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HOUSE BILL NO. 1179

Offered January 26, 1998

A BILL to amend and reenact §§ 18.2-271, 18.2-271.1 and 46.2-391 of the Code of Virginia, relating to driving under the influence; loss of driver's license.

Patron—O'Brien

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-271, 18.2-271.1 and 46.2-391 of the Code of Virginia is amended and reenacted as follows:

§ 18.2-271. Forfeiture of driver's license for driving while intoxicated.

A. Except as provided in § 18.2-271.1, the judgment of conviction if for a first offense under § 18.2-266 or for a similar offense under any county, city, or town ordinance, or for a first offense under subsection A of § 46.2-341.24, shall of itself operate to deprive the person so convicted of the privilege to drive or operate any motor vehicle, engine or train in the Commonwealth for a period of one year from the date of such judgment. This suspension period shall be in addition to the suspension period provided under § 46.2-391.2.

B. If a person is (i) tried on a process alleging a second offense of violating § 18.2-266 or subsection A of § 46.2-341.24 within ten years of a first offense for which the person was convicted, or found guilty in the case of a juvenile, under § 18.2-266 or subsection A of § 46.2-341.24 or any valid county, city, or town ordinance or law of any other state or of the United States substantially similar to § 18.2-266 or subsection A of § 46.2-341.24 and (ii) is convicted thereof, such person's license to operate a motor vehicle, engine or train shall be revoked for a period of three years from the date of the judgment of conviction. This suspension period shall be in addition to the suspension period provided under § 46.2-391.2. Any period of license suspension or revocation imposed pursuant to this section, in any case, shall run consecutively with any period of suspension for failure to permit a blood or breath sample to be taken as required by §§ 18.2-268.1 through 18.2-268.12 or §§ 46.2-341.26.1 through 46.2-341.26.11.

C. If a person is tried on a process alleging a third or subsequent offense of violating § 18.2-266 or subsection A of § 46.2-341.24 within ten years of two other offenses for which the person was convicted, or found guilty in the case of a juvenile, under § 18.2-266, subsection A of § 46.2-341.24 or any valid county, city or town ordinance or law of any other state or of the United States substantially similar to § 18.2-266 or subsection A of § 46.2-341.24, and is convicted thereof, such person shall not be eligible for participation in a program pursuant to § 18.2-271.1 and shall have his license revoked as provided in subsection B of § 46.2-391. The court trying such case shall order the surrender of the driver's license of the person so convicted, to be disposed of in accordance with § 46.2-398, and shall notify such person that his license has been revoked indefinitely.

D. Notwithstanding any other provision of this section, the period of license revocation or suspension shall not begin to expire until the person convicted has surrendered his license to the court or to the Department of Motor Vehicles.

E. The provisions of this section shall not apply to, and shall have no effect upon, any disqualification from operating a commercial motor vehicle imposed under the provisions of the Commercial Driver's License Act (§ 46.2-341.1 et seq.)

§ 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 decline to order 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

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60 participation in any other alcohol rehabilitation program. If such person has never entered into an
61 alcohol safety action program, in keeping with the procedures provided for in this section, and upon
62 motion of the accused or his counsel, the court shall give mature consideration to the needs of such
63 person in determining whether he shall be allowed to enter such program.

64 B. The court shall require the person entering such program under the provisions of this section to
65 pay a fee of no less than \$250 but no more than \$300. A reasonable portion of such fee, as may be
66 determined by the Commission on VASAP, but not to exceed ten percent, shall be forwarded monthly to
67 be deposited with the State Treasurer for expenditure by the Commission on VASAP, and the balance
68 shall be held in a separate fund for local administration of driver alcohol rehabilitation programs. Upon
69 a positive finding that the defendant is indigent, the court may reduce or waive the fee. In addition to
70 the costs of the proceeding, fees as may reasonably be required of defendants referred for intervention
71 under any such program may be charged.

