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SENATE BILL NO. 1103

Offered January 9, 2013

Prefiled January 9, 2013

A *BILL to amend and reenact §§ 18.2-271.1 and 18.2-272 of the Code of Virginia, relating to restricted license for first offense DUI; alcohol monitoring device.*

Patron—McDougle

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-271.1 and 18.2-272 of the Code of Virginia are amended and reenacted as follows:
§ 18.2-271.1. Probation, education and rehabilitation of person charged or convicted; person convicted under law of another state; issuance of restricted license.

A. Any person convicted of a first or second offense of § 18.2-266 (i), (ii), (iii), or (iv), or any ordinance of a county, city, or town similar to the provisions thereof, or provisions of subsection A of § 46.2-341.24, shall be required by court order, as a condition of probation or otherwise, to enter into and successfully complete an alcohol safety action program in the judicial district in which such charge is brought or in any other judicial district upon such terms and conditions as the court may set forth. However, upon motion of a person convicted of any such offense following an assessment of the person conducted by an alcohol safety action program, the court, for good cause, may decline to order participation in such a program if the assessment by the alcohol safety action program indicates that intervention is not appropriate for such person. In no event shall such persons be permitted to enter any such program which is not certified as meeting minimum standards and criteria established by the Commission on the Virginia Alcohol Safety Action Program (VASAP) pursuant to subsection H of this section and to § 18.2-271.2. However, any person charged with a violation of a first or second offense of § 18.2-266 (i), (ii), (iii), or (iv), or any ordinance of a county, city, or town similar to the provisions thereof, or provisions of subsection A of § 46.2-341.24, may, at any time prior to trial, enter into an alcohol safety action program in the judicial district in which such charge is brought or in any other judicial district. Any person who enters into such program prior to trial may pre-qualify with the program to have an ignition interlock system installed on any motor vehicle owned or operated by him. However, no ignition interlock company shall install an ignition interlock system on any such vehicle until a court issues to the person a restricted license with the ignition interlock restriction.

B. The court shall require the person entering such program under the provisions of this section to pay a fee of no less than \$250 but no more than \$300. A reasonable portion of such fee, as may be determined by the Commission on VASAP, but not to exceed 10 percent, shall be forwarded monthly to be deposited with the State Treasurer for expenditure by the Commission on VASAP, and the balance shall be held in a separate fund for local administration of driver alcohol rehabilitation programs. Upon a positive finding that the defendant is indigent, the court may reduce or waive the fee. In addition to the costs of the proceeding, fees as may reasonably be required of defendants referred for intervention under any such program may be charged.

C. Upon conviction of a violation of § 18.2-266 or any ordinance of a county, city or town similar to the provisions thereof, or subsection A of § 46.2-341.24, the court shall impose the sentence authorized by § 18.2-270 or 46.2-341.28 and the license revocation as authorized by § 18.2-271. In addition, if the conviction was for a second offense committed within less than 10 years after a first such offense, the court shall order that restoration of the person's license to drive be conditioned upon the installation of an ignition interlock system on each motor vehicle, as defined in § 46.2-100, owned by or registered to the person, in whole or in part, for a period of six months beginning at the end of the three year license revocation, unless such a system has already been installed for six months prior to that time pursuant to a restricted license order under subsection E of this section. Upon a finding that a person so convicted is required to participate in the program described herein, the court shall enter the conviction on the warrant, and shall note that the person so convicted has been referred to such program. The court may then proceed to issue an order in accordance with subsection E of this section, if the court finds that the person so convicted is eligible for a restricted license. If the court finds good cause for a person not to participate in such program or subsequently that such person has violated, without good cause, any of the conditions set forth by the court in entering the program, the court shall dispose of the case as if no program had been entered, in which event the revocation provisions of § 46.2-389 and subsection A of § 46.2-391 shall be applicable to the conviction. The court shall, upon final disposition of the case, send a copy of its order to the Commissioner of the Department of Motor Vehicles. If such order provides for

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59 the issuance of a restricted license, the Commissioner of the Department of Motor Vehicles, upon receipt
60 thereof, shall issue a restricted license. Appeals from any such disposition shall be allowed as provided
61 by law. The time within which an appeal may be taken shall be calculated from the date of the final
62 disposition of the case or any motion for rehearing, whichever is later.

