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HOUSE BILL NO. 1589

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee for Courts of Justice
on January 31, 2011)

(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 for first offense DUI.*

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 percent shall, 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

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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, *passenger vehicle designed to transport more than 15 passengers*, or a commercial motor
76 vehicle as defined in § 46.2-341.4. This subsection shall not apply if such employer is an entity wholly
77 or partially owned or controlled by the person otherwise prohibited from operating a vehicle without an
78 ignition interlock system.

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

81 § 18.2-271.1. Probation, education and rehabilitation of person charged or convicted; person
82 convicted under law of another state.

83 A. Any person convicted of a first or second offense of § 18.2-266 (i), (ii), (iii) or (iv), or any
84 ordinance of a county, city, or town similar to the provisions thereof, or provisions of subsection A of
85 § 46.2-341.24, shall be required by court order, as a condition of probation or otherwise, to enter into
86 and successfully complete an alcohol safety action program in the judicial district in which such charge
87 is brought or in any other judicial district upon such terms and conditions as the court may set forth.
88 However, upon motion of a person convicted of any such offense following an assessment of the person
89 conducted by an alcohol safety action program, the court, for good cause, may decline to order
90 participation in such a program if the assessment by the alcohol safety action program indicates that
91 intervention is not appropriate for such person. In no event shall such persons be permitted to enter any
92 such program which is not certified as meeting minimum standards and criteria established by the
93 Commission on the Virginia Alcohol Safety Action Program (VASAP) pursuant to subsection H of this
94 section and to § 18.2-271.2. However, any person charged with a violation of a first or second offense
95 of § 18.2-266 (i), (ii), (iii) or (iv), or any ordinance of a county, city, or town similar to the provisions
96 thereof, or provisions of subsection A of § 46.2-341.24, may, at any time prior to trial, enter into an
97 alcohol safety action program in the judicial district in which such charge is brought or in any other
98 judicial district.

99 B. The court shall require the person entering such program under the provisions of this section to
100 pay a fee of no less than \$250 but no more than \$300. A reasonable portion of such fee, as may be
101 determined by the Commission on VASAP, but not to exceed 10 percent, shall be forwarded monthly to
102 be deposited with the State Treasurer for expenditure by the Commission on VASAP, and the balance
103 shall be held in a separate fund for local administration of driver alcohol rehabilitation programs. Upon
104 a positive finding that the defendant is indigent, the court may reduce or waive the fee. In addition to
105 the costs of the proceeding, fees as may reasonably be required of defendants referred for intervention
106 under any such program may be charged.

107 C. Upon conviction of a violation of § 18.2-266 or any ordinance of a county, city or town similar to
108 the provisions thereof, or subsection A of § 46.2-341.24, the court shall impose the sentence authorized
109 by § 18.2-270 or § 46.2-341.28 and the license revocation as authorized by § 18.2-271. In addition, if
110 the conviction was for a second offense committed within less than 10 years after a first such offense,
111 the court shall order that restoration of the person's license to drive be conditioned upon the installation
112 of an ignition interlock system on each motor vehicle, as defined in § 46.2-100, owned by or registered
113 to the person, in whole or in part, for a period of six months beginning at the end of the three year
114 license revocation, unless such a system has already been installed for six months prior to that time
115 pursuant to a restricted license order under subsection E of this section. Upon a finding that a person so
116 convicted is required to participate in the program described herein, the court shall enter the conviction
117 on the warrant, and shall note that the person so convicted has been referred to such program. The court
118 may then proceed to issue an order in accordance with subsection E of this section, if the court finds
119 that the person so convicted is eligible for a restricted license. If the court finds good cause for a person
120 not to participate in such program or subsequently that such person has violated, without good cause,
121 any of the conditions set forth by the court in entering the program, the court shall dispose of the case

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122 as if no program had been entered, in which event the revocation provisions of § 46.2-389 and
123 subsection A of § 46.2-391 shall be applicable to the conviction. The court shall, upon final disposition
124 of the case, send a copy of its order to the Commissioner of the Department of Motor Vehicles. If such
125 order provides for the issuance of a restricted license, the Commissioner of the Department of Motor
126 Vehicles, upon receipt thereof, shall issue a restricted license. Appeals from any such disposition shall
127 be allowed as provided by law. The time within which an appeal may be taken shall be calculated from
128 the date of the final disposition of the case or any motion for rehearing, whichever is later.

