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SENATE BILL NO. 686

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on January 28, 2015)

(Patron Prior to Substitute—Senator Ebbin)

A *BILL to amend and reenact §§ 16.1-260, 18.2-250.1, 18.2-251, 18.2-252, 18.2-259.1, 18.2-18.2-308.1:5, and 46.2-390.1 of the Code of Virginia, relating to possession of marijuana; penalty.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-260, 18.2-250.1, 18.2-251, 18.2-252, 18.2-259.1, 18.2-308.1:5, and 46.2-390.1 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-260. Intake; petition; investigation.

A. All matters alleged to be within the jurisdiction of the court shall be commenced by the filing of a petition, except as provided in subsection H and in § 16.1-259. The form and content of the petition shall be as provided in § 16.1-262. No individual shall be required to obtain support services from the Department of Social Services prior to filing a petition seeking support for a child. Complaints, requests and the processing of petitions to initiate a case shall be the responsibility of the intake officer. However, (i) the attorney for the Commonwealth of the city or county may file a petition on his own motion with the clerk, (ii) designated nonattorney employees of the Department of Social Services may complete, sign and file petitions and motions relating to the establishment, modification, or enforcement of support on forms approved by the Supreme Court of Virginia with the clerk, and (iii) any attorney may file petitions on behalf of his client with the clerk except petitions alleging that the subject of the petition is a child alleged to be in need of services, in need of supervision or delinquent. Complaints alleging abuse or neglect of a child shall be referred initially to the local department of social services in accordance with the provisions of Chapter 15 (§ 63.2-1500 et seq.) of Title 63.2. Motions and other subsequent pleadings in a case shall be filed directly with the clerk. The intake officer or clerk with whom the petition or motion is filed shall inquire whether the petitioner is receiving child support services or public assistance. No individual who is receiving support services or public assistance shall be denied the right to file a petition or motion to establish, modify or enforce an order for support of a child. If the petitioner is seeking or receiving child support services or public assistance, the clerk, upon issuance of process, shall forward a copy of the petition or motion, together with notice of the court date, to the Division of Child Support Enforcement.

B. The appearance of a child before an intake officer may be by (i) personal appearance before the intake officer or (ii) use of two-way electronic video and audio communication. If two-way electronic video and audio communication is used, an intake officer may exercise all powers conferred by law. All communications and proceedings shall be conducted in the same manner as if the appearance were in person, and any documents filed may be transmitted by facsimile process. The facsimile may be served or executed by the officer or person to whom sent, and returned in the same manner, and with the same force, effect, authority, and liability as an original document. All signatures thereon shall be treated as original signatures. Any two-way electronic video and audio communication system used for an appearance shall meet the standards as set forth in subsection B of § 19.2-3.1.

When the court service unit of any court receives a complaint alleging facts which may be sufficient to invoke the jurisdiction of the court pursuant to § 16.1-241, the unit, through an intake officer, may proceed informally to make such adjustment as is practicable without the filing of a petition or may authorize a petition to be filed by any complainant having sufficient knowledge of the matter to establish probable cause for the issuance of the petition.

An intake officer may proceed informally on a complaint alleging a child is in need of services, in need of supervision or delinquent only if the juvenile (i) is not alleged to have committed a violent juvenile felony or (ii) has not previously been proceeded against informally or adjudicated delinquent for an offense that would be a felony if committed by an adult. A petition alleging that a juvenile committed a violent juvenile felony shall be filed with the court. A petition alleging that a juvenile is delinquent for an offense that would be a felony if committed by an adult shall be filed with the court if the juvenile had previously been proceeded against informally by intake or had been adjudicated delinquent for an offense that would be a felony if committed by an adult.

