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SENATE BILL NO. 690

Offered January 19, 2024

A BILL to amend and reenact §§ 18.2-268.3, 18.2-271.1, and 29.1-738.5 of the Code of Virginia, relating to Virginia Alcohol Safety Action Program; fee.

Patron—Obenshain

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-268.3, 18.2-271.1, and 29.1-738.5 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-268.3. Refusal of tests; penalties; procedures.

A. It is unlawful for a person who is arrested for a violation of § 18.2-266 or 18.2-266.1 or subsection B of § 18.2-272 or of a similar ordinance to unreasonably refuse to have samples of his breath taken for chemical tests to determine the alcohol content of his blood as required by § 18.2-268.2, and any person who so unreasonably refuses is guilty of a violation of this subsection, which is punishable as follows:

1. A first violation is a civil offense. For a first offense, the court shall suspend the defendant's privilege to drive for a period of one year. This suspension period is in addition to the suspension period provided under § 46.2-391.2.

2. If a person is found to have violated this subsection and within 10 years prior to the date of the refusal he was found guilty of any of the following: a violation of this section, a violation of § 18.2-266, or a violation of any offense listed in subsection E of § 18.2-270 arising out of separate occurrences or incidents, he is guilty of a Class 1 misdemeanor. A conviction under this subdivision shall of itself operate to deprive the person of the privilege to drive for a period of three years from the date of the judgment of conviction. This revocation period is in addition to the suspension period provided under § 46.2-391.2.

B. It is unlawful for a person who is arrested for a violation of § 18.2-266 or 18.2-266.1 or subsection B of § 18.2-272 or of a similar ordinance to unreasonably refuse to have samples of his blood taken for chemical tests to determine the alcohol or drug content of his blood as required by § 18.2-268.2 and any person who so unreasonably refuses is guilty of a violation of this subsection, which is a civil offense and is punishable as follows:

1. For a first offense, the court shall suspend the defendant's privilege to drive for a period of one year. This suspension period is in addition to the suspension period provided under § 46.2-391.2.

2. If a person is found to have violated this subsection and within 10 years prior to the date of the refusal he was found guilty of any of the following: a violation of this section, a violation of § 18.2-266, or a violation of any offense listed in subsection E of § 18.2-270 arising out of separate occurrences or incidents, such violation shall of itself operate to deprive the person of the privilege to drive for a period of three years from the date of the judgment. This revocation period is in addition to the suspension period provided under § 46.2-391.2.

C. When a person is arrested for a violation of § 18.2-51.4, 18.2-266, or 18.2-266.1 or subsection B of § 18.2-272 or of a similar ordinance and such person refuses to permit blood or breath or both blood and breath samples to be taken for testing as required by § 18.2-268.2, the arresting officer shall advise the person, from a form provided by the Office of the Executive Secretary of the Supreme Court (i) that a person who operates a motor vehicle upon a highway in the Commonwealth is deemed thereby, as a condition of such operation, to have consented to have samples of his blood and breath taken for chemical tests to determine the alcohol or drug content of his blood, (ii) that a finding of unreasonable refusal to consent may be admitted as evidence at a criminal trial, (iii) that the unreasonable refusal to do so constitutes grounds for the revocation of the privilege of operating a motor vehicle upon the highways of the Commonwealth, (iv) of the civil penalties for unreasonable refusal to have blood or breath or both blood and breath samples taken, and (v) of the criminal penalty for unreasonable refusal to have breath samples taken within 10 years of a prior conviction for driving while intoxicated or unreasonable refusal, which is a Class 1 misdemeanor. The form from which the arresting officer shall advise the person arrested shall contain a brief statement of the law requiring the taking of blood or breath samples, a statement that a finding of unreasonable refusal to consent may be admitted as evidence at a criminal trial, and the penalties for refusal. The Office of the Executive Secretary of the Supreme Court shall make the form available on the Internet and the form shall be considered an official publication of the Commonwealth for the purposes of § 8.01-388.

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59 D. The arresting officer shall, under oath before the magistrate, execute the form and certify (i) that
60 the defendant has refused to permit blood or breath or both blood and breath samples to be taken for
61 testing; (ii) that the officer has read the portion of the form described in subsection C to the arrested
62 person; (iii) that the arrested person, after having had the portion of the form described in subsection C
63 read to him, has refused to permit such sample or samples to be taken; and (iv) how many, if any,
64 violations of this section, § 18.2-266, or any offense described in subsection E of § 18.2-270 the arrested
65 person has been convicted of within the last 10 years. Such sworn certification shall constitute probable
66 cause for the magistrate to issue a warrant or summons charging the person with unreasonable refusal.
67 The magistrate shall attach the executed and sworn advisement form to the warrant or summons. The
68 warrant or summons for a first offense under subsection A or any offense under subsection B shall be
69 executed in the same manner as a criminal warrant or summons. If the person arrested has been taken to
70 a medical facility for treatment or evaluation of his medical condition, the arresting officer may read the
71 advisement form to the person at the medical facility, and issue, on the premises of the medical facility,
72 a summons for a violation of this section in lieu of securing a warrant or summons from the magistrate.
73 The magistrate or arresting officer, as the case may be, shall forward the executed advisement form and
74 warrant or summons to the appropriate court.

