

2016 SESSION

LEGISLATION NOT PREPARED BY DLS
INTRODUCED

16104068D

HOUSE BILL NO. 845

Offered January 13, 2016

Prefiled January 12, 2016

A *BILL to amend and reenact §§ 18.2-270.1 and 18.2-271.1 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 18.2-270.3, relating to driving under the influence; first offenders; 24/7 sobriety program.*

Patrons—Leftwich and Spruill

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-270.1 and 18.2-271.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 18.2-270.3 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~~ Except as provided in § 18.2-270.3, 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 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, 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. 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 upon the offender's driving privilege, and shall also set forth any exception granted by the court under subsection F.

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

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

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

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

85 **§18.2-270.3. Sobriety program; testing; fees.**

86 A. *The primary law-enforcement agency serving any county, city, or town may establish a 24/7*
87 *sobriety program to be administered by such agency. The agency shall collect all fees associated with*
88 *the operation of a 24/7 sobriety program, which shall be deposited into the local treasury.*

89 B. *A court serving a jurisdiction that has established a 24/7 sobriety program may order that any*
90 *person convicted of a first offense under § 18.2-266 or a substantially similar ordinance of any county,*
91 *city, or town, as a condition of probation, participate in a 24/7 sobriety program for a period of 12*
92 *consecutive months. Notwithstanding the provisions of §§ 18.2-270.1 and 18.2-271.1, participation in a*
93 *24/7 sobriety program shall be the only condition of a restricted license issued to such person.*

94 C. *A person ordered to participate in a 24/7 sobriety program shall:*

95 1. *Refrain from the use of drugs or alcohol during his participation in the program;*

96 2. *If convicted under clause (i), (ii), or (iv) of § 18.2-266 or a substantially similar ordinance of any*
97 *county, city, or town, submit to twice-daily testing of his blood alcohol concentration, where such testing*
98 *shall be performed approximately 12 hours apart, and wear a secure transdermal alcohol monitoring*
99 *device that provides continuous remote testing of a person's alcohol levels; and*

100 3. *If convicted under clause (iii) or (v) of § 18.2-266 or a substantially similar ordinance of any*
101 *county, city, or town, submit to urinalysis for the use of drugs at such times as determined by the*
102 *agency administering the 24/7 sobriety program.*

103 D. *The agency administering a 24/7 sobriety program shall establish testing locations and times for*
104 *performing such tests.*

105 E. *A person ordered to participate in a 24/7 sobriety program shall pay all fees associated with the*
106 *program. The agency administering a 24/7 sobriety program may charge fees not to exceed the*
107 *following amounts:*

108 1. *\$3 per day for participation in the program;*

109 2. *\$3 per test for testing of blood alcohol concentration;*

110 3. *\$10 for urinalysis;*

111 4. *\$50 for the installation of a secure transdermal alcohol monitoring device; and*

112 5. *\$10 per day for monitoring a secure transdermal alcohol monitoring device.*

113 F. *A person who violates the conditions of B or C shall immediately surrender his license to the*
114 *court or the law enforcement agency administering the 24/7 sobriety program. Any license surrendered*
115 *pursuant to this section shall be surrendered in accordance with the provisions of section 46.2-398.*

116 *Upon a finding that such person is indigent, the court may reduce or waive the fees paid by the*
117 *person to the agency administering the program.*

118 **§ 18.2-271.1. Probation, education, and rehabilitation of person charged or convicted; person**
119 **convicted under law of another state or federal law.**

120 A. Any person convicted of a first or second offense of § 18.2-266, 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 this section and to § 18.2-271.2. However, any person charged with a violation of a first or second offense of § 18.2-266, 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.

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

D. Any person who has been convicted under the law of another state or the United States of an offense substantially similar to the provisions of § 18.2-266 or subsection A of § 46.2-341.24, and whose privilege to operate a motor vehicle in this Commonwealth is subject to revocation under the provisions of § 46.2-389 and subsection A of § 46.2-391, may petition the general district court of the county or city in which he resides that he be given probation and assigned to a program as provided in subsection A of this section and that, upon entry into such program, he be issued an order in accordance with subsection E of this section. If the court finds that such person would have qualified therefor if he had been convicted in this Commonwealth of a violation of § 18.2-266 or subsection A of § 46.2-341.24, the court may grant the petition and may issue an order in accordance with subsection E of this section as to the period of license suspension or revocation imposed pursuant to § 46.2-389 or subsection A of § 46.2-391. The court shall, as a condition of a restricted license, prohibit such person from operating a motor vehicle that is not equipped with a functioning certified ignition interlock system for a period of time not to exceed the period of license suspension and restriction, not less than six consecutive months

182 without alcohol-related violations of interlock requirements. Such order shall be conditioned upon the
183 successful completion of a program by the petitioner. If the court subsequently finds that such person
184 has violated any of the conditions set forth by the court, the court shall dispose of the case as if no
185 program had been entered and shall notify the Commissioner, who shall revoke the person's license in
186 accordance with the provisions of § 46.2-389 or subsection A of § 46.2-391. A copy of the order
187 granting the petition or subsequently revoking or suspending such person's license to operate a motor
188 vehicle shall be forthwith sent to the Commissioner of the Department of Motor Vehicles.

