VIRGINIA ACTS OF ASSEMBLY -- 1994 SESSION

CHAPTER 359

An Act to amend and reenact §§ 18.2-266, 18.2-267, 18.2-268.2 through 18.2-268.5, 18.2-268.7 through 18.2-268.10, 18.2-269, 18.2-271, 18.2-271.1, 46.2-301, 46.2-341.24 and 46.2-341.27 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 18.2-266.1, 46.2-301.1 and 46.2-391.2 through 46.2-391.5, relating to the administrative suspension of the driver's license of any person arrested for driving under the influence; presumptions from alcohol content of blood; unlawful for person under age twenty-one to drive with blood-alcohol concentration of 0.02 or more; impoundment of motor vehicle for certain driving-while-license-revoked offenses; unlawful to allow another with license revoked for alcohol-related offense to drive one's motor vehicle; penalties.

[S 176]

Approved April 6, 1994

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-266, 18.2-267, 18.2-268.2 through 18.2-268.5, 18.2-268.7 through 18.2-268.10, 18.2-269, 18.2-271, 18.2-271.1, 46.2-301, 46.2-341.24 and 46.2-341.27 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 18.2-266.1, 46.2-301.1 and 46.2-391.2 through 46.2-391.5 as follows:

§ 18.2-266. Driving motor vehicle, engine, etc., while intoxicated, etc.

It shall be unlawful for any person to drive or operate any motor vehicle, engine or train (i) while such person has a blood alcohol concentration of ~~0.10~~ *0.08* percent or more by weight by volume *or 0.08 grams or more per 210 liters of breath* as indicated by a chemical test administered as provided in this article, (ii) while such person is under the influence of alcohol, (iii) while such person is under the influence of any narcotic drug or any other self-administered intoxicant or drug of whatsoever nature, or any combination of such drugs, to a degree which impairs his ability to drive or operate any motor vehicle, engine or train safely, or (iv) while such person is under the combined influence of alcohol and any drug or drugs to a degree which impairs his ability to drive or operate any motor vehicle, engine or train safely.

For the purposes of this section, the term "motor vehicle" ~~shall include~~ *includes* mopeds, while operated on the public highways of this Commonwealth.

§ 18.2-266.1. Persons under age twenty-one driving after illegally consuming alcohol; penalty.

A. It shall be unlawful for any person under the age of twenty-one to operate any motor vehicle after illegally consuming alcohol. Any such person with a blood alcohol concentration of 0.02 percent or more by weight by volume or 0.02 grams or more per 210 liters of breath but less than 0.08 by weight by volume or less than 0.08 grams per 210 liters of breath as indicated by a chemical test administered as provided in this article shall be in violation of this section.

B. A violation of this section shall be punishable by forfeiture of such person's license to operate a motor vehicle for a period of six months from the date of conviction and by a fine of not more than $500. The penalties and license forfeiture provisions set forth in §§ 16.1-278.9, 18.2-270 and 18.2-271 shall not apply to a violation of this section. Any person convicted of a violation of this section shall be eligible to attend an Alcohol Safety Action Program under the provisions of § 18.2-271.1 and shall be eligible for a restricted license during the term of license suspension.

C. Notwithstanding §§ 16.1-278.8 and 16.1-278.9, upon adjudicating a juvenile delinquent based upon a violation of this section, the juvenile and domestic relations district court shall order disposition as provided in subsection B.

§ 18.2-267. Preliminary analysis of breath to determine alcoholic content of blood.

A. Any person who is suspected of a violation of § 18.2-266 *or § 18.2-266.1* shall be entitled, if such equipment is available, to have his breath analyzed to determine the probable alcoholic content of his blood. The person shall also be entitled, upon request, to observe the process of analysis and to see the blood-alcohol reading on the equipment used to perform the breath test. His breath may be analyzed by any police officer of the Commonwealth, or of any county, city or town, or by any member of a sheriff's department in the normal discharge of his duties.

B. The Department of General Services, Division of Forensic Science, shall determine the proper method and equipment to be used in analyzing breath samples taken pursuant to this section and shall advise the respective police and sheriff's departments of the same.

C. Any person who has been stopped by a police officer of the Commonwealth, or of any county, city or town, or by any member of a sheriff's department and is suspected by such officer to be guilty of a violation of § 18.2-266 *or § 18.2-266.1*, shall have the right to refuse to permit his breath to be so analyzed, and his failure to permit such analysis shall not be evidence in any prosecution under § 18.2-266 *or § 18.2-266.1*.

D. Whenever the breath sample analysis indicates that alcohol is present in the person's blood, the

officer may charge the person with a violation of § 18.2-266 *or § 18.2-266.1*, or a similar ordinance of the county, city or town where the arrest is made. The person so charged shall then be subject to the provisions of §§ 18.2-268.1 through 18.2-268.12, or of a similar ordinance of a county, city or town.