63 D. Any person who has been convicted in another state of the violation of a law of such state
64 substantially similar to the provisions of § 18.2-266 or subsection A of § 46.2-341.24, and whose
65 privilege to operate a motor vehicle in this Commonwealth is subject to revocation under the provisions
66 of § 46.2-389 and subsection A of § 46.2-391, may petition the general district court of the county or
67 city in which he resides that he be given probation and assigned to a program as provided in subsection
68 A of this section and that, upon entry into such program, he be issued an order in accordance with
69 subsection E of this section. If the court finds that such person would have qualified therefor if he had
70 been convicted in this Commonwealth of a violation of § 18.2-266 or subsection A of § 46.2-341.24, the
71 court may grant the petition and may issue an order in accordance with subsection E of this section as
72 to the period of license suspension or revocation imposed pursuant to § 46.2-389 or subsection A of
73 § 46.2-391. Such order shall be conditioned upon the successful completion of a program by the
74 petitioner. If the court subsequently finds that such person has violated any of the conditions set forth by
75 the court, the court shall dispose of the case as if no program had been entered and shall notify the
76 Commissioner, who shall revoke the person's license in accordance with the provisions of § 46.2-389 or
77 subsection A of § 46.2-391. A copy of the order granting the petition or subsequently revoking or
78 suspending such person's license to operate a motor vehicle shall be forthwith sent to the Commissioner
79 of the Department of Motor Vehicles.

80 No period of license suspension or revocation shall be imposed pursuant to this subsection which,
81 when considered together with any period of license suspension or revocation previously imposed for the
82 same offense in any state, results in such person's license being suspended for a period in excess of the
83 maximum periods specified in this subsection.

84 E. Except as otherwise provided ~~herein~~ *in this section*, whenever a person enters a certified program
85 pursuant to this section, and such person's license to operate a motor vehicle, engine or train in the
86 Commonwealth has been suspended or revoked, the court may, in its discretion and for good cause
87 shown, provide that such person be issued a restricted permit to operate a motor vehicle for any of the
88 following purposes: (i) travel to and from his place of employment; (ii) travel to and from an alcohol
89 rehabilitation or safety action program; (iii) travel during the hours of such person's employment if the
90 operation of a motor vehicle is a necessary incident of such employment; (iv) travel to and from school
91 if such person is a student, upon proper written verification to the court that such person is enrolled in a
92 continuing program of education; (v) travel for health care services, including medically necessary
93 transportation of an elderly parent or, as designated by the court, any person residing in the person's
94 household with a serious medical problem upon written verification of need by a licensed health
95 professional; (vi) travel necessary to transport a minor child under the care of such person to and from
96 school, day care, and facilities housing medical service providers; (vii) travel to and from court-ordered
97 visitation with a child of such person; (viii) travel to a screening, evaluation and education program
98 entered pursuant to § 18.2-251 or subsection H of § 18.2-258.1; (ix) travel to and from court
99 appearances in which he is a subpoenaed witness or a party and appointments with his probation officer
100 and to and from any programs required by the court or as a condition of probation; (x) travel to and
101 from a place of religious worship one day per week at a specified time and place; (xi) travel to and
102 from appointments approved by the Division of Child Support Enforcement of the Department of Social
103 Services as a requirement of participation in a court-ordered intensive case monitoring program for child
104 support for which the participant maintains written proof of the appointment, including written proof of
105 the date and time of the appointment, on his person; (xii) travel to and from jail to serve a sentence
106 when such person has been convicted and sentenced to confinement in jail and pursuant to § 53.1-131.1
107 the time to be served is on weekends or nonconsecutive days; or (xiii) travel to and from the facility
108 that installed or monitors the ignition interlock in the person's vehicle.

