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SENATE BILL NO. 439

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance and Appropriations
on February 5, 2020)

(Patrons Prior to Substitute—Senators Surovell, Stuart [SB 154], and McDougle [SB 520])

A *BILL to amend and reenact §§ 18.2-270.1, 18.2-270.2, 18.2-271.1, and 18.2-272 of the Code of Virginia, relating to driving under the influence; remote alcohol monitoring; penalty.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-270.1, 18.2-270.2, 18.2-271.1, and 18.2-272 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.

"Remote alcohol monitoring device" means an unsupervised mobile testing device with the ability to confirm the location and presence of alcohol in a person and that is capable of scheduled, random, and on-demand tests that provide immediate, or as-requested, results. A testing device may be worn or used by persons ordered by the court to provide measurements of the presence of alcohol in their blood.

"Rolling retest" means a test of the vehicle operator's blood alcohol content required at random intervals during operation of the vehicle, which triggers the sounding of the horn and flashing of lights if (i) the test indicates that the operator has a blood alcohol content which exceeds 0.02 percent or (ii) the operator fails to take the test.

B. In addition to any penalty provided by law for a conviction under § 18.2-51.4 or 18.2-266 or a substantially similar ordinance of any county, city, or town, any court of proper jurisdiction 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~~ any period of time *not less than six consecutive months without alcohol-related violations of the interlock requirements*. Such condition shall be in addition to any purposes for which a restricted license may be issued pursuant to § 18.2-271.1. ~~The~~ *Whenever an ignition interlock system 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. The period of time during which the offender (i) is prohibited from operating a motor vehicle that is not equipped with an ignition interlock system or (ii) is required to have an ignition interlock system installed on each motor vehicle owned by or registered to the offender, in whole or in part, shall be calculated from the date the offender is issued a restricted license by the court; however, such period of time shall be tolled upon the expiration of the restricted license issued by the court until such time as the person is issued a restricted license by the Department.*

C. *However, upon motion of an offender, if (i) a conviction was under § 18.2-266 or a substantially similar ordinance of any county, city, or town; (ii) the conviction was for a first offense; (iii) the*

60 offender was an adult at the time of the offense; and (iv) the offender's blood alcohol content was less
61 than 0.15, the only restriction of a restricted license that the court shall impose is to prohibit the
62 offender from operating a motor vehicle that is not equipped with a functioning, certified ignition
63 interlock system for not less than 12 consecutive months without alcohol-related violations of the
64 interlock requirements.

65 D. In any case in which the court requires the installation of an ignition interlock system, the court
66 shall order the offender not to operate any motor vehicle that is not equipped with such a system for the
67 period of time that the interlock restriction is in effect. The clerk of the court shall file with the
68 Department of Motor Vehicles a copy of the order, which shall become a part of the offender's
69 operator's license record maintained by the Department. The Department shall issue to the offender for
70 the period during which the interlock restriction is imposed a restricted license which shall appropriately
71 set forth the restrictions required by the court under this subsection and any other restrictions imposed
72 upon the offender's driving privilege, and shall also set forth any exception granted by the court under
73 subsection F I.

74 D. E. The court may, upon motion of an offender who is ineligible to receive a restricted license in
75 accordance with subsection C, order that the offender (i) use a remote alcohol monitoring device for a
76 period of time coextensive with the period of time of the prohibition imposed under subsection B and (ii)
77 refrain from alcohol consumption during such period of time. Additionally, upon such motion and
78 pursuant to § 18.2-271.1, the court may issue a restricted license to operate a motor vehicle for any
79 purpose to a person who is prohibited from operating a motor vehicle that is not equipped with a
80 functioning, certified ignition interlock system when such person is ordered to use a remote alcohol
81 monitoring device pursuant to this subsection and has a functioning, certified ignition interlock system
82 installed on each motor vehicle, as defined in § 46.2-100, owned by or registered to the offender, in
83 whole or in part.

84 A fee of \$20 to cover court and administrative costs related to the remote alcohol monitoring device
85 shall be paid by any such offender to the clerk of the court. The offender shall be enrolled in and
86 supervised by an alcohol safety action program pursuant to § 18.2-271.1 and shall comply with all
87 conditions established by regulation under § 18.2-270.2 by the Commission during the period for which
88 the court has ordered the wearing of a remote alcohol monitoring device. The offender shall be further
89 required to provide to such program, at least quarterly during the period of time the offender is ordered
90 to use a remote alcohol monitoring device, a copy of the data from such device indicating the offender's
91 blood alcohol content and showing attempts to circumvent or tamper with the device. The period of time
92 during which the offender is required to use a remote alcohol monitoring device shall be calculated
93 from the date the offender is issued a restricted license by the court; however, such period of time shall
94 be tolled upon the expiration of the restricted license issued by the court until such time as the person is
95 issued a restricted license by the Department.