75 E. A defendant who is found guilty of a first offense and whose license is suspended pursuant to
76 subdivision A 1 or B 1 may petition the court 30 days after the date of conviction for a restricted
77 license and the court may, for good cause shown, provide that the defendant is issued a restricted license
78 during the remaining period of suspension, or any portion thereof, for any of the purposes set forth in
79 subsection E of § 18.2-271.1. No restricted license issued pursuant to this subsection shall permit any
80 person to operate a commercial motor vehicle as defined in the Virginia Commercial Driver's License
81 Act (§ 46.2-341.1 et seq.). If the court grants such petition and issues the defendant a restricted license,
82 the court shall order (i) that reinstatement of the defendant's license to drive be conditioned upon (a) the
83 installation of an ignition interlock system on each motor vehicle, as defined in § 46.2-100, owned by or
84 registered to the person, in whole or in part, for a period of time not to exceed the period of license
85 suspension and restriction, not less than six consecutive months without alcohol-related violations of the
86 interlock requirements and (b) the requirement that such person not operate any motor vehicle that is not
87 equipped with such a system for the period of time that the interlock restriction is in effect and (ii) that,
88 as a condition of probation or otherwise, the defendant enter into and successfully complete an alcohol
89 safety action program in the judicial district in which such charge is brought or in any other judicial
90 district upon such terms and conditions as the court may set forth. However, upon motion of a person
91 convicted of any such offense following an assessment of the person conducted by an alcohol safety
92 action program, the court, for good cause, may decline to order participation in such a program if the
93 assessment conducted by the alcohol safety action program indicates that intervention is not appropriate
94 for such person. In no event shall such persons be permitted to enter any such program that is not
95 certified as meeting minimum standards and criteria established by the Commission on the Virginia
96 Alcohol Safety Action Program (VASAP) pursuant to this section and to § 18.2-271.2. The court shall
97 require the person entering such program under the provisions of this section to pay a fee of no less
98 than \$250 but no more than ~~\$300~~ \$350. A reasonable portion of such fee, as may be determined by the
99 Commission on VASAP, but not to exceed 10 percent, shall be forwarded monthly to be deposited with
100 the State Treasurer for expenditure by the Commission on VASAP, and the balance shall be held in a
101 separate fund for local administration of driver alcohol rehabilitation programs. Upon a positive finding
102 that the defendant is indigent, the court may reduce or waive the fee. In addition to the costs of the
103 proceeding, fees as may reasonably be required of defendants referred for intervention under any such
104 program may be charged.

105 If the court grants a restricted license to any person pursuant to this section, the court shall order
106 such person to surrender his driver's license to be disposed of in accordance with the provisions of §
107 46.2-398 and shall forward to the Commissioner of the Department of Motor Vehicles a copy of its
108 order entered pursuant to this subsection. This order shall specifically enumerate the restrictions imposed
109 and contain such information regarding the person to whom such a permit is issued as is reasonably
110 necessary to identify such person. The court shall also provide a copy of its order to such person who
111 may operate a motor vehicle on the order until receipt from the Commissioner of the Department of
112 Motor Vehicles of a restricted license, but only if the order provides for a restricted license for that
113 period. A copy of the order and, after receipt thereof, the restricted license shall be carried at all times
114 by such person while operating a motor vehicle. The period of time during which the person is
115 prohibited from operating a motor vehicle that is not equipped with an ignition interlock system shall be
116 calculated from the date the person is issued a restricted license by the court; however, such period of
117 time shall be tolled upon the expiration of the restricted license issued by the court until such time as
118 the person is issued a restricted license by the Department of Motor Vehicles. Any person who operates
119 a motor vehicle in violation of any restrictions imposed pursuant to this section shall be guilty of a
120 violation of § 18.2-272. The provisions of subsection F of § 18.2-271.1 shall apply to this subsection

mutatis mutandis, except as herein provided.

F. Notwithstanding any other provisions of this section or of § 18.2-271.1, 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.).

