

12104085D

## HOUSE BILL NO. 1258

Offered January 20, 2012

A BILL to amend and reenact §§ 18.2-270.1, 18.2-270.2, 18.2-271, 18.2-271.1, 46.2-391, 46.2-391.2, and 46.2-391.3 of the Code of Virginia, relating to ignition interlock in lieu of restricted license.

Patron—Miller

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 18.2-270.1, 18.2-270.2, 18.2-271, 18.2-271.1, 46.2-391, 46.2-391.2, and 46.2-391.3 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~~ random retest and to electronically log the blood alcohol content during ignition, attempted ignition and ~~rolling~~ random retest.

"~~Rolling~~ Random 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, as a condition of a restricted license or shall, 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 the periods of time specified in subsection C of § 18.2-271.1, provided that during the final four consecutive months without there are no alcohol-related violations of the interlock requirements, and shall require that such a functioning ignition interlock system be installed on each one or more motor vehicle vehicles, as defined in § 46.2-100, owned by or registered to be operated by 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 \$45 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~~ information in a format prescribed by the department from such electronic log ignition interlock system indicating the offender's blood alcohol content during such ignitions, attempted ignitions, and ~~rolling~~ random 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 an ignition interlock permit that~~ 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

INTRODUCED

HB1258

59 subsection F.

60 D. The offender shall be ordered to provide the appropriate ASAP program, within ~~30~~ 15 days of the  
61 effective date of the order of court, proof of the installation of the ignition interlock system. The  
62 Program shall require the offender to have the system monitored and calibrated for proper operation at  
63 least every ~~30~~ 60 days by an entity approved by the Commission under the provisions of § 18.2-270.2  
64 and to demonstrate proof thereof. The offender shall pay the cost of leasing or buying and monitoring  
65 and maintaining the ignition interlock system *unless the Department determines the person is eligible for*  
66 *his program costs to be subsidized by the Ignition Interlock Assistance Fund in accordance with*  
67 *§ 18.2-270.2.* Absent good cause shown, the court may revoke the offender's driving privilege for failing  
68 to (i) timely install such system or (ii) have the system properly monitored and calibrated.

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

80 F. Any person prohibited from operating a motor vehicle under subsection B may, solely in the  
81 course of his employment, operate a motor vehicle which is owned or provided by his employer without  
82 installation of an ignition interlock system, ~~if the court expressly permits such operation as a condition~~  
83 ~~of a restricted license at the request of the employer has been notified and the person has proof of the~~  
84 *notification on a form provided by and on file with the Department of Motor Vehicles bearing the*  
85 *notarized signature of the employer, a copy of which must be in the person's possession while operating*  
86 *a motor vehicle that is owned or provided by the employer,* but such person may not operate a school  
87 bus, school vehicle, or a commercial motor vehicle as defined in § 46.2-341.4. This subsection shall not  
88 apply if such employer is an entity wholly or partially owned or controlled by the person otherwise  
89 prohibited from operating a vehicle without an ignition interlock system.

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

92 § 18.2-270.2. Ignition interlock system; certification by Commission on VASAP; regulations; sale or  
93 lease; monitoring use; reports.

94 A. The Executive Director of the Commission on VASAP or his designee shall, pursuant to approval  
95 by the Commission, certify ignition interlock systems for use in ~~this~~ *the* Commonwealth and adopt  
96 regulations and forms for the installation, maintenance and certification of such ignition interlock  
97 systems.

98 The regulations adopted shall include requirements that ignition interlock systems:

99 1. Do not impede the safe operation of the vehicle;

100 2. Minimize opportunities to be bypassed, circumvented or tampered with, and provide evidence  
101 thereof;

102 3. Correlate accurately with established measures of blood alcohol content and be calibrated  
103 according to the manufacturer's specifications;

104 4. Work accurately and reliably in an unsupervised environment;

105 5. Have the capability to provide an accurate written measure of blood alcohol content for each  
106 ignition, attempted ignition, and ~~rolling~~ *random* retest, and record each attempt to circumvent or tamper  
107 with the equipment;

108 6. Minimize inconvenience to other users;

109 7. Be manufactured or distributed by an entity responsible for installation, user training, service, and  
110 maintenance, and meet the safety and operational requirements promulgated by the National Highway  
111 Transportation Safety Administration;

112 8. Operate reliably over the range of motor vehicle environments or motor vehicle manufacturing  
113 standards;

114 9. Be manufactured by an entity which is adequately insured against liability, in an amount  
115 established by the Commission, including product liability and installation and maintenance errors;

116 10. Provide for an electronic log of the driver's experience with the system with an information  
117 management system capable of electronically delivering information to the agency supervising the  
118 interlock user within ~~twenty-four~~ 24 hours of the collection of such information from the datalogger; and

119 11. Provide for a ~~rolling~~ *random* retest of the operator's blood alcohol content.

