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## HOUSE BILL NO. 355

Offered January 12, 2000

A *BILL to amend and reenact §§ 18.2-36.1, 18.2-51.4, 18.2-270, 18.2-271, 46.2-301, 46.2-357, 46.2-389, 46.2-391, 46.2-394 and 46.2-395 of the Code of Virginia, relating to suspended and revoked driver's licenses; penalties.*

Patrons—Moran and Deeds

Referred to Committee on Transportation

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 18.2-36.1, 18.2-51.4, 18.2-270, 18.2-271, 46.2-301, 46.2-357, 46.2-389, 46.2-391, 46.2-394 and 46.2-395 of the Code of Virginia are amended and reenacted as follows:**

§ 18.2-36.1. Certain conduct punishable as involuntary manslaughter.

A. Any person who, as a result of driving under the influence in violation of subdivision (ii), (iii), or (iv) of § 18.2-266 or any local ordinance substantially similar thereto unintentionally causes the death of another person, shall be guilty of involuntary manslaughter.

B. If, in addition, the conduct of the defendant was so gross, wanton and culpable as to show a reckless disregard for human life, he shall be guilty of aggravated involuntary manslaughter, a felony punishable by a term of imprisonment of not less than one nor more than twenty years, one year of which shall be a mandatory, minimum term of imprisonment.

C. The provisions of this section shall not preclude prosecution under any other homicide statute. This section shall not preclude any other revocation or suspension required by law. *The driver's license of any person convicted under this section shall be revoked pursuant to subsection B of § 46.2-391.*

D. Upon a conviction under subsection A or B of this section, the court shall revoke such person's driver's license for an indefinite period. However, upon expiration of three years of the revocation period, the person may petition the circuit court of his residence for a restricted license to authorize such person to drive a motor vehicle in the Commonwealth in the course of his employment and to and from his home to the place of his employment. The court may order that a restricted license for such a person be issued in accordance with subsection E of § 18.2-271.1, if the court is satisfied from the evidence presented that 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. The court may prohibit the person to whom the 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 the 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 such restrictions, or any of the conditions set by the court related thereto, shall be reported to the court, and the court shall hold a hearing to determine if the license should be revoked. No restricted license issued pursuant to this subsection shall permit any person to operate a commercial motor vehicle as defined in the Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.). This section shall not prohibit a person from operating any farm tractor on the highways when it is necessary to move the tractor from one tract of land used for agricultural purposes to another tract of land used for agricultural purposes, provided that the distance between the said tracts of land is no more than five miles.

E. Upon expiration of five years of the revocation period hereunder, such person may petition the circuit court of his residence for restoration of his privilege to drive a motor vehicle in the Commonwealth. 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 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 the Virginia Alcohol Safety Action Program and recommendations therefrom be submitted to the court.

F. Any person convicted of driving a motor vehicle or any self-propelled machinery or equipment (i) while his license is revoked pursuant to subsection D of this section or (ii) in violation of the terms of a restricted license issued pursuant to such subsection shall be punished as follows:

1. If such driving does not, of itself, endanger the life, limb, or property of another, such person

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shall be guilty of a misdemeanor punishable by confinement in jail for no more than ninety days or a fine of not more than \$2,500, or both. However, ten days of any such confinement shall not be suspended except in cases designated in subdivision 2 (ii) of this subsection.

2. If such driving of itself endangers the life, limb, or property of another or takes place while such person is in violation of § 18.2-266, irrespective of whether the driving of itself endangers the life, limb or property of another and one of the offender's underlying convictions is for a violation of subsection A or B of this section, § 18.2-51.4, § 18.2-266 or a parallel local ordinance, such person shall be guilty of a felony punishable by confinement in a state correctional facility for not less than one year nor more than five years or, in the discretion of the jury or the court trying the case without a jury, by confinement in jail for twelve months; no portion of such sentence shall be suspended. However, (i) if the sentence is for more than one year in a state correctional facility, any portion of such sentence in excess of one year may be suspended or (ii) in cases wherein an operation is necessitated in situations of apparent extreme emergency which require such operation to save life or limb, the sentence, or any part thereof, may be suspended.