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

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~~ \$350. 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. 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, 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 the issuance of a restricted license, the Commissioner of the Department of Motor Vehicles, upon receipt thereof, shall issue a restricted license. The period of time during which the person (i) is prohibited from operating a motor vehicle that is not equipped with an ignition interlock system, (ii) is required to have an ignition interlock system installed on each motor vehicle owned by or registered to the person, in whole or in part, or (iii) is required to use a remote alcohol monitoring device shall be calculated from the date the person is issued a restricted license by the court; however, such period of time shall be tolled upon the expiration of the restricted license issued by the court until such time as the person is issued a restricted license by the Department of Motor Vehicles. Appeals from any such disposition shall be allowed as provided by law. The time within which an appeal may be taken shall be calculated from the date of the

182 final disposition of the case or any motion for rehearing, whichever is later.

183 D. Any person who has been convicted under the law of another state or the United States of an
184 offense substantially similar to the provisions of § 18.2-266 or subsection A of § 46.2-341.24, and whose
185 privilege to operate a motor vehicle in this Commonwealth is subject to revocation under the provisions
186 of § 46.2-389 and subsection A of § 46.2-391, may petition the general district court of the county or
187 city in which he resides that he be given probation and assigned to a program as provided in subsection
188 A and that, upon entry into such program, he be issued an order in accordance with subsection E. If the
189 court finds that such person would have qualified therefor if he had been convicted in this
190 Commonwealth of a violation of § 18.2-266 or subsection A of § 46.2-341.24, the court may grant the
191 petition and may issue an order in accordance with subsection E as to the period of license suspension
192 or revocation imposed pursuant to § 46.2-389 or subsection A of § 46.2-391. The court (i) shall, as a
193 condition of a restricted license, prohibit such person from operating a motor vehicle that is not
194 equipped with a functioning, certified ignition interlock system for a period of time not to exceed the
195 period of license suspension and restriction, not less than six consecutive months without alcohol-related
196 violations of interlock requirements, and (ii) may, upon request of such person and as a condition of a
197 restricted license, require such person to use a remote alcohol monitoring device in accordance with the
198 provisions of subsection E of § 18.2-270.1. Such order shall be conditioned upon the successful
199 completion of a program by the petitioner. If the court subsequently finds that such person has violated
200 any of the conditions set forth by the court, the court shall dispose of the case as if no program had
201 been entered and shall notify the Commissioner, who shall revoke the person's license in accordance
202 with the provisions of § 46.2-389 or subsection A of § 46.2-391. A copy of the order granting the
203 petition or subsequently revoking or suspending such person's license to operate a motor vehicle shall be
204 forthwith sent to the Commissioner of the Department of Motor Vehicles. The period of time during
205 which the person (a) is prohibited from operating a motor vehicle that is not equipped with an ignition
206 interlock system or (b) is required to use a remote alcohol monitoring device shall be calculated from
207 the date the person is issued a restricted license by the court; however, such period of time shall be
208 tolled upon the expiration of the restricted license issued by the court until such time as the person is
209 issued a restricted license by the Department of Motor Vehicles.

210 No period of license suspension or revocation shall be imposed pursuant to this subsection which,
211 when considered together with any period of license suspension or revocation previously imposed for the
212 same offense under the law of another state or the United States, results in such person's license being
213 suspended for a period in excess of the maximum periods specified in this subsection.

214 E. Except as otherwise provided herein, if a person enters a certified program pursuant to this
215 section, and such person's license to operate a motor vehicle, engine, or train in the Commonwealth has
216 been suspended or revoked, or a person's license to operate a motor vehicle, engine, or train in the
217 Commonwealth has been suspended or revoked pursuant to former § 18.2-259.1 or 46.2-390.1, the court
218 may, in its discretion and for good cause shown, provide that such person be issued a restricted permit
219 to operate a motor vehicle for any of the following purposes: (i) travel to and from his place of
220 employment; (ii) travel to and from an alcohol rehabilitation or safety action program; (iii) travel during
221 the hours of such person's employment if the operation of a motor vehicle is a necessary incident of
222 such employment; (iv) travel to and from school if such person is a student, upon proper written
223 verification to the court that such person is enrolled in a continuing program of education; (v) travel for
224 health care services, including medically necessary transportation of an elderly parent or, as designated
225 by the court, any person residing in the person's household with a serious medical problem upon written
226 verification of need by a licensed health professional; (vi) travel necessary to transport a minor child
227 under the care of such person to and from school, day care, and facilities housing medical service
228 providers; (vii) travel to and from court-ordered visitation with a child of such person; (viii) travel to a
229 screening, evaluation, and education program entered pursuant to § 18.2-251 or subsection H of
230 § 18.2-258.1; (ix) travel to and from court appearances in which he is a subpoenaed witness or a party
231 and appointments with his probation officer and to and from any programs required by the court or as a
232 condition of probation; (x) travel to and from a place of religious worship one day per week at a
233 specified time and place; (xi) travel to and from appointments approved by the Division of Child
234 Support Enforcement of the Department of Social Services as a requirement of participation in an
235 administrative or court-ordered intensive case monitoring program for child support for which the
236 participant maintains written proof of the appointment, including written proof of the date and time of
237 the appointment, on his person; (xii) travel to and from jail to serve a sentence when such person has
238 been convicted and sentenced to confinement in jail and pursuant to § 53.1-131.1 the time to be served
239 is on weekends or nonconsecutive days; (xiii) travel to and from the facility that installed or monitors
240 the ignition interlock in the person's vehicle; (xiv) travel to and from a job interview for which he
241 maintains on his person written proof from the prospective employer of the date, time, and location of
242 the job interview; or (xv) travel to and from the offices of the Virginia Employment Commission for the
243 purpose of seeking employment. However, (a) any such person who is eligible to receive a restricted