120 Such regulations shall also provide for the establishment of a fund, using a percentage of fees

received by the manufacturer or distributor providing ignition interlock services, to afford persons found by the court to be indigent all or part of the costs of an ignition interlock system.

The Commission shall design and adopt a warning label to be affixed to an ignition interlock system upon installation. The warning label shall state that a person tampering with, or attempting to circumvent the ignition interlock system shall be guilty of a Class 1 misdemeanor and, upon conviction, shall be subject to a fine or incarceration or both.

The Commission shall publish a list of certified ignition interlock systems and shall ensure that such systems are available throughout the Commonwealth. The local alcohol safety action program shall make the list available to eligible offenders, who shall have the responsibility and authority to choose which certified ignition interlock company will supply the offender's equipment. A manufacturer or distributor of an ignition interlock system that seeks to sell or lease the ignition interlock system to persons subject to the provisions of § 18.2-270.1 shall pay the reasonable costs of obtaining the required certification, as set forth by the Commission.

*B. Such regulations shall also provide for the establishment in the state treasury of a special nonreverting fund to be known as the Ignition Interlock Assistance Fund. The Fund shall consist of any moneys paid into it by virtue of operation of subsection C and any moneys appropriated thereto by the General Assembly and designated for the Fund. Any moneys deposited to or remaining in the Fund during or at the end of each fiscal year or biennium, including interest thereon, shall not revert to the general fund but shall remain in the Fund and be available for the allocation in ensuing fiscal years.*

*1. The Executive Director of the Commission on VASAP or his designee shall, pursuant to approval by the Commission, establish objective standards to determine eligibility for persons to receive assistance from the Fund for payment of all or part of the costs of an ignition interlock system.*

*2. Any cost the Department incurs in administering the Fund, including personnel, shall be drawn from the Fund.*

*C. On and after July 1, 2012, a court shall order any person convicted of a violation of § 18.2-266 or 18.2-266.1 to pay \$30 to the Ignition Interlock Assistance Fund established in subsection B. At the end of the fiscal year beginning July 1, 2012, and at the end of each fiscal year thereafter, the Director shall adjust the \$30 amount to be collected during the following fiscal year to assure a funding level adequate to require no further appropriation of funds by the General Assembly.*

*D. A person may not sell or lease or offer to sell or lease an ignition interlock system to any person subject to the provisions of § 18.2-270.1 unless:*

*1. The system has been certified by the Commission; and*

*2. The warning label adopted by the Commission is affixed to the system.*

*EE. A manufacturer or distributor of an ignition interlock system shall provide such services as may be required at no cost to the Commonwealth. Such services shall include a toll free, twenty-four-hour 24-hour telephone number for the users of ignition interlock systems.*

*§ 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 (i) is tried on a process alleging a second offense of violating § 18.2-266 or subsection A of § 46.2-341.24, or any substantially similar local ordinance, or law of any other jurisdiction, within ten 10 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 local ordinance or any law of any other jurisdiction substantially similar to § 18.2-266 or subsection A of § 46.2-341.24 and (ii) is convicted thereof, except as provided in § 18.2-271.1, such conviction 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 three years from the date of the judgment of conviction and such person shall have his license revoked as provided in subsection A of § 46.2-391. The court trying such case shall order the surrender of the person's driver's license, to be disposed of in accordance with § 46.2-398, and shall notify such person that his license has been revoked for a period of three years and that the penalty for violating that revocation is as set out in § 46.2-391. This suspension period shall be in addition to the suspension period provided under § 46.2-391.2. Any 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 or any period of suspension for a previous violation of § 18.2-266, 18.2-266.1, or 46.2-341.24.*

*C. If a person (i) is tried on a process alleging a third or subsequent offense of violating § 18.2-266*

