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## SENATE BILL NO. 450

Offered January 8, 2014

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A *BILL to amend and reenact §§ 18.2-270.1, 18.2-271, 18.2-271.1, 18.2-272, 46.2-316, 46.2-389, and 46.2-391 of the Code of Virginia, relating to driving under the influence; first offenders; license conditions.*

Patron—Norment

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, 18.2-271.1, 18.2-272, 46.2-316, 46.2-389, and 46.2-391 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 (i) a conviction under § 18.2-266 or a substantially similar ordinance of any county, city, or town, any court of proper jurisdiction shall, for a first offense where the offender was an adult at the time of the offense and his blood alcohol content was less than 0.15, prohibit the offender from operating a motor vehicle that is not equipped with a functioning, certified ignition interlock system for 12 consecutive months without alcohol-related violations of the interlock requirements or (ii) a conviction under § 18.2-51.4 or a substantially similar ordinance of any county, city, or town or any other conviction under 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, as a condition of a restricted license for a conviction under § 18.2-51.4, a second or subsequent offense 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.

Whenever an ignition interlock is required, 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

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59 shall order the offender not to operate any motor vehicle that is not equipped with such a system for the  
60 period of time that the interlock restriction is in effect. The clerk of the court shall file with the  
61 Department of Motor Vehicles a copy of the order, which shall become a part of the offender's  
62 operator's license record maintained by the Department. ~~The~~ *If the ignition interlock requirement is a*  
63 *condition of a restricted license, the* Department shall issue to the offender for the period during which  
64 the interlock restriction is imposed a restricted license which shall appropriately set forth the restrictions  
65 required by the court under this subsection and any other restrictions imposed upon the offender's  
66 driving privilege, and shall also set forth any exception granted by the court under subsection F.

67 D. The offender shall be ordered to provide the appropriate ASAP program, within 30 days of the  
68 effective date of the order of court, proof of the installation of the ignition interlock system. The  
69 Program shall require the offender to have the system monitored and calibrated for proper operation at  
70 least every 30 days by an entity approved by the Commission under the provisions of § 18.2-270.2 and  
71 to demonstrate proof thereof. The offender shall pay the cost of leasing or buying and monitoring and  
72 maintaining the ignition interlock system. Absent good cause shown, the court may revoke the offender's  
73 driving privilege for failing to (i) timely install such system or (ii) have the system properly monitored  
74 and calibrated.

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

84 F. Any person prohibited from operating a motor vehicle *or prohibited from operating a vehicle*  
85 *without an ignition interlock* under subsection B may, solely in the course of his employment, operate a  
86 motor vehicle which is owned or provided by his employer without installation of an ignition interlock  
87 system, if the court expressly permits such operation *in its order or, if the person is issued a restricted*  
88 *license*, as a condition of a restricted license at the request of the employer, but such person may not  
89 operate a school bus, school vehicle, or a commercial motor vehicle as defined in § 46.2-341.4. This  
90 subsection shall not apply if such employer is an entity wholly or partially owned or controlled by the  
91 person otherwise prohibited from operating a vehicle without an ignition interlock system.

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

94 **§ 18.2-271. Forfeiture of driver's license for driving while intoxicated.**

95 A. Except as provided in § 18.2-271.1, the judgment of conviction if for a first offense under  
96 § 18.2-266 or for a similar offense under any county, city, or town ordinance *where the person's blood*  
97 *alcohol level was at least 0.15*, or for a first offense under subsection A of § 46.2-341.24, shall of itself  
98 operate to deprive the person so convicted of the privilege to drive or operate any motor vehicle, engine  
99 or train in the Commonwealth for a period of one year from the date of such judgment. This suspension  
100 period shall be in addition to the suspension period provided under § 46.2-391.2.