3. If any such offense of driving is a second or subsequent violation, the person shall be punished as provided in subdivision 2 of this subsection, irrespective of whether the offense, of itself, endangers the life, limb, or property of another.

G. Notwithstanding the provisions of subdivisions 2 and 3 of subsection F, following conviction and prior to imposition of sentence with the consent of the defendant, the court may order the defendant to be evaluated for and to participate in the Boot Camp Incarceration Program pursuant to § 19.2-316.1, or the Detention Center Incarceration Program pursuant to § 19.2-316.2, or the Diversion Center Incarceration Program pursuant to § 19.2-316.3.

§ 18.2-51.4. Maiming, etc., of another resulting from driving while intoxicated.

A. Any person who, as a result of driving while intoxicated in violation of § 18.2-266 or any local ordinance substantially similar thereto in a manner so gross, wanton and culpable as to show a reckless disregard for human life, unintentionally causes the serious bodily injury of another person resulting in permanent and significant physical impairment shall be guilty of a Class 6 felony. *The drivers' license of any person convicted under this section shall be revoked pursuant to subsection B of § 46.2-391.*

B. Upon a conviction under subsection A of this section, the court shall revoke such person's driver's license for an indefinite period. However, upon expiration of three years of the revocation period, the person may petition the circuit court of his residence for a restricted license to authorize such person to drive a motor vehicle in the Commonwealth in the course of his employment and to and from his home to the place of his employment. The court may order that a restricted license for such a person be issued in accordance with subsection E of § 18.2-271.1, if the court is satisfied from the evidence presented that 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. The court may prohibit the person to whom the 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 the 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 such restrictions, or any of the conditions set by the court related thereto, shall be reported to the court, and the court shall hold a hearing to determine if the license should be revoked. No restricted license issued pursuant to this subsection shall permit any person to operate a commercial motor vehicle as defined in the Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.). This section shall not prohibit a person from operating any farm tractor on the highways when it is necessary to move the tractor from one tract of land used for agricultural purposes to another tract of land used for agricultural purposes, provided that the distance between the said tracts of land is no more than five miles.

C. Upon expiration of five years of the revocation period hereunder, such person may petition the circuit court of his residence for restoration of his privilege to drive a motor vehicle in the Commonwealth. 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 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 the Virginia Alcohol Safety Action Program and recommendations therefrom be submitted to the court.

D. Any person convicted of driving a motor vehicle or any self-propelled machinery or equipment (i) while his license is revoked pursuant to subsection B of this section or (ii) in violation of the terms of a restricted license issued pursuant to such subsection shall be punished as follows:

1. If such driving does not, of itself, endanger the life, limb, or property of another, such person shall be guilty of a misdemeanor punishable by confinement in jail for no more than ninety days and a fine of not more than \$2,500, either or both. However, ten days of any such confinement shall not be suspended except in cases designated in subdivision 2 (ii) of this subsection.

2. If such driving of itself endangers the life, limb, or property of another or takes place while such person is in violation of § 18.2-266, irrespective of whether the driving of itself endangers the life, limb or property of another and one of the offender's underlying convictions is for subsection A of this section, §§ 18.2-36.1, 18.2-266 or a parallel local ordinance, such person shall be guilty of a felony punishable by confinement in a state correctional facility for not less than one year nor more than five years or, in the discretion of the jury or the court trying the case without a jury, by confinement in jail for twelve months; no portion of such sentence shall be suspended. However, (i) if the sentence is for more than one year in a state correctional facility, any portion of such sentence in excess of one year may be suspended or (ii) in cases wherein an operation is necessitated in situations of apparent extreme emergency which require such operation to save life or limb, the sentence, or any part thereof, may be suspended.

