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HOUSE BILL NO. 1147

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on March 3, 2004)

(Patron Prior to Substitute—Delegate McDonnell)

*A BILL to amend and reenact §§ 18.2-270, 18.2-271 and 46.2-391 of the Code of Virginia, relating to punishment for DUI; mandatory minimums.***Be it enacted by the General Assembly of Virginia:****1. That §§ 18.2-270, 18.2-271 and 46.2-391 of the Code of Virginia are amended and reenacted as follows:**

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

A. Except as otherwise provided herein, any person violating any provision of § 18.2-266 shall be guilty of a Class 1 misdemeanor. If the person's blood alcohol level as indicated by the chemical test administered as provided in this article was at least 0.20, but not more than 0.25, he shall be confined in jail for an additional mandatory, minimum period of five days or, if the level was more than 0.25, for an additional mandatory, minimum period of 10 days. The additional mandatory, minimum period of confinement shall not be suspended by the court. In addition, such person shall be fined a mandatory, minimum fine of \$250, which shall not be suspended by the court.

B. 1. Any person convicted of a second offense committed within less than five years after a first offense under § 18.2-266 shall upon conviction of the second offense be punished by a mandatory, minimum fine of \$500, which shall not be suspended by the court, and by confinement in jail for not less than one month nor more than one year. Five days of such confinement shall be a mandatory, minimum sentence not subject to suspension by the court.

2. Any person convicted of a second offense committed within a period of five to ~~ten~~ 10 years of a first offense under § 18.2-266 shall upon conviction of the second offense be punished by a mandatory, minimum fine of \$500, which shall not be suspended by the court, and by confinement in jail for not less than one month.

3. Upon conviction of a second offense within 10 years of a first offense, if the person's blood alcohol level as indicated by the chemical test administered as provided in this article was at least 0.20, but not more than 0.25, he shall be confined in jail for an additional minimum, mandatory period of 10 days or, if the level was more than 0.25, for an additional mandatory, minimum period of 20 days. The additional mandatory, minimum period of confinement shall not be suspended by the court. In addition, such person shall be fined a mandatory, minimum fine of \$500, which shall not be suspended by the court.

C. Any person convicted of three or more offenses of § 18.2-266 ~~committed within a 10-year period~~ shall ~~upon conviction of the third offense~~ be guilty of a Class 6 felony, and the sentence shall include a mandatory, minimum sentence of confinement for ~~40~~ 30 days that shall not be subject to suspension by the court. In addition, such person shall be fined a mandatory, minimum fine of \$1,000, which shall not be suspended by the court. ~~Any~~ *The sentence of any person convicted of a third offense under § 18.2-266 committed within a five years of an offense under § 18.2-266 shall upon conviction of the third offense be guilty of a Class 6 felony, and the sentence -year period* shall include a mandatory, minimum sentence of confinement for ~~30 days of 60 days~~ that shall not be subject to suspension by the court. In addition, such person shall be fined a mandatory, minimum fine of \$1,000, which shall not be suspended by the court. The punishment of any person convicted of a fourth or subsequent offense under § 18.2-266 committed within a 10-year period shall, upon conviction, include a mandatory, minimum term of imprisonment of one year, none of which may be suspended in whole or in part. In addition, such person shall be fined a mandatory, minimum fine of \$1,000, which shall not be suspended by the court. 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.

D. 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 17 years of age or younger shall be (i) fined an additional minimum of \$500 and not more than \$1000 and (ii) sentenced to a mandatory, minimum period of confinement of five days.

E. For the purpose of this section, an adult conviction of any person, or finding of guilty in the case of a juvenile, under the following shall be considered a ~~prior~~ conviction under § 18.2-266: (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

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

63 § 18.2-271. Forfeiture of driver's license for driving while intoxicated.

64 A. Except as provided in § 18.2-271.1, the judgment of conviction if for a first offense under
65 § 18.2-266 or for a similar offense under any county, city, or town ordinance, or for a first offense
66 under subsection A of § 46.2-341.24, shall of itself operate to deprive the person so convicted of the
67 privilege to drive or operate any motor vehicle, engine or train in the Commonwealth for a period of
68 one year from the date of such judgment. This suspension period shall be in addition to the suspension
69 period provided under § 46.2-391.2.

70 B. If a person (i) is tried on a process alleging a second offense of violating § 18.2-266 or subsection
71 A of § 46.2-341.24, or any substantially similar local ordinance, or law of any other jurisdiction, within
72 ten 10 years of a first offense for which the person was convicted, or found guilty in the case of a
73 juvenile, under § 18.2-266 or subsection A of § 46.2-341.24 or any valid local ordinance or any law of
74 any other jurisdiction substantially similar to § 18.2-266 or subsection A of § 46.2-341.24 and (ii) is
75 convicted thereof, such conviction shall of itself operate to deprive the person so convicted of the
76 privilege to drive or operate any motor vehicle, engine or train in the Commonwealth for a period of
77 three years from the date of the judgment of conviction and such person shall have his license revoked
78 as provided in subsection A of § 46.2-391. The court trying such case shall order the surrender of the
79 person's driver's license, to be disposed of in accordance with § 46.2-398, and shall notify such person
80 that his license has been revoked for a period of three years and that the penalty for violating that
81 revocation is as set out in § 46.2-391. This suspension period shall be in addition to the suspension
82 period provided under § 46.2-391.2. Any period of license suspension or revocation imposed pursuant to
83 this section, in any case, shall run consecutively with any period of suspension for failure to permit a
84 blood or breath sample to be taken as required by §§ 18.2-268.1 through 18.2-268.12 or
85 §§ 46.2-341.26:1 through 46.2-341.26:11.