101 B. If a person (i) is tried on a process alleging a second offense of violating § 18.2-266 or subsection  
102 A of § 46.2-341.24, or any substantially similar local ordinance, or law of any other jurisdiction, within  
103 ten years of a first offense for which the person was convicted, or found guilty in the case of a juvenile,  
104 under § 18.2-266 or subsection A of § 46.2-341.24 or any valid local ordinance or any law of any other  
105 jurisdiction substantially similar to § 18.2-266 or subsection A of § 46.2-341.24 and (ii) is convicted  
106 thereof, such conviction shall of itself operate to deprive the person so convicted of the privilege to  
107 drive or operate any motor vehicle, engine or train in the Commonwealth for a period of three years  
108 from the date of the judgment of conviction and such person shall have his license revoked as provided  
109 in subsection A of § 46.2-391. The court trying such case shall order the surrender of the person's  
110 driver's license, to be disposed of in accordance with § 46.2-398, and shall notify such person that his  
111 license has been revoked for a period of three years and that the penalty for violating that revocation is  
112 as set out in § 46.2-391. This suspension period shall be in addition to the suspension period provided  
113 under § 46.2-391.2. Any period of license suspension or revocation imposed pursuant to this section, in  
114 any case, shall run consecutively with any period of suspension for failure to permit a blood or breath  
115 sample to be taken as required by §§ 18.2-268.1 through 18.2-268.12 or §§ 46.2-341.26:1 through  
116 46.2-341.26:11 or any period of suspension for a previous violation of § 18.2-266, 18.2-266.1, or  
117 46.2-341.24.

118 C. If a person (i) is tried on a process alleging (a) a felony conviction of § 18.2-266 or (b) a third or  
119 subsequent offense of violating § 18.2-266 or subsection A of § 46.2-341.24, or any substantially  
120 similar local ordinance, or law of any other jurisdiction, within 10 years of two other offenses for which

the person was convicted, or found not innocent 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, 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 and such person shall not be eligible for participation in a program pursuant to § 18.2-271.1 and shall, upon such conviction, have his license revoked as provided in subsection B 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 indefinitely and that the penalty for violating that revocation is as set out in § 46.2-391.

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

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

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

A. Any person convicted of a first or second offense of § 18.2-266 ~~(i), (ii), (iii), or (iv)~~, or any ordinance of a county, city, or town similar to the provisions thereof, or provisions of subsection A of § 46.2-341.24, shall be required by court order, as a condition of probation or otherwise, to enter into and successfully complete an alcohol safety action program in the judicial district in which such charge is brought or in any other judicial district upon such terms and conditions as the court may set forth. However, upon motion of a person convicted of any such offense following an assessment of the person conducted by an alcohol safety action program, the court, for good cause, may decline to order participation in such a program if the assessment by the alcohol safety action program indicates that intervention is not appropriate for such person. In no event shall such persons be permitted to enter any such program which is not certified as meeting minimum standards and criteria established by the Commission on the Virginia Alcohol Safety Action Program (VASAP) pursuant to subsection H of this section I and to § 18.2-271.2. However, any person charged with a violation of a first or second offense of § 18.2-266 ~~(i), (ii), (iii), or (iv)~~, or any ordinance of a county, city, or town similar to the provisions thereof, or provisions of subsection A of § 46.2-341.24, may, at any time prior to trial, enter into an alcohol safety action program in the judicial district in which such charge is brought or in any other judicial district. Any person who enters into such program prior to trial may pre-qualify with the program to have an ignition interlock system installed on any motor vehicle owned or operated by him. However, no ignition interlock company shall install an ignition interlock system on any such vehicle until a court issues to the person a restricted license with the ignition interlock restriction *or issues an order prohibiting the person from driving without an ignition interlock.*

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

C. Upon conviction of a violation of § 18.2-266 or any ordinance of a county, city or town similar to the provisions thereof, or subsection A of § 46.2-341.24, the court shall impose the sentence authorized by § 18.2-270 or 46.2-341.28 and ~~the~~ any license revocation as authorized by § 18.2-271. In addition, if the conviction was for a second offense committed within less than 10 years after a first such offense, the court shall order that restoration of the person's license to drive be conditioned upon the installation of an ignition interlock system on each motor vehicle, as defined in § 46.2-100, owned by or registered to the person, in whole or in part, for a period of six months beginning at the end of the three year license revocation, unless such a system has already been installed for six months prior to that time pursuant to a restricted license order under subsection E of this section. Upon a finding that a person so convicted is required to participate in the program described herein, the court shall enter the conviction on the warrant, and shall note that the person so convicted has been referred to such program. The court 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