3. If any such offense of driving is a second or subsequent violation, such person shall be punished as provided in subdivision 2 of this subsection, irrespective of whether the offense, of itself, endangers the life, limb, or property of another.

E. Notwithstanding the provisions of subdivisions 2 and 3 of subsection D, following conviction and prior to imposition of sentence with the consent of the defendant, the court may order the defendant to be evaluated for and to participate in the Boot Camp Incarceration Program pursuant to § 19.2-316.1, or the Detention Center Incarceration Program pursuant to § 19.2-316.2, or the Diversion Center Incarceration Program pursuant to § 19.2-316.3.

F. 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.

G. 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.).

H. For the purpose of this section a "prior offense" means a violation of: (i) the provisions of § 18.2-266, former § 18.1-54 (formerly § 18-75), this section, the ordinance of any county, city or town in this Commonwealth or the laws of any other state or of the United States substantially similar to the provisions of §§ 18.2-266 through 18.2-269 or this section or (ii) the provisions of subsection A of § 46.2-341.24 or the substantially similar laws of any other state or of the United States.

I. The provisions of Article 2 (§ 18.2-266 et seq.) of Chapter 7 of Title 18.2 shall apply, mutatis mutandis, upon arrest for a violation of this section.

§ 18.2-270. Penalty for driving while intoxicated; subsequent offense; prior conviction.

Except as otherwise provided herein, any person violating any provision of § 18.2-266 shall be guilty of a Class 1 misdemeanor.

Any person convicted of a ~~second offense~~ *two offenses* committed within less than five years after a first offense under § 18.2-266 shall be punishable by a fine of not less than \$200 nor more than \$2,500 and by confinement in jail for not less than one month nor more than one year. Forty-eight hours of such confinement shall be a mandatory, minimum sentence not subject to suspension by the court. Any person convicted of a ~~second offense~~ *two offenses* committed within a period of five to ten years of a first offense under § 18.2-266 shall be punishable by a fine of not less than \$200 nor more than \$2,500 and by confinement in jail for not less than one month nor more than one year. Any person convicted of a ~~third or subsequent offense~~ *three or more offenses of § 18.2-266* committed within a ~~ten-year~~ *years of* an offense under § 18.2-266 ~~period~~ shall be guilty of a Class 6 felony. Upon conviction for a fourth or subsequent offense within ten years, the sentence shall include a mandatory, minimum term of imprisonment of one year, none of which may be suspended in whole or in part. Unless otherwise modified by the court, the defendant shall remain on probation and under the terms of any suspended sentence for the same period as his operator's license was suspended, not to exceed three years.

In addition to the penalty otherwise authorized by this section or § 16.1-278.9, any person convicted of a violation of § 18.2-266 committed while transporting a person seventeen years of age or younger shall be (i) fined an additional minimum of \$500 and not more than \$1000 and (ii) sentenced to perform forty hours of community service in a program benefiting children or, for a subsequent offense, eighty hours of community service in such a program.

For the purpose of this section, a ~~an adult~~ conviction, or finding of ~~guilty~~ *not innocent* in the case of a juvenile, under the following shall be considered a prior conviction: (i) the provisions of § 18.2-36.1 or the substantially similar laws of any other state or of the United States, (ii) the provisions of § 18.2-51.4, § 18.2-266, former § 18.1-54 (formerly § 18-75), the ordinance of any county, city or

town in this Commonwealth or the laws of any other state or of the United States substantially similar to the provisions of § 18.2-51.4, and §§ 18.2-266 through 18.2-269 or (iii) the provisions of subsection A of § 46.2-341.24 or the substantially similar laws of any other state or of the United States.