E. The results of the breath analysis shall not be admitted into evidence in any prosecution under § 18.2-266 *or § 18.2-266.1*, the purpose of this section being to permit a preliminary analysis of the alcoholic content of the blood of a person suspected of having violated the provisions of § 18.2-266 *or § 18.2-266.1*.

F. Police officers or members of any sheriff's department shall, upon stopping any person suspected of having violated the provisions of § 18.2-266 *or § 18.2-266.1*, advise the person of his rights under the provisions of this section.

G. Nothing in this section shall be construed as limiting the provisions of §§ 18.2-268.1 through 18.2-268.12.

§ 18.2-268.2. Implied consent to post-arrest chemical test to determine drug or alcohol content of blood.

A. Any person, whether licensed by Virginia or not, who operates a motor vehicle upon a highway, as defined in § 46.2-100, in this Commonwealth shall be deemed thereby, as a condition of such operation, to have consented to have samples of his blood, breath, or both blood and breath taken for a chemical test to determine the alcohol, drug, or both alcohol and drug content of his blood, if he is arrested for violation of § 18.2-266 or of a similar ordinance within two hours of the alleged offense.

B. Any person so arrested for a violation of § 18.2-266 *A* (i) or (ii) or both, *or § 18.2-266.1* or of a similar ordinance shall ~~elect to have either a blood or breath sample taken, but not both. If either the blood test or the breath test is not available, then the available test shall be taken and it shall not be a matter of defense if the blood test or the breath test is not available. If the~~ *submit to a breath test. If the breath test is unavailable or the person is physically unable to submit to the breath test, a blood test shall be given. The* accused ~~elects a breath test, he~~ shall ~~be entitled, upon request~~, *prior to administration of the test, be advised by the person administering the test that he has the right* to observe the process of analysis and to see the blood-alcohol reading on the equipment used to perform the breath test. If the equipment automatically produces a written printout of the breath test result, the printout, or a copy, shall be given to the accused.

C. A person, after having been arrested for a violation of § 18.2-266 (iii) or (iv) *or § 18.2-266.1* or of a similar ordinance, may be required to submit to ~~tests~~ *a blood test* to determine the ~~alcohol or~~ drug *or both drug and alcohol* content of his blood. ~~If~~ *When* a person, after having been arrested for a violation of § 18.2-266 (i) or (ii) or both, ~~chooses to submit~~ *submits* to a breath test in accordance with subsection B of this section *or refuses to take or is incapable of taking such a breath test* , he may ~~also~~ be required to submit to tests to determine the drug *or both drug and alcohol* content of his blood if the law-enforcement officer has reasonable cause to believe the person was driving under the influence of any drug or combination of drugs, or the combined influence of alcohol and drugs.

§ 18.2-268.3. Refusal of tests; procedures.

A. If a person, after having been arrested for a violation of § 18.2-266 *or § 18.2-266.1* or of a similar ordinance and after having been advised by the arresting officer that a person who operates a motor vehicle upon a public highway in this Commonwealth is deemed thereby, as a condition of such operation, to have consented to have samples of his blood ~~or~~ *and* breath taken for chemical tests to determine the alcohol or drug content of his blood, and that the unreasonable refusal to do so constitutes grounds for the revocation of the privilege of operating a motor vehicle upon the highways of this Commonwealth, ~~then~~ refuses to permit blood or breath *or both blood and breath* samples to be taken for such tests, the arresting officer shall take the person before a committing magistrate. If he again so refuses after having been further advised by the magistrate of the law requiring blood or breath samples to be taken and the penalty for refusal, and so declares again his refusal in writing upon a form provided by the Supreme Court, or refuses or fails to so declare in writing and such fact is certified as prescribed below, then no blood or breath samples shall be taken even though he may later request them.

B. The form shall contain a brief statement of the law requiring the taking of blood or breath samples and the penalty for refusal, a declaration of refusal, and lines for the signature of the person from whom the blood or breath sample is sought, the date, and the signature of a witness to the signing. If the person refuses or fails to execute the declaration, the magistrate shall certify such fact and that the magistrate advised the person that a refusal to permit a blood or breath sample to be taken, if found to be unreasonable, constitutes grounds for revocation of the person's privilege to operate a motor vehicle on the highways of this Commonwealth. The magistrate shall promptly issue a warrant or summons charging the person with a violation of § 18.2-268.2. The warrant or summons shall be executed in the same manner as criminal warrants.

C. Venue for the trial of the warrant or summons shall lie in the court of the county or city in which the offense of driving under the influence of intoxicants is to be tried. The executed declaration of refusal or the certificate of the magistrate, as the case may be, shall be attached to the warrant and shall be forwarded by the magistrate to the aforementioned court.

D. When the court receives the declaration or certificate and the warrant or summons charging refusal, the court shall fix a date for the trial of the warrant or summons, at such time as the court designates but subsequent to the defendant's criminal trial for driving under the influence of intoxicants.