If a juvenile is alleged to be a truant pursuant to a complaint filed in accordance with § 22.1-258 and the attendance officer has provided documentation to the intake officer that the relevant school division has complied with the provisions of § 22.1-258, then the intake officer shall file a petition with the court. The intake officer may defer filing the complaint for 90 days and proceed informally by developing a truancy plan. The intake officer may proceed informally only if the juvenile has not

60 previously been proceeded against informally or adjudicated in need of supervision for failure to comply
61 with compulsory school attendance as provided in § 22.1-254. The juvenile and his parent or parents,
62 guardian or other person standing in loco parentis must agree, in writing, for the development of a
63 truancy plan. The truancy plan may include requirements that the juvenile and his parent or parents,
64 guardian or other person standing in loco parentis participate in such programs, cooperate in such
65 treatment or be subject to such conditions and limitations as necessary to ensure the juvenile's
66 compliance with compulsory school attendance as provided in § 22.1-254. The intake officer may refer
67 the juvenile to the appropriate public agency for the purpose of developing a truancy plan using an
68 interagency interdisciplinary team approach. The team may include qualified personnel who are
69 reasonably available from the appropriate department of social services, community services board, local
70 school division, court service unit and other appropriate and available public and private agencies and
71 may be the family assessment and planning team established pursuant to § 2.2-5207. If at the end of the
72 90-day period the juvenile has not successfully completed the truancy plan or the truancy program, then
73 the intake officer shall file the petition.

74 Whenever informal action is taken as provided in this subsection on a complaint alleging that a child
75 is in need of services, in need of supervision or delinquent, the intake officer shall (i) develop a plan for
76 the juvenile, which may include restitution and the performance of community service, based upon
77 community resources and the circumstances which resulted in the complaint, (ii) create an official record
78 of the action taken by the intake officer and file such record in the juvenile's case file, and (iii) advise
79 the juvenile and the juvenile's parent, guardian or other person standing in loco parentis and the
80 complainant that any subsequent complaint alleging that the child is in need of supervision or delinquent
81 based upon facts which may be sufficient to invoke the jurisdiction of the court pursuant to § 16.1-241
82 will result in the filing of a petition with the court.

83 C. The intake officer shall accept and file a petition in which it is alleged that (i) the custody,
84 visitation or support of a child is the subject of controversy or requires determination, (ii) a person has
85 deserted, abandoned or failed to provide support for any person in violation of law, (iii) a child or such
86 child's parent, guardian, legal custodian or other person standing in loco parentis is entitled to treatment,
87 rehabilitation or other services which are required by law, (iv) family abuse has occurred and a
88 protective order is being sought pursuant to § 16.1-253.1, 16.1-253.4, or 16.1-279.1, or (v) an act of
89 violence, force, or threat has occurred, a protective order is being sought pursuant to § 19.2-152.8,
90 19.2-152.9, or 19.2-152.10, and either the alleged victim or the respondent is a juvenile. If any such
91 complainant does not file a petition, the intake officer may file it. In cases in which a child is alleged to
92 be abused, neglected, in need of services, in need of supervision or delinquent, if the intake officer
93 believes that probable cause does not exist, or that the authorization of a petition will not be in the best
94 interest of the family or juvenile or that the matter may be effectively dealt with by some agency other
95 than the court, he may refuse to authorize the filing of a petition. The intake officer shall provide to a
96 person seeking a protective order pursuant to § 16.1-253.1, 16.1-253.4, or 16.1-279.1 a written
97 explanation of the conditions, procedures and time limits applicable to the issuance of protective orders
98 pursuant to § 16.1-253.1, 16.1-253.4, or 16.1-279.1. If the person is seeking a protective order pursuant
99 to § 19.2-152.8, 19.2-152.9, or 19.2-152.10, the intake officer shall provide a written explanation of the
100 conditions, procedures, and time limits applicable to the issuance of protective orders pursuant to
101 § 19.2-152.8, 19.2-152.9, or 19.2-152.10.

102 D. Prior to the filing of any petition alleging that a child is in need of supervision, the matter shall
103 be reviewed by an intake officer who shall determine whether the petitioner and the child alleged to be
104 in need of supervision have utilized or attempted to utilize treatment and services available in the
105 community and have exhausted all appropriate nonjudicial remedies which are available to them. When
106 the intake officer determines that the parties have not attempted to utilize available treatment or services
107 or have not exhausted all appropriate nonjudicial remedies which are available, he shall refer the
108 petitioner and the child alleged to be in need of supervision to the appropriate agency, treatment facility
109 or individual to receive treatment or services, and a petition shall not be filed. Only after the intake
110 officer determines that the parties have made a reasonable effort to utilize available community
111 treatment or services may he permit the petition to be filed.

