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HOUSE BILL NO. 2454

Offered January 10, 2007

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A BILL to amend and reenact § 46.2-391 of the Code of Virginia, relating to permanent revocation of driver's license for third offense of DUI within 10 years.

Patrons—Cline, Albo, Athey, Cole, Cosgrove, Gear, Iaquinto, Jones, S.C., Landes, Lohr, Rust and Sherwood

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 46.2-391 of the Code of Virginia is amended and reenacted as follows:**

§ 46.2-391. Revocation of license for multiple convictions of driving while intoxicated; 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 (i) is adjudged to be a second offender 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), or § 18.2-266 (driving under the influence of drugs or intoxicants), if the subsequent violation occurred within 10 years of the prior violation, or (ii) is convicted of 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 10 years of the prior offense. However, if the Commissioner has received a copy of a court order authorizing issuance of a restricted license 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 violation of a valid local 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. Additionally, in no event shall the Commissioner reinstate the driver's license of any person convicted of a violation of § 18.2-266, or of a substantially similar valid local ordinance or law of another jurisdiction, until receipt of notification that such person has successfully completed an 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. A conviction includes a finding of not innocent in the case of a juvenile.

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) convicted of three offenses arising out of separate incidents or occurrences within a period of 10 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, or any combination of three such offenses. A conviction includes a finding of not innocent in the case of a juvenile.

C. Any person who has had his driver's license revoked in accordance with *clause (i) of 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

58 the Virginia Alcohol Safety Action Program which shall during the term of the restricted license monitor
59 the person's compliance with the terms of the restrictions imposed by the court. Any violation of the
60 restrictions shall be reported to the court, and the court may then modify the restrictions or revoke the
61 license.

62 2. For a restricted license to authorize such person to drive a motor vehicle in the Commonwealth in
63 the course of his employment and to drive a motor vehicle to and from his home to the place of his
64 employment after the expiration of three years from the date of his last conviction. The court may order
65 that a restricted license for such purposes be issued in accordance with the procedures of subsection E
66 of § 18.2-271.1, if the court is satisfied from the evidence presented that (i) at the time of the previous
67 convictions, the petitioner was addicted to or psychologically dependent on the use of alcohol or other
68 drugs; (ii) at the time of the hearing on the petition, he is no longer addicted to or psychologically
69 dependent on the use of alcohol or such other drugs; and (iii) the defendant does not constitute a threat
70 to the safety and welfare of himself and others with regard to the driving of a motor vehicle. The court
71 shall prohibit the person to whom a restricted license is issued from operating a motor vehicle that is
72 not equipped with a functioning, certified ignition interlock system during all or any part of the term for
73 which the restricted license is issued, in accordance with the provisions set forth in § 18.2-270.1.
74 However, prior to acting on the petition, the court shall order that an evaluation of the person, to
75 include an assessment of his degree of alcohol abuse and the appropriate treatment therefor, if any, be
76 conducted by a Virginia Alcohol Safety Action Program and recommendations therefrom be submitted
77 to the court. The Virginia Alcohol Safety Action Program shall during the term of the restricted license
78 monitor the person's compliance with the terms of the restrictions imposed by the court. Any violation
79 of the restrictions shall be reported to the court, and the court may then modify the restrictions or
80 revoke the license.

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

85 D. Any person convicted of driving a motor vehicle or any self-propelled machinery or equipment (i)
86 while his license is revoked pursuant to subsection A or B or (ii) in violation of the terms of a restricted
87 license issued pursuant to subsection C shall, provided such revocation was based on at least one
88 conviction for an offense committed after July 1, 1999, be punished as follows:

89 1. If such driving does not of itself endanger the life, limb, or property of another, such person shall
90 be guilty of a Class 1 misdemeanor punishable by a mandatory minimum term of confinement in jail of
91 10 days except in cases wherein such operation is necessitated in situations of apparent extreme
92 emergency that require such operation to save life or limb, the sentence, or any part thereof, may be
93 suspended.

94 2. a. If such driving (i) of itself endangers the life, limb, or property of another or (ii) takes place
95 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
96 a substantially similar law or ordinance of another jurisdiction, irrespective of whether the driving of
97 itself endangers the life, limb or property of another and the person has been previously convicted of a
98 violation of §§ 18.2-36.1, 18.2-51.4, 18.2-266, subsection A of § 46.2-341.24, or a substantially similar
99 local ordinance, or law of another jurisdiction, such person shall be guilty of a felony punishable by
100 confinement in a state correctional facility for not less than one year nor more than five years, one year
101 of which shall be a mandatory minimum term of confinement or, in the discretion of the jury or the
102 court trying the case without a jury, by mandatory minimum confinement in jail for a period of 12
103 months and no portion of such sentence shall be suspended or run concurrently with any other sentence.

104 b. However, in cases wherein such operation is necessitated in situations of apparent extreme
105 emergency that require such operation to save life or limb, the sentence, or any part thereof, may be
106 suspended.

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

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

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

118 G. Nothing in this section shall prohibit a person from operating any farm tractor on the highways
119 when it is necessary to move the tractor from one tract of land used for agricultural purposes to another

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

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

INTRODUCED

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