182 or subsection A of § 46.2-341.24, or any substantially similar local ordinance, or law of any other  
183 jurisdiction, within ~~ten~~ 10 years of two other offenses for which the person was convicted, or found not  
184 innocent in the case of a juvenile, under § 18.2-266 or subsection A of § 46.2-341.24 or any valid local  
185 ordinance or any law of any other jurisdiction substantially similar to § 18.2-266 or subsection A of  
186 § 46.2-341.24 and (ii) is convicted thereof, such conviction shall of itself operate to deprive the person  
187 so convicted of the privilege to drive or operate any motor vehicle, engine or train in the  
188 Commonwealth ~~and such~~. Such person shall ~~not~~ be eligible for participation in a program pursuant to  
189 § 18.2-271.1 ~~and~~. Such person shall, upon such conviction, have his license revoked as provided in  
190 subsection B of § 46.2-391. The court trying such case shall order the surrender of the person's driver's  
191 license, to be disposed of in accordance with § 46.2-398, and shall notify such person that his license  
192 has been revoked indefinitely and that the penalty for violating that revocation is as set out in  
193 § 46.2-391.

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

197 E. The provisions of this section shall not apply to, and shall have no effect upon, any  
198 disqualification from operating a commercial motor vehicle imposed under the provisions of the  
199 Commercial Driver's License Act (§ 46.2-341.1 et seq.).

200 § 18.2-271.1. Probation, education and rehabilitation of person charged or convicted; person  
201 convicted under law of another state.

202 A. Any person convicted of a first or second offense of § 18.2-266 (i), (ii), (iii), or (iv), or any  
203 ordinance of a county, city, or town similar to the provisions thereof, or provisions of subsection A of  
204 § 46.2-341.24, shall be required by court order, as a condition of probation or otherwise, to enter into  
205 and successfully complete an alcohol safety action program in the judicial district in which such charge  
206 is brought or in any other judicial district upon such terms and conditions as the court may set forth.  
207 However, upon motion of a person convicted of any such offense following an assessment of the person  
208 conducted by an alcohol safety action program, the court, for good cause, may decline to order  
209 participation in such a program if the assessment by the alcohol safety action program indicates that  
210 intervention is not appropriate for such person. In no event shall such persons be permitted to enter any  
211 such program which is not certified as meeting minimum standards and criteria established by the  
212 Commission on the Virginia Alcohol Safety Action Program (VASAP) pursuant to subsection H of ~~this~~  
213 ~~section~~ and to § 18.2-271.2. However, any person charged with a violation of a first or second offense  
214 of § 18.2-266 (i), (ii), (iii), or (iv), or any ordinance of a county, city, or town similar to the provisions  
215 thereof, or provisions of subsection A of § 46.2-341.24, may, at any time prior to trial, enter into an  
216 alcohol safety action program in the judicial district in which such charge is brought or in any other  
217 judicial district.

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

226 C. Upon conviction of a violation of § 18.2-266 or any ordinance of a county, city or town similar to  
227 the provisions thereof, or subsection A of § 46.2-341.24, the court shall impose the sentence authorized  
228 by § 18.2-270 or 46.2-341.28 and the license revocation as authorized by § 18.2-271. In addition, ~~if the~~  
229 ~~conviction was for a second offense committed within less than 10 years after a first such offense,~~ the  
230 court shall order that restoration of the person's license to drive be conditioned upon the installation ~~and~~  
231 ~~maintenance of an~~ a functioning ignition interlock system on ~~each one or more motor vehicle vehicles,~~  
232 as defined in § 46.2-100, ~~owned by or registered to be operated by the person, in whole or in part,~~ for a  
233 period of ~~six~~:

234 1. Six months beginning at the end of the ~~three year~~ one-year license revocation; ~~unless such a~~  
235 ~~system has already been installed for six months prior to that time pursuant to a restricted license order~~  
236 ~~under subsection E of this section if the conviction was for a first offense; or~~

237 2. One year, beginning at the end of the three-year license revocation if the conviction was for a  
238 second offense committed within 10 years of a first such offense.