E. The declaration of refusal or certificate of the magistrate shall be prima facie evidence that the defendant refused to allow a blood or breath sample to be taken to determine the alcohol or drug content of his blood. However, this shall not prohibit the defendant from introducing on his behalf evidence of the basis for his refusal. The court shall determine the reasonableness of such refusal.

§ 18.2-268.4. Appeal and trial; sanctions for refusal.

The procedure for appeal and trial shall be the same as provided by law for misdemeanors; if requested by either party on appeal to the circuit court, trial by jury shall be as provided in Article 4 (§ 19.2-260 et seq.) of Chapter 15 of Title 19.2, and the Commonwealth shall be required to prove its case beyond a reasonable doubt.

If the court or jury finds the defendant guilty as charged in the warrant or summons issued pursuant to § 18.2-268.3, the court shall suspend the defendant's privilege to drive for a period of six months for a first offense and for one year for a second or subsequent offense of refusal within one year of the first or other such refusal. *This suspension period is in addition to the suspension period provided under § 46.2-391.2.* The time shall be computed from the date of the first offense to the date of the second or subsequent offense. However, if the defendant pleads guilty to a violation of § 18.2-266 *or § 18.2-266.1* or of a similar ordinance, the court may dismiss the warrant or summons.

The court shall forward the defendant's license to the Commissioner of the Department of Motor Vehicles of Virginia as in other cases of similar nature for suspension of license. However, if the defendant appeals his conviction, the court shall return the license to him upon his appeal being perfected*; however, the defendant's license shall not be returned during any period of suspension imposed under § 46.2-391.2.*

§ 18.2-268.5. Qualifications and liability of persons authorized to take blood sample; procedure for taking samples.

For purposes of this article, only a physician, registered professional nurse, graduate laboratory technician or a technician or nurse designated by order of a circuit court acting upon the recommendation of a licensed physician, using soap and water, polyvinylpyrrolidone iodine or benzalkonium chloride to cleanse the part of the body from which the blood is taken and using instruments sterilized by the accepted steam sterilizer or some other sterilizer which will not affect the accuracy of the test, or using chemically clean sterile disposable syringes, shall withdraw blood for the purpose of determining its alcohol or drug *or both alcohol and drug* content. It is a Class 3 misdemeanor to reuse single-use-only needles or syringes. No civil liability shall attach to any person authorized to withdraw blood as a result of the act of withdrawing blood as provided in this section from any person submitting thereto, provided the blood was withdrawn according to recognized medical procedures. However, the person shall not be relieved from liability for negligence in the withdrawing of any blood sample.

No person arrested for a violation of § 18.2-266 *or § 18.2-266.1,* or a similar ordinance shall be required to execute in favor of any person or corporation a waiver or release of liability in connection with the withdrawal of blood and as a condition precedent to the withdrawal of blood as provided for in this section.

§ 18.2-268.7. Transmission of blood test results; use as evidence.

Upon receipt of a blood sample forwarded to the Division for analysis pursuant to § 18.2-268.6, the Division shall have it examined for its alcohol or drug *or both alcohol and drug* content and the Director shall execute a certificate of analysis indicating the name of the accused; the date, time and by whom the blood sample was received and examined; a statement that the seal on the vial had not been broken or otherwise tampered with; a statement that the container and vial were provided by the Division and that the vial was one to which the completed withdrawal certificate was attached; and a statement of the sample's alcohol or drug *or both alcohol and drug* content. The Director shall remove the withdrawal certificate from the vial, attach it to the certificate of analysis and state in the certificate of analysis that it was so removed and attached. The certificate of analysis with the withdrawal certificate shall be returned to the clerk of the court in which the charge will be heard. The vial and blood sample shall be destroyed after completion of the analysis. A similar certificate of analysis, with the withdrawal certificate from the independent laboratory which analyzes the second blood sample on behalf of the accused, shall be returned to the clerk of the court in which the charge will be heard. The blood sample shall be destroyed after completion of the analysis by the independent laboratory.

When a blood sample taken in accordance with the provisions of §§ 18.2-268.2 through 18.2-268.6 is forwarded for analysis to the Division, a report of the test results shall be filed in that office. Upon proper identification of the certificate of withdrawal, the certificate of analysis, with the withdrawal certificate attached, shall, when attested by the Director, be admissible in any court, in any criminal or civil proceeding, as evidence of the facts therein stated and of the results of such analysis. On motion of the accused, the certificate prepared for the second sample shall be admissible in evidence when attested by the pathologist or by the supervisor of the approved laboratory.

Upon request of the person whose blood ~~or breath~~ was analyzed, the test results shall be made available to him.

The Director may delegate or assign these duties under the provisions of § 2.1-20.01:2.

§ 18.2-268.8. Fees.

Payment for withdrawing blood shall not exceed twenty-five dollars, which shall be paid out of the appropriation for criminal charges. If the person whose blood sample was withdrawn is subsequently convicted for a violation of § 18.2-266 *or § 18.2-266.1* or of a similar ordinance, or is placed under the purview of a probational, educational, or rehabilitational program as set forth in § 18.2-271.1, the amount charged by the person withdrawing the sample shall be taxed as part of the costs of the criminal case and shall be paid into the general fund of the state treasury.