§ 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 Any adult convicted, or any juvenile found not innocent, of violating § 18.2-266 or subsection A of § 46.2-341.24, or any substantially similar ordinance or law of any other jurisdiction, within ten years of following a first previous conviction or finding of not innocent of any such 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 have his driver's license be revoked for a period of three years from the date of the judgment of conviction as provided in subsection A of § 46.2-391. 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 Any person convicted, or any juvenile found not innocent, of a third or subsequent offense of violating § 18.2-266 or subsection A of § 46.2-341.24, or any substantially similar ordinance or law of any other jurisdiction, three or more times in any combination 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, upon the third conviction, have his license revoked as provided in subsection B of § 46.2-391. The court trying such case shall order the surrender of the person's 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.).

§ 46.2-301. Driving while license, permit, or privilege to drive suspended or revoked.

A. In addition to any other penalty provided by this section, any motor vehicle administratively impounded or immobilized under the provisions of § 46.2-301.1 may, in the discretion of the court, be impounded or immobilized for an additional period of up to ninety days upon conviction of an offender for driving while his driver's license, learner's permit, or privilege to drive a motor vehicle has been suspended or revoked for (i) a violation of §§ 18.2-36.1, 18.2-51.4, or driving while under the influence in violation of §§ 18.2-266; or 46.2-341.24 or a substantially similar ordinance or law in any other jurisdiction or (ii) driving after adjudication as an habitual offender, where such adjudication was based in whole or in part on an alcohol-related offense, or where such person's license has been administratively suspended under the provisions of § 46.2-391.2. However, if, at the time of the violation, the offender was driving a motor vehicle owned by another person, the court shall have no jurisdiction over such motor vehicle but may order the impoundment or immobilization of a motor vehicle owned solely by the offender at the time of arrest. All costs of impoundment or immobilization, including removal or storage expenses, shall be paid by the offender prior to the release of his motor vehicle.

B. Except as provided in §§ 46.2-304 and 46.2-357, no resident or nonresident (i) whose driver's license, learner's permit, or privilege to drive a motor vehicle has been suspended or revoked or (ii) who has been directed not to drive by any court, by the Commissioner, or by operation of law pursuant to this title or (iii) who has been forbidden, as prescribed by law, by the Commissioner, the State Corporation Commission, the Commonwealth Transportation Commissioner, any court, or the Superintendent of State Police, to operate a motor vehicle in the Commonwealth shall thereafter drive any motor vehicle or any self-propelled machinery or equipment on any highway in the Commonwealth

until the period of such suspension or revocation has terminated. A clerk's notice of suspension of license for failure to pay fines or costs given in accordance with § 46.2-395 shall be sufficient notice for the purpose of maintaining a conviction under this section. For the purposes of this section, the phrase "motor vehicle or any self-propelled machinery or equipment" shall not include mopeds.

C. A first or second offense of violating this section shall constitute a Class 2 misdemeanor. A second or subsequent offense shall constitute a Class 1 misdemeanor. A third or subsequent offense shall constitute a Class 1 misdemeanor punishable by a minimum, mandatory term of confinement in jail of ten days which shall not be suspended in whole or in part. However, the court shall not be required to impose a minimum, mandatory term of confinement in any case where a motor vehicle is operated in violation of this section in a situation of apparent extreme emergency which requires such operation to save life or limb.

In addition, the court shall suspend the person's driver's license, permit, or privilege to drive for the same period for which it had been previously suspended or revoked when the person violated this section.

D. In the event the person has violated this section by driving during a period of suspension or revocation which was not for a definite period of time, the court shall suspend the person's license, permit or privilege to drive for an additional period not to exceed ninety days. Any additional suspension ordered under the provisions of this section shall commence upon the expiration of the previous suspension or revocation unless the previous suspension or revocation has expired prior to the ordering of an additional suspension or revocation.

§ 46.2-357. Operation of motor vehicle or self-propelled machinery or equipment by habitual offender prohibited; penalty; enforcement of section.

