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HOUSE BILL NO. 944

Offered January 8, 2014

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A BILL to amend and reenact §§ 18.2-270.1, 18.2-271.1, and 46.2-391.01 of the Code of Virginia, relating to ignition interlock system as a condition of restricted license, license restoration, and administrative enforcement of ignition interlock requirements; exemption of certain offenders.

Patron—Surovell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-270.1, 18.2-271.1, and 46.2-391.01 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~~ where the offender was under the influence of alcohol at the time of the offense, clause (i), (ii), or (iv) of § 18.2-266, or a substantially similar ordinance of any county, city, or town, any court of proper jurisdiction shall, as a condition of a restricted license, 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. The court shall, for a conviction under § 18.2-51.4 where the offender was under the influence of alcohol at the time of the offense, a second or subsequent offense of clause (i), (ii), or (iv) of § 18.2-266, or a substantially similar ordinance of any county, city, or town, or as a condition of license restoration pursuant to subsection C of § 18.2-271.1 or § 46.2-391, 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 order the offender not to operate any motor vehicle that is not equipped with such a system for the period of time that the interlock restriction is in effect. 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 period during which the interlock restriction is imposed a restricted license which shall appropriately set forth the restrictions required by the court under this subsection and any other restrictions imposed

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59 upon the offender's driving privilege, and shall also set forth any exception granted by the court under  
60 subsection F.

61 D. The offender shall be ordered to provide the appropriate ASAP program, within 30 days of the  
62 effective date of the order of court, proof of the installation of the ignition interlock system. The  
63 Program shall require the offender to have the system monitored and calibrated for proper operation at  
64 least every 30 days by an entity approved by the Commission under the provisions of § 18.2-270.2 and  
65 to demonstrate proof thereof. The offender shall pay the cost of leasing or buying and monitoring and  
66 maintaining the ignition interlock system. Absent good cause shown, the court may revoke the offender's  
67 driving privilege for failing to (i) timely install such system or (ii) have the system properly monitored  
68 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 ignition interlock system. No person  
72 shall tamper with, or in any way attempt to circumvent the operation of, an ignition interlock system  
73 that has been installed in the motor vehicle of a person under this section. Except as authorized in  
74 subsection G F, no person shall knowingly furnish a motor vehicle not equipped with a functioning  
75 ignition interlock system to any person prohibited under subsection B from operating any motor vehicle  
76 which is not equipped with such system. A violation of this subsection is punishable as a Class 1  
77 misdemeanor.

78 F. Any person prohibited from operating a motor vehicle under subsection B may, solely in the  
79 course of his employment, operate a motor vehicle which is owned or provided by his employer without  
80 installation of an ignition interlock system, if the court expressly permits such operation as a condition  
81 of a restricted license at the request of the employer; ~~but such person may not operate a school bus,~~  
82 ~~school vehicle, or a commercial motor vehicle as defined in § 46.2-341.4.~~ This subsection shall not  
83 apply if such employer is an entity wholly or partially owned or controlled by the person otherwise  
84 prohibited from operating a vehicle without an ignition interlock system. *Any person who is subject to a*  
85 *restricted license due to a conviction under § 18.2-51.4 or 18.2-266 shall not operate a school bus,*  
86 *school vehicle, or commercial motor vehicle as defined in § 46.2-341.4.*

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

89 **§ 18.2-271.1. Probation, education, and rehabilitation of person charged or convicted; person**  
90 **convicted under law of another state.**