112 E. If the intake officer refuses to authorize a petition relating to an offense that if committed by an
113 adult would be punishable as a Class 1 misdemeanor or as a felony, the complainant shall be notified in
114 writing at that time of the complainant's right to apply to a magistrate for a warrant. If a magistrate
115 determines that probable cause exists, he shall issue a warrant returnable to the juvenile and domestic
116 relations district court. The warrant shall be delivered forthwith to the juvenile court, and the intake
117 officer shall accept and file a petition founded upon the warrant. If the court is closed and the magistrate
118 finds that the criteria for detention or shelter care set forth in § 16.1-248.1 have been satisfied, the
119 juvenile may be detained pursuant to the warrant issued in accordance with this subsection. If the intake
120 officer refuses to authorize a petition relating to a child in need of services or in need of supervision, a
121 status offense, or a misdemeanor other than Class 1, his decision is final.

Upon delivery to the juvenile court of a warrant issued pursuant to subdivision 2 of § 16.1-256, the intake officer shall accept and file a petition founded upon the warrant.

F. The intake officer shall notify the attorney for the Commonwealth of the filing of any petition which alleges facts of an offense which would be a felony if committed by an adult.

G. Notwithstanding the provisions of Article 12 (§ 16.1-299 et seq.), the intake officer shall file a report with the division superintendent of the school division in which any student who is the subject of a petition alleging that such student who is a juvenile has committed an act, wherever committed, which would be a crime if committed by an adult, or that such student who is an adult has committed a crime and is alleged to be within the jurisdiction of the court. The report shall notify the division superintendent of the filing of the petition and the nature of the offense, if the violation involves:

1. A firearm offense pursuant to Article 4 (§ 18.2-279 et seq.), 5 (§ 18.2-288 et seq.), 6 (§ 18.2-299 et seq.), 6.1 (§ 18.2-307.1 et seq.), or 7 (§ 18.2-308.1 et seq.) of Chapter 7 of Title 18.2;

2. Homicide, pursuant to Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2;

3. Felonious assault and bodily wounding, pursuant to Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2;

4. Criminal sexual assault, pursuant to Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2;

5. Manufacture, sale, gift, distribution or possession of Schedule I or II controlled substances, pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2;

6. Manufacture, sale or distribution of marijuana pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2;

7. Arson and related crimes, pursuant to Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2;

8. Burglary and related offenses, pursuant to §§ 18.2-89 through 18.2-93;

9. Robbery pursuant to § 18.2-58;

10. Prohibited criminal street gang activity pursuant to § 18.2-46.2;

11. Recruitment of other juveniles for a criminal street gang activity pursuant to § 18.2-46.3; or

12. An act of violence by a mob pursuant to § 18.2-42.1.

The failure to provide information regarding the school in which the student who is the subject of the petition may be enrolled shall not be grounds for refusing to file a petition.

The information provided to a division superintendent pursuant to this section may be disclosed only as provided in § 16.1-305.2.

H. The filing of a petition shall not be necessary:

1. In the case of violations of the traffic laws, including offenses involving bicycles, hitchhiking and other pedestrian offenses, game and fish laws or a violation of the ordinance of any city regulating surfing or any ordinance establishing curfew violations, animal control violations or littering violations. In such cases the court may proceed on a summons issued by the officer investigating the violation in the same manner as provided by law for adults. Additionally, an officer investigating a motor vehicle accident may, at the scene of the accident or at any other location where a juvenile who is involved in such an accident may be located, proceed on a summons in lieu of filing a petition.