96 F. The offender shall be ordered to provide the appropriate ASAP program, within 30 days of the
97 effective date of the order of court, proof of the installation of the ignition interlock system, and, if
98 applicable, proof that the offender is using a remote alcohol monitoring device. The Program shall
99 require the offender to have the system or device monitored and calibrated for proper operation at least
100 every 30 days by an entity approved by the Commission under the provisions of § 18.2-270.2 and to
101 demonstrate proof thereof. The offender shall pay the cost of leasing or buying and monitoring and
102 maintaining the ignition interlock system and the remote alcohol monitoring device. Absent good cause
103 shown, the court may revoke the offender's driving privilege for failing to (i) timely install such system
104 or use such device or (ii) have the system or device properly monitored and calibrated.

105 E. G. No person shall start or attempt to start a motor vehicle equipped with an ignition interlock
106 system for the purpose of providing an operable motor vehicle to a person who is prohibited under this
107 section from operating a motor vehicle that is not equipped with an ignition interlock system. No person
108 shall tamper with, or in any way attempt to circumvent the operation of, an ignition interlock system
109 that has been installed in the motor vehicle of a person under this section. Except as authorized in
110 subsection F I, no person shall knowingly furnish a motor vehicle not equipped with a functioning
111 ignition interlock system to any person prohibited under subsection B from operating any motor vehicle
112 which that is not equipped with such system. A violation of this subsection is punishable as a Class 1
113 misdemeanor.

114 H. No person shall tamper with, or in any way attempt to circumvent the operation of, a remote
115 alcohol monitoring device that an offender is ordered to use under this section. A violation of this
116 subsection is punishable as a Class 1 misdemeanor.

117 Any person who violates this subsection shall have his restricted license issued pursuant to
118 subsection E revoked. The court may, in its discretion and for good cause shown, provide that such
119 person be issued a restricted permit to operate a motor vehicle in accordance with the terms of a
120 restricted license issued pursuant to subsection E of § 18.2-271.1.

121 F. I. Any person prohibited from operating a motor vehicle under subsection B may, solely in the

course of his employment, operate a motor vehicle that is owned or provided by his employer without installation of an ignition interlock system, if the court expressly permits such operation as a condition of a restricted license at the request of the employer; such person shall not be permitted to operate any other vehicle without a functioning ignition interlock system and, in no event, shall such person be permitted to operate a school bus, school vehicle, or a commercial motor vehicle as defined in § 46.2-341.4. This subsection shall not apply if such employer is an entity wholly or partially owned or controlled by the person otherwise prohibited from operating a vehicle without an ignition interlock system.

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

§ 18.2-270.2. Ignition interlock system and remote alcohol monitoring device; certification by Commission on VASAP; regulations; sale or lease; monitoring use; reports.

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

The regulations adopted shall include requirements that ignition interlock systems:

1. Do not impede the safe operation of the vehicle;
2. Minimize opportunities to be bypassed, circumvented or tampered with, and provide evidence thereof;
3. Correlate accurately with established measures of blood alcohol content and be calibrated according to the manufacturer's specifications;
4. Work accurately and reliably in an unsupervised environment;
5. Have the capability to provide an accurate written measure of blood alcohol content for each ignition, attempted ignition, and rolling retest, and record each attempt to circumvent or tamper with the equipment;
6. Minimize inconvenience to other users;
7. Be manufactured or distributed by an entity responsible for installation, user training, service, and maintenance, and meet the safety and operational requirements promulgated by the National Highway Transportation Safety Administration;
8. Operate reliably over the range of motor vehicle environments or motor vehicle manufacturing standards;
9. Be manufactured by an entity which is adequately insured against liability, in an amount established by the Commission, including product liability and installation and maintenance errors;
10. Provide for an electronic log of the driver's experience with the system with an information management system capable of electronically delivering information to the agency supervising the interlock user within ~~twenty-four~~ 24 hours of the collection of such information from the datalogger; and
11. Provide for a rolling retest of the operator's blood alcohol content.

B. *The Executive Director of the Commission on VASAP or his designee shall, pursuant to approval by the Commission, certify remote alcohol monitoring devices for use in the Commonwealth and adopt regulations and forms for the installation, maintenance, and certification of such remote alcohol monitoring devices.*

C. Such regulations shall also provide for the establishment of a fund, using a percentage of fees received by the manufacturer or distributor providing ignition interlock services *or remote alcohol monitoring devices*, to afford persons found by the court to be indigent all or part of the costs of an ignition interlock system *or remote alcohol monitoring device*.