239 Upon a finding that a person so convicted is required to participate in the program described herein,  
240 the court shall enter the conviction on the warrant, and shall note that the person so convicted has been  
241 referred to such program. The court may then proceed to issue an order in accordance with subsection E  
242 of ~~this section~~, if the court finds that the person so convicted is eligible for a ~~restricted license an~~  
243 ~~ignition interlock permit~~. 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~~ *an ignition interlock permit*, the Commissioner of the Department of Motor Vehicles, upon receipt thereof, shall issue a ~~restricted license~~ *an ignition interlock permit*. 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 the~~ 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~~ *subsections A and C 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 the~~ 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, ~~or if a person's license to operate a motor vehicle, engine or train in the Commonwealth has been revoked indefinitely in accordance with subsection C of § 18.2-271,~~ the court may, in its discretion and for good cause shown, provide that such person be issued a ~~restricted~~ *may apply for an ignition interlock* 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; (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; or (xii) travel to and from jail to serve a sentence when such person has been convicted and sentenced to confinement in jail and pursuant to ~~§ 53.1-131.1~~ the time to be served is on weekends or nonconsecutive days, *conditioned upon the installation and maintenance of a functioning ignition interlock system on each motor vehicle, as defined in § 46.2-100, to be operated by the person until the expiration of such period of suspension or revocation, or indefinitely in the case of a person whose license has been revoked in accordance with subsection C of § 18.2-271.*

1. No ~~restricted license~~ *ignition interlock permit* issued pursuant to this subsection shall permit any

305 person to operate a commercial motor vehicle as defined in the Virginia Commercial Driver's License  
306 Act (§ 46.2-341.1 et seq.).

307 2. The court shall order the surrender of such person's license to operate a motor vehicle to be  
308 disposed of in accordance with the provisions of § 46.2-398 and shall forward to the Commissioner of  
309 the Department of Motor Vehicles a copy of its order entered pursuant to this subsection *authorizing*  
310 *such person to apply for an ignition interlock permit*, which shall specifically enumerate the restrictions  
311 ~~imposed and~~ contain such information regarding the person to whom such a permit is issued as is  
312 reasonably necessary to identify such person. ~~The court shall also provide a copy of its order to the~~  
313 ~~person so convicted who may operate a motor vehicle on the order until receipt from the Commissioner~~  
314 ~~of the Department of Motor Vehicles of a restricted license, if the order provides for a restricted license~~  
315 ~~for that time period.~~ A copy of such order and, after receipt thereof, the ~~restricted license~~ *ignition*  
316 *interlock permit* shall be carried at all times while operating a motor vehicle. Any person who operates a  
317 motor vehicle in violation of any restrictions imposed pursuant to this section ~~shall be~~ *is* guilty of a  
318 violation of § 18.2-272. Such ~~restricted license~~ *ignition interlock permit* shall be conditioned upon  
319 enrollment within 15 days in, and successful completion of, a program as described in subsection A of  
320 this section. ~~No restricted license shall be issued during the first four months of a revocation imposed~~  
321 ~~pursuant to subsection B of § 18.2-271 or subsection A of § 46.2-391 for a second offense of the type~~  
322 ~~described therein committed within 10 years of a first such offense. No restricted license shall be issued~~  
323 ~~during the first year of a revocation imposed pursuant to subsection B of § 18.2-271 or subsection A of~~  
324 ~~§ 46.2-391 for a second offense of the type described therein committed within five years of a first such~~  
325 ~~offense. No restricted license shall be issued during any revocation period imposed pursuant to~~  
326 ~~subsection C of § 18.2-271 or subsection B of § 46.2-391.~~

327 3. Notwithstanding the provisions of § 46.2-411, the fee charged pursuant to § 46.2-411 for  
328 reinstatement of the driver's license of any person whose privilege or license has been suspended or  
329 revoked as a result of a violation of § 18.2-266, subsection A of § 46.2-341.24 or of any ordinance of a  
330 county, city or town, or of any federal law or the laws of any other state similar to the provisions of  
331 § 18.2-266 or subsection A of § 46.2-341.24 shall be ~~\$105~~ *\$165*. ~~Forty~~ *Seventy* dollars of such  
332 reinstatement fee shall be retained by the Department of Motor Vehicles as provided in § 46.2-411, ~~\$40~~  
333 ~~\$70~~ shall be transferred to the Commission on VASAP, and \$25 shall be transferred to the  
334 Commonwealth Neurotrauma Initiative Trust Fund.