2. In the case of seeking consent to apply for the issuance of a work permit pursuant to subsection H of § 16.1-241.

3. In the case of a misdemeanor violation of ~~§ 18.2-250.1~~, 18.2-266, 18.2-266.1, or 29.1-738, or the commission of any other alcohol-related offense, *or a violation of § 18.2-250.1*, provided the juvenile is released to the custody of a parent or legal guardian pending the initial court date. The officer releasing a juvenile to the custody of a parent or legal guardian shall issue a summons to the juvenile and shall also issue a summons requiring the parent or legal guardian to appear before the court with the juvenile. Disposition of the charge shall be in the manner provided in § 16.1-278.8, 16.1-278.8:01, or 16.1-278.9. If the juvenile so charged with a violation of § 18.2-51.4, 18.2-266, 18.2-266.1, 18.2-272, or 29.1-738 refuses to provide a sample of blood or breath or samples of both blood and breath for chemical analysis pursuant to §§ 18.2-268.1 through 18.2-268.12 or 29.1-738.2, the provisions of these sections shall be followed except that the magistrate shall authorize execution of the warrant as a summons. The summons shall be served on a parent or legal guardian and the juvenile, and a copy of the summons shall be forwarded to the court in which the violation is to be tried. When a violation of § 18.2-250.1 is charged by summons, the juvenile shall be entitled to have the charge referred to intake for consideration of informal proceedings pursuant to subsection B, provided such right is exercised by written notification to the clerk not later than 10 days prior to trial. At the time such summons alleging a violation of § 18.2-250.1 is served, the officer shall also serve upon the juvenile written notice of the right to have the charge referred to intake on a form approved by the Supreme Court and make return of such service to the court. If the officer fails to make such service or return, the court shall dismiss the summons without prejudice.

4. In the case of offenses which, if committed by an adult, would be punishable as a Class 3 or Class 4 misdemeanor. In such cases the court may direct that an intake officer proceed as provided in

§ 16.1-237 on a summons issued by the officer investigating the violation in the same manner as provided by law for adults provided that notice of the summons to appear is mailed by the investigating officer within five days of the issuance of the summons to a parent or legal guardian of the juvenile.

I. Failure to comply with the procedures set forth in this section shall not divest the juvenile court of the jurisdiction granted it in § 16.1-241.

§ 18.2-250.1. Possession of marijuana unlawful; civil penalty.

A. It is unlawful for any person knowingly or intentionally to possess marijuana unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by the Drug Control Act (§ 54.1-3400 et seq.). *The attorney for the Commonwealth or the county, city, or town attorney may prosecute such a case. Any violation of this section may be charged by summons.*

Upon the prosecution of a person for violation of this section, ownership or occupancy of the premises or vehicle upon or in which marijuana was found shall not create a presumption that such person either knowingly or intentionally possessed such marijuana.

Any person who violates this section ~~shall be guilty of a misdemeanor, and be confined in jail not more than thirty days and a fine of not more than \$500, either or both; any person, upon a second or subsequent conviction of a violation of this section, shall be guilty of a Class 1 misdemeanor is subject to a civil penalty of no more than \$100 payable to the Literary Fund.~~

B. The provisions of this section shall not apply to members of state, federal, county, city or town law-enforcement agencies, jail officers, or correctional officers, as defined in § 53.1-1, certified as handlers of dogs trained in the detection of controlled substances when possession of marijuana is necessary for the performance of their duties.

§ 18.2-251. Persons charged with first offense may be placed on probation; conditions; substance abuse screening, assessment treatment and education programs or services; drug tests; costs and fees; violations; discharge.

Whenever any person who has not previously been convicted of any *criminal* offense under this article or under any statute of the United States or of any state relating to narcotic drugs, marijuana, or stimulant, depressant, or hallucinogenic drugs, or has not previously had a proceeding against him for violation of such an offense dismissed as provided in this section, pleads guilty to or enters a plea of not guilty to possession of a controlled substance under § 18.2-250 ~~or to possession of marijuana under § 18.2-250.1~~, the court, upon such plea if the facts found by the court would justify a finding of guilt, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him on probation upon terms and conditions.