Approved laboratories determining the alcohol content of the second blood sample shall be allowed a fee of no more than twenty-five dollars, which shall be paid out of the appropriation for criminal charges. Payment for determining the presence of a drug or drugs in the second sample may not exceed the amount established on the Division's fee schedule and shall be paid out of the appropriation for criminal charges.

If the person whose blood sample was withdrawn is subsequently convicted for violation of § 18.2-266 *or § 18.2-266.1* or a similar ordinance, (i) the fee paid by the Commonwealth to the laboratory for testing the second blood sample and (ii) a fee of twenty-five dollars for testing the first blood sample by the Division shall be taxed as part of the costs of the criminal case and shall be paid into the general fund of the state treasury.

§ 18.2-268.9. Assurance of breath-test validity; use of test results as evidence.

To be capable of being considered valid as evidence in a prosecution under § 18.2-266 *or § 18.2-266.1*, chemical analysis of a person's breath shall be performed by an individual possessing a valid license to conduct such tests, with a type of equipment and in accordance with methods approved by the Department of General Services, Division of Forensic Science. The Division shall test the accuracy of the breath-testing equipment at least once every six months.

The Division shall establish a training program for all individuals who are to administer the breath tests. The program shall include at least forty hours of instruction in the operation of the breath-test equipment and the administration of such tests. Upon a person's successful completion of the training program, the Division may license him to conduct breath-test analyses.

Any individual conducting a breath test under the provisions of § 18.2-268.2 shall issue a certificate which will indicate that the test was conducted in accordance with the Division's specifications, the equipment on which the breath test was conducted has been tested within the past six months and has been found to be accurate, the name of the accused, *that prior to administration of the test the accused was advised of his right to observe the process and see the blood alcohol reading on the equipment used to perform the breath test*, the date and time the sample was taken from the accused, the sample's alcohol content, and the name of the person who examined the sample. This certificate, when attested by the individual conducting the breath test, shall be admissible in any court in any criminal or civil proceeding as evidence of the facts therein stated and of the results of such analysis. Any such certificate of analysis purporting to be signed by a person authorized by the Division shall be admissible in evidence without proof of seal or signature of the person whose name is signed to it. A copy of the certificate shall be promptly delivered to the accused.

The officer making the arrest, or anyone with him at the time of the arrest, or anyone participating in the arrest of the accused, if otherwise qualified to conduct such test as provided by this section, may make the breath test or analyze the results.

§ 18.2-268.10. Evidence of violation of § 18.2-266 or § 18.2-266.1.

In any trial for a violation of § 18.2-266 *or § 18.2-266.1* or a similar ordinance, the admission of the blood or breath test results shall not limit the introduction of any other relevant evidence bearing upon any question at issue before the court, and the court shall, regardless of the result of any blood or breath tests, consider other relevant admissible evidence of the condition of the accused. If the test results indicate the presence of any drug other than alcohol, the test results shall be admissible only if other competent evidence has been presented to relate the presence of the drug or drugs to the impairment of the accused's ability to drive or operate any motor vehicle, engine or train safely.

The failure of an accused to permit a blood or breath sample to be taken to determine the alcohol or drug content of his blood is not evidence and shall not be subject to comment by the Commonwealth at the trial of the case, except in rebuttal; nor shall the fact that a blood or breath test had been offered the accused be evidence or the subject of comment by the Commonwealth, except in rebuttal.

The court or jury trying the case involving a violation of clause (ii), (iii) or (iv) of § 18.2-266 *or § 18.2-266.1* shall determine the innocence or guilt of the defendant from all the evidence concerning his condition at the time of the alleged offense.

§ 18.2-269. Presumptions from alcohol content of blood.

A. In any prosecution for a violation of § 18.2-36.1 or § 18.2-266 (ii), or any similar ordinance, the amount of alcohol in the blood of the accused at the time of the alleged offense as indicated by a chemical analysis of a sample of the accused's blood or breath to determine the ~~alcoholic~~ *alcohol*

content of his blood in accordance with the provisions of §§ 18.2-268.1 through 18.2-268.12 shall give rise to the following rebuttable presumptions:

(1) If there was at that time 0.05 percent or less by weight by volume of alcohol in the accused's blood *or 0.05 grams or less per 210 liters of the accused's breath*, it shall be presumed that the accused was not under the influence of alcoholic intoxicants *at the time of the alleged offense*;

(2) If there was at that time in excess of 0.05 percent but less than ~~0.10~~ *0.08* percent by weight by volume of alcohol in the accused's blood *or 0.05 grams but less than 0.08 grams per 210 liters of the accused's breath*, such facts shall not give rise to any presumption that the accused was or was not under the influence of ~~alcoholic~~ *alcohol* intoxicants *at the time of the alleged offense*, but such facts may be considered with other competent evidence in determining the guilt or innocence of the accused; or

(3) If there was at that time ~~0.10~~ *0.08* percent or more by weight by volume of alcohol in the accused's blood *or 0.08 grams or more per 210 liters of the accused's breath*, it shall be presumed that the accused was under the influence of ~~alcoholic~~ *alcohol* intoxicants *at the time of the alleged offense*.