335 4. *A person issued an ignition interlock permit in accordance with this subsection shall receive*  
336 *day-for-day credit toward any ignition interlock requirement established in subsection C of § 18.2-271.1*  
337 *or 46.2-391 arising from the same incident.*

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

348 G. For the purposes of this section, any court which has convicted a person of a violation of  
349 § 18.2-266, subsection A of § 46.2-341.24 or any ordinance of a county, city or town similar to the  
350 provisions of § 18.2-266 shall have continuing jurisdiction over such person during any period of license  
351 revocation related to that conviction, for the limited purposes of (i) referring such person to a certified  
352 alcohol safety action program, (ii) providing for a ~~restricted~~ *an ignition interlock* permit for such person  
353 in accordance with the provisions of subsection E, and (iii) imposing terms, conditions and limitations  
354 for actions taken pursuant to clauses (i) and (ii), whether or not it took either such action at the time of  
355 the conviction. ~~This continuing jurisdiction is subject to the limitations of subsection E that provide that~~  
356 ~~no restricted license shall be issued during a revocation imposed pursuant to subsection C of § 18.2-271~~  
357 ~~or subsection B of § 46.2-391 or during the first four months or first year, whichever is applicable, of~~  
358 ~~the revocation imposed pursuant to subsection B of § 18.2-271 or subsection A of § 46.2-391.~~ The  
359 provisions of this subsection shall apply to a person convicted of a violation of § 18.2-266, subsection A  
360 of § 46.2-341.24 or any ordinance of a county, city or town similar to the provisions of § 18.2-266 on,  
361 after and at any time prior to July 1, 2003.

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

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

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

§ 46.2-391. Revocation of license for multiple convictions of driving while intoxicated; exception; petition for restoration of privilege.

A. The Commissioner shall forthwith revoke and not thereafter reissue for three years the driver's license of any person on receiving a record of the conviction of any person who (i) is adjudged to be a second offender in violation of the provisions of subsection A of § 46.2-341.24 (driving a commercial motor vehicle under the influence of drugs or intoxicants), or § 18.2-266 (driving under the influence of drugs or intoxicants), if the subsequent violation occurred within 10 years of the prior violation, or (ii) is convicted of any two or more offenses of § 18.2-272 (driving while the driver's license has been forfeited for a conviction under § 18.2-266) if the second or subsequent violation occurred within 10 years of the prior offense. However, if the Commissioner has received a copy of a court order authorizing *such person to apply for issuance of a restricted license an ignition interlock permit* as provided in subsection E of § 18.2-271.1, he shall proceed as provided in the order of the court. For the purposes of this subsection, an offense in violation of a valid local ordinance, or law of any other jurisdiction, which ordinance or law is substantially similar to any provision of Virginia law herein shall be considered an offense in violation of such provision of Virginia law. Additionally, in no event shall the Commissioner reinstate the driver's license of any person convicted of a violation of § 18.2-266, or of a substantially similar valid local ordinance or law of another jurisdiction, until receipt of notification that such person has successfully completed an alcohol safety action program if such person was required by court order to do so unless the requirement for completion of the program has been waived by the court for good cause shown. A conviction includes a finding of not innocent in the case of a juvenile.

B. The Commissioner shall forthwith revoke and not thereafter reissue the driver's license of any person after receiving a record of the conviction of any person (i) convicted of a violation of § 18.2-36.1 or § 18.2-51.4 or (ii) convicted of three offenses arising out of separate incidents or occurrences within a period of 10 years in violation of the provisions of subsection A of § 46.2-341.24 or § 18.2-266, or a substantially similar ordinance or law of any other jurisdiction, or any combination of three such offenses. *However, if the Commissioner has received a copy of a court order authorizing such person to apply for issuance of an ignition interlock permit as provided in subsection E of § 18.2-271.1, he shall proceed as provided in the order of the court. For the purposes of this subsection, an offense in violation of a valid local ordinance, or law of any other jurisdiction, which ordinance or law is substantially similar to any provision of Virginia law herein, shall be considered an offense in violation of such provision of Virginia law. Additionally, in no event shall the Commissioner reinstate the driver's license of any person convicted of a violation of § 18.2-266, or of a substantially similar valid local ordinance or law of another jurisdiction, until receipt of notification that such person has successfully completed an alcohol safety action program if such person was required by court order to do so unless the requirement for completion of the program has been waived by the court for good cause shown. A conviction includes a finding of not innocent in the case of a juvenile.*

C. Any person who has had his driver's license revoked in accordance with subsection B of this section may petition the circuit court of his residence, or, if a nonresident of Virginia, any circuit court:

1. For restoration of his privilege to drive a motor vehicle in the Commonwealth after the expiration of five years from the date of his last conviction. On such petition, and for good cause shown, the court may, in its discretion, restore to the person the privilege to drive a motor vehicle in the Commonwealth