A. It shall be unlawful for any person determined or adjudicated an habitual offender to drive any motor vehicle or self-propelled machinery or equipment on the highways of the Commonwealth while the revocation of the person's driving privilege remains in effect. However, the revocation determination shall not prohibit the person from operating any farm tractor on the highways when it is necessary to move the tractor from one tract of land used for agricultural purposes to another tract of land used for agricultural purposes, provided that the distance between the said tracts of land is no more than five miles.

B. Except as provided in subsection D, any person found to be an habitual offender under this article, who is thereafter convicted of driving a motor vehicle or self-propelled machinery or equipment in the Commonwealth while the revocation determination is in effect, shall be punished as follows:

1. If such driving does not, of itself, endanger the life, limb, or property of another, such person shall be guilty of a Class 1 misdemeanor punishable by minimum, mandatory term of confinement in jail for no more less than ninety ten days, and a fine of not more than \$2,500, either or both. However, ten days of any such confinement which shall not be suspended except in cases designated in subdivision 2 (ii) of this subsection.

2. If such driving of itself endangers the life, limb, or property of another or takes place while such person is in violation of § 18.2-36.1, § 18.2-51.4, § 18.2-266, or § 46.2-341.24, irrespective of whether the driving of itself endangers the life, limb or property of another and one of the offender's underlying convictions is for the person has been previously convicted of a violation of §§ 18.2-36.1, 18.2-51.4, 18.2-266 or 46.2-341.24 or a parallel local ordinance, such person shall be guilty of a felony punishable by confinement in a state correctional facility for not less than one year nor more than five years or, in the discretion of the jury or the court trying the case without a jury, by confinement in jail for twelve months and no portion of such sentence shall be suspended. However, (i) if the sentence is more than one year in a state correctional facility, any portion of such sentence in excess of one year may be suspended or (ii) in cases wherein such operation is necessitated in situations of apparent extreme emergency which require such operation to save life or limb, said sentence, or any part thereof may be suspended. For the purposes of this section, an offense in violation of a valid ordinance or law of any other jurisdiction which ordinance or law is substantially similar to any provision of law herein shall be considered an offense in violation of such provision of law.

3. If the offense of driving while a determination as an habitual offender is in effect is a second or subsequent such offense, such person shall be punished as provided in subdivision 2 of this subsection, irrespective of whether the offense, of itself, endangers the life, limb, or property of another.

C. For the purpose of enforcing this section, in any case in which the accused is charged with driving a motor vehicle or self-propelled machinery or equipment while his license, permit, or privilege to drive is suspended or revoked or is charged with driving without a license, the court before hearing the charge shall determine whether the person has been determined an habitual offender and, by reason of this determination, is barred from driving a motor vehicle or self-propelled machinery or equipment on the highways in the Commonwealth. If the court determines the accused has been determined to be an habitual offender and finds there is probable cause that the alleged offense under this section is a

felony, it shall certify the case to the circuit court of its jurisdiction for trial.

D. Notwithstanding the provisions of subdivisions 2 and 3 of subsection B, following conviction and prior to imposition of sentence with the consent of the defendant, the court may order the defendant to be evaluated for and to participate in the Boot Camp Incarceration Program pursuant to § 19.2-316.1, or the Detention Center Incarceration Program pursuant to § 19.2-316.2, or the Diversion Center Incarceration Program pursuant to § 19.2-316.3.

§ 46.2-389. Required revocation for one year upon conviction or finding of guilty of certain offenses; exceptions.