72 C. Upon conviction of a violation of § 18.2-266 or any ordinance of a county, city or town similar to
73 the provisions thereof, or subsection A of § 46.2-341.24, the court shall impose the sentence authorized
74 by § 18.2-270 or § 46.2-341.28 and the license revocation as authorized by §§ 18.2-270 and 18.2-271.
75 Upon a finding that a person so convicted is eligible for participation in the program described herein,
76 the court shall enter the conviction on the warrant, and shall note that the person so convicted has been
77 referred to such program. The court may then proceed to issue an order in accordance with subsection E
78 of this section, if the court finds that the person so convicted is eligible for a restricted license. If the
79 court finds that a person is not eligible for such program or subsequently that such person has violated,
80 without good cause, any of the conditions set forth by the court in entering the program, the court shall
81 dispose of the case as if no program had been entered, in which event the revocation provisions of
82 § 46.2-389 and subsection A of § 46.2-391 shall be applicable to the conviction. The court shall, upon
83 final disposition of the case, send a copy of its order to the Commissioner of the Department of Motor
84 Vehicles. If such order provides for the issuance of a restricted license, the Commissioner of the
85 Department of Motor Vehicles, upon receipt thereof, shall issue a restricted license. Appeals from any
86 such disposition shall be allowed as provided by law. The time within which an appeal may be taken
87 shall be calculated from the date of the final disposition of the case or any motion for rehearing,
88 whichever is later.

89 D. Any person who has been convicted in another state of the violation of a law of such state
90 substantially similar to the provisions of § 18.2-266 or subsection A of § 46.2-341.24, and whose
91 privilege to operate a motor vehicle in this Commonwealth is subject to revocation under the provisions
92 of § 46.2-389 and subsection A of § 46.2-391, may petition the general district court of the county or
93 city in which he resides that he be given probation and assigned to a program as provided in subsection
94 A of this section and that, upon entry into such program, he be issued an order in accordance with
95 subsection E of this section. If the court finds that such person would have qualified therefor if he had
96 been convicted in this Commonwealth of a violation of § 18.2-266 or subsection A of § 46.2-341.24, the
97 court may grant the petition and may issue an order in accordance with subsection E of this section as
98 to the period of license suspension or revocation imposed pursuant to § 46.2-389 or subsection A of
99 § 46.2-391. Such order shall be conditioned upon the successful completion of a program by the
100 petitioner. If the court subsequently finds that such person has violated any of the conditions set forth by
101 the court, the court shall dispose of the case as if no program had been entered and shall notify the
102 Commissioner, who shall revoke the person's license in accordance with the provisions of § 46.2-389 or
103 subsection A of § 46.2-391. A copy of the order granting the petition or subsequently revoking or
104 suspending such person's license to operate a motor vehicle shall be forthwith sent to the Commissioner
105 of the Department of Motor Vehicles.

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

110 E. Except as otherwise provided herein, whenever a person enters a certified program pursuant to this
111 section, and such person's license to operate a motor vehicle, engine or train in the Commonwealth has
112 been suspended or revoked, the court may, in its discretion and for good cause shown, provide that such
113 person be issued a restricted permit to operate a motor vehicle for any or all of the following purposes:
114 (i) travel to and from his place of employment; (ii) travel to and from an alcohol rehabilitation program
115 entered pursuant to this subsection; (iii) travel during the hours of such person's employment if the
116 operation of a motor vehicle is a necessary incident of such employment; (iv) travel to and from school
117 if such person is a student, upon proper written verification to the court that such person is enrolled in a
118 continuing program of education; or (v) such other medically necessary travel as the court deems
119 necessary and proper upon written verification of need by a licensed health professional. No restricted
120 license issued pursuant to this subsection shall permit any person to operate a commercial motor vehicle
121 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 shall be guilty of a violation of § 18.2-272. Such restricted license shall be conditioned upon enrollment within fifteen days in, and successful completion of, a program as described in subsection A of this section. ~~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 ten 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 seventy-five dollars. Forty dollars of such reinstatement fee shall be retained by the Department of Motor Vehicles as provided in § 46.2-411 and thirty-five dollars shall be transferred to the Commission on VASAP.

F. The court shall have jurisdiction over any person entering such program under any provision of this section 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 ten 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. 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.

H. The Commission on VASAP, or any county, city, 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 chosen in accordance with procedures approved and promulgated by the Commission on VASAP. 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.

I. 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.).

§ 46.2-391. 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

183 second offender in violation of the provisions of subsection A of § 46.2-341.24 (driving a commercial
184 motor vehicle under the influence of drugs or intoxicants), § 18.2-51.4 (maiming committed while
185 driving under the influence of drugs or intoxicants), § 18.2-266 (driving under the influence of drugs or
186 intoxicants), § 18.2-272 (driving while the driver's license has been forfeited for a conviction under
187 § 18.2-266), or a violation of a federal law or a law of any other state or a valid ordinance of any
188 county, city, or town of the Commonwealth similar to subsection A of § 46.2-341.24, §§ 18.2-51.4,
189 18.2-266 or § 18.2-272, if the second violation adjudication occurred within ten years from the prior
190 violation. However, if the Commissioner has received a copy of a court order as provided in subsection
191 E of § 18.2-271.1, he shall proceed as provided in the order of the court.