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

189 D. Any person who has been convicted in another state of the violation of a law of such state  
190 substantially similar to the provisions of § 18.2-266 or subsection A of § 46.2-341.24, and whose  
191 privilege to operate a motor vehicle in this Commonwealth is subject to revocation under the provisions  
192 of § 46.2-389 and subsection A of § 46.2-391, may petition the general district court of the county or  
193 city in which he resides that he be given probation and assigned to a program as provided in subsection  
194 A of this section and that, upon entry into such program, he be issued an order in accordance with  
195 subsection E of this section. If the court finds that such person would have qualified therefor if he had  
196 been convicted in this Commonwealth of a violation of § 18.2-266 or subsection A of § 46.2-341.24, the  
197 court may grant the petition and may issue an order in accordance with subsection E of this section as  
198 to the period of license suspension or revocation imposed pursuant to § 46.2-389 or subsection A of  
199 § 46.2-391. Such order shall be conditioned upon the successful completion of a program by the  
200 petitioner. If the court subsequently finds that such person has violated any of the conditions set forth by  
201 the court, the court shall dispose of the case as if no program had been entered and shall notify the  
202 Commissioner, who shall revoke the person's license in accordance with the provisions of § 46.2-389 or  
203 subsection A of § 46.2-391. A copy of the order granting the petition or subsequently revoking or  
204 suspending such person's license to operate a motor vehicle shall be forthwith sent to the Commissioner  
205 of the Department of Motor Vehicles.

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

210 E. Except as otherwise provided herein, whenever a person enters a certified program pursuant to this  
211 section, and such person's license to operate a motor vehicle, engine or train in the Commonwealth has  
212 been suspended or revoked, the court may, in its discretion and for good cause shown, provide that such  
213 person be issued a restricted permit to operate a motor vehicle for any of the following purposes: (i)  
214 travel to and from his place of employment; (ii) travel to and from an alcohol rehabilitation or safety  
215 action program; (iii) travel during the hours of such person's employment if the operation of a motor  
216 vehicle is a necessary incident of such employment; (iv) travel to and from school if such person is a  
217 student, upon proper written verification to the court that such person is enrolled in a continuing  
218 program of education; (v) travel for health care services, including medically necessary transportation of  
219 an elderly parent or, as designated by the court, any person residing in the person's household with a  
220 serious medical problem upon written verification of need by a licensed health professional; (vi) travel  
221 necessary to transport a minor child under the care of such person to and from school, day care, and  
222 facilities housing medical service providers; (vii) travel to and from court-ordered visitation with a child  
223 of such person; (viii) travel to a screening, evaluation and education program entered pursuant to  
224 § 18.2-251 or subsection H of § 18.2-258.1; (ix) travel to and from court appearances in which he is a  
225 subpoenaed witness or a party and appointments with his probation officer and to and from any  
226 programs required by the court or as a condition of probation; (x) travel to and from a place of religious  
227 worship one day per week at a specified time and place; (xi) travel to and from appointments approved  
228 by the Division of Child Support Enforcement of the Department of Social Services as a requirement of  
229 participation in a court-ordered intensive case monitoring program for child support for which the  
230 participant maintains written proof of the appointment, including written proof of the date and time of  
231 the appointment, on his person; (xii) travel to and from jail to serve a sentence when such person has  
232 been convicted and sentenced to confinement in jail and pursuant to § 53.1-131.1 the time to be served  
233 is on weekends or nonconsecutive days; or (xiii) travel to and from the facility that installed or monitors  
234 the ignition interlock in the person's vehicle. No restricted license issued pursuant to this subsection shall  
235 permit any person to operate a commercial motor vehicle as defined in the Virginia Commercial Driver's  
236 License Act (§ 46.2-341.1 et seq.). The court shall order the surrender of such person's license to operate  
237 a motor vehicle to be disposed of in accordance with the provisions of § 46.2-398 and shall forward to  
238 the Commissioner of the Department of Motor Vehicles a copy of its order entered pursuant to this  
239 subsection, which shall specifically enumerate the restrictions imposed and contain such information  
240 regarding the person to whom such a permit is issued as is reasonably necessary to identify such person.  
241 The court shall also provide a copy of its order to the person so convicted who may operate a motor  
242 vehicle on the order until receipt from the Commissioner of the Department of Motor Vehicles of a  
243 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.