91 A. Any person convicted of a first or second offense of § 18.2-266 (i), (ii), (iii), or (iv), or any  
92 ordinance of a county, city, or town similar to the provisions thereof, or provisions of subsection A of §  
93 46.2-341.24, shall be required by court order, as a condition of probation or otherwise, to enter into and  
94 successfully complete an alcohol safety action program in the judicial district in which such charge is  
95 brought or in any other judicial district upon such terms and conditions as the court may set forth.  
96 However, upon motion of a person convicted of any such offense following an assessment of the person  
97 conducted by an alcohol safety action program, the court, for good cause, may decline to order  
98 participation in such a program if the assessment by the alcohol safety action program indicates that  
99 intervention is not appropriate for such person. In no event shall such persons be permitted to enter any  
100 such program which is not certified as meeting minimum standards and criteria established by the  
101 Commission on the Virginia Alcohol Safety Action Program (VASAP) pursuant to subsection H of this  
102 section and to § 18.2-271.2. However, any person charged with a violation of a first or second offense  
103 of § 18.2-266 (i), (ii), (iii), or (iv), or any ordinance of a county, city, or town similar to the provisions  
104 thereof, or provisions of subsection A of § 46.2-341.24, may, at any time prior to trial, enter into an  
105 alcohol safety action program in the judicial district in which such charge is brought or in any other  
106 judicial district. Any person who enters into such program prior to trial may pre-qualify with the  
107 program to have an ignition interlock system installed on any motor vehicle owned or operated by him.  
108 However, no ignition interlock company shall install an ignition interlock system on any such vehicle  
109 until a court issues to the person a restricted license with the ignition interlock restriction.

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

118 C. Upon conviction of a violation of § 18.2-266 or any ordinance of a county, city, or town similar  
119 to the provisions thereof, or subsection A of § 46.2-341.24, the court shall impose the sentence  
120 authorized by § 18.2-270 or 46.2-341.28 and the license revocation as authorized by § 18.2-271. In

121 addition, if the conviction was for a second offense *of clause (i), (ii), or (iv) of § 18.2-266 or a*  
 122 *substantially similar ordinance of any county, city, or town* committed within less than 10 years after a  
 123 first such offense, the court shall order that restoration of the person's license to drive be conditioned  
 124 upon the installation of an ignition interlock system on each motor vehicle, as defined in § 46.2-100,  
 125 owned by or registered to the person, in whole or in part, for a period of six months beginning at the  
 126 end of the three year license revocation, unless such a system has already been installed for six months  
 127 prior to that time pursuant to a restricted license order under subsection E of this section. Upon a  
 128 finding that a person so convicted is required to participate in the program described herein, the court  
 129 shall enter the conviction on the warrant, and shall note that the person so convicted has been referred  
 130 to such program. The court may then proceed to issue an order in accordance with subsection E of this  
 131 section, if the court finds that the person so convicted is eligible for a restricted license. If the court  
 132 finds good cause for a person not to participate in such program or subsequently that such person has  
 133 violated, without good cause, any of the conditions set forth by the court in entering the program, the  
 134 court shall dispose of the case as if no program had been entered, in which event the revocation  
 135 provisions of § 46.2-389 and subsection A of § 46.2-391 shall be applicable to the conviction. The court  
 136 shall, upon final disposition of the case, send a copy of its order to the Commissioner of the Department  
 137 of Motor Vehicles. If such order provides for the issuance of a restricted license, the Commissioner of  
 138 the Department of Motor Vehicles, upon receipt thereof, shall issue a restricted license. Appeals from  
 139 any such disposition shall be allowed as provided by law. The time within which an appeal may be  
 140 taken shall be calculated from the date of the final disposition of the case or any motion for rehearing,  
 141 whichever is later.

142 D. Any person who has been convicted in another state of the violation of a law of such state  
 143 substantially similar to the provisions of § 18.2-266 or subsection A of § 46.2-341.24, and whose  
 144 privilege to operate a motor vehicle in this Commonwealth is subject to revocation under the provisions  
 145 of § 46.2-389 and subsection A of § 46.2-391, may petition the general district court of the county or  
 146 city in which he resides that he be given probation and assigned to a program as provided in subsection  
 147 A of this section and that, upon entry into such program, he be issued an order in accordance with  
 148 subsection E of this section. If the court finds that such person would have qualified therefor if he had  
 149 been convicted in this Commonwealth of a violation of § 18.2-266 or subsection A of § 46.2-341.24, the  
 150 court may grant the petition and may issue an order in accordance with subsection E of this section as  
 151 to the period of license suspension or revocation imposed pursuant to § 46.2-389 or subsection A of  
 152 § 46.2-391. Such order shall be conditioned upon the successful completion of a program by the  
 153 petitioner. If the court subsequently finds that such person has violated any of the conditions set forth by  
 154 the court, the court shall dispose of the case as if no program had been entered and shall notify the  
 155 Commissioner, who shall revoke the person's license in accordance with the provisions of § 46.2-389 or  
 156 subsection A of § 46.2-391. A copy of the order granting the petition or subsequently revoking or  
 157 suspending such person's license to operate a motor vehicle shall be forthwith sent to the Commissioner  
 158 of the Department of Motor Vehicles.