A. The Commissioner shall forthwith revoke, and not thereafter reissue for a period of time specified in subsection B, except as provided in § 18.2-271 or § 18.2-271.1, the driver's license of any resident or nonresident on receiving a record of his conviction or a record of his having been found guilty in the case of a juvenile of any of the following crimes, committed in violation of a state law or a valid county, city, or town ordinance or law of the United States, or a law of any other state, substantially paralleling and substantially conforming to a like state law and to all changes and amendments of it:

1. Voluntary or involuntary manslaughter resulting from the driving of a motor vehicle;
2. Violation of § 18.2-266 or § 18.2-272, or subsection A of § 46.2-341.24 or violation of a valid *substantially similar* local ordinance *paralleling and substantially conforming to* ~~§ 18.2-266 or § 18.2-272~~;
3. Perjury or the making of a false affidavit to the Department under this chapter or any other law of the Commonwealth requiring the registration of motor vehicles or regulating their operation on the highways;
4. The making of a false statement to the Department on any application for a driver's license;
5. Any crime punishable as a felony under the motor vehicle laws of the Commonwealth or any other felony in the commission of which a motor vehicle is used;
6. Failure to stop and disclose his identity at the scene of the accident, on the part of a driver of a motor vehicle involved in an accident resulting in the death of or injury to another person; or
7. Violation of ~~§ 18.2-36.1 or § 18.2-51.4~~.

B. ~~For~~ Upon conviction of an offense set forth in subsection A, the *person's period of revocation driver's license* shall be *revoked* for one year; ~~except; however,~~ for a violation of subdivision A 1 or A 7, the ~~revocation driver's license~~ shall be ~~for an indefinite period~~ *revoked as provided in subsection B of § 46.2-391*.

§ 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 convicted of (i) any combination of two or more offenses, if the second or subsequent violation occurred within ten years of the prior adjudication,~~ in violation of the provisions of subsection A of § 46.2-341.24 (driving a commercial motor vehicle under the influence of drugs or intoxicants), ~~§ 18.2-51.4 (maiming committed while driving under the influence of drugs or intoxicants), or § 18.2-266 (driving under the influence of drugs or intoxicants), (ii) any two or more offenses of § 18.2-272 (driving while the driver's license has been forfeited for a conviction under § 18.2-266) if the second or subsequent violation occurred within ten years of the prior adjudication, or (iii) an offense in violation of §§ 18.2-266 or 46.2-341.24 if, at the time the offense occurred, the person's driving was prohibited as a result of a conviction of reckless driving under Article 7 (§ 46.2-852 et seq.) of Chapter 8 of Subtitle III of Title 46.2. 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. For the purposes of this subsection, an offense in a violation of a federal law or a law of any other state or a valid ordinance or law of any other jurisdiction which ordinance or law is substantially similar to any provision of Virginia law herein shall be considered an offense in violation of such provision of Virginia law.~~ *county, city, or town of the Commonwealth similar to subsection A of § 46.2-341.24, §§ 18.2-51.4, 18.2-266 or § 18.2-272, if the second violation adjudication occurred 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 *convicted of (i) a violation of § 18.2-36.1 or § 18.2-51.4 adjudged to be a third offender or (ii) any combination of three convictions* within a period of ten years ~~in~~ *of a* violation of the provisions of subsection A of § 46.2-341.24, ~~§§ 18.2-51.4, or § 18.2-266, or a violation of federal law or a substantially similar ordinance or law of any other jurisdiction state or a valid ordinance of any county, city, or town of the Commonwealth similar to subsection 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 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, *or, if a nonresident of Virginia, the circuit court of the City of Richmond*:

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~~ license 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.

D. Any person convicted of driving a motor vehicle or any self-propelled machinery or equipment (i) while his license is revoked pursuant to subsection A or B or (ii) in violation of the terms of a restricted license issued pursuant to subsection C shall be punished as follows:

1. If such driving does not, of itself, endanger the life, limb, or property of another, such person shall be guilty of a *Class 1* misdemeanor punishable by a *minimum, mandatory term of* confinement in jail for no *less than ten more than ninety* days, ~~or a fine of not more than \$2,500, or both. However, ten days of any such confinement~~ which shall not be suspended except in cases designated in subdivision 2 (ii) of this subsection.