109 No restricted license issued pursuant to this ~~subsection~~ *section* shall permit any person to operate a
110 commercial motor vehicle as defined in the Virginia Commercial Driver's License Act (§ 46.2-341.1 et
111 seq.). The court shall order the surrender of such person's license to operate a motor vehicle to be
112 disposed of in accordance with the provisions of § 46.2-398 and shall forward to the Commissioner of
113 the Department of Motor Vehicles a copy of its order entered pursuant to this ~~subsection~~ *section*, which
114 shall specifically enumerate the restrictions imposed and contain such information regarding the person
115 to whom such a permit is issued as is reasonably necessary to identify such person. The court shall also
116 provide a copy of its order to the person so convicted who may operate a motor vehicle on the order
117 until receipt from the Commissioner of the Department of Motor Vehicles of a restricted license, if the
118 order provides for a restricted license for that time period. A copy of such order and, after receipt
119 thereof, the restricted license shall be carried at all times while operating a motor vehicle. Any person
120 who operates a motor vehicle in violation of any restrictions imposed pursuant to this section shall be

guilty of a violation of § 18.2-272.

~~Such~~ A restricted license *issued pursuant to this subsection* shall be conditioned upon enrollment within 15 days in, and successful completion of, a program as described in subsection A of this section. No restricted license shall be issued during the first four months of a revocation imposed pursuant to subsection B of § 18.2-271 or subsection A of § 46.2-391 for a second offense of the type described therein committed within 10 years of a first such offense. No restricted license shall be issued during the first year of a revocation imposed pursuant to subsection B of § 18.2-271 or subsection A of § 46.2-391 for a second offense of the type described therein committed within five years of a first such offense. No restricted license shall be issued during any revocation period imposed pursuant to subsection C of § 18.2-271 or subsection B of § 46.2-391.

Notwithstanding the provisions of § 46.2-411, the fee charged pursuant to § 46.2-411 for reinstatement of the driver's license of any person whose privilege or license has been suspended or revoked as a result of a violation of § 18.2-266, subsection A of § 46.2-341.24 or of any ordinance of a county, city or town, or of any federal law or the laws of any other state similar to the provisions of § 18.2-266 or subsection A of § 46.2-341.24 shall be \$105. Forty dollars of such reinstatement fee shall be retained by the Department of Motor Vehicles as provided in § 46.2-411, \$40 shall be transferred to the Commission on VASAP, and \$25 shall be transferred to the Commonwealth Neurotrauma Initiative Trust Fund.

F. For any person convicted of a first offense of clause (i), (ii), (iii), or (iv) of § 18.2-266, or of any ordinance of a county, city, or town similar to the provisions thereof, or of subsection A of § 46.2-341.24, where the offense occurred on or after July 1, 2013, in lieu of issuing a restricted license for the purposes set out in subsection E, the court may issue an order for a restricted license that is not limited to the purposes enumerated in subsection E under the following conditions, which shall be set out in the order and shall be conditions of probation: (i) the person receives a sentence of 12 months and is placed on probation for any portion of the sentence that he is not incarcerated, (ii) the person refrains from alcohol consumption for the duration of the sentence and probationary period, (iii) the person wears a secure transdermal alcohol monitoring device during the probationary period that provides continuous remote transdermal alcohol testing of the breath, blood, or transdermal alcohol concentration levels, and (iv) the person pays all costs of installing, maintaining, and administering the device, unless such cost is waived. Upon a finding that the defendant is indigent, the court may reduce or waive the costs of the device. The monitoring agency shall report any violations to the court.

~~F.~~ *G.* The court shall have jurisdiction over any person entering such program under any provision of this section until such time as the case has been disposed of by either successful completion of the program *or the probationary period*, or revocation due to ineligibility or violation of a condition or conditions imposed by the court, whichever shall first occur. Revocation proceedings shall be commenced by notice to show cause why the court should not revoke the privilege afforded by this section. Such notice shall be made by first-class mail to the last known address of such person, and shall direct such person to appear before the court in response thereto on a date contained in such notice, which shall not be less than 10 days from the date of mailing of the notice. Failure to appear in response to such notice shall of itself be grounds for revocation of such privilege. Notice of revocation under this subsection shall be sent forthwith to the Commissioner of the Department of Motor Vehicles.

