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HOUSE BILL NO. 2041

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on February 23, 2009)

(Patron Prior to Substitute—Delegate Iaquinto)

A *BILL to amend and reenact § 18.2-270.1 of the Code of Virginia, relating to ignition interlock limitations.***Be it enacted by the General Assembly of Virginia:****1. That § 18.2-270.1 of the Code of Virginia is amended and reenacted as follows:**

§ 18.2-270.1. Ignition interlock systems; penalty.

A. For purposes of this section and § 18.2-270.2:

"Commission" means the Commission on VASAP.

"Department" means the Department of Motor Vehicles.

"Ignition interlock system" means a device that (i) connects a motor vehicle ignition system to an analyzer that measures a driver's blood alcohol content; (ii) prevents a motor vehicle ignition from starting if a driver's blood alcohol content exceeds 0.02 percent; and (iii) is equipped with the ability to perform a rolling retest and to electronically log the blood alcohol content during ignition, attempted ignition and rolling retest.

"Rolling retest" means a test of the vehicle operator's blood alcohol content required at random intervals during operation of the vehicle, which triggers the sounding of the horn and flashing of lights if (i) the test indicates that the operator has a blood alcohol content which exceeds 0.02 percent or (ii) the operator fails to take the test.

B. In addition to any penalty provided by law for a conviction under § 18.2-51.4 or 18.2-266 or a substantially similar ordinance of any county, city or town, any court of proper jurisdiction (i) may, for a first offense, (ii) shall, for a second or subsequent offense and, (iii) shall, for an offense where an offender's blood alcohol content equals or exceeds ~~0.15~~ 0.10 percent, as a condition of a restricted license or as a condition of license restoration under subsection C of § 18.2-271.1 or 46.2-391, prohibit an offender from operating a motor vehicle that is not equipped with a functioning, certified ignition interlock system for any period of time not to exceed the period of license suspension and restriction, not less than six consecutive months without alcohol-related violations of the interlock requirements, and shall require that such a system be installed on each motor vehicle, as defined in § 46.2-100, owned by or registered to the offender, in whole or in part, for such period of time. Such condition shall be in addition to any purposes for which a restricted license may be issued pursuant to § 18.2-271.1. The court may order the installation of an ignition interlock system to commence immediately upon conviction. A fee of \$20 to cover court and administrative costs related to the ignition interlock system shall be paid by any such offender to the clerk of the court. The court shall require the offender to install an electronic log device with the ignition interlock system on a vehicle designated by the court to measure the blood alcohol content at each attempted ignition and random rolling retest during operation of the vehicle. The offender shall be enrolled in and supervised by an alcohol safety action program pursuant to § 18.2-271.1 and to conditions established by regulation under § 18.2-270.2 by the Commission during the period for which the court has ordered installation of the ignition interlock system. The offender shall be further required to provide to such program, at least quarterly during the period of court ordered ignition interlock installation, a printout from such electronic log indicating the offender's blood alcohol content during such ignitions, attempted ignitions, and rolling retests, and showing attempts to circumvent or tamper with the equipment.

C. In any case in which the court requires the installation of an ignition interlock system, the court shall direct the offender not to operate any motor vehicle which is not equipped with such a system for the period of time that installation is ordered. The clerk of the court shall file with the Department of Motor Vehicles a copy of the order, which shall become a part of the offender's operator's license record maintained by the Department. The Department shall issue to the offender for the installation period required by the court, a restricted license which shall appropriately set forth the restrictions required by the court under this subsection and any other restrictions imposed upon the offender's driving privilege, and shall also set forth any exception granted by the court under subsection F.

D. The offender shall be ordered to provide the appropriate ASAP program, within 30 days of the effective date of the order of court, proof of the installation of the ignition interlock system. The Program shall require the offender to have the system monitored and calibrated for proper operation at least every 30 days by an entity approved by the Commission under the provisions of § 18.2-270.2 and to demonstrate proof thereof. The offender shall pay the cost of leasing or buying and monitoring and maintaining the ignition interlock system. Absent good cause shown, the court may revoke the offender's

60 driving privilege for failing to (i) timely install such system or (ii) have the system properly monitored
61 and calibrated.

62 E. No person shall start or attempt to start a motor vehicle equipped with an ignition interlock
63 system for the purpose of providing an operable motor vehicle to a person who is prohibited under this
64 section from operating a motor vehicle that is not equipped with an ignition interlock system. No person
65 shall tamper with, or in any way attempt to circumvent the operation of, an ignition interlock system
66 that has been installed in the motor vehicle of a person under this section. Except as authorized in
67 subsection G, no person shall knowingly furnish a motor vehicle not equipped with a functioning
68 ignition interlock system to any person prohibited under subsection B from operating any motor vehicle
69 which is not equipped with such system. A violation of this subsection shall be punishable as a Class 1
70 misdemeanor.

71 F. Any person prohibited from operating a motor vehicle under subsection B may, solely in the
72 course of his employment, operate a motor vehicle which is owned or provided by his employer without
73 installation of an ignition interlock system, if the court expressly permits such operation as a condition
74 of a restricted license at the request of the employer, but such person may not operate a school bus,
75 school vehicle, or a commercial motor vehicle as defined in § 46.2-341.4. This subsection shall not
76 apply if such employer is an entity wholly or partially owned or controlled by the person otherwise
77 prohibited from operating a vehicle without an ignition interlock system.

78 G. The Commission shall promulgate such regulations and forms as are necessary to implement the
79 procedures outlined in this section.

80 **2. That no general fund appropriations shall be used by any agency or program to cover the costs**
81 **of leasing, buying, monitoring, maintaining, or installing ignition interlock systems on vehicles**
82 **owned or operated by persons found by the court to be indigent.**

83 **3. That the provisions of this act shall not become effective unless reenacted by the 2010 Session**
84 **of the General Assembly.**