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HOUSE BILL NO. 634

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Transportation
on March 5, 1998)

(Patron Prior to Substitute—Delegate Armstrong)

*A BILL to amend and reenact §§ 46.2-360 and 46.2-361 of the Code of Virginia, relating to restoration of privilege after driving while license revoked or suspended.***Be it enacted by the General Assembly of Virginia:****1. That §§ 46.2-360 and 46.2-361 of the Code of Virginia are amended and reenacted as follows:**

§ 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 *determination or 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 to:

1. Restore his privilege to drive a motor vehicle in the Commonwealth, provided that five years have elapsed from the date of the 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 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. Issue a restricted permit to authorize such person to drive a motor vehicle in the Commonwealth in the course of his employment, to and from his home to the place of his employment or such other medically necessary travel as the court deems necessary and proper upon written verification of need by a licensed physician, provided that three years have elapsed from the date of the final order, or if no such order was entered then the 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. 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 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 the final order or notification by the Commissioner of the habitual offender determination.

A copy of any petition filed hereunder shall be served on the attorney for the Commonwealth for the jurisdiction wherein the petition was filed, and shall also be served on the Commissioner of the

60 Department of Motor Vehicles, who shall provide to the attorney for the Commonwealth a certified copy
61 of the petitioner's driving record. The Commissioner shall also advise the attorney for the
62 Commonwealth whether there is anything in the records maintained by the Department that might make
63 the petitioner ineligible for restoration, and may also provide notice of any potential ineligibility to the
64 Attorney General's Office, which may join in representing the interests of the Commonwealth where it
65 appears that the petitioner is not eligible for restoration. The hearing on a petition filed pursuant to this
66 article shall not be set for a date sooner than thirty days after the petition is filed and served as
67 provided herein. The court may order that the petitioner be evaluated by a Virginia Alcohol Safety
68 Action Program and that the results of the evaluation be made available to the court, prior to the
69 hearing date.

70 § 46.2-361. Restoration of privilege after driving while license revoked or suspended for failure to
71 pay fines or costs or furnish proof of financial responsibility.

72 A. Any person who has been found to be an habitual offender, where the determination or
73 adjudication was based in part and dependent on a conviction as set out in subdivision 1 c of
74 § 46.2-351, may, after three years from the date of the final order of a court entered under this article,
75 or if no such order was entered then the notice of the determination or adjudication by the
76 Commissioner, petition the court in which he was found to be an habitual offender, or the circuit court
77 in the political subdivision in which he then resides, for restoration of his privilege to drive a motor
78 vehicle in the Commonwealth. In no event, however, shall the provisions of this subsection apply when
79 such person's determination or adjudication was also based in part and dependent on a conviction as
80 set out in subdivision 1 b of § 46.2-351. In such case license restoration shall be in compliance with the
81 provisions of § 46.2-360.

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

88 C. This section shall apply only where the conviction or convictions as set out in subdivision 1 c of
89 § 46.2-351 resulted from a suspension or revocation ordered pursuant to (i) § 46.2-395 for failure to pay
90 fines and costs, (ii) § 46.2-459 for failure to furnish proof of financial responsibility or (iii) § 46.2-417
91 for failure to satisfy a judgment, provided the judgment has been paid in full prior to the time of filing
92 the petition or was a conviction under § 46.2-302 or former § 46.1-351.

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

99 E. A copy of any petition filed hereunder shall be served on the attorney for the Commonwealth for
100 the jurisdiction wherein the petition was filed, and shall also be served on the Commissioner of the
101 Department of Motor Vehicles, who shall provide to the attorney for the Commonwealth a certified copy
102 of the petitioner's driving record. The Commissioner shall also advise the attorney for the
103 Commonwealth whether there is anything in the records maintained by the Department that might make
104 the petitioner ineligible for restoration, and may also provide notice of any potential ineligibility to the
105 Attorney General's Office, which may join in representing the interests of the Commonwealth where it
106 appears that the petitioner is not eligible for restoration. The hearing on a petition filed pursuant to this
107 article shall not be set for a date sooner than thirty days after the petition is filed and served as
108 provided herein.