86 C. If a person (i) is tried on a process alleging a third or subsequent offense of violating § 18.2-266
87 or subsection A of § 46.2-341.24, or any substantially similar local ordinance, or law of any other
88 jurisdiction, within ten years of two other offenses for which the person was convicted, or found not
89 innocent in the case of a juvenile, under § 18.2-266 or subsection A of § 46.2-341.24 or any valid local
90 ordinance or any law of any other jurisdiction substantially similar to § 18.2-266 or subsection A of
91 § 46.2-341.24 and (ii) is convicted thereof, such conviction shall of itself operate to deprive the person
92 so convicted of the privilege to drive or operate any motor vehicle, engine or train in the
93 Commonwealth and such person shall not be eligible for participation in a program pursuant to
94 § 18.2-271.1 and shall, upon such conviction, have his license revoked as provided in subsection B of
95 § 46.2-391. The court trying such case shall order the surrender of the person's driver's license, to be
96 disposed of in accordance with § 46.2-398, and shall notify such person that his license has been
97 revoked indefinitely and that the penalty for violating that revocation is as set out in § 46.2-391.

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

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

104 § 46.2-391. Revocation of license for multiple convictions of driving while intoxicated; exception;
105 petition for restoration of privilege.

106 A. The Commissioner shall forthwith revoke and not thereafter reissue for three years the driver's
107 license of any person on receiving a record of the conviction of any person who (i) is adjudged to be a
108 second offender in violation of the provisions of subsection A of § 46.2-341.24 (driving a commercial
109 motor vehicle under the influence of drugs or intoxicants), or § 18.2-266 (driving under the influence of
110 drugs or intoxicants), if the subsequent violation occurred within ten 10 years from the prior violation, or
111 (ii) is convicted of any two or more offenses of § 18.2-272 (driving while the driver's license has been
112 forfeited for a conviction under § 18.2-266) if the second or subsequent violation occurred within ten 10
113 years of the prior offense. However, if the Commissioner has received a copy of a court order
114 authorizing issuance of a restricted license as provided in subsection E of § 18.2-271.1, he shall proceed
115 as provided in the order of the court. For the purposes of this subsection, an offense in violation of a
116 valid local ordinance, or law of any other jurisdiction, which ordinance or law is substantially similar to
117 any provision of Virginia law herein shall be considered an offense in violation of such provision of
118 Virginia law. Additionally, in no event shall the Commissioner reinstate the driver's license of any
119 person convicted of a violation of § 18.2-266, or of a substantially similar valid local ordinance or law
120 of another jurisdiction, until receipt of notification that such person has successfully completed an
121 alcohol safety action program if such person was required by court order to do so unless the requirement

for completion of the program has been waived by the court for good cause shown.

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 (i) convicted of a violation of § 18.2-36.1 or § 18.2-51.4 or (ii) adjudged to be a third *or subsequent* offender ~~within a period of ten years~~ in violation of the provisions of subsection A of § 46.2-341.24 or § 18.2-266, or a substantially similar ordinance or law of any other jurisdiction.

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, any circuit court:

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 condition that such person install an ignition interlock system in accordance with § 18.2-270.1 on all motor vehicles, as defined in § 46.2-100, owned by or registered to him, in whole or in part, for a period of at least six months, and upon whatever other 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, to include an assessment of his degree of alcohol abuse and the appropriate treatment therefor, if any, 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 § 18.2-270.1 and 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 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 shall 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, to include an assessment of his degree of alcohol abuse and the appropriate treatment therefor, if any, 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.

The ignition interlock system installation requirement under subdivisions 1 and 2 of this subsection need only be satisfied once as to any single revocation under subsection B of this section for any person seeking restoration under subdivision 1 following the granting of a restricted license under subdivision 1 or 2.

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, provided such revocation was based on at least one conviction for an offense committed after July 1, 1999, 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~~ 10 days which shall not be suspended except in cases designated in subdivision 2 b (ii) of this subsection.

2. a. If such driving (i) of itself endangers the life, limb, or property of another or (ii) takes place

183 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
184 a substantially similar law or ordinance of another jurisdiction, irrespective of whether the driving of
185 itself endangers the life, limb or property of another and the person has been previously convicted of a
186 violation of §§ 18.2-36.1, 18.2-51.4, 18.2-266, subsection A of § 46.2-341.24, or a substantially similar
187 local ordinance, or law of another jurisdiction, such person shall be guilty of a felony punishable by
188 confinement in a state correctional facility for not less than one year nor more than five years or, in the
189 discretion of the jury or the court trying the case without a jury, by confinement in jail for ~~twelve~~ 12
190 months and no portion of such sentence shall be suspended.

191 b. However, (i) if the sentence is more than one year in a state correctional facility, any portion of
192 such sentence in excess of one year may be suspended or (ii) in cases wherein such operation is
193 necessitated in situations of apparent extreme emergency ~~which~~ that require such operation to save life
194 or limb, said sentence, or any part thereof may be suspended.

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

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

203 F. Any period of driver's license revocation imposed pursuant to this section shall not begin to expire
204 until the person convicted has surrendered his license to the court or to the Department of Motor
205 Vehicles.

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

209 H. Any person who operates a motor vehicle or any self-propelled machinery or equipment (i) while
210 his license is revoked pursuant to subsection A or B, or (ii) in violation of the terms of a restricted
211 license issued pursuant to subsection C, where the provisions of subsection D do not apply, shall be
212 guilty of a violation of § 18.2-272.