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HOUSE BILL NO. 1783

House Amendments in [] - February 9, 2015

A BILL to amend and reenact §§ 18.2-271.1, 46.2-320.1, and 63.2-1952 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 63.2-1908.1, relating to child support; arrearage.

Patron Prior to Engrossment—Delegate Lindsey

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-271.1, 46.2-320.1, and 63.2-1952 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 63.2-1908.1 as follows:

§ 18.2-271.1. Probation, education and rehabilitation of person charged or convicted; person convicted under law of another state.

A. Any person convicted of a first or second offense of § 18.2-266, 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 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, 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

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59 § 46.2-391 shall be applicable to the conviction. The court shall, upon final disposition of the case, send
60 a copy of its order to the Commissioner of the Department of Motor Vehicles. If such order provides for
61 the issuance of a restricted license, the Commissioner of the Department of Motor Vehicles, upon receipt
62 thereof, shall issue a restricted license. Appeals from any such disposition shall be allowed as provided
63 by law. The time within which an appeal may be taken shall be calculated from the date of the final
64 disposition of the case or any motion for rehearing, whichever is later.

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

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

86 E. Except as otherwise provided herein, whenever a person enters a certified program pursuant to this
87 section, and such person's license to operate a motor vehicle, engine or train in the Commonwealth has
88 been suspended or revoked, the court may, in its discretion and for good cause shown, provide that such
89 person be issued a restricted permit to operate a motor vehicle for any of the following purposes: (i)
90 travel to and from his place of employment; (ii) travel to and from an alcohol rehabilitation or safety
91 action program; (iii) travel during the hours of such person's employment if the operation of a motor
92 vehicle is a necessary incident of such employment; (iv) travel to and from school if such person is a
93 student, upon proper written verification to the court that such person is enrolled in a continuing
94 program of education; (v) travel for health care services, including medically necessary transportation of
95 an elderly parent or, as designated by the court, any person residing in the person's household with a
96 serious medical problem upon written verification of need by a licensed health professional; (vi) travel
97 necessary to transport a minor child under the care of such person to and from school, day care, and
98 facilities housing medical service providers; (vii) travel to and from court-ordered visitation with a child
99 of such person; (viii) travel to a screening, evaluation and education program entered pursuant to
100 § 18.2-251 or subsection H of § 18.2-258.1; (ix) travel to and from court appearances in which he is a
101 subpoenaed witness or a party and appointments with his probation officer and to and from any
102 programs required by the court or as a condition of probation; (x) travel to and from a place of religious
103 worship one day per week at a specified time and place; (xi) travel to and from appointments approved
104 by the Division of Child Support Enforcement of the Department of Social Services as a requirement of
105 participation in a *an administrative or* court-ordered intensive case monitoring program for child support
106 for which the participant maintains written proof of the appointment, including written proof of the date
107 and time of the appointment, on his person; (xii) travel to and from jail to serve a sentence when such
108 person has been convicted and sentenced to confinement in jail and pursuant to § 53.1-131.1 the time to
109 be served is on weekends or nonconsecutive days; or (xiii) travel to and from the facility that installed
110 or monitors the ignition interlock in the person's vehicle. No restricted license issued pursuant to this
111 subsection shall permit any person to operate a commercial motor vehicle as defined in the Virginia
112 Commercial Driver's License Act (§ 46.2-341.1 et seq.). The court shall order the surrender of such
113 person's license to operate a motor vehicle to be disposed of in accordance with the provisions of
114 § 46.2-398 and shall forward to the Commissioner of the Department of Motor Vehicles a copy of its
115 order entered pursuant to this subsection, which shall specifically enumerate the restrictions imposed and
116 contain such information regarding the person to whom such a permit is issued as is reasonably
117 necessary to identify such person. The court shall also provide a copy of its order to the person so
118 convicted who may operate a motor vehicle on the order until receipt from the Commissioner of the
119 Department of Motor Vehicles of a restricted license, if the order provides for a restricted license for
120 that time period. A copy of such order and, after receipt thereof, the restricted license shall be carried at

all times while operating a motor vehicle. Any person 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 restricted license 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. 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 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. 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, 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. 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. 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.