192 B. The Commissioner shall forthwith revoke and not thereafter reissue the driver's license of any
193 person after receiving a record of the conviction of any person adjudged to be (i) *a second offender*
194 *within a period of ten years in violation of § 18.2-266 or federal law or a law of any other state or a*
195 *valid ordinance of any county, city, or town of the Commonwealth similar thereto, or subsection A of*
196 *§ 46.2-341.24 or (ii) a third offender within a period of ten years in violation of the provisions of*
197 *subsection A of § 46.2-341.24, §§ 18.2-51.4, 18.2-266, or a violation of federal law or a law of any*
198 *other state or a valid ordinance of any county, city, or town of the Commonwealth similar to subsection*
199 *A of § 46.2-341.24, §§ 18.2-51.4, 18.2-266 or § 18.2-272. At the expiration of ten years from the date of*
200 *the revocation hereunder, the person may petition the circuit court in the county or city in which he*
201 *resides, and for good cause shown, his license may in the discretion of the court be restored on such*
202 *conditions as the court may prescribe.*

203 C. Any person who has had his driver's license revoked in accordance with subsection B of this
204 section may petition the circuit court of his residence:

205 1. For restoration of his privilege to drive a motor vehicle in the Commonwealth after the expiration
206 of five years from the date of his last conviction. On such petition, and for good cause shown, the court
207 may, in its discretion, restore to the person the privilege to drive a motor vehicle in the Commonwealth
208 on whatever conditions the court may prescribe, subject to the provisions of law relating to issuance of
209 driver's licenses, if the court is satisfied from the evidence presented that: (i) at the time of his previous
210 convictions, the petitioner was addicted to or psychologically dependent on the use of alcohol or other
211 drugs; (ii) at the time of the hearing on the petition, he is no longer addicted to or psychologically
212 dependent on the use of alcohol or other drugs; and (iii) the defendant does not constitute a threat to the
213 safety and welfare of himself or others with regard to the driving of a motor vehicle. However, prior to
214 acting on the petition, the court shall order that an evaluation of the person be conducted by a Virginia
215 Alcohol Safety Action Program and recommendations therefrom be submitted to the court. The court
216 may, in lieu of restoring the person's privilege to drive, authorize the issuance of a restricted license for
217 a period not to exceed five years in accordance with the provisions of subsection E of § 18.2-271.1. The
218 court shall notify the Virginia Alcohol Safety Action Program which shall during the term of the
219 restricted license monitor the person's compliance with the terms of the restrictions imposed by the
220 court. Any violation of the restrictions shall be reported to the court, and the court may then modify the
221 restrictions or revoke the license.

222 2. For a restricted permit to authorize such person to drive a motor vehicle in the Commonwealth in
223 the course of his employment and to drive a motor vehicle to and from his home to the place of his
224 employment after the expiration of three years from the date of his last conviction. The court may order
225 that a restricted license for such purposes be issued in accordance with the procedures of subsection E
226 of § 18.2-271.1, if the court is satisfied from the evidence presented that (i) at the time of the previous
227 convictions, the petitioner was addicted to or psychologically dependent on the use of alcohol or other
228 drugs; (ii) at the time of the hearing on the petition, he is no longer addicted to or psychologically
229 dependent on the use of alcohol or such other drugs; and (iii) the defendant does not constitute a threat
230 to the safety and welfare of himself and others with regard to the driving of a motor vehicle. The court
231 may prohibit the person to whom a restricted license is issued from operating a motor vehicle that is not
232 equipped with a functioning, certified ignition interlock system during all or any part of the term for
233 which the restricted license is issued, in accordance with the provisions set forth in § 18.2-270.1.
234 However, prior to acting on the petition, the court shall order that an evaluation of the person be
235 conducted by a Virginia Alcohol Safety Action Program and recommendations therefrom be submitted
236 to the court. The Virginia Alcohol Safety Action Program shall during the term of the restricted license
237 monitor the person's compliance with the terms of the restrictions imposed by the court. Any violation
238 of the restrictions shall be reported to the court, and the court may then modify the restrictions or
239 revoke the license.

240 In the computation of the five-year and three-year periods under subdivisions 1 and 2 of this
241 subsection, such person shall be given credit for any period his driver's license was revoked under
242 § 46.2-360 after adjudication as an habitual offender.