428 on condition that such person install an ignition interlock system in accordance with § 18.2-270.1 on all  
429 one or more motor vehicles, as defined in § 46.2-100, ~~owned by or registered to him to be operated by~~  
430 the person, in whole or in part, for a period of at least six months, and upon whatever other conditions  
431 the court may prescribe, subject to the provisions of law relating to issuance of driver's licenses, if the  
432 court is satisfied from the evidence presented that: (i) at the time of his previous convictions, the  
433 petitioner was addicted to or psychologically dependent on the use of alcohol or other drugs; (ii) at the  
434 time of the hearing on the petition, he is no longer addicted to or psychologically dependent on the use  
435 of alcohol or other drugs; and (iii) the defendant does not constitute a threat to the safety and welfare of  
436 himself or others with regard to the driving of a motor vehicle. *The person shall receive day-for-day*  
437 *credit for the ignition interlock required by this subsection for the time period the person had a valid*  
438 *ignition interlock permit issued under subsection E of § 18.2-271.1 for the same conviction.* However,  
439 prior to acting on the petition, the court shall order that an evaluation of the person, to include an  
440 assessment of his degree of alcohol abuse and the appropriate treatment therefor, if any, be conducted  
441 by a Virginia Alcohol Safety Action Program and recommendations therefrom be submitted to the court.  
442 The court may, in lieu of restoring the person's privilege to drive, authorize *such person to apply for* the  
443 issuance of a ~~restricted license~~ *an ignition interlock permit* for a period not to exceed five years in  
444 accordance with the provisions of § 18.2-270.1 and subsection E of § 18.2-271.1. The court shall notify  
445 the Virginia Alcohol Safety Action Program which shall during the term of the ~~restricted license~~ *ignition*  
446 *interlock permit* monitor the person's compliance with the terms of the restrictions imposed by the court.  
447 Any violation of the restrictions shall be reported to the court, and the court may then modify the  
448 restrictions or revoke the license.

449 2. For a restricted license to authorize such person to drive a motor vehicle in the Commonwealth in  
450 the course of his employment and to drive a motor vehicle to and from his home to the place of his  
451 employment after the expiration of three years from the date of his last conviction. The court may order  
452 that a ~~restricted license~~ *authorize such person to apply for an ignition interlock permit* for such purposes  
453 be issued in accordance with the procedures of subsection E of § 18.2-271.1, if the court is satisfied  
454 from the evidence presented that (i) at the time of the previous convictions, the petitioner was addicted  
455 to or psychologically dependent on the use of alcohol or other drugs; (ii) at the time of the hearing on  
456 the petition, he is no longer addicted to or psychologically dependent on the use of alcohol or such  
457 other drugs; and (iii) the defendant does not constitute a threat to the safety and welfare of himself and  
458 others with regard to the driving of a motor vehicle. The court shall prohibit the person to whom a  
459 ~~restricted license~~ *an ignition interlock permit* is issued from operating a motor vehicle that is not  
460 equipped with a functioning, certified ignition interlock system during all or any part of the term for  
461 which the ~~restricted license~~ *ignition interlock permit* is issued, in accordance with the provisions set  
462 forth in § 18.2-270.1. However, prior to acting on the petition, the court shall order that an evaluation of  
463 the person, to include an assessment of his degree of alcohol abuse and the appropriate treatment  
464 therefor, if any, be conducted by a Virginia Alcohol Safety Action Program and recommendations  
465 therefrom be submitted to the court. The Virginia Alcohol Safety Action Program shall during the term  
466 of the ~~restricted license~~ *ignition interlock permit* monitor the person's compliance with the terms of the  
467 restrictions imposed by the court. Any violation of the restrictions shall be reported to the court, and the  
468 court may then modify the restrictions or revoke the license.

469 The ignition interlock system installation requirement under subdivisions 1 and 2 of this subsection  
470 need only be satisfied once as to any single revocation under subsection B of this section for any person  
471 seeking restoration under subdivision 1 following the granting of a ~~restricted license~~ *an ignition interlock*  
472 *permit* under subdivision 1 or 2.

