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HOUSE BILL NO. 557

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 Sherwood)

*A BILL to amend and reenact §§ 18.2-272, 46.2-301, 46.2-329 and 46.2-391 of the Code of Virginia, relating to driving after forfeiture of license for DUI conviction.***Be it enacted by the General Assembly of Virginia:****1. That §§ 18.2-272, 46.2-301, 46.2-329 and 46.2-391 of the Code of Virginia are amended and reenacted as follows:**

§ 18.2-272. Driving after forfeiture of license.

If any person so convicted shall, during the time for which he is deprived of his right so to do, drive or operate any motor vehicle, engine or train in this Commonwealth, he shall be guilty of a Class 1 misdemeanor. Any person who drives or operates any motor vehicle, engine or train in the Commonwealth during the time for which he was deprived of the right to do so by § 18.2-271 or § 46.2-391.2, after his license has been revoked pursuant to § 46.2-389 or § 46.2-391, or in violation of the terms of a restricted license issued pursuant to subsection E of § 18.2-271.1, is guilty of a Class 1 misdemeanor, and is subject to administrative revocation of his driver's license pursuant to § 46.2-389 and § 46.2-391. Nothing in this section or §§ 18.2-266, 18.2-270 or § 18.2-271, shall be construed as conflicting with or repealing any ordinance or resolution of any city, town or county which restricts still further the right of such persons to drive or operate any such vehicle or conveyance.

§ 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~~ 90 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, 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 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~~ 10 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 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~~ 90 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

60 ordering of an additional suspension or revocation.

61 *E. Any person who operates a motor vehicle or any self-propelled machinery or equipment in*
62 *violation of the terms of a restricted license issued pursuant to subsection E of § 18.2-271.1 is guilty of*
63 *a violation of § 18.2-272.*

64 § 46.2-329. Special restrictions on particular licensees.

65 The Department, on issuing a driver's license may, whenever good cause appears, impose restrictions
66 suitable to the licensee's driving ability with respect to the type of, or special mechanical control devices
67 required on, a motor vehicle which the licensee may drive, or any other restrictions applicable to the
68 licensee as the Department may determine. When it appears from the records of the Department that the
69 licensee has failed or refused to comply with the restrictions imposed on the licensee's driving of a
70 motor vehicle, the Department may, after ~~ten~~ 10 days' written notice to the address indicated in the
71 records of the Department, suspend the person's driver's license and the suspension shall remain in effect
72 until this section has been complied with.

73 Any person issued a driver's license on which there are printed or stamped restrictions as provided
74 by this section, and who drives a motor vehicle in violation of these restrictions shall be guilty of a
75 Class 2 misdemeanor.

76 *Any person who operates a motor vehicle or any self-propelled machinery or equipment in violation*
77 *of the terms of a restricted license issued pursuant to subsection E of § 18.2-271.1 is guilty of a*
78 *violation of § 18.2-272.*

79 § 46.2-391. Revocation of license for multiple convictions of driving while intoxicated; exception;
80 petition for restoration of privilege.

81 A. The Commissioner shall forthwith revoke and not thereafter reissue for three years the driver's
82 license of any person on receiving a record of the conviction of any person who (i) is adjudged to be a
83 second offender in violation of the provisions of subsection A of § 46.2-341.24 (driving a commercial
84 motor vehicle under the influence of drugs or intoxicants), or § 18.2-266 (driving under the influence of
85 drugs or intoxicants), if the subsequent violation occurred within ~~ten~~ 10 years from the prior violation,
86 or (ii) is convicted of any two or more offenses of § 18.2-272 (driving while the driver's license has
87 been forfeited for a conviction under § 18.2-266) if the second or subsequent violation occurred within
88 ~~ten~~ 10 years of the prior offense. However, if the Commissioner has received a copy of a court order
89 authorizing issuance of a restricted license as provided in subsection E of § 18.2-271.1, he shall proceed
90 as provided in the order of the court. For the purposes of this subsection, an offense in violation of a
91 valid local ordinance, or law of any other jurisdiction, which ordinance or law is substantially similar to
92 any provision of Virginia law herein shall be considered an offense in violation of such provision of
93 Virginia law. Additionally, in no event shall the Commissioner reinstate the driver's license of any
94 person convicted of a violation of § 18.2-266, or of a substantially similar valid local ordinance or law
95 of another jurisdiction, until receipt of notification that such person has successfully completed an
96 alcohol safety action program if such person was required by court order to do so unless the requirement
97 for completion of the program has been waived by the court for good cause shown.

98 B. The Commissioner shall forthwith revoke and not thereafter reissue the driver's license of any
99 person after receiving a record of the conviction of any person (i) convicted of a violation of § 18.2-36.1
100 or § 18.2-51.4 or (ii) adjudged to be a third offender within a period of ~~ten~~ 10 years in violation of the
101 provisions of subsection A of § 46.2-341.24 or § 18.2-266, or a substantially similar ordinance or law of
102 any other jurisdiction.

103 C. Any person who has had his driver's license revoked in accordance with subsection B of this
104 section may petition the circuit court of his residence, or, if a nonresident of Virginia, any circuit court:

105 1. For restoration of his privilege to drive a motor vehicle in the Commonwealth after the expiration
106 of five years from the date of his last conviction. On such petition, and for good cause shown, the court
107 may, in its discretion, restore to the person the privilege to drive a motor vehicle in the Commonwealth
108 on condition that such person install an ignition interlock system in accordance with § 18.2-270.1 on all
109 motor vehicles, as defined in § 46.2-100, owned by or registered to him, in whole or in part, for a
110 period of at least six months, and upon whatever other conditions the court may prescribe, subject to the
111 provisions of law relating to issuance of driver's licenses, if the court is satisfied from the evidence
112 presented that: (i) at the time of his previous convictions, the petitioner was addicted to or
113 psychologically dependent on the use of alcohol or other drugs; (ii) at the time of the hearing on the
114 petition, he is no longer addicted to or psychologically dependent on the use of alcohol or other drugs;
115 and (iii) the defendant does not constitute a threat to the safety and welfare of himself or others with
116 regard to the driving of a motor vehicle. However, prior to acting on the petition, the court shall order
117 that an evaluation of the person, to include an assessment of his degree of alcohol abuse and the
118 appropriate treatment therefor, if any, be conducted by a Virginia Alcohol Safety Action Program and
119 recommendations therefrom be submitted to the court. The court may, in lieu of restoring the person's
120 privilege to drive, authorize the issuance of a restricted license for a period not to exceed five years in
121 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 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 the 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 substantially similar local ordinance, or law 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~~ 12 months and no portion of such sentence shall be suspended.

b. 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.

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

G. Nothing in this section shall 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

183 such tract of land when the distance between the tracts is no more than five miles.

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