2. *a.* If such driving (i) of itself endangers the life, limb, or property of another or (ii) takes place while such person is in violation of § 18.2-36.1, § 18.2-51.4, § 18.2-266, *subsection A of § 46.2-341.24, or a substantially similar law or ordinance of another jurisdiction*, irrespective of whether the driving of itself endangers the life, limb or property of another and ~~one of the offender's underlying convictions is for~~ *person has been previously convicted of a violation of § 18.2-36.1, § 18.2-51.4, § 18.2-266, subsection A of § 46.2-341.24, or a parallel substantially similar law or local ordinance of another jurisdiction*, such person shall be guilty of a felony punishable by confinement in a state correctional facility for not less than one year nor more than five years or, in the discretion of the jury or the court trying the case without a jury, by confinement in jail for twelve months and no portion of such sentence shall be suspended.

*2.b.* However, (i) if the sentence is more than one year in a state correctional facility, any portion of

429 such sentence in excess of one year may be suspended or (ii) in cases wherein such operation is  
430 necessitated in situations of apparent extreme emergency which require such operation to save life or  
431 limb, said sentence, or any part thereof may be suspended.

432 3. If any such offense of driving is a second or subsequent violation, such person shall be punished  
433 as provided in subdivision 2 of this subsection, irrespective of whether the offense, of itself, endangers  
434 the life, limb, or property of another.

435 E. Notwithstanding the provisions of subdivisions 2 and 3 of subsection D, following conviction and  
436 prior to imposition of sentence with the consent of the defendant, the court may order the defendant to  
437 be evaluated for and to participate in the Boot Camp Incarceration Program pursuant to § 19.2-316.1, or  
438 the Detention Center Incarceration Program pursuant to § 19.2-316.2, or the Diversion Center  
439 Incarceration Program pursuant to § 19.2-316.3.

440 *F. Any period of driver's license revocation imposed pursuant to this section shall commence with*  
441 *the surrender of the license to the court or to the Department of Motor Vehicles.*

442 *G. Nothing in this section shall prohibit a person from operating any farm tractor on the highways*  
443 *when it is necessary to move the tractor from one tract of land used for agricultural purposes to*  
444 *another such tract of land when the distance between the tracts is no more than five miles.*

445 § 46.2-394. Revocation of license for fourth conviction of certain offenses.

446 If any person is convicted ~~four times of a fourth offense as provided in~~ of a violation of  
447 ~~§§ 18.2-51.4, 18.2-266, 46.2-301, §46.2-865, §46.2-894, and or §46.2-895, or any substantially similar~~  
448 ~~ordinance or law of any county, city, or town in Virginia~~ another jurisdiction, the court in which the  
449 conviction is held shall revoke his driver's license for five years.

450 § 46.2-395. Suspension of license for failure or refusal to pay fines or costs.

451 A. Any person, whether licensed by Virginia or not, who drives a motor vehicle on the highways in  
452 the Commonwealth shall thereby, as a condition of such driving, consent to pay all lawful fines, court  
453 costs, forfeitures, restitution, and penalties assessed against him for violations of the laws of the  
454 Commonwealth; of any county, city, or town; or of the United States. For the purpose of this section,  
455 such fines and costs shall be deemed to include any fee assessed by the court under the provisions of  
456 § 18.2-271.1 for entry by a person convicted of a violation of § 18.2-51.4 or § 18.2-266 into an alcohol  
457 safety action program.

458 B. In addition to any penalty provided by law, when any person is convicted of any violation of the  
459 law of the Commonwealth or of the United States or of any valid local ordinance and fails or refuses to  
460 provide for immediate payment in full of any fine, costs, forfeitures, restitution, or penalty lawfully  
461 assessed against him, or fails to make deferred payments or installment payments as ordered by the  
462 court, the court shall forthwith suspend the person's privilege to drive a motor vehicle on the highways  
463 in the Commonwealth. The driver's license of the person shall continue suspended until the fine, costs,  
464 forfeiture, restitution, or penalty has been paid in full. If the person has not obtained a license as  
465 required by this chapter, or is a nonresident, the court may direct in the judgment of conviction that the  
466 person shall not drive any motor vehicle in Virginia for a period to coincide with the nonpayment of the  
467 amounts due.

