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SENATE BILL NO. 1228

Offered January 21, 1999

A BILL to amend and reenact § 46.2-360 of the Code of Virginia, relating to restricted privilege of operating motor vehicle while an habitual offender.

Patrons—Marsh, Gartlan, Miller, Y.B. and Ticer; Delegates: Christian, Crittenden, Day, Hall, Hull, McEachin, Moran and Robinson

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 46.2-360 of the Code of Virginia is 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 court shall require such person to be monitored by the local Virginia Alcohol Safety Action Program shall during the term of the restricted license monitor the to ensure 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 court shall require such person to be monitored by the local Virginia Alcohol Safety Action Program shall during the term of the restricted license monitor to ensure 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 section, such person shall be given credit for any period his driver's license was administratively revoked under

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60 § 46.2-391 prior to the final order or notification by the Commissioner of the habitual offender
61 determination.

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