473 D. Any person convicted of driving a motor vehicle or any self-propelled machinery or equipment (i)  
474 while his license is revoked pursuant to subsection A or B or (ii) in violation of the terms of a ~~restricted~~  
475 ~~license~~ *an ignition interlock permit* issued pursuant to subsection C shall, provided such revocation was  
476 based on at least one conviction for an offense committed after July 1, 1999, be punished as follows:

477 1. If such driving does not of itself endanger the life, limb, or property of another, such person shall  
478 be guilty of a Class 1 misdemeanor punishable by a mandatory minimum term of confinement in jail of  
479 10 days except in cases wherein such operation is necessitated in situations of apparent extreme  
480 emergency that require such operation to save life or limb, the sentence, or any part thereof, may be  
481 suspended.

482 2. a. If such driving (i) of itself endangers the life, limb, or property of another or (ii) takes place  
483 while such person is in violation of §§ 18.2-36.1, 18.2-51.4, 18.2-266, subsection A of § 46.2-341.24, or  
484 a substantially similar law or ordinance of another jurisdiction, irrespective of whether the driving of  
485 itself endangers the life, limb or property of another and the person has been previously convicted of a  
486 violation of §§ 18.2-36.1, 18.2-51.4, 18.2-266, subsection A of § 46.2-341.24, or a substantially similar  
487 local ordinance, or law of another jurisdiction, such person shall be guilty of a felony punishable by  
488 confinement in a state correctional facility for not less than one year nor more than five years, one year  
489 of which shall be a mandatory minimum term of confinement or, in the discretion of the jury or the



court trying the case without a jury, by mandatory minimum confinement in jail for a period of 12 months and no portion of such sentence shall be suspended or run concurrently with any other sentence.

b. However, in cases wherein such operation is necessitated in situations of apparent extreme emergency that require such operation to save life or limb, the sentence, or any part thereof, may be suspended.

3. If any such offense of driving is a second or subsequent violation, such person shall be punished as provided in subdivision 2 of this subsection, irrespective of whether the offense, of itself, endangers the life, limb, or property of another.

E. Notwithstanding the provisions of subdivisions 2 and 3 of subsection D, following conviction and prior to imposition of sentence with the consent of the defendant, the court may order the defendant to be evaluated for and to participate in the Boot Camp Incarceration Program pursuant to § 19.2-316.1, or the Detention Center Incarceration Program pursuant to § 19.2-316.2, or the Diversion Center Incarceration Program pursuant to § 19.2-316.3.

F. Any period of driver's license revocation imposed pursuant to this section shall not begin to expire until the person convicted has surrendered his license to the court or to the Department of Motor Vehicles.

G. Nothing in this section shall prohibit a person from operating any farm tractor on the highways when it is necessary to move the tractor from one tract of land used for agricultural purposes to another such tract of land when the distance between the tracts is no more than five miles.

H. Any person who operates a motor vehicle or any self-propelled machinery or equipment (i) while his license is revoked pursuant to subsection A or B, or (ii) in violation of the terms of a ~~restricted license~~ *an ignition interlock permit* issued pursuant to subsection C, where the provisions of subsection D do not apply, shall be guilty of a violation of § 18.2-272.

§ 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 and (i) 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 (ii) the results, for persons under 21 years of age, show 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 or (iii) the person refuses to submit to the breath test in violation of § 18.2-268.3 or any similar ordinance, and upon issuance of a petition or summons, or upon issuance of a warrant by the magistrate, for a violation of § 18.2-51.4, 18.2-266, or 18.2-266.1, or any similar ordinance, or upon the issuance of a warrant or summons by the magistrate or by the arresting officer at a medical facility for a violation of § 18.2-268.3, or any similar ordinance, the person's license shall be suspended immediately or in the case of ~~(i)~~ *(a)* an unlicensed person, ~~(ii)~~ *(b)* a person whose license is otherwise suspended or revoked, or ~~(iii)~~ *(c)* 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. The period of suspension of the person's license or privilege to drive shall be seven days, unless the petition, summons or warrant issued charges the person with a second or subsequent offense. If the person is charged with a second offense the suspension shall be for 60 days. If not already expired, the period of suspension shall expire on the day and time of trial of the offense charged on the petition, summons or warrant, except that it shall not so expire during the first seven days of the suspension. If the person is charged with a third or subsequent offense, the suspension shall be until the day and time of trial of the offense charged on the petition, summons or warrant. *A person whose license or privilege to drive is suspended under this subsection may apply for issuance of an ignition interlock permit pursuant to subsection E of § 18.2-271.1. Upon applying for an ignition interlock permit under this subsection, the person waives his right to:*

*1. Request the court to review the suspension under subsection C; and*

*2. Appeal the warrant or summons for the unreasonable refusal to consent to have samples of the person's blood or breath or both blood and breath taken for chemical testing in accordance with § 18.2-268.3.*

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 or, as appropriate, the court with jurisdiction over juveniles of the jurisdiction in which the arrest was made together with any petition, summons or warrant, 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 ~~(a)~~ *(1)* the general district court or, as appropriate, the court with jurisdiction over juveniles of the jurisdiction in which the arrest was made and ~~(b)~~ *(2)* the Commissioner. Transmission of this information may be made by electronic means.