B. The provisions of this section shall not apply to and shall not affect any prosecution for a violation of § 46.2-341.24.

§ 18.2-271. Forfeiture of driver's license for driving while intoxicated.

A. Except as provided in § 18.2-271.1, the judgment of conviction if for a first offense under § 18.2-266 or for a similar offense under any county, city, or town ordinance, or for a first offense under subsection A of § 46.2-341.24, shall of itself operate to deprive the person so convicted of the privilege to drive or operate any motor vehicle, engine or train in the Commonwealth for a period of one year from the date of such judgment. *This suspension period shall be in addition to the suspension period provided under § 46.2-391.2.*

B. If a person is (i) tried on a process alleging a second offense of violating § 18.2-266 or subsection A of § 46.2-341.24 within ten years of a first offense for which the person was convicted, or found guilty in the case of a juvenile, under § 18.2-266 or subsection A of § 46.2-341.24 or any valid county, city, or town ordinance or law of any other state or of the United States substantially similar to § 18.2-266 or subsection A of § 46.2-341.24 and (ii) is convicted thereof, such person's license to operate a motor vehicle, engine or train shall be revoked for a period of three years from the date of the judgment of conviction. *This suspension period shall be in addition to the suspension period provided under § 46.2-391.2.* Any ~~such~~ period of license suspension or revocation *imposed pursuant to this section*, in any case, shall run consecutively with any period of suspension for failure to permit a blood or breath sample to be taken as required by §§ 18.2-268.1 through 18.2-268.12 or §§ 46.2-341.26:1 through 46.2-341.26:11.

C. If a person is tried on a process alleging a third or subsequent offense of violating § 18.2-266 or subsection A of § 46.2-341.24 within ten years of two other offenses for which the person was convicted, or found guilty in the case of a juvenile, under § 18.2-266, subsection A of § 46.2-341.24 or any valid county, city or town ordinance or law of any other state or of the United States substantially similar to § 18.2-266 or subsection A of § 46.2-341.24, and is convicted thereof, such person shall not be eligible for participation in a program pursuant to § 18.2-271.1 and shall have his license revoked as provided in subsection B of § 46.2-391. The court trying such case shall order the surrender of the driver's license of the person so convicted, to be disposed of in accordance with § 46.2-398, and shall notify such person that his license has been revoked indefinitely.

D. Notwithstanding any other provision of this section, the period of license revocation or suspension shall not begin to expire until the person convicted has surrendered his license to the court or to the Department of Motor Vehicles.

E. The provisions of this section shall not apply to, and shall have no effect upon, any disqualification from operating a commercial motor vehicle imposed under the provisions of the 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.

A. Any person convicted of a violation of § 18.2-266 (i), (ii), (iii) or (iv), or any ordinance of a county, city, or town similar to the provisions thereof, or provisions of subsection A of § 46.2-341.24, or any second offense thereunder, may, with leave of court or upon court order, enter into 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. In no event shall such persons be permitted to enter any such program which is not certified as meeting minimum standards and criteria established by the Commission on the Virginia Alcohol Safety Action Program (VASAP) pursuant to subsection H of this section and to § 18.2-271.2. In the determination of the eligibility of such person to enter such a program, the court shall consider his prior record of participation in any other alcohol rehabilitation program. If such person has never entered into an alcohol safety action program, in keeping with the procedures provided for in this section, and upon motion of the accused or his counsel, the court shall give mature consideration to the needs of such person in determining whether he shall be allowed to enter such program.

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 ten 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 §§ 18.2-270 and 18.2-271. Upon a finding that a person so convicted is eligible for participation 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 that a person is not eligible for 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. 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 final disposition of the case or any motion for rehearing, whichever is later.

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

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

E. Except as otherwise provided herein, whenever a person enters a certified program pursuant to this section, and such person's license to operate a motor vehicle, engine or train in the Commonwealth has been suspended or revoked, the court may, in its discretion and for good cause shown, provide that such person be issued a restricted permit to operate a motor vehicle for any or all of the following purposes: (i) travel to and from his place of employment; (ii) travel to and from an alcohol rehabilitation program entered pursuant to this subsection; (iii) travel during the hours of such person's employment if the operation of a motor vehicle is a necessary incident of such employment; (iv) travel to and from school if such person is a student, upon proper written verification to the court that such person is enrolled in a continuing program of education; or (v) such other medically necessary travel as the court deems necessary and proper upon written verification of need by a licensed health professional. 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 shall be guilty of a violation of § 18.2-272. Such restricted license shall be conditioned upon enrollment within fifteen 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 ten 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 ~~forty~~ *fifty* dollars. ~~Thirty~~ *Forty* dollars of such reinstatement fee shall be retained by the Department of Motor Vehicles as provided in § 46.2-411 and ten dollars shall be transferred to the Commission on VASAP.