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 *or during any period when such person is subject to a court-ordered ignition interlock requirement* 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 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.).

**§ 18.2-272. Driving after forfeiture of license or in violations of court order; penalties.**

A. Any person who drives or operates any motor vehicle, engine or train in the Commonwealth during the time for which he was deprived of the right to do so (i) upon conviction of a violation of § 18.2-268.3 or of an offense set forth in subsection E of § 18.2-270, (ii) by § 18.2-271 or 46.2-391.2, (iii) after his license has been revoked pursuant to § 46.2-389 or 46.2-391, or (iv) in violation of the terms of a restricted license issued pursuant to subsection E of § 18.2-271.1, or (v) *in violation of a court-ordered ignition interlock requirement because of a violation of § 18.2-266* is guilty of a Class 1 misdemeanor except as otherwise provided in § 46.2-391, and is subject to administrative revocation of his driver's license pursuant to §§ 46.2-389 and 46.2-391. Any person convicted of three violations of this section committed within a 10-year period is guilty of a Class 6 felony.

Nothing in this section or § 18.2-266, 18.2-270 or 18.2-271, shall be construed as conflicting with or repealing any ordinance or resolution of any city, town or county which restricts still further the right of such persons to drive or operate any such vehicle or conveyance.

B. Regardless of compliance with any other restrictions on his privilege to drive or operate a motor vehicle, it shall be a violation of this section for any person whose privilege to drive or operate a motor vehicle has been restricted, suspended or revoked because of a violation of § 18.2-36.1, 18.2-51.4, 18.2-266, 18.2-268.3, 46.2-341.24, or a similar ordinance or law of another state or the United States *or who is subject to a court-ordered ignition interlock requirement because of a violation of § 18.2-266* to drive or operate a motor vehicle while he has a blood alcohol content of 0.02 percent or more.

Any person suspected of a violation of this subsection shall be entitled to a preliminary breath test in accordance with the provisions of § 18.2-267, shall be deemed to have given his implied consent to have samples of his blood, breath or both taken for analysis pursuant to the provisions of § 18.2-268.2, and, when charged with a violation of this subsection, shall be subject to the provisions of §§ 18.2-268.1 through 18.2-268.12.

C. Any person who drives or operates a motor vehicle without a certified ignition interlock system as required by § 46.2-391.01 is guilty of a Class 1 misdemeanor and is subject to administrative revocation of his driver's license pursuant to §§ 46.2-389 and 46.2-391.

**§ 46.2-316. Persons convicted or found not innocent of certain offenses; requirement of proof of financial responsibility for certain offenses.**

A. The Department shall not issue a driver's license or learner's permit to any resident or nonresident person while his license or other privilege to drive is suspended or revoked because of his conviction, or finding of not innocent in the case of a juvenile, or forfeiture of bail upon the following charges of offenses committed in violation of either a law of the Commonwealth or a valid local ordinance or of any federal law or law of any other state or any valid local ordinance of any other state:

1. Voluntary or involuntary manslaughter resulting from the operation of a motor vehicle.

2. Perjury, the making of a false affidavit to the Department under any law requiring the registration of motor vehicles or regulating their operation on the highways, or the making of a false statement in any application for a driver's license.

3. Any crime punishable as a felony under the motor vehicle laws or any felony in the commission of which a motor vehicle is used.

4. Violation of the provisions of § 18.2-51.4, pertaining to maiming while under the influence, § 18.2-266, pertaining to driving while under the influence of intoxicants or drugs, or of § 18.2-272, pertaining to driving while the driver's license has been forfeited ~~for a conviction~~ *or in violation of a court order*, or finding of not innocent in the case of a juvenile, under §§ 18.2-51.4, 18.2-266 or § 18.2-272, or for violation of the provisions of any federal law or law of any other state or any valid local ordinance similar to §§ 18.2-51.4, 18.2-266 or § 18.2-272.

