armstrong)

A *BILL to amend and reenact § 18.2-271.1 of the Code of Virginia, relating to driving under the influence; VASAP.*

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.

A. Any person convicted of a first offense of § 18.2-266 (i), (ii), (iii) or (iv), 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 or upon conviction of a second offense thereunder, may, 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 a first offense following an assessment of the person conducted by an alcohol safety action program, the court, for good cause may require participation in such a program.* 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 subsection H of this section and to § 18.2-271.2. In the determination of the eligibility of such person convicted of a second offense to enter such a program, the court shall consider his prior record of participation in any other alcohol rehabilitation program. If such person has never entered into an alcohol safety action program, in keeping with the procedures provided for in this section, and upon motion of the accused or his counsel, the court shall give mature consideration to the needs of such person in determining whether he shall be allowed to enter such program.

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 ten 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 §§ 18.2-270 and 18.2-271. Upon a finding that a person so convicted is eligible for participation 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 of this section, if the court finds that the person so convicted is eligible for a restricted license. If the court finds that a person is not eligible for 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 restricted license, the Commissioner of the Department of Motor Vehicles, upon receipt thereof, shall issue a restricted license. 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 in another state of the violation of a law of such state 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 of this section and that, upon entry into such program, he be issued an order in accordance with subsection E of this section. If the court finds that such person would have qualified therefor if he had

60 been convicted in this Commonwealth of a violation of § 18.2-266 or subsection A of § 46.2-341.24, the
61 court may grant the petition and may issue an order in accordance with subsection E of this section as
62 to the period of license suspension or revocation imposed pursuant to § 46.2-389 or subsection A of
63 § 46.2-391. Such order shall be conditioned upon the successful completion of a program by the
64 petitioner. If the court subsequently finds that such person has violated any of the conditions set forth by
65 the court, the court shall dispose of the case as if no program had been entered and shall notify the
66 Commissioner, who shall revoke the person's license in accordance with the provisions of § 46.2-389 or
67 subsection A of § 46.2-391. A copy of the order granting the petition or subsequently revoking or
68 suspending such person's license to operate a motor vehicle shall be forthwith sent to the Commissioner
69 of the Department of Motor Vehicles.

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

74 E. Except as otherwise provided herein, whenever a person enters a certified program pursuant to this
75 section, and such person's license to operate a motor vehicle, engine or train in the Commonwealth has
76 been suspended or revoked, the court may, in its discretion and for good cause shown, provide that such
77 person be issued a restricted permit to operate a motor vehicle for any or all of the following purposes:
78 (i) travel to and from his place of employment; (ii) travel to and from an alcohol rehabilitation program
79 entered pursuant to this subsection; (iii) travel during the hours of such person's employment if the
80 operation of a motor vehicle is a necessary incident of such employment; (iv) travel to and from school
81 if such person is a student, upon proper written verification to the court that such person is enrolled in a
82 continuing program of education; or (v) such other medically necessary travel as the court deems
83 necessary and proper upon written verification of need by a licensed health professional. No restricted
84 license issued pursuant to this subsection shall permit any person to operate a commercial motor vehicle
85 as defined in the Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.). The court shall order
86 the surrender of such person's license to operate a motor vehicle to be disposed of in accordance with
87 the provisions of § 46.2-398 and shall forward to the Commissioner of the Department of Motor
88 Vehicles a copy of its order entered pursuant to this subsection, which shall specifically enumerate the
89 restrictions imposed and contain such information regarding the person to whom such a permit is issued
90 as is reasonably necessary to identify such person. The court shall also provide a copy of its order to the
91 person so convicted who may operate a motor vehicle on the order until receipt from the Commissioner
92 of the Department of Motor Vehicles of a restricted license, if the order provides for a restricted license
93 for that time period. A copy of such order and, after receipt thereof, the restricted license shall be
94 carried at all times while operating a motor vehicle. Any person who operates a motor vehicle in
95 violation of any restrictions imposed pursuant to this section shall be guilty of a violation of § 18.2-272.
96 Such restricted license shall be conditioned upon enrollment within fifteen days in, and successful
97 completion of, a program as described in subsection A of this section. No restricted license shall be
98 issued during the first four months of a revocation imposed pursuant to subsection B of § 18.2-271 or
99 subsection A of § 46.2-391 for a second offense of the type described therein committed within ten
100 years of a first such offense. No restricted license shall be issued during any revocation period imposed
101 pursuant to subsection C of § 18.2-271 or subsection B of § 46.2-391. Notwithstanding the provisions of
102 § 46.2-411, the fee charged pursuant to § 46.2-411 for reinstatement of the driver's license of any person
103 whose privilege or license has been suspended or revoked as a result of a violation of § 18.2-266,
104 subsection A of § 46.2-341.24 or of any ordinance of a county, city or town, or of any federal law or
105 the laws of any other state similar to the provisions of § 18.2-266 or subsection A of § 46.2-341.24 shall
106 be seventy-five dollars. Forty dollars of such reinstatement fee shall be retained by the Department of
107 Motor Vehicles as provided in § 46.2-411 and thirty-five dollars shall be transferred to the Commission
108 on VASAP.

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

119 G. The State Treasurer, the Commission on VASAP or any city or county is authorized to accept any
120 gifts or bequests of money or property, and any grant, loan, service, payment or property from any
121 source, including the federal government, for the purpose of driver alcohol education. Any such gifts,

122 bequests, grants, loans or payments shall be deposited in the separate fund provided in subsection B.

123 H. The Commission on VASAP, or any county, city, town, or any combination thereof may establish
124 and, if established, shall operate, in accordance with the standards and criteria required by this
125 subsection, alcohol safety action programs in connection with highway safety. Each such program shall
126 operate under the direction of a local independent policy board chosen in accordance with procedures
127 approved and promulgated by the Commission on VASAP. Local sitting or retired district court judges
128 who regularly hear or heard cases involving driving under the influence and are familiar with their local
129 alcohol safety action programs may serve on such boards. The Commission on VASAP shall establish
130 minimum standards and criteria for the implementation and operation of such programs and shall
131 establish procedures to certify all such programs to ensure that they meet the minimum standards and
132 criteria stipulated by the Commission. The Commission shall also establish criteria for the administration
133 of such programs for public information activities, for accounting procedures, for the auditing
134 requirements of such programs and for the allocation of funds. Funds paid to the Commonwealth
135 hereunder shall be utilized in the discretion of the Commission on VASAP to offset the costs of state
136 programs and local programs run in conjunction with any county, city or town and costs incurred by the
137 Commission. The Commission shall submit an annual report as to actions taken at the close of each
138 calendar year to the Governor and the General Assembly.

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