~~G.~~ *H.* For the purposes of this section, any court which has convicted a person of a violation of § 18.2-266, subsection A of § 46.2-341.24 or any ordinance of a county, city or town similar to the provisions of § 18.2-266 shall have continuing jurisdiction over such person during any period of license revocation related to that conviction, for the limited purposes of (i) referring such person to a certified alcohol safety action program, (ii) providing for a restricted permit for such person in accordance with the provisions of subsection E *or F*, and (iii) imposing terms, conditions and limitations for actions taken pursuant to clauses (i) and (ii), whether or not it took either such action at the time of the conviction. This continuing jurisdiction is subject to the limitations of subsection E that provide that no restricted license shall be issued during a revocation imposed pursuant to subsection C of § 18.2-271 or subsection B of § 46.2-391 or during the first four months or first year, whichever is applicable, of the revocation imposed pursuant to subsection B of § 18.2-271 or subsection A of § 46.2-391. The provisions of this subsection shall apply to a person convicted of a violation of § 18.2-266, subsection A of § 46.2-341.24 or any ordinance of a county, city or town similar to the provisions of § 18.2-266 on, after and at any time prior to July 1, 2003.

H. *I.* The State Treasurer, the Commission on VASAP or any city or county is authorized to accept any gifts or bequests of money or property, and any grant, loan, service, payment or property from any source, including the federal government, for the purpose of driver alcohol education. Any such gifts, bequests, grants, loans or payments shall be deposited in the separate fund provided in subsection B.

I. *J.* The Commission on VASAP, or any county, city, town, or any combination thereof may establish and, if established, shall operate, in accordance with the standards and criteria required by this

subsection, alcohol safety action programs in connection with highway safety. Each such program shall operate under the direction of a local independent policy board chosen in accordance with procedures approved and promulgated by the Commission on VASAP. Local sitting or retired district court judges who regularly hear or heard cases involving driving under the influence and are familiar with their local alcohol safety action programs may serve on such boards. The Commission on VASAP shall establish minimum standards and criteria for the implementation and operation of such programs and shall establish procedures to certify all such programs to ensure that they meet the minimum standards and criteria stipulated by the Commission. The Commission shall also establish criteria for the administration of such programs for public information activities, for accounting procedures, for the auditing requirements of such programs and for the allocation of funds. Funds paid to the Commonwealth hereunder shall be utilized in the discretion of the Commission on VASAP to offset the costs of state programs and local programs run in conjunction with any county, city or town and costs incurred by the Commission. The Commission shall submit an annual report as to actions taken at the close of each calendar year to the Governor and the General Assembly.

§ K. Notwithstanding any other provisions of this section or of § 18.2-271, nothing in this section shall permit the court to suspend, reduce, limit, or otherwise modify any disqualification from operating a commercial motor vehicle imposed under the provisions of the Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.).

§ 18.2-272. Driving after forfeiture of license.

A. 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 (i) upon conviction of a violation of § 18.2-268.3 or of an offense set forth in subsection E of § 18.2-270, (ii) by § 18.2-271 or 46.2-391.2, (iii) after his license has been revoked pursuant to § 46.2-389 or 46.2-391, or (iv) in violation of the terms of a restricted license issued pursuant to subsection E or F of § 18.2-271.1, is guilty of a Class 1 misdemeanor except as otherwise provided in § 46.2-391, and is subject to administrative revocation of his driver's license pursuant to §§ 46.2-389 and 46.2-391. Any person convicted of three violations of this section committed within a 10-year period is guilty of a Class 6 felony.

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.

B. Regardless of compliance with any other restrictions on his privilege to drive or operate a motor vehicle, it shall be a violation of this section for any person whose privilege to drive or operate a motor vehicle has been restricted, suspended or revoked because of a violation of § 18.2-36.1, 18.2-51.4, 18.2-266, 18.2-268.3, 46.2-341.24, or a similar ordinance or law of another state or the United States to drive or operate a motor vehicle while he has a blood alcohol content of 0.02 percent or more.

Any person suspected of a violation of this subsection shall be entitled to a preliminary breath test in accordance with the provisions of § 18.2-267, shall be deemed to have given his implied consent to have samples of his blood, breath or both taken for analysis pursuant to the provisions of § 18.2-268.2, and, when charged with a violation of this subsection, shall be subject to the provisions of §§ 18.2-268.1 through 18.2-268.12.

C. Any person who drives or operates a motor vehicle without a certified ignition interlock system as required by § 46.2-391.01 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.

2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 3 of the Acts of Assembly of 2012, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.