5. Failure of a driver of a motor vehicle, involved in an accident resulting in death or injury to another person, to stop and disclose his identity at the scene of the accident.

6. On a charge of operating or permitting the operation, for the second time, of a passenger automobile for the transportation of passengers for rent or for hire, without having first obtained a license for the privilege as provided in § 46.2-694.

B. Except as provided in subsection C, the Department shall not issue a driver's license or learner's permit to any person convicted of a crime mentioned in subsection A of this section for a further period of three years after he otherwise becomes entitled to a license or permit until he proves to the Commissioner his ability to respond in damages as provided in Article 15 (§ 46.2-435 et seq.) of Chapter 3 of this title or any other law of the Commonwealth requiring proof of financial responsibility.

C. In addition to the prohibition on licensure set forth in subsection A, the Department shall not issue or reinstate a driver's license or learner's permit to any person convicted of a violation set forth in subdivision A 4 for a period of three years after he otherwise becomes entitled to a license or permit until he furnishes proof of financial responsibility in the future under a motor vehicle liability insurance policy that satisfies the requirements of § 46.2-472 except that the limits of coverage exclusive of interest and costs, with respect to each motor vehicle insured under the policy, shall be not less than double the minimum limits set forth in subdivision 3 of § 46.2-472 for bodily injury or death of one person in any one accident, for bodily injury to or death of two or more persons in any one accident, and for injury to or destruction of property of others in any one accident.

**§ 46.2-389. Required revocation for one year upon conviction or finding of guilty of certain offenses; exceptions.**

A. The Commissioner shall forthwith revoke, and not thereafter reissue for a period of time specified in subsection B, except as provided in § 18.2-271 or § 18.2-271.1, the driver's license of any resident or nonresident on receiving a record of his conviction or a record of his having been found guilty in the case of a juvenile of any of the following crimes, committed in violation of a state law or a valid county, city, or town ordinance or law of the United States, or a law of any other state, substantially paralleling and substantially conforming to a like state law and to all changes and amendments of it:

1. Voluntary or involuntary manslaughter resulting from the driving of a motor vehicle;
2. Violation of § 18.2-266 or a substantially similar local ordinance except where the violation is an adult offender's first offense and his blood alcohol content was less than 0.15; however, if the court determines to dispose of the case as if no program had been entered pursuant to § 18.2-271 the offender's license shall be revoked as provided in this section;
- 2.a. Violation of § 18.2-272 or a substantially similar local ordinance; ~~or~~;
- 2.b. Violation of subsection A of § 46.2-341.24 or violation of a substantially similar local ordinance;
3. Perjury or the making of a false affidavit to the Department under this chapter or any other law of the Commonwealth requiring the registration of motor vehicles or regulating their operation on the highways;
4. The making of a false statement to the Department on any application for a driver's license;
5. Any crime punishable as a felony under the motor vehicle laws of the Commonwealth or any other felony in the commission of which a motor vehicle is used;
6. Failure to stop and disclose his identity at the scene of the accident, on the part of a driver of a motor vehicle involved in an accident resulting in the death of or injury to another person; or
7. Violation of § 18.2-36.1 or § 18.2-51.4.

B. Upon conviction of an offense set forth in subsection A, the person's driver's license shall be revoked for one year; however, for a violation of subdivision A 1 or A 7, the driver's license shall be revoked as provided in subsection B of § 46.2-391. However, in no such 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 a court to do so unless the requirement for completion of the program has been waived by the court for good cause shown.

**§ 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 or in violation of a court order) 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 issuance of a restricted license 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

428 cause shown. A conviction includes a finding of not innocent in the case of a juvenile.