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

163 E. Except as otherwise provided herein, whenever a person enters a certified program pursuant to this  
 164 section, and such person's license to operate a motor vehicle, engine or train in the Commonwealth has  
 165 been suspended or revoked, the court may, in its discretion and for good cause shown, provide that such  
 166 person be issued a restricted permit to operate a motor vehicle for any of the following purposes: (i)  
 167 travel to and from his place of employment; (ii) travel to and from an alcohol rehabilitation or safety  
 168 action program; (iii) travel during the hours of such person's employment if the operation of a motor  
 169 vehicle is a necessary incident of such employment; (iv) travel to and from school if such person is a  
 170 student, upon proper written verification to the court that such person is enrolled in a continuing  
 171 program of education; (v) travel for health care services, including medically necessary transportation of  
 172 an elderly parent or, as designated by the court, any person residing in the person's household with a  
 173 serious medical problem upon written verification of need by a licensed health professional; (vi) travel  
 174 necessary to transport a minor child under the care of such person to and from school, day care, and  
 175 facilities housing medical service providers; (vii) travel to and from court-ordered visitation with a child  
 176 of such person; (viii) travel to a screening, evaluation and education program entered pursuant to  
 177 § 18.2-251 or subsection H of § 18.2-258.1; (ix) travel to and from court appearances in which he is a  
 178 subpoenaed witness or a party and appointments with his probation officer and to and from any  
 179 programs required by the court or as a condition of probation; (x) travel to and from a place of religious  
 180 worship one day per week at a specified time and place; (xi) travel to and from appointments approved  
 181 by the Division of Child Support Enforcement of the Department of Social Services as a requirement of

182 participation in a court-ordered intensive case monitoring program for child support for which the  
183 participant maintains written proof of the appointment, including written proof of the date and time of  
184 the appointment, on his person; (xii) travel to and from jail to serve a sentence when such person has  
185 been convicted and sentenced to confinement in jail and pursuant to § 53.1-131.1 the time to be served  
186 is on weekends or nonconsecutive days; or (xiii) travel to and from the facility that installed or monitors  
187 the ignition interlock in the person's vehicle. No restricted license issued pursuant to this subsection shall  
188 permit any person to operate a commercial motor vehicle as defined in the Virginia Commercial Driver's  
189 License Act (§ 46.2-341.1 et seq.). The court shall order the surrender of such person's license to  
190 operate a motor vehicle to be disposed of in accordance with the provisions of § 46.2-398 and shall  
191 forward to the Commissioner of the Department of Motor Vehicles a copy of its order entered pursuant  
192 to this subsection, which shall specifically enumerate the restrictions imposed and contain such  
193 information regarding the person to whom such a permit is issued as is reasonably necessary to identify  
194 such person. The court shall also provide a copy of its order to the person so convicted who may  
195 operate a motor vehicle on the order until receipt from the Commissioner of the Department of Motor  
196 Vehicles of a restricted license, if the order provides for a restricted license for that time period. A copy  
197 of such order and, after receipt thereof, the restricted license shall be carried at all times while operating  
198 a motor vehicle. Any person who operates a motor vehicle in violation of any restrictions imposed  
199 pursuant to this section shall be guilty of a violation of § 18.2-272. Such restricted license shall be  
200 conditioned upon enrollment within 15 days in, and successful completion of, a program as described in  
201 subsection A of this section. No restricted license shall be issued during the first four months of a  
202 revocation imposed pursuant to subsection B of § 18.2-271 or subsection A of § 46.2-391 for a second  
203 offense of the type described therein committed within 10 years of a first such offense. No restricted  
204 license shall be issued during the first year of a revocation imposed pursuant to subsection B of  
205 § 18.2-271 or subsection A of § 46.2-391 for a second offense of the type described therein committed  
206 within five years of a first such offense. No restricted license shall be issued during any revocation  
207 period imposed pursuant to subsection C of § 18.2-271 or subsection B of § 46.2-391. Notwithstanding  
208 the provisions of § 46.2-411, the fee charged pursuant to § 46.2-411 for reinstatement of the driver's  
209 license of any person whose privilege or license has been suspended or revoked as a result of a  
210 violation of § 18.2-266, subsection A of § 46.2-341.24 or of any ordinance of a county, city or town, or  
211 of any federal law or the laws of any other state similar to the provisions of § 18.2-266 or subsection A  
212 of § 46.2-341.24 shall be \$105. Forty dollars of such reinstatement fee shall be retained by the  
213 Department of Motor Vehicles as provided in § 46.2-411, \$40 shall be transferred to the Commission on  
214 VASAP, and \$25 shall be transferred to the Commonwealth Neurotrauma Initiative Trust Fund.