129 D. Any person who has been convicted in another state of the violation of a law of such state
130 substantially similar to the provisions of § 18.2-266 or subsection A of § 46.2-341.24, and whose
131 privilege to operate a motor vehicle in this Commonwealth is subject to revocation under the provisions
132 of § 46.2-389 and subsection A of § 46.2-391, may petition the general district court of the county or
133 city in which he resides that he be given probation and assigned to a program as provided in subsection
134 A of this section and that, upon entry into such program, he be issued an order in accordance with
135 subsection E of this section. If the court finds that such person would have qualified therefor if he had
136 been convicted in this Commonwealth of a violation of § 18.2-266 or subsection A of § 46.2-341.24, the
137 court may grant the petition and may issue an order in accordance with subsection E of this section as
138 to the period of license suspension or revocation imposed pursuant to § 46.2-389 or subsection A of
139 § 46.2-391. Such order shall be conditioned upon the successful completion of a program by the
140 petitioner. If the court subsequently finds that such person has violated any of the conditions set forth by
141 the court, the court shall dispose of the case as if no program had been entered and shall notify the
142 Commissioner, who shall revoke the person's license in accordance with the provisions of § 46.2-389 or
143 subsection A of § 46.2-391. A copy of the order granting the petition or subsequently revoking or
144 suspending such person's license to operate a motor vehicle shall be forthwith sent to the Commissioner
145 of the Department of Motor Vehicles.

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

150 E. Except as otherwise provided herein, whenever a person enters a certified program pursuant to this
151 section, and such person's license to operate a motor vehicle, engine or train in the Commonwealth has
152 been suspended or revoked, the court may, in its discretion and for good cause shown, provide that such
153 person be issued a restricted permit to operate a motor vehicle for any of the following purposes: (i)
154 travel to and from his place of employment; (ii) travel to and from an alcohol rehabilitation or safety
155 action program; (iii) travel during the hours of such person's employment if the operation of a motor
156 vehicle is a necessary incident of such employment; (iv) travel to and from school if such person is a
157 student, upon proper written verification to the court that such person is enrolled in a continuing
158 program of education; (v) travel for health care services, including medically necessary transportation of
159 an elderly parent or, as designated by the court, any person residing in the person's household with a
160 serious medical problem upon written verification of need by a licensed health professional; (vi) travel
161 necessary to transport a minor child under the care of such person to and from school, day care, and
162 facilities housing medical service providers; (vii) travel to and from court-ordered visitation with a child
163 of such person; (viii) travel to a screening, evaluation and education program entered pursuant to
164 § 18.2-251 or subsection H of § 18.2-258.1; (ix) travel to and from court appearances in which he is a
165 subpoenaed witness or a party and appointments with his probation officer and to and from any
166 programs required by the court or as a condition of probation; (x) travel to and from a place of religious
167 worship one day per week at a specified time and place; or (xi) travel to and from appointments
168 approved by the Division of Child Support Enforcement of the Department of Social Services as a
169 requirement of participation in a court-ordered intensive case monitoring program for child support for
170 which the participant maintains written proof of the appointment, including written proof of the date and
171 time of the appointment, on his person; or (xii) *travel to and from the facility that installed or monitors*
172 *the ignition interlock in the person's vehicle.* No restricted license issued pursuant to this subsection
173 shall permit any person to operate a commercial motor vehicle as defined in the Virginia Commercial
174 Driver's License Act (§ 46.2-341.1 et seq.). The court shall order the surrender of such person's license
175 to operate a motor vehicle to be disposed of in accordance with the provisions of § 46.2-398 and shall
176 forward to the Commissioner of the Department of Motor Vehicles a copy of its order entered pursuant
177 to this subsection, which shall specifically enumerate the restrictions imposed and contain such
178 information regarding the person to whom such a permit is issued as is reasonably necessary to identify
179 such person. The court shall also provide a copy of its order to the person so convicted who may
180 operate a motor vehicle on the order until receipt from the Commissioner of the Department of Motor
181 Vehicles of a restricted license, if the order provides for a restricted license for that time period. A copy
182 of such order and, after receipt thereof, the restricted license shall be carried at all times while operating

183 a motor vehicle. Any person who operates a motor vehicle in violation of any restrictions imposed
184 pursuant to this section shall be guilty of a violation of § 18.2-272. Such restricted license shall be
185 conditioned upon enrollment within 15 days in, and successful completion of, a program as described in
186 subsection A of this section. No restricted license shall be issued during the first four months of a
187 revocation imposed pursuant to subsection B of § 18.2-271 or subsection A of § 46.2-391 for a second
188 offense of the type described therein committed within 10 years of a first such offense. No restricted
189 license shall be issued during the first year of a revocation imposed pursuant to subsection B of
190 § 18.2-271 or subsection A of § 46.2-391 for a second offense of the type described therein committed
191 within five years of a first such offense. No restricted license shall be issued during any revocation
192 period imposed pursuant to subsection C of § 18.2-271 or subsection B of § 46.2-391. Notwithstanding
193 the provisions of § 46.2-411, the fee charged pursuant to § 46.2-411 for reinstatement of the driver's
194 license of any person whose privilege or license has been suspended or revoked as a result of a
195 violation of § 18.2-266, subsection A of § 46.2-341.24 or of any ordinance of a county, city or town, or
196 of any federal law or the laws of any other state similar to the provisions of § 18.2-266 or subsection A
197 of § 46.2-341.24 shall be \$105. Forty dollars of such reinstatement fee shall be retained by the
198 Department of Motor Vehicles as provided in § 46.2-411, \$40 shall be transferred to the Commission on
199 VASAP, and \$25 shall be transferred to the Commonwealth Neurotrauma Initiative Trust Fund.