429 B. The Commissioner shall forthwith revoke and not thereafter reissue the driver's license of any  
430 person after receiving a record of the conviction of any person (i) convicted of a violation of § 18.2-36.1  
431 or 18.2-51.4 or a felony violation of § 18.2-266 or (ii) convicted of three offenses arising out of separate  
432 incidents or occurrences within a period of 10 years in violation of the provisions of subsection A of  
433 § 46.2-341.24 or 18.2-266, or a substantially similar ordinance or law of any other jurisdiction, or any  
434 combination of three such offenses. A conviction includes a finding of not innocent in the case of a  
435 juvenile.

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

438 1. For restoration of his privilege to drive a motor vehicle in the Commonwealth after the expiration  
439 of five years from the date of his last conviction. On such petition, and for good cause shown, the court  
440 may, in its discretion, restore to the person the privilege to drive a motor vehicle in the Commonwealth  
441 on condition that such person install an ignition interlock system in accordance with § 18.2-270.1 on all  
442 motor vehicles, as defined in § 46.2-100, owned by or registered to him, in whole or in part, for a  
443 period of at least six months, and upon whatever other conditions the court may prescribe, subject to the  
444 provisions of law relating to issuance of driver's licenses, if the court is satisfied from the evidence  
445 presented that: (i) at the time of his previous convictions, the petitioner was addicted to or  
446 psychologically dependent on the use of alcohol or other drugs; (ii) at the time of the hearing on the  
447 petition, he is no longer addicted to or psychologically dependent on the use of alcohol or other drugs;  
448 and (iii) the defendant does not constitute a threat to the safety and welfare of himself or others with  
449 regard to the driving of a motor vehicle. However, prior to acting on the petition, the court shall order  
450 that an evaluation of the person, to include an assessment of his degree of alcohol abuse and the  
451 appropriate treatment therefor, if any, be conducted by a Virginia Alcohol Safety Action Program and  
452 recommendations therefrom be submitted to the court. The court may, in lieu of restoring the person's  
453 privilege to drive, authorize the issuance of a restricted license for a period not to exceed five years in  
454 accordance with the provisions of § 18.2-270.1 and subsection E of § 18.2-271.1. The court shall notify  
455 the Virginia Alcohol Safety Action Program which shall during the term of the restricted license monitor  
456 the person's compliance with the terms of the restrictions imposed by the court. Any violation of the  
457 restrictions shall be reported to the court, and the court may then modify the restrictions or revoke the  
458 license.

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

478 The ignition interlock system installation requirement under subdivisions 1 and 2 of this subsection  
479 need only be satisfied once as to any single revocation under subsection B of this section for any person  
480 seeking restoration under subdivision 1 following the granting of a restricted license under subdivision 1  
481 or 2.

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

486 1. If such driving does not of itself endanger the life, limb, or property of another, such person shall  
487 be guilty of a Class 1 misdemeanor punishable by a mandatory minimum term of confinement in jail of  
488 10 days except in cases wherein such operation is necessitated in situations of apparent extreme  
489 emergency that require such operation to save life or limb, the sentence, or any part thereof, may be



490 suspended.

491 2. a. If such driving (i) of itself endangers the life, limb, or property of another or (ii) takes place  
492 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  
493 a substantially similar law or ordinance of another jurisdiction, irrespective of whether the driving of  
494 itself endangers the life, limb or property of another and the person has been previously convicted of a  
495 violation of §§ 18.2-36.1, 18.2-51.4, 18.2-266, subsection A of § 46.2-341.24, or a substantially similar  
496 local ordinance, or law of another jurisdiction, such person shall be guilty of a felony punishable by  
497 confinement in a state correctional facility for not less than one year nor more than five years, one year  
498 of which shall be a mandatory minimum term of confinement or, in the discretion of the jury or the  
499 court trying the case without a jury, by mandatory minimum confinement in jail for a period of 12  
500 months and no portion of such sentence shall be suspended or run concurrently with any other sentence.

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

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

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

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

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

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

522 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**  
523 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**  
524 **be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter**  
525 **806 of the Acts of Assembly of 2013 requires the Virginia Criminal Sentencing Commission to**  
526 **assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated amount of the**  
527 **necessary appropriation cannot be determined for periods of commitment to the custody of the**  
528 **Department of Juvenile Justice.**