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 ten 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. 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.

H. 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.

I. 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.).

§ 46.2-301. Driving while license, permit, or privilege to drive suspended or revoked.

A. In addition to any other penalty provided by this section, any motor vehicle administratively impounded or immobilized under the provisions of § 46.2-301.1 may, in the discretion of the court, be impounded or immobilized for an additional period of up to ninety days upon conviction of an offender for driving while his driver's license, learner's permit, or privilege to drive a motor vehicle has been suspended or revoked for (i) driving while intoxicated in violation of §§ 18.2-266, 46.2-341.24 or a substantially similar ordinance or law in any other jurisdiction or (ii) driving after adjudication as an habitual offender, where such adjudication was based in whole or in part on an alcohol-related offense, or where such person's license has been administratively suspended under the provisions of § 46.2-391.2. However, if, at the time of the violation, the offender was driving a motor vehicle owned by another person, the court shall have no jurisdiction over such motor vehicle but may order the impoundment or immobilization of a motor vehicle owned solely by the offender at the time of arrest. All costs of impoundment or immobilization, including removal or storage expenses, shall be paid by the

offender prior to the release of his motor vehicle.

B. Except as provided in §§ 46.2-304 and 46.2-357, no resident or nonresident (i) whose driver's license, learner's permit, or privilege to drive a motor vehicle has been suspended or revoked or (ii) who has been directed not to drive by any court, by the Commissioner, or by operation of law pursuant to this title or (iii) who has been forbidden, as prescribed by law, by the Commissioner, the State Corporation Commission, the Commonwealth Transportation Commissioner, any court, or the Superintendent of State Police, to operate a motor vehicle in the Commonwealth shall thereafter drive any motor vehicle or any self-propelled machinery or equipment on any highway in the Commonwealth until the period of such suspension or revocation has terminated. A clerk's notice of suspension of license for failure to pay fines or costs given in accordance with § 46.2-395 shall be sufficient notice for the purpose of maintaining a conviction under this section. For the purposes of this section, the phrase "motor vehicle or any self-propelled machinery or equipment" shall not include mopeds.

C. A first offense of violating this section shall constitute a Class 2 misdemeanor. A second or subsequent offense shall constitute a Class 1 misdemeanor. In addition, the court shall suspend the person's license, permit, or privilege to drive for the same period for which it had been previously suspended or revoked when the person violated this section.

D. In the event the person has violated this section by driving during a period of suspension or revocation which was not for a definite period of time, the court shall suspend the person's license, permit or privilege to drive for an additional period not to exceed ninety days. Any additional suspension ordered under the provisions of this section shall commence upon the expiration of the previous suspension or revocation unless the previous suspension or revocation has expired prior to the ordering of an additional suspension or revocation.

§ 46.2-301.1. Administrative impoundment of motor vehicle for certain driving while license suspended or revoked offenses; judicial impoundment upon conviction; penalty for permitting violation with one's vehicle.

A. The motor vehicle being driven by any person whose driver's license, learner's permit or privilege to drive a motor vehicle has been suspended or revoked for (i) driving while intoxicated in violation of §§ 18.2-266, 46.2-341.24 or a substantially similar ordinance or law in any other jurisdiction, or (ii) driving after adjudication as an habitual offender, where such adjudication was based in whole or in part on an alcohol-related offense, or where such person's license has been administratively suspended under the provisions of § 46.2-391.2, shall be impounded or immobilized by the arresting law-enforcement officer at the time the person is arrested for driving after his driver's license, learner's permit or privilege to drive has been so revoked or suspended. The impoundment or immobilization shall be for a period of thirty days.

The arresting officer, acting on behalf of the Commonwealth, shall serve a notice of impoundment upon the arrested person. The notice shall include information on the person's right to petition for review of the impoundment pursuant to subsection B. A copy of the notice of impoundment shall be delivered to the magistrate and thereafter promptly forwarded to the clerk of the general district court of the jurisdiction where the arrest was made and to the Commissioner. Transmission of the notice may be by electronic means.

At least five days prior to the expiration of the period of impoundment imposed pursuant to this section or § 46.2-301, the clerk shall provide the offender with information on the location of the motor vehicle and how and when the vehicle will be released.

All reasonable costs of impoundment or immobilization, including removal and storage expenses, shall be paid by the offender prior to the release of his motor vehicle.

