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SENATE BILL NO. 1613

Senate Amendments in [] - January 24, 2019

A *BILL to amend and reenact §§ 18.2-251, 46.2-395, 46.2-410.1, and 46.2-1200.1 of the Code of Virginia and to repeal §§ 18.2-259.1 and 46.2-390.1 of the Code of Virginia, relating to driver's license suspensions for certain non-driving related offenses.*

Patrons Prior to Engrossment—Senators Ebbin, Petersen and Surovell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-251, 46.2-395, 46.2-410.1, and 46.2-1200.1 of the Code of Virginia are amended and reenacted as follows:

§ 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 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 (a) to successfully complete treatment or education program or services, (b) 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, (c) to make reasonable efforts to secure and maintain employment, and (d) 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. ~~In addition to any community service required by the court pursuant to clause (d), if the court does not suspend or revoke the accused's license as a term or condition of probation for a violation of § 18.2-250.1, the court shall require the accused to comply with a plan of 50 hours of community service.~~ 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. However, if the court places an individual on probation upon terms

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59 and conditions for a violation of ~~§ 18.2-250.1~~, such action shall not be treated as a conviction for
60 purposes of ~~§ 18.2-259.1 or 46.2-390.1~~, provided that a court (1) may suspend or revoke an individual's
61 driver's license as a term or condition of probation and (2) shall suspend or revoke an individual's
62 driver's license as a term or condition of probation for a period of six months if the violation of
63 ~~§ 18.2-250.1~~ was committed while such person was in operation of a motor vehicle. The provisions of
64 this paragraph shall not be applicable to any offense for which a juvenile has had his license suspended
65 or denied pursuant to § 16.1-278.9 for the same offense.

66 **§ 46.2-395. Suspension of license for failure or refusal to pay fines or costs.**

67 A. Any person, whether licensed by Virginia or not, who drives a motor vehicle on the highways in
68 the Commonwealth shall thereby, as a condition of such driving, consent to pay all lawful fines, court
69 costs, forfeitures, restitution, and penalties assessed against him for violations of the laws of the
70 Commonwealth; of any county, city, or town; or of the United States. *However, this section shall not*
71 *apply to violations of Article 1 (§ 18.2-247 et seq.) or Article 1.1 (§ 18.2-265.1 et seq.) of Chapter 7 of*
72 *Title 18.2 or to violations not pertaining to the operator or operation of a motor vehicle.* For the
73 purpose of this section, such fines and costs shall be deemed to include any fee assessed by the court
74 under the provisions of § 18.2-271.1 for entry by a person convicted of a violation of § 18.2-51.4 or
75 18.2-266 into an alcohol safety action program.

76 B. In addition to any penalty provided by law and subject to the limitations on collection under
77 §§ 19.2-340 and 19.2-341, when any person is convicted of any violation of the law of the
78 Commonwealth or of the United States or of any valid local ordinance *except as provided in subsection*
79 *A* and fails or refuses to provide for immediate payment in full of any fine, costs, forfeitures, restitution,
80 or penalty lawfully assessed against him, or fails to make deferred payments or installment payments as
81 ordered by the court, the court shall forthwith suspend the person's privilege to drive a motor vehicle on
82 the highways in the Commonwealth. The driver's license of the person shall continue suspended until the
83 fine, costs, forfeiture, restitution, or penalty has been paid in full. However, if the defendant, after
84 having his license suspended, pays the reinstatement fee to the Department of Motor Vehicles and enters
85 into an agreement under § 19.2-354 that is acceptable to the court to make deferred payments or
86 installment payments of unpaid fines, costs, forfeitures, restitution, or penalties as ordered by the court,
87 the defendant's driver's license shall thereby be restored. If the person has not obtained a license as
88 provided in this chapter, or is a nonresident, the court may direct in the judgment of conviction that the
89 person shall not drive any motor vehicle in Virginia for a period to coincide with the nonpayment of the
90 amounts due.

91 C. Before transmitting to the Commissioner a record of the person's failure or refusal to pay all or
92 part of any fine, costs, forfeiture, restitution, or penalty or a failure to comply with an order issued
93 pursuant to § 19.2-354, the clerk of the court that convicted the person shall provide or cause to be sent
94 to the person written notice of the suspension of his license or privilege to drive a motor vehicle in
95 Virginia, effective 30 days from the date of conviction, if the fine, costs, forfeiture, restitution, or
96 penalty is not paid prior to the effective date of the suspension as stated on the notice. Notice shall be
97 provided to the person at the time of trial or shall be mailed by first-class mail to the address certified
98 on the summons or bail recognizance document as the person's current mailing address, or to such
99 mailing address as the person has subsequently provided to the court as a change of address. If so
100 mailed on the date of conviction or within five business days thereof, or if delivered to the person at the
101 time of trial, such notice shall be adequate notice of the license suspension and of the person's ability to
102 avoid suspension by paying the fine, costs, forfeiture, restitution, or penalty prior to the effective date.
103 No other notice shall be required to make the suspension effective. A record of the person's failure or
104 refusal and of the license suspension shall be sent to the Commissioner if the fine, costs, forfeiture,
105 restitution, or penalty remains unpaid on the effective date of the suspension specified in the notice or
106 on the failure to make a scheduled payment.