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

225 G. For the purposes of this section, any court which has convicted a person of a violation of  
226 § 18.2-266, subsection A of § 46.2-341.24 or any ordinance of a county, city or town similar to the  
227 provisions of § 18.2-266 shall have continuing jurisdiction over such person during any period of  
228 license revocation related to that conviction, for the limited purposes of (i) referring such person to a  
229 certified alcohol safety action program, (ii) providing for a restricted permit for such person in  
230 accordance with the provisions of subsection E, and (iii) imposing terms, conditions and limitations for  
231 actions taken pursuant to clauses (i) and (ii), whether or not it took either such action at the time of the  
232 conviction. This continuing jurisdiction is subject to the limitations of subsection E that provide that no  
233 restricted license shall be issued during a revocation imposed pursuant to subsection C of § 18.2-271 or  
234 subsection B of § 46.2-391 or during the first four months or first year, whichever is applicable, of the  
235 revocation imposed pursuant to subsection B of § 18.2-271 or subsection A of § 46.2-391. The  
236 provisions of this subsection shall apply to a person convicted of a violation of § 18.2-266, subsection A  
237 of § 46.2-341.24 or any ordinance of a county, city or town similar to the provisions of § 18.2-266 on,  
238 after and at any time prior to July 1, 2003.

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

243 I. The Commission on VASAP, or any county, city, town, or any combination thereof may establish

244 and, if established, shall operate, in accordance with the standards and criteria required by this  
 245 subsection, alcohol safety action programs in connection with highway safety. Each such program shall  
 246 operate under the direction of a local independent policy board chosen in accordance with procedures  
 247 approved and promulgated by the Commission on VASAP. Local sitting or retired district court judges  
 248 who regularly hear or heard cases involving driving under the influence and are familiar with their local  
 249 alcohol safety action programs may serve on such boards. The Commission on VASAP shall establish  
 250 minimum standards and criteria for the implementation and operation of such programs and shall  
 251 establish procedures to certify all such programs to ensure that they meet the minimum standards and  
 252 criteria stipulated by the Commission. The Commission shall also establish criteria for the administration  
 253 of such programs for public information activities, for accounting procedures, for the auditing  
 254 requirements of such programs and for the allocation of funds. Funds paid to the Commonwealth  
 255 hereunder shall be utilized in the discretion of the Commission on VASAP to offset the costs of state  
 256 programs and local programs run in conjunction with any county, city or town and costs incurred by the  
 257 Commission. The Commission shall submit an annual report as to actions taken at the close of each  
 258 calendar year to the Governor and the General Assembly.

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

263 **§ 46.2-391.01. Administrative enforcement of ignition interlock requirements.**

264 If the court, as a condition of license restoration or as a condition of a restricted license under  
 265 ~~subsection C of § 18.2-271.1 or § 46.2-391~~, fails to prohibit an offender from operating a motor vehicle  
 266 that is not equipped with a functioning, certified ignition interlock system ~~upon the offender's conviction~~  
 267 ~~of a second or subsequent offense under § 18.2-51.4 or § 18.2-266 or a substantially similar ordinance of~~  
 268 ~~any county, city or town in accordance with the provisions of § 18.2-270.1~~, the Commissioner shall  
 269 enforce the requirements relating to installation of such systems ~~in accordance with the provisions of~~  
 270 ~~§ 18.2-270.1~~.