468 C. Before transmitting to the Commissioner a record of the person's failure or refusal to pay all or  
469 part of any fine, costs, forfeiture, restitution, or penalty or a failure to comply with an order issued  
470 pursuant to § 19.2-354, the clerk of the court that convicted the person shall send or provide the person  
471 written notice of the suspension of his license or privilege to drive a motor vehicle in Virginia, effective  
472 ten days from the date of conviction, if the fine, costs, forfeiture, restitution, or penalty is not paid prior  
473 to the effective date of the suspension as stated on the notice. Notice shall be provided to the person at  
474 the time of trial or shall be mailed by first-class mail to the address certified on the summons or bail  
475 recognizance document as the person's current mailing address, or to such mailing address as the person  
476 has subsequently provided to the court as a change of address. If so mailed on the date of conviction or  
477 within two business days thereof, or if delivered to the person at the time of trial, such notice shall be  
478 adequate notice of the license suspension and of the person's ability to avoid suspension by paying the  
479 fine, costs, forfeiture, restitution, or penalty prior to the effective date. No other notice shall be required  
480 to make the suspension effective. A record of the person's failure or refusal and of the license  
481 suspension shall be sent to the Commissioner if the fine, costs, forfeiture, restitution, or penalty remains  
482 unpaid on the effective date of the suspension specified in the notice or on the failure to make a  
483 scheduled payment.

484 C1. Whenever a person provides for payment of a fine, costs, forfeiture, restitution or penalty other  
485 than by cash and such provision for payment fails, the clerk of the court that convicted the person shall  
486 send to the person written notice of (i) the failure, and of (ii) the suspension of his license or privilege  
487 to drive in Virginia and (iii) the provisions of subsection F hereof. The license suspension shall be  
488 effective ten days from the date of the notice. The notice shall be the effective notice of the suspension  
489 and of the person's ability to avoid the suspension by paying the full amount owed by cash, cashier's  
490 check or certified check prior to the effective date of the suspension if the notice is mailed by first class



mail to the address provided by the person to the court pursuant to subsection C or § 19.2-354. Upon such a failure of payment and notice, the fine, costs, forfeiture, restitution or penalty due shall be paid only by cash, cashier's check or certified check, unless otherwise ordered by the court, for good cause shown.

D. If the person pays the amounts assessed against him subsequent to the time the *suspended* license has been transmitted to the Department, and his license is not under suspension or revocation for any other lawful reason, except pursuant to this section, then the Commissioner shall return the license to the person on presentation of the official report of the court evidencing the payment of the fine, costs, forfeiture, restitution, or penalty.

E. If the court has suspended or revoked the driver's license for any lawful reason other than this section, or the conviction is one for which revocation or suspension is required under any provision of this title, except for this section, then the suspension permitted under this section shall be in addition to, and run consecutively with, the revocation or suspension. The period of suspension shall be calculated from the date of the assessment of the fine, costs, forfeiture, restitution, or penalty until the date it has been paid.

*F. Any court to which fines or costs are owed may, upon petition by the person who owes such fines and costs, authorize the issuance of a restricted license to the person pursuant to the provisions of § 46.2-392. Such restricted license may be issued for an indefinite period or for a fixed period of time which, in the opinion of the court, is appropriate to the case. Upon payment of all fines and costs and if the license is not under suspension or revocation for any other lawful reason, the Commissioner shall return the license to the person on presentation of the official report of the court evidencing the payment of the fines and costs. Any violation of any term or condition of the restricted license shall be punishable pursuant to subsection C of § 46.2-301. Nothing in this subsection shall affect the remedies available to the court under § 19.2-358.*

**2. That the provisions of this act may result in a net increase in periods of imprisonment in state correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0 in FY 2010.**