107 C1. Whenever a person provides for payment of a fine, costs, forfeiture, restitution or penalty other
108 than by cash and such provision for payment fails, the clerk of the court that convicted the person shall
109 cause to be sent to the person written notice of the failure and of the suspension of his license or
110 privilege to drive in Virginia. The license suspension shall be effective 10 days from the date of the
111 notice. The notice shall be effective notice of the suspension and of the person's ability to avoid the
112 suspension by paying the full amount owed by cash, cashier's check or certified check prior to the
113 effective date of the suspension if the notice is mailed by first class mail to the address provided by the
114 person to the court pursuant to subsection C or § 19.2-354. Upon such a failure of payment and notice,
115 the fine, costs, forfeiture, restitution or penalty due shall be paid only in cash, cashier's check or
116 certified check, unless otherwise ordered by the court, for good cause shown.

117 D. If the person pays the amounts assessed against him subsequent to the time the suspended license
118 has been transmitted to the Department, and his license is not under suspension or revocation for any
119 other lawful reason, except pursuant to this section, then the Commissioner shall return the license to the
120 person on presentation of the official report of the court evidencing the payment of the fine, costs,

forfeiture, restitution, or penalty.

E. Any person otherwise eligible for a restricted license may petition each court that suspended his license pursuant to this section for authorization for a restricted license. A court may, upon written verification of employment and for good cause shown, authorize the Department of Motor Vehicles to issue 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 may be issued unless each court which suspended the person's license pursuant to this section provides authorization for a restricted license. Such restricted license shall not be issued for more than a six-month period. No restricted license issued pursuant to this subsection shall permit a person to operate a commercial motor vehicle as defined in the Commercial Driver's License Act (§ 46.2-341.1 et seq.).

The court shall forward to the Commissioner a copy of its authorization entered pursuant to this section, which shall specifically enumerate the restrictions imposed and contain such information regarding the person to whom such a license is issued as is reasonably necessary to identify the person. The court shall also provide a copy of its authorization to the person, who may not operate a motor vehicle until receipt from the Commissioner of a restricted license. A copy of the restricted license issued by the Commissioner 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 punished as provided in subsection C of § 46.2-301.

F. Notwithstanding any other provision of law imposing a license suspension, revocation, or forfeiture against a person whose license is suspended pursuant to this section, the period of suspension imposed under this section shall run concurrently with any other license suspension, revocation, or forfeiture imposed.

§ 46.2-410.1. Judicial review of revocation or suspension by Commissioner.

A. Notwithstanding the provisions of § 46.2-410, when the Commissioner orders a revocation or suspension of a person's driver's license under the provisions of this chapter, ~~unless such revocation or suspension is required under § 46.2-390.1,~~ the person so aggrieved may, in cases of manifest injustice, within ~~sixty~~ 60 days of receipt of notice of the suspension or revocation, petition the circuit court of the jurisdiction wherein he resides for a hearing to review the Commissioner's order. Manifest injustice is defined as those instances where the Commissioner's order was the result of an error or was issued without authority or jurisdiction. The person shall provide notice of his petition to the attorney for the Commonwealth of that jurisdiction.

B. At the hearing on the petition, if the court finds that the Commissioner's order is manifestly unjust the court may, notwithstanding any other provision of law, order the Commissioner to modify the order or issue the person a restricted license in accordance with the provisions of § 18.2-271.1. For any action under this section, no appeal shall lie from the determination of the circuit court.

C. This section shall not apply to any disqualification of eligibility to operate a commercial motor vehicle imposed by the Commissioner pursuant to Article 6.1 (§ 46.2-341.1 et seq.) ~~of this chapter.~~

§ 46.2-1200.1. Abandoning motor vehicles prohibited; penalty.

No person shall cause any motor vehicle to become an abandoned motor vehicle as defined in § 46.2-1200. In any prosecution for a violation of this section, proof that the defendant was, at the time that the vehicle was found abandoned, the owner of the vehicle shall constitute in evidence a rebuttable presumption that the owner was the person who committed the violation. Such presumption, however, shall not arise if the owner of the vehicle provided notice to the Department, as provided in § 46.2-604, that he had sold or otherwise transferred the ownership of the vehicle.

A summons for a violation of this section shall be executed by mailing a copy of the summons by first-class mail to the address of the owner of the vehicle as shown on the records of the Department of Motor Vehicles. If the person fails to appear on the date of return set out in the summons, a new summons shall be issued and delivered to the sheriff of the county, city, or town for service on the accused personally. If the person so served then fails to appear on the date of return set out in the summons, proceedings for contempt shall be instituted.

Any person convicted of a violation of this section shall be subject to a civil penalty of no more than \$500. ~~If any person fails to pay any such penalty, his privilege to drive a motor vehicle on the highways of the Commonwealth shall be suspended as provided in § 46.2-395.~~

All penalties collected under this section shall be paid into the state treasury to be credited to the Literary Fund as provided in § 46.2-114.

2. That §§ 18.2-259.1 and 46.2-390.1 of the Code of Virginia are repealed.

3. That the provisions of this act shall serve as a resolution of the General Assembly in expressing its opposition to 23 U.S.C § 159(a)(3)(A).

4. That the Governor shall provide the necessary certifications required pursuant to 23 U.S.C. § 159(a)(3)(B).

[5. That the provisions of this act shall not become effective unless an appropriation

182 effectuating the purposes of this act is included in a general appropriation act passed in 2019 by
183 the General Assembly that becomes law.]