B. Any driver who is the owner of the motor vehicle that is impounded or immobilized under subsection A may, during the period of the impoundment, petition the general district court of the jurisdiction in which the arrest was made to review that impoundment. The court shall review the impoundment within the same time period as the court hears an appeal from an order denying bail or fixing terms of bail or terms of recognizance, giving this matter precedence over all other matters on its docket. If the person proves to the court by a preponderance of the evidence that the arresting law-enforcement officer did not have probable cause for the arrest, or that the magistrate did not have probable cause to issue the warrant, the court shall rescind the impoundment. Upon recision, the motor vehicle shall be released and the Commonwealth shall pay or reimburse the person for all reasonable costs of impoundment or immobilization, including removal or storage costs paid or incurred by him. Otherwise, the court shall affirm the impoundment. If the person requesting the review fails to appear without just cause, his right to review shall be waived.

The court's findings are without prejudice to the person contesting the impoundment or to any other potential party as to any proceedings, civil or criminal, and shall not be evidence in any proceedings, civil or criminal.

C. The owner or co-owner of any motor vehicle impounded or immobilized under subsection A who was not the driver at the time of the violation, may petition the general district court in the jurisdiction where the violation occurred for the release of his motor vehicle. The motor vehicle shall be released if the owner or co-owner proves by a preponderance of the evidence that he (i) did not know that the

offender's driver's license was suspended or revoked when he authorized the offender to drive such motor vehicle or (ii) did not consent to the operation of the motor vehicle by the offender. If the owner proves by a preponderance of the evidence that his immediate family has only one motor vehicle and will suffer a substantial hardship if that motor vehicle is impounded or immobilized for thirty days, the court, in its discretion, may release the vehicle after some period of less than thirty days.

D. Notwithstanding any provision of this section, a subsequent dismissal or acquittal of the charge of driving on a suspended or revoked license shall result in an immediate recision of the impoundment or immobilization provided in subsection A. Upon recision, the motor vehicle shall be released and the Commonwealth shall pay or reimburse the person for all reasonable costs of impoundment or immobilization, including removal or storage costs, incurred or paid by him.

E. Any person who knowingly authorizes the operation of a motor vehicle by a person he knows has had his driver's license, learner's permit or privilege to drive a motor vehicle suspended or revoked for any of the reasons set forth in subsection A, shall be guilty of a Class 1 misdemeanor.

F. Notwithstanding the provisions of this section or § 46.2-301, nothing in this section shall impede or infringe upon a valid lienholder's rights to cure a default under an existing security agreement. Furthermore, such lienholder shall not be liable for any cost of impoundment or immobilization, including removal or storage expenses which may accrue pursuant to the provisions of this section or § 46.2-301.

§ 46.2-341.24. Driving a commercial motor vehicle while intoxicated, etc.

A. It shall be unlawful for any person to drive or operate any commercial motor vehicle (i) while such person has a blood alcohol concentration of ~~0.10~~ *0.08* percent or more by weight by volume *or 0.08 grams per 210 liters of breath* as indicated by a chemical test administered as provided in this article; (ii) while such person is under the influence of alcohol; (iii) while such person is under the influence of any narcotic drug or any other self-administered intoxicant or drug of whatsoever nature, or any combination of such drugs, to a degree which impairs his ability to drive or operate any commercial motor vehicle safely; or (iv) while such person is under the combined influence of alcohol and any drug or drugs to a degree which impairs his ability to drive or operate any commercial motor vehicle safely.

B. It shall be unlawful and a lesser included offense of an offense under provision (i), (ii), or (iv) of subsection A of this section for a person to drive or operate a commercial motor vehicle while such person has a blood alcohol concentration of 0.04 percent or more by weight by volume *or 0.04 grams or more per 210 liters of breath* as indicated by a chemical test administered in accordance with the provisions of this article.

§ 46.2-341.27. Presumptions from alcoholic content of blood.

In any prosecution for a violation of provision (ii) of subsection A of § 46.2-341.24, the amount of alcohol in the blood of the accused at the time of the alleged offense as indicated by a chemical analysis of a sample of the suspect's blood or breath to determine the alcoholic content of his blood in accordance with the provisions of §§ 46.2-341.26:1 through 46.2-341.26:11 shall give rise to the following rebuttable presumption: if there was at that time ~~0.10~~ *0.08* percent or more by weight by volume of alcohol in the accused's blood *or 0.08 grams or more per 210 liters of the accused's breath*, it shall be presumed that the accused was under the influence of alcoholic intoxicants.

If there was at that time less than ~~0.10~~ *0.08* percent by weight by volume of alcohol in the accused's blood *or 0.08 grams or more per 210 liters of the accused's breath*, such fact shall not give rise to any presumption that the accused was or was not under the influence of alcoholic intoxicants, but such fact may be considered with other competent evidence in determining the guilt or innocence of the accused.

§ 46.2-391.2. Administrative suspension of license or privilege to operate a motor vehicle.

A. If a breath test is taken pursuant to § 18.2-268.2 or any similar ordinance of any county, city or town and the results show a blood alcohol content of 0.08 percent or more by weight by volume or 0.08 grams or more per 210 liters of breath, or the person refuses to submit to the breath test in violation of § 18.2-268.3 or any similar local ordinance, and upon issuance of a warrant by the magistrate for a violation of § 18.2-266 or § 18.2-268.3, or any similar local ordinance, the person's license shall be suspended immediately for seven days or in the case of (i) an unlicensed person, (ii) a person whose license is otherwise suspended or revoked, or (iii) a person whose driver's license is from a jurisdiction other than the Commonwealth, such person's privilege to operate a motor vehicle in the Commonwealth shall be suspended immediately for seven days.