As a term or condition, the court shall require the accused to undergo a substance abuse assessment pursuant to § 18.2-251.01 or 19.2-299.2, as appropriate, and enter treatment and/or education program or services, if available, such as, in the opinion of the court, may be best suited to the needs of the accused based upon consideration of the substance abuse assessment. The program or services may be located in the judicial district in which the charge is brought or in any other judicial district as the court may provide. The services shall be provided by (i) a program licensed by the Department of Behavioral Health and Developmental Services, by a similar program which is made available through the Department of Corrections, (ii) a local community-based probation services agency established pursuant to § 9.1-174, or (iii) an ASAP program certified by the Commission on VASAP.

The court shall require the person entering such program under the provisions of this section to pay all or part of the costs of the program, including the costs of the screening, assessment, testing, and treatment, based upon the accused's ability to pay unless the person is determined by the court to be indigent.

As a condition of probation, the court shall require the accused (i) to successfully complete treatment or education program or services, (ii) to remain drug and alcohol free during the period of probation and submit to such tests during that period as may be necessary and appropriate to determine if the accused is drug and alcohol free, (iii) to make reasonable efforts to secure and maintain employment, and (iv) to comply with a plan of at least 100 hours of community service for a felony and up to 24 hours of community service for a misdemeanor. Such testing shall be conducted by personnel of the supervising probation agency or personnel of any program or agency approved by the supervising probation agency.

The court shall, unless done at arrest, order the accused to report to the original arresting law-enforcement agency to submit to fingerprinting.

Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without adjudication of guilt and is a conviction only for the purposes of applying this section in subsequent proceedings.

Notwithstanding any other provision of this section, whenever a court places an individual on probation upon terms and conditions pursuant to this section, such action shall be treated as a conviction

for purposes of §§ 18.2-259.1, 22.1-315, and 46.2-390.1, and the driver's license forfeiture provisions of those sections shall be imposed. The provisions of this paragraph shall not be applicable to any offense for which a juvenile has had his license suspended or denied pursuant to § 16.1-278.9 for the same offense.

§ 18.2-252. Suspended sentence conditioned upon substance abuse screening, assessment, testing, and treatment or education.

The trial judge or court trying the case of (i) any person found guilty of ~~violating a criminal violation of~~ any law concerning the use, in any manner, of drugs, controlled substances, narcotics, marijuana, noxious chemical substances and like substances; *or (ii) any minor penalized for a violation of § 18.2-250.1* shall condition any suspended sentence *or suspension of any penalty* by first requiring such person to agree to undergo a substance abuse screening pursuant to § 18.2-251.01 and to submit to such periodic substance abuse testing, to include alcohol testing, as may be directed by the court. Such testing shall be conducted by the supervising probation agency or by personnel of any program or agency approved by the supervising probation agency. The cost of such testing ordered by the court shall be paid by the Commonwealth and taxed as a part of the costs of such ~~criminal~~ proceedings. The judge or court shall order the person, as a condition of any suspended sentence *or suspended civil penalty*, to undergo such treatment or education for substance abuse, if available, as the judge or court deems appropriate based upon consideration of the substance abuse assessment. The treatment or education shall be provided by a program or agency licensed by the Department of Behavioral Health and Developmental Services, by a similar program or services available through the Department of Corrections if the court imposes a sentence of one year or more or, if the court imposes a sentence of 12 months or less, by a similar program or services available through a local or regional jail, a local community-based probation services agency established pursuant to § 9.1-174, or an ASAP program certified by the Commission on VASAP.

§ 18.2-259.1. Forfeiture of driver's license for violations of article.

A. In addition to any other sanction or penalty imposed for a *criminal* violation of this article, *or civil violation of § 18.2-250.1 committed by a juvenile*, the (i) judgment of *either a conviction under this article, or a civil violation of § 18.2-250.1 by a juvenile*, or (ii) placement on probation following deferral of further proceedings under § 18.2-251 or subsection H of § 18.2-258.1 for any such offense shall of itself operate to deprive the person so convicted or placed on probation after deferral of proceedings under § 18.2-251 or subsection H of § 18.2-258.1 of the privilege to drive or operate a motor vehicle, engine, or train in the Commonwealth for a period of six months from the date of such judgment or placement on probation. Such license forfeiture shall be in addition to and shall run consecutively with any other license suspension, revocation or forfeiture in effect or imposed upon the person so convicted or placed on probation. However, a juvenile who has had his license suspended or denied pursuant to § 16.1-278.9 shall not have his license forfeited pursuant to this section for the same offense.