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

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

B. F. A person may not sell or lease or offer to sell or lease an ignition interlock system *or a remote*

183 *alcohol monitoring device* to any person subject to the provisions of § 18.2-270.1 unless:

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

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

186 C. G. A manufacturer or distributor of an ignition interlock system *or remote alcohol monitoring*
187 *device* shall provide such services as may be required at no cost to the Commonwealth. Such services
188 shall include a toll free, ~~twenty-four hour~~ 24-hour telephone number for the users of ignition interlock
189 systems *or remote alcohol monitoring devices*.

190 **§ 18.2-271.1. Probation, education, and rehabilitation of person charged or convicted; person**
191 **convicted under law of another state or federal law.**

192 A. Any person convicted of a first or second offense of § 18.2-266, or any ordinance of a county,
193 city, or town similar to the provisions thereof, or provisions of subsection A of § 46.2-341.24, shall be
194 required by court order, as a condition of probation or otherwise, to enter into and successfully complete
195 an alcohol safety action program in the judicial district in which such charge is brought or in any other
196 judicial district upon such terms and conditions as the court may set forth. However, upon motion of a
197 person convicted of any such offense following an assessment of the person conducted by an alcohol
198 safety action program, the court, for good cause, may decline to order participation in such a program if
199 the assessment by the alcohol safety action program indicates that intervention is not appropriate for
200 such person. In no event shall such persons be permitted to enter any such program which is not
201 certified as meeting minimum standards and criteria established by the Commission on the Virginia
202 Alcohol Safety Action Program (VASAP) pursuant to this section and to § 18.2-271.2. However, any
203 person charged with a violation of a first or second offense of § 18.2-266, or any ordinance of a county,
204 city, or town similar to the provisions thereof, or provisions of subsection A of § 46.2-341.24, may, at
205 any time prior to trial, enter into an alcohol safety action program in the judicial district in which such
206 charge is brought or in any other judicial district. Any person who enters into such program prior to
207 trial may pre-qualify with the program to have an ignition interlock system installed on any motor
208 vehicle owned or operated by him. However, no ignition interlock company shall install an ignition
209 interlock system on any such vehicle until a court issues to the person a restricted license with the
210 ignition interlock restriction.

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

219 C. Upon conviction of a violation of § 18.2-266 or any ordinance of a county, city or town similar to
220 the provisions thereof, or subsection A of § 46.2-341.24, the court shall impose the sentence authorized
221 by § 18.2-270 or 46.2-341.28 and the license revocation as authorized by § 18.2-271. In addition, if the
222 conviction was for a second offense committed within less than 10 years after a first such offense, the
223 court shall order that restoration of the person's license to drive be conditioned upon the installation of
224 an ignition interlock system on each motor vehicle, as defined in § 46.2-100, owned by or registered to
225 the person, in whole or in part, for a period of six months beginning at the end of the three year license
226 revocation, unless such a system has already been installed for six months prior to that time pursuant to
227 a restricted license order under subsection E. Upon a finding that a person so convicted is required to
228 participate in the program described herein, the court shall enter the conviction on the warrant, and shall
229 note that the person so convicted has been referred to such program. The court may then proceed to
230 issue an order in accordance with subsection E, if the court finds that the person so convicted is eligible
231 for a restricted license. If the court finds good cause for a person not to participate in such program or
232 subsequently that such person has violated, without good cause, any of the conditions set forth by the
233 court in entering the program, the court shall dispose of the case as if no program had been entered, in
234 which event the revocation provisions of § 46.2-389 and subsection A of § 46.2-391 shall be applicable
235 to the conviction. The court shall, upon final disposition of the case, send a copy of its order to the
236 Commissioner of the Department of Motor Vehicles. If such order provides for the issuance of a
237 restricted license, the Commissioner of the Department of Motor Vehicles, upon receipt thereof, shall
238 issue a restricted license. The period of time during which the person (i) is prohibited from operating a
239 motor vehicle that is not equipped with an ignition interlock system ~~or~~, (ii) is required to have an
240 ignition interlock system installed on each motor vehicle owned by or registered to the person, in whole
241 or in part, *or (iii) is required to use a remote alcohol monitoring device* shall be calculated from the
242 date the person is issued a restricted license by the court; however, such period of time shall be tolled
243 upon the expiration of the restricted license issued by the court until such time as the person is issued a
244 restricted license by the Department of Motor Vehicles. 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 and that, upon entry into such program, he be issued an order in accordance with subsection E. 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 as to the period of license suspension or revocation imposed pursuant to § 46.2-389 or subsection A of § 46.2-391. The court (i) 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 without alcohol-related violations of interlock requirements, and (ii) may, upon request of such person and as a condition of a restricted license, require such person to use a remote alcohol monitoring device in accordance with the provisions of subsection E of § 18.2-270.1. Such order shall be conditioned upon the successful completion of a program by the petitioner. If the court subsequently finds that such person has violated any of the conditions set forth by the court, the court shall dispose of the case as if no program had been entered and shall notify the Commissioner, who shall revoke the person's license in accordance with the provisions of § 46.2-389 or subsection A of § 46.2-391. A copy of the order granting the petition or subsequently revoking or suspending such person's license to operate a motor vehicle shall be forthwith sent to the Commissioner of the Department of Motor Vehicles. The period of time during which the person (a) is prohibited from operating a motor vehicle that is not equipped with an ignition interlock system or (b) is required to use a remote alcohol monitoring device shall be calculated from the date the person is issued a restricted license by the court; however, such period of time shall be tolled upon the expiration of the restricted license issued by the court until such time as the person is issued a restricted license by the Department of Motor Vehicles.