license as provided in subsection C of § 18.2-270.1 or (b) any such person ordered to use a remote alcohol monitoring device pursuant to subsection E of § 18.2-270.1 who has a functioning, certified ignition interlock system as required by law may be issued a restricted permit to operate a motor vehicle for any lawful purpose. 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 to operate a motor vehicle to be disposed of in accordance with the provisions of § 46.2-398 and shall forward to the Commissioner of the Department of Motor Vehicles a copy of its order entered pursuant to this subsection, which 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 the person so convicted who may operate a motor vehicle on the order until receipt from the Commissioner of the Department of Motor Vehicles of a restricted license, if the order provides for a restricted license for 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 is 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. 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. Any person who is otherwise eligible to receive a restricted license issued in accordance with this subsection or as otherwise provided by law shall not be required to pay in full his fines and costs, as defined in § 19.2-354.1, before being issued such restricted license.

F. The court shall have jurisdiction over any person entering such program under any provision of this section, or under any provision of § 46.2-392, 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 that has convicted a person of a violation of § 18.2-266, subsection A of § 46.2-341.24, any ordinance of a county, city, or town similar to the provisions of § 18.2-266, or any reckless driving violation under Article 7 (§ 46.2-852 et seq.) of Chapter 8 of Title 46.2 and such person was initially charged with 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, any ordinance of a county, city, or town similar to the provisions of § 18.2-266, or any reckless driving violation under Article 7 (§ 46.2-852 et seq.) of Chapter 8 of Title 46.2 and such person was initially charged with 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, or 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. Such local independent policy board shall be chosen in accordance with procedures approved and promulgated by the Commission on VASAP. Such procedures shall provide that the board shall endeavor to select one criminal defense attorney who has specialized knowledge in representing persons charged with driving while intoxicated offenses and one local attorney for the Commonwealth to sit on such local independent policy board. 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.

J. 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.).

§ 29.1-738.5. Participation in rehabilitation program.

A. Any person convicted of a violation of subsection B of § 29.1-738, or any ordinance of a county, city or town similar to the provisions thereof, or any second offense thereunder, shall, with leave of court or upon court order, enter into an alcohol safety action program certified by the Commission on the Virginia Alcohol Safety Action Program (VASAP) in the judicial district in which the charge is brought or in any other judicial district upon such terms and conditions as the court may set forth. In the determination of the eligibility of such person to enter a program, the court shall consider his prior record of participation in any other rehabilitation program. Suspension of the penalties imposed pursuant to § 29.1-738.4 shall be conditioned upon successful completion of such a program.

B. The court shall require the person entering such program under the provisions of subsection A to pay a fee of no less than \$250 but no more than ~~\$300~~ \$350. A reasonable portion of such fee, as may be determined by the Commission on VASAP, but not to exceed ten percent, shall be forwarded quarterly 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 alcohol rehabilitation programs. Upon a 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 extended treatment under such program may be charged.

C. Upon such conviction, the court shall impose the sentence authorized. Upon a finding that a person so convicted is eligible for participation in an alcohol rehabilitation program, the court shall enter the conviction on the warrant, and shall note that the person so convicted has been referred to a program. If the court finds that a person is not eligible for a program or subsequently that the 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. Appeals from any such disposition shall be allowed as provided by law.

The court shall have jurisdiction over any person entering a program under the provisions of this section until such time as the case has been disposed of by either successful completion of the program, or final imposition of sentence upon ineligibility or violation of a condition imposed by the court, whichever occurs first.

D. The Commission on VASAP shall establish standards and criteria for the implementation and operation of water safety alcohol rehabilitation programs. The Commission on VASAP shall also establish criteria for the modalities of administration of such programs, as well as public information, accounting procedures and allocation of funds.