200 F. The court shall have jurisdiction over any person entering such program under any provision of
201 this section until such time as the case has been disposed of by either successful completion of the
202 program, or revocation due to ineligibility or violation of a condition or conditions imposed by the
203 court, whichever shall first occur. Revocation proceedings shall be commenced by notice to show cause
204 why the court should not revoke the privilege afforded by this section. Such notice shall be made by
205 first-class mail to the last known address of such person, and shall direct such person to appear before
206 the court in response thereto on a date contained in such notice, which shall not be less than 10 days
207 from the date of mailing of the notice. Failure to appear in response to such notice shall of itself be
208 grounds for revocation of such privilege. Notice of revocation under this subsection shall be sent
209 forthwith to the Commissioner of the Department of Motor Vehicles.

210 G. For the purposes of this section, any court which has convicted a person of a violation of
211 § 18.2-266, subsection A of § 46.2-341.24 or any ordinance of a county, city or town similar to the
212 provisions of § 18.2-266 shall have continuing jurisdiction over such person during any period of license
213 revocation related to that conviction, for the limited purposes of (i) referring such person to a certified
214 alcohol safety action program, (ii) providing for a restricted permit for such person in accordance with
215 the provisions of subsection E, and (iii) imposing terms, conditions and limitations for actions taken
216 pursuant to clauses (i) and (ii), whether or not it took either such action at the time of the conviction.
217 This continuing jurisdiction is subject to the limitations of subsection E that provide that no restricted
218 license shall be issued during a revocation imposed pursuant to subsection C of § 18.2-271 or subsection
219 B of § 46.2-391 or during the first four months or first year, whichever is applicable, of the revocation
220 imposed pursuant to subsection B of § 18.2-271 or subsection A of § 46.2-391. The provisions of this
221 subsection shall apply to a person convicted of a violation of § 18.2-266, subsection A of § 46.2-341.24
222 or any ordinance of a county, city or town similar to the provisions of § 18.2-266 on, after and at any
223 time prior to July 1, 2003.

224 H. The State Treasurer, the Commission on VASAP or any city or county is authorized to accept any
225 gifts or bequests of money or property, and any grant, loan, service, payment or property from any
226 source, including the federal government, for the purpose of driver alcohol education. Any such gifts,
227 bequests, grants, loans or payments shall be deposited in the separate fund provided in subsection B.

228 I. The Commission on VASAP, or any county, city, town, or any combination thereof may establish
229 and, if established, shall operate, in accordance with the standards and criteria required by this
230 subsection, alcohol safety action programs in connection with highway safety. Each such program shall
231 operate under the direction of a local independent policy board chosen in accordance with procedures
232 approved and promulgated by the Commission on VASAP. Local sitting or retired district court judges
233 who regularly hear or heard cases involving driving under the influence and are familiar with their local
234 alcohol safety action programs may serve on such boards. The Commission on VASAP shall establish
235 minimum standards and criteria for the implementation and operation of such programs and shall
236 establish procedures to certify all such programs to ensure that they meet the minimum standards and
237 criteria stipulated by the Commission. The Commission shall also establish criteria for the administration
238 of such programs for public information activities, for accounting procedures, for the auditing
239 requirements of such programs and for the allocation of funds. Funds paid to the Commonwealth
240 hereunder shall be utilized in the discretion of the Commission on VASAP to offset the costs of state
241 programs and local programs run in conjunction with any county, city or town and costs incurred by the
242 Commission. The Commission shall submit an annual report as to actions taken at the close of each
243 calendar year to the Governor and the General Assembly.

244 J. Notwithstanding any other provisions of this section or of § 18.2-271, nothing in this section shall

245 permit the court to suspend, reduce, limit, or otherwise modify any disqualification from operating a
246 commercial motor vehicle imposed under the provisions of the Virginia Commercial Driver's License
247 Act (§ 46.2-341.1 et seq.).

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