A law-enforcement officer, acting on behalf of the Commonwealth, shall serve a notice of suspension personally on the arrested person. When notice is served, the arresting officer shall promptly take possession of any driver's license held by the person and issued by the Commonwealth and shall promptly deliver it to the magistrate. Any driver's license taken into possession under this section shall be forwarded promptly by the magistrate to the clerk of the general district court of the jurisdiction in which the arrest was made together with the warrant or warrants, the results of the breath test, if any, and the report required by subsection B. A copy of the notice of suspension shall be forwarded forthwith to both the general district court of the jurisdiction in which the arrest was made and the Commissioner. Transmission of this information may be made by electronic means.

The clerk shall promptly return the suspended license to the person at the expiration of the seven-day

suspension. Whenever a suspended license is to be returned under this section or § 46.2-391.4, the person may elect to have the license returned in person at the clerk's office or by mail to the address on the person's license or to such other address as he may request.

B. Promptly after arrest and service of the notice of suspension, the arresting officer shall forward to the magistrate a sworn report of the arrest that shall include (i) information which adequately identifies the person arrested and (ii) a statement setting forth the arresting officer's grounds for belief that the person violated § 18.2-266 or a similar local ordinance or refused to submit to a breath test in violation of § 18.2-268.3 or a similar local ordinance. The report required by this subsection shall be submitted on forms supplied by the Supreme Court.

C. Any person whose license or privilege to operate a motor vehicle has been suspended under subsection A may, during the period of the suspension, request the general district court of the jurisdiction in which the arrest was made to review that suspension. The court shall review the suspension within the same time period as the court hears an appeal from an order denying bail or fixing terms of bail or terms of recognizance, giving this matter precedence over all other matters on its docket. If the person proves to the court by a preponderance of the evidence that the arresting officer did not have probable cause for the arrest, or that the magistrate did not have probable cause to issue the warrant, the court shall rescind the suspension, and the clerk of the court shall forthwith (i) return the suspended license, if any, to the person unless the license has been otherwise suspended or revoked, (ii) deliver to the person a notice that the suspension under § 46.2-391.2 has been rescinded and (iii) forward to the Commissioner a copy of the notice that the suspension under § 46.2-391.2 has been rescinded. Otherwise, the court shall affirm the suspension. If the person requesting the review fails to appear without just cause, his right to review shall be waived.

The court's findings are without prejudice to the person contesting the suspension or to any other potential party as to any proceedings, civil or criminal, and shall not be evidence in any proceedings, civil or criminal.

D. If a person whose license or privilege to operate a motor vehicle is suspended under subsection A is convicted under § 18.2-266 or any similar local ordinance during the seven-day suspension imposed by subsection A, and if the court decides to issue the person a restricted permit under subsection E of § 18.2-271.1, such restricted permit shall not be issued to the person before the expiration of the seven-day suspension imposed under subsection A.

§ 46.2-391.3. Content of notice of suspension.

A notice of suspension issued pursuant to § 46.2-391.2 shall clearly specify (i) the reason and statutory grounds for the suspension, (ii) the effective date and duration of the suspension, (iii) the right of the offender to request a review of that suspension by the appropriate district court of the jurisdiction in which the arrest was made, and (iv) the procedures for requesting such a review.

§ 46.2-391.4. When suspension to be rescinded.

Notwithstanding any other provision of § 46.2-391.2, a subsequent dismissal or acquittal of all the charges under §§ 18.2-266 and 18.2-268.3 or any similar local ordinances, for the same offense for which a person's driver's license or privilege to operate a motor vehicle was suspended under § 46.2-391.2 shall result in the immediate rescission of the suspension. In any such case, the clerk of the court shall forthwith (i) return the suspended license, if any, to the person unless the license has been otherwise suspended or revoked, (ii) deliver to the person a notice that the suspension under § 46.2-391.2 has been rescinded and (iii) forward to the Commissioner a copy of the notice that the suspension under § 46.2-391.2 has been rescinded.

§ 46.2-391.5. Preparation and distribution of forms.

The Supreme Court shall develop policies and regulations pertaining to the notice of suspension under subsection A of § 46.2-391.2 and the notice that the suspension has been rescinded under subsection C of § 46.2-391.2 and § 46.2-391.4, and shall furnish appropriate forms to all law-enforcement officers and district courts, respectively.

2. That the provisions of this act contained in §§ 18.2-268.2 through 18.2-268.5, 18.2-271, 18.2-271.1 and 46.2-391.2 through 46.2-391.5 shall become effective January 1, 1995, except to the extent that the amendments merely reflect the enactment by this act of § 18.2-266.1.