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SENATE BILL NO. 1118

Offered January 12, 2011

Prefiled January 11, 2011

A *BILL to amend and reenact §§ 18.2-270.1 and 18.2-271.1 of the Code of Virginia, relating to first offense DUI; ignition interlock and restricted license.*

Patrons—McEachin and Herring

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-270.1 and 18.2-271.1 of the Code of Virginia are 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

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59 Program shall require the offender to have the system monitored and calibrated for proper operation at
60 least every 30 days by an entity approved by the Commission under the provisions of § 18.2-270.2 and
61 to demonstrate proof thereof. The offender shall pay the cost of leasing or buying and monitoring and
62 maintaining the ignition interlock system. Absent good cause shown, the court may revoke the offender's
63 driving privilege for failing to (i) timely install such system or (ii) have the system properly monitored
64 and calibrated.

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

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

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

83 § 18.2-271.1. Probation, education and rehabilitation of person charged or convicted; person
84 convicted under law of another state.

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

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

109 C. Upon conviction of a violation of § 18.2-266 or any ordinance of a county, city or town similar to
110 the provisions thereof, or subsection A of § 46.2-341.24, the court shall impose the sentence authorized
111 by § 18.2-270 or § 46.2-341.28 and the license revocation as authorized by § 18.2-271. In addition, if
112 the conviction was for a second offense committed within less than 10 years after a first such offense,
113 the court shall order that restoration of the person's license to drive be conditioned upon the installation
114 of an ignition interlock system on each motor vehicle, as defined in § 46.2-100, owned by or registered
115 to the person, in whole or in part, for a period of six months beginning at the end of the three year
116 license revocation, unless such a system has already been installed for six months prior to that time
117 pursuant to a restricted license order under subsection E of this section. Upon a finding that a person so
118 convicted is required to participate in the program described herein, the court shall enter the conviction
119 on the warrant, and shall note that the person so convicted has been referred to such program. The court
120 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 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. 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 of the following purposes: (i) travel to and from his place of employment; (ii) travel to and from an alcohol rehabilitation or safety action program; (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; (v) travel for health care services, including medically necessary transportation of an elderly parent or, as designated by the court, any person residing in the person's household with a serious medical problem upon written verification of need by a licensed health professional; (vi) travel necessary to transport a minor child under the care of such person to and from school, day care, and facilities housing medical service providers; (vii) travel to and from court-ordered visitation with a child of such person; (viii) travel to a screening, evaluation and education program entered pursuant to § 18.2-251 or subsection H of § 18.2-258.1; (ix) travel to and from court appearances in which he is a subpoenaed witness or a party and appointments with his probation officer and to and from any programs required by the court or as a condition of probation; (x) travel to and from a place of religious worship one day per week at a specified time and place; or (xi) travel to and from appointments approved by the Division of Child Support Enforcement of the Department of Social Services as a requirement of participation in a court-ordered intensive case monitoring program for child support for which the participant maintains written proof of the appointment, including written proof of the date and time of the appointment, on his person. 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 15 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 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.

E1. Notwithstanding any other provision of law, whenever a person enters a certified program pursuant to this section, such person's license to operate a motor vehicle in the Commonwealth has been suspended or revoked, and the person has been convicted of no more than one offense listed in subsection E of § 18.2-270, the court shall, for good cause shown, issue such person a restricted permit to operate a motor vehicle for travel during the hours of such person's employment if the operation of a motor vehicle is a necessary incident of such employment and the employer is not an entity wholly or partially owned or controlled by the person. The provisions of subsection E shall apply to a restricted license issued pursuant to this subsection, other than the criteria for issuance of a restricted license.

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 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 which has convicted a person of 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 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, 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

244 minimum standards and criteria for the implementation and operation of such programs and shall
245 establish procedures to certify all such programs to ensure that they meet the minimum standards and
246 criteria stipulated by the Commission. The Commission shall also establish criteria for the administration
247 of such programs for public information activities, for accounting procedures, for the auditing
248 requirements of such programs and for the allocation of funds. Funds paid to the Commonwealth
249 hereunder shall be utilized in the discretion of the Commission on VASAP to offset the costs of state
250 programs and local programs run in conjunction with any county, city or town and costs incurred by the
251 Commission. The Commission shall submit an annual report as to actions taken at the close of each
252 calendar year to the Governor and the General Assembly.

253 J. Notwithstanding any other provisions of this section or of § 18.2-271, nothing in this section shall
254 permit the court to suspend, reduce, limit, or otherwise modify any disqualification from operating a
255 commercial motor vehicle imposed under the provisions of the Virginia Commercial Driver's License
256 Act (§ 46.2-341.1 et seq.).