B. The court trying the case shall order any person so convicted or placed on probation, *or any juvenile so penalized for a civil violation of § 18.2-250.1*, to surrender his driver's license to be disposed of in accordance with the provisions of § 46.2-398 and shall notify the Department of Motor Vehicles of any such conviction *or judgment* entered and of the license forfeiture to be imposed.

C. In those cases where the court determines there are compelling circumstances warranting an exception, the court may provide that any individual be issued a restricted license to operate a motor vehicle for any of the purposes set forth in subsection E of § 18.2-271.1. No restricted license issued pursuant to this subsection shall permit any person to operate a commercial motor vehicle as defined in the Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.). The court shall order the surrender of such person's license in accordance with the provisions of subsection B and shall forward to the Commissioner of the Department of Motor Vehicles a copy of its order entered pursuant to this subsection. This order shall specifically enumerate the restrictions imposed and contain such information regarding the person to whom such a permit is issued as is reasonably necessary to identify such person. The court shall also provide a copy of its order to such person who may operate a motor vehicle on the order until receipt from the Commissioner of the Department of Motor Vehicles of a restricted license, but only if the order provides for a restricted license for that period. A copy of the order and, after receipt thereof, the restricted license shall be carried at all times by such person while operating a motor vehicle. The court may require a person issued a restricted permit under the provisions of this subsection to be monitored by an alcohol safety action program during the period of license suspension. Any violation of the terms of the restricted license or of any condition set forth by the court related thereto, or any failure to remain drug-free during such period shall be reported forthwith to the court by such program. Any person who operates a motor vehicle in violation of any restriction imposed pursuant to this section ~~shall be~~ *is* guilty of a violation of § 46.2-301.

§ 18.2-308.1:5. Purchase or transportation of firearm by persons convicted of certain drug

306 offenses prohibited.

307 Any person who, within a 36-consecutive-month period, has been convicted of two misdemeanor
308 offenses under subsection B of former § 18.2-248.1:1; *or* § 18.2-250 *or who has been subjected to a*
309 *civil penalty for two or more violations pursuant to* § 18.2-250.1 shall be ineligible to purchase or
310 transport a handgun. However, upon expiration of a period of five years from the date of the second
311 conviction *or civil violation* and provided the person has not been convicted of *or the subject of a civil*
312 *penalty for* any such offense within that period, the ineligibility shall be removed.

313 § 46.2-390.1. Required revocation for conviction of drug offenses or deferral of proceedings.

314 A. Except as otherwise ordered pursuant to § 18.2-259.1, the Commissioner shall forthwith revoke,
315 and not thereafter reissue for six months from the later of (i) the date of conviction, *date of judgment*
316 *for a violation of § 18.2-250.1 by a juvenile*, or deferral of proceedings under § 18.2-251 or (ii) the next
317 date of eligibility to be licensed, the driver's license, registration card, and license plates of any resident
318 or nonresident on receiving notification of ~~(i)~~ (a) his conviction, ~~(ii)~~ *or a judgment for a violation of*
319 *§ 18.2-250.1 by a minor*, (b) his having been found guilty in the case of a juvenile, or ~~(iii)~~ (c) the
320 deferral of further proceedings against him under § 18.2-251 for any violation of any provisions of
321 Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, or of any state or federal law or valid county,
322 city, or town ordinance, or a law of any other state substantially similar to provisions of such Virginia
323 laws. Such license revocation shall be in addition to and shall run consecutively with any other license
324 suspension, revocation, or forfeiture in effect against such person.

325 B. Any person whose license has been revoked pursuant to this section and § 18.2-259.1 shall be
326 subject to the provisions of §§ 46.2-370 and 46.2-414 and shall be required to pay a reinstatement fee as
327 provided in § 46.2-411 in order to have his license restored.