189 No period of license suspension or revocation shall be imposed pursuant to this subsection which,
190 when considered together with any period of license suspension or revocation previously imposed for the
191 same offense under the law of another state or the United States, results in such person's license being
192 suspended for a period in excess of the maximum periods specified in this subsection.

193 E. Except as otherwise provided herein, whenever a person enters a certified program pursuant to this
194 section, and such person's license to operate a motor vehicle, engine or train in the Commonwealth has
195 been suspended or revoked, the court may, in its discretion and for good cause shown, provide that such
196 person be issued a restricted permit to operate a motor vehicle for any of the following purposes: (i)
197 travel to and from his place of employment; (ii) travel to and from an alcohol rehabilitation or safety
198 action program; (iii) travel during the hours of such person's employment if the operation of a motor
199 vehicle is a necessary incident of such employment; (iv) travel to and from school if such person is a
200 student, upon proper written verification to the court that such person is enrolled in a continuing
201 program of education; (v) travel for health care services, including medically necessary transportation of
202 an elderly parent or, as designated by the court, any person residing in the person's household with a
203 serious medical problem upon written verification of need by a licensed health professional; (vi) travel
204 necessary to transport a minor child under the care of such person to and from school, day care, and
205 facilities housing medical service providers; (vii) travel to and from court-ordered visitation with a child
206 of such person; (viii) travel to a screening, evaluation and education program entered pursuant to
207 § 18.2-251 or subsection H of § 18.2-258.1; (ix) travel to and from court appearances in which he is a
208 subpoenaed witness or a party and appointments with his probation officer and to and from any
209 programs required by the court or as a condition of probation; (x) travel to and from a place of religious
210 worship one day per week at a specified time and place; (xi) travel to and from appointments approved
211 by the Division of Child Support Enforcement of the Department of Social Services as a requirement of
212 participation in an administrative or court-ordered intensive case monitoring program for child support
213 for which the participant maintains written proof of the appointment, including written proof of the date
214 and time of the appointment, on his person; (xii) travel to and from jail to serve a sentence when such
215 person has been convicted and sentenced to confinement in jail and pursuant to § 53.1-131.1 the time to
216 be served is on weekends or nonconsecutive days; or (xiii) travel to and from the facility that installed
217 or monitors the ignition interlock in the person's vehicle. *However, if a person is ordered to participate*
218 *in a 24/7 sobriety program pursuant to § 18.2-270.3, the only condition of a restricted license shall be*
219 *such person's participation in that program.* No restricted license issued pursuant to this subsection shall
220 permit any person to operate a commercial motor vehicle as defined in the Virginia Commercial Driver's
221 License Act (§ 46.2-341.1 et seq.). The court shall order the surrender of such person's license to operate
222 a motor vehicle to be disposed of in accordance with the provisions of § 46.2-398 and shall forward to
223 the Commissioner of the Department of Motor Vehicles a copy of its order entered pursuant to this
224 subsection, which shall specifically enumerate the restrictions imposed and contain such information
225 regarding the person to whom such a permit is issued as is reasonably necessary to identify such person.
226 The court shall also provide a copy of its order to the person so convicted who may operate a motor
227 vehicle on the order until receipt from the Commissioner of the Department of Motor Vehicles of a
228 restricted license, if the order provides for a restricted license for that time period. A copy of such order
229 and, after receipt thereof, the restricted license shall be carried at all times while operating a motor
230 vehicle. Any person who operates a motor vehicle in violation of any restrictions imposed pursuant to
231 this section shall be guilty of a violation of § 18.2-272. Such restricted license shall be conditioned upon
232 enrollment within 15 days in, and successful completion of, a program as described in subsection A of
233 this section. No restricted license shall be issued during the first four months of a revocation imposed
234 pursuant to subsection B of § 18.2-271 or subsection A of § 46.2-391 for a second offense of the type
235 described therein committed within 10 years of a first such offense. No restricted license shall be issued
236 during the first year of a revocation imposed pursuant to subsection B of § 18.2-271 or subsection A of
237 § 46.2-391 for a second offense of the type described therein committed within five years of a first
238 such offense. No restricted license shall be issued during any revocation period imposed pursuant to
239 subsection C of § 18.2-271 or subsection B of § 46.2-391. Notwithstanding the provisions of § 46.2-411,
240 the fee charged pursuant to § 46.2-411 for reinstatement of the driver's license of any person whose
241 privilege or license has been suspended or revoked as a result of a violation of § 18.2-266, subsection A
242 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
243 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 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.).