551 The clerk shall promptly return the suspended license to the person at the expiration of the  
552 suspension. Whenever a suspended license is to be returned under this section or § 46.2-391.4, the  
553 person may elect to have the license returned in person at the clerk's office or by mail to the address on  
554 the person's license or to such other address as he may request.

555 B. Promptly after arrest and service of the notice of suspension, the arresting officer shall forward to  
556 the magistrate a sworn report of the arrest that shall include (i) information which adequately identifies  
557 the person arrested and (ii) a statement setting forth the arresting officer's grounds for belief that the  
558 person violated § 18.2-51.4, 18.2-266, or 18.2-266.1, or a similar ordinance or refused to submit to a  
559 breath test in violation of § 18.2-268.3 or a similar ordinance. The report required by this subsection  
560 shall be submitted on forms supplied by the Supreme Court.

561 C. Any person whose license or privilege to operate a motor vehicle has been suspended under  
562 subsection A may, during the period of the suspension, request the general district court or, as  
563 appropriate, the court with jurisdiction over juveniles of the jurisdiction in which the arrest was made to  
564 review that suspension. The court shall review the suspension within the same time period as the court  
565 hears an appeal from an order denying bail or fixing terms of bail or terms of recognizance, giving this  
566 matter precedence over all other matters on its docket. If the person proves to the court by a  
567 preponderance of the evidence that the arresting officer did not have probable cause for the arrest, that  
568 the magistrate did not have probable cause to issue the warrant, or that there was not probable cause for  
569 issuance of the petition, the court shall rescind the suspension, or that portion of it that exceeds seven  
570 days if there was not probable cause to charge a second offense or 60 days if there was not probable  
571 cause to charge a third or subsequent offense, and the clerk of the court shall forthwith, or at the  
572 expiration of the reduced suspension time, (i) return the suspended license, if any, to the person unless  
573 the license has been otherwise suspended or revoked, (ii) deliver to the person a notice that the  
574 suspension under § 46.2-391.2 has been rescinded or reduced, and (iii) forward to the Commissioner a  
575 copy of the notice that the suspension under § 46.2-391.2 has been rescinded or reduced. Otherwise, the  
576 court shall affirm the suspension. If the person requesting the review fails to appear without just cause,  
577 his right to review shall be waived.

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

581 D. If a person whose license or privilege to operate a motor vehicle is suspended under subsection A  
582 is convicted under ~~§ 18.2-36.1, 18.2-51.4, 18.2-266, or 18.2-266.1, or any similar ordinance~~ during the  
583 suspension imposed by subsection A, and if the court decides to issue the person a restricted permit  
584 under subsection E of ~~§ 18.2-271.1~~, such restricted permit shall not be issued to the person before the  
585 expiration of the first seven days of the suspension imposed under subsection A.

586 § 46.2-391.3. Content of notice of suspension.

587 A notice of suspension issued pursuant to § 46.2-391.2 shall clearly specify (i) the reason and  
588 statutory grounds for the suspension, (ii) the effective date and duration of the suspension, (iii) the right  
589 of the offender to request a review of that suspension by the appropriate district court of the jurisdiction  
590 in which the arrest was made, ~~and~~ (iv) the procedures for requesting such a review, (v) *that the person*  
591 *may apply for an ignition interlock permit under subsection E of § 18.2-271.1, and (vi) that the person*  
592 *waives his right to a review by the court of that suspension upon the person's filing of an application*  
593 *for issuance of an ignition interlock permit in accordance with subsection A of § 46.2-391.2.*

594 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**  
595 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**  
596 **be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter**  
597 **890 of the Acts of Assembly of 2011 requires the Virginia Criminal Sentencing Commission to**  
598 **assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated amount of the**  
599 **necessary appropriation is \$0 for periods of commitment to the custody of the Department of**  
600 **Juvenile Justice.**