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

186 **§ 46.2-320.1. Other grounds for suspension; nonpayment of child support.**

187 A. The Commissioner may enter into an agreement with the Department of Social Services whereby
188 the Department may suspend or refuse to renew the driver's license of any person upon receipt of notice
189 from the Department of Social Services that the person (i) is delinquent in the payment of child support
190 by 90 days or more or in an amount of \$5,000 or more or (ii) has failed to comply with a subpoena,
191 summons, or warrant relating to paternity or child support proceedings. A suspension or refusal to renew
192 authorized pursuant to this section shall not be effective until 30 days after service on the delinquent
193 obligor of notice of intent to suspend or refusal to renew. The notice of intent shall be served on the
194 obligor by the Department of Social Services (a) by certified mail, return receipt requested, sent to the
195 obligor's last known addresses as shown in the records of the Department or the Department of Social
196 Services; or (b) pursuant to § 8.01-296, or service may be waived by the obligor in accordance with
197 procedures established by the Department of Social Services. The obligor shall be entitled to a judicial
198 hearing if a request for a hearing is made, in writing, to the Department of Social Services within 10
199 days from service of the notice of intent. Upon receipt of the request for a hearing, the Department of
200 Social Services shall petition the court that entered or is enforcing the order, requesting a hearing on the
201 proposed suspension or refusal to renew. The court shall authorize the suspension or refusal to renew
202 only if it finds that the obligor's noncompliance with the child support order was willful. Upon a
203 showing by the Department of Social Services that the obligor is delinquent in the payment of child
204 support by 90 days or more or in an amount of \$5,000 or more, the burden of proving that the
205 delinquency was not willful shall rest upon the obligor. The Department shall not suspend or refuse to
206 renew the driver's license until a final determination is made by the court.

207 B. At any time after service of a notice of intent, the person may petition the juvenile and domestic
208 relations district court in the jurisdiction where he resides for the issuance of a restricted license to be
209 used if the suspension or refusal to renew becomes effective. Upon such petition and a finding of good
210 cause, the court may provide that such person be issued a restricted permit to operate a motor vehicle
211 for any of the purposes set forth in subsection E of § 18.2-271.1. A restricted license issued pursuant to
212 this subsection shall not permit any person to operate a commercial motor vehicle as defined in
213 § 46.2-341.4. The court shall order the surrender of the person's license to operate a motor vehicle, to be
214 disposed of in accordance with the provisions of § 46.2-398, and shall forward to the Commissioner a
215 copy of its order entered pursuant to this subsection. The order shall specifically enumerate the
216 restrictions imposed and contain such information regarding the person to whom such a permit is issued
217 as is reasonably necessary to identify him.

218 C. The Department shall not renew a driver's license or terminate a license suspension imposed
219 pursuant to this section until it has received from the Department of Social Services a certification that
220 the person has (i) paid the delinquency in full; (ii) reached an agreement with the Department of Social
221 Services to satisfy the delinquency within a period not to exceed 10 years, and at least one payment
222 representing at least five percent of the total delinquency or \$600, whichever is greater, has been made
223 pursuant to the agreement; (iii) complied with a subpoena, summons, or warrant relating to a paternity
224 or child support proceeding; or (iv) completed or is successfully participating in an intensive case
225 monitoring program for child support as ordered by a juvenile and domestic relations district court ~~for~~
226 ~~noncustodial parents, as determined by the court or as administered by the Department of Social~~
227 ~~Services.~~ Certification by the Department of Social Services shall be made by electronic or telephonic
228 communication and shall be made on the same work day that payment required by clause (i) or (ii) is
229 made.

230 D. If a person who has entered into an agreement with the Department of Social Services pursuant to
231 clause (ii) of subsection C fails to comply with the requirements of the agreement, the Department of
232 Social Services shall notify the Department of the person's noncompliance and the Department shall
233 suspend or refuse to renew the driver's license of the person until it has received from the Department
234 of Social Services a certification that the person has paid the delinquency in full or has entered into a
235 subsequent agreement with the Department of Social Services to satisfy the delinquency within a period
236 not to exceed seven years and has made at least one payment of \$1,200 or five percent of the total
237 delinquency, whichever is greater, pursuant to the agreement. If the person fails to comply with the
238 terms of a subsequent agreement reached with the Department of Social Services pursuant to this
239 section, without further notice to the person as provided in the subsequent agreement, the Department of
240 Social Services shall notify the Department of the person's noncompliance, and the Department shall
241 suspend or refuse to renew the driver's license of the person. A person who has failed to comply with
242 the terms of a second or subsequent agreement pursuant to this subsection may be granted a new
243 agreement with the Department of Social Services if the person has made at least one payment of

\$1,800 or five percent of the total delinquency, whichever is greater, and agrees to a repayment schedule of not more than seven years. Upon receipt of certification from the Department of Social Services of the person's satisfaction of these conditions, the Department shall issue a driver's license to the person or reinstate the person's driver's license. Certification by the Department of Social Services shall be made by electronic or telephonic communication and shall be made on the same work day that payment required by this subsection is made.

§ 63.2-1908.1. Arrears compromise program.

The Department may establish and operate an arrears compromise program pursuant to which it may [~~accept offers in~~] compromise [of] child support arrears and interest accrued thereon owed to the Commonwealth for reimbursement of public assistance paid. The program shall take into consideration the obligor's ability to pay.

§ 63.2-1952. Interest on debts due.

Interest at the judgment interest rate as established by § 6.2-302 on any arrearage pursuant to an order being enforced by the Department pursuant to this chapter shall be collected by the Commissioner except in the case of a minor obligor during the period of his minority. The Commissioner shall maintain interest balance due accounts. *In accordance with § 63.2-1908.1, the Commissioner may [~~accept offers in~~] compromise [of] interest on debt owed to the Commonwealth for reimbursement of public assistance paid.*

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