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

E. Except as otherwise provided herein, whenever a person enters a certified program pursuant to this section, and such person's license to operate a motor vehicle, engine or train in the Commonwealth has been suspended or revoked, the court may, in its discretion and for good cause shown, provide that such person be issued a restricted permit to operate a motor vehicle for any of the following purposes: (i) travel to and from his place of employment; (ii) travel to and from an alcohol rehabilitation or safety action program; (iii) travel during the hours of such person's employment if the operation of a motor vehicle is a necessary incident of such employment; (iv) travel to and from school if such person is a student, upon proper written verification to the court that such person is enrolled in a continuing program of education; (v) travel for health care services, including medically necessary transportation of an elderly parent or, as designated by the court, any person residing in the person's household with a serious medical problem upon written verification of need by a licensed health professional; (vi) travel necessary to transport a minor child under the care of such person to and from school, day care, and facilities housing medical service providers; (vii) travel to and from court-ordered visitation with a child of such person; (viii) travel to a screening, evaluation and education program entered pursuant to § 18.2-251 or subsection H of § 18.2-258.1; (ix) travel to and from court appearances in which he is a subpoenaed witness or a party and appointments with his probation officer and to and from any programs required by the court or as a condition of probation; (x) travel to and from a place of religious worship one day per week at a specified time and place; (xi) travel to and from appointments approved by the Division of Child Support Enforcement of the Department of Social Services as a requirement of participation in an administrative or court-ordered intensive case monitoring program for child support for which the participant maintains written proof of the appointment, including written proof of the date and time of the appointment, on his person; (xii) travel to and from jail to serve a sentence when such person has been convicted and sentenced to confinement in jail and pursuant to § 53.1-131.1 the time to be served is on weekends or nonconsecutive days; (xiii) travel to and from the facility that installed or monitors the ignition interlock in the person's vehicle; ~~or~~ (xiv) travel to and from a job interview for which he maintains on his person written proof from the prospective employer of the date, time, and location of the job interview; or (xv) travel to and from the offices of the Virginia Employment Commission for the purpose of seeking employment. However, (a) any such person who is eligible to

306 *receive a restricted license as provided in subsection C of § 18.2-270.1 or (b) any such person ordered*
307 *to use a remote alcohol monitoring device pursuant to subsection E of § 18.2-270.1 who has a*
308 *functioning, certified ignition interlock system as required by law may be issued a restricted permit to*
309 *operate a motor vehicle for any lawful purpose.* No restricted license issued pursuant to this subsection
310 shall permit any person to operate a commercial motor vehicle as defined in the Virginia Commercial
311 Driver's License Act (§ 46.2-341.1 et seq.). The court shall order the surrender of such person's license
312 to operate a motor vehicle to be disposed of in accordance with the provisions of § 46.2-398 and shall
313 forward to the Commissioner of the Department of Motor Vehicles a copy of its order entered pursuant
314 to this subsection, which shall specifically enumerate the restrictions imposed and contain such
315 information regarding the person to whom such a permit is issued as is reasonably necessary to identify
316 such person. The court shall also provide a copy of its order to the person so convicted who may
317 operate a motor vehicle on the order until receipt from the Commissioner of the Department of Motor
318 Vehicles of a restricted license, if the order provides for a restricted license for that time period. A copy
319 of such order and, after receipt thereof, the restricted license shall be carried at all times while operating
320 a motor vehicle. Any person who operates a motor vehicle in violation of any restrictions imposed
321 pursuant to this section ~~shall be~~ *is* guilty of a violation of § 18.2-272. Such restricted license shall be
322 conditioned upon enrollment within 15 days in, and successful completion of, a program as described in
323 subsection A. No restricted license shall be issued during the first four months of a revocation imposed
324 pursuant to subsection B of § 18.2-271 or subsection A of § 46.2-391 for a second offense of the type
325 described therein committed within 10 years of a first such offense. No restricted license shall be issued
326 during the first year of a revocation imposed pursuant to subsection B of § 18.2-271 or subsection A of
327 § 46.2-391 for a second offense of the type described therein committed within five years of a first such
328 offense. No restricted license shall be issued during any revocation period imposed pursuant to
329 subsection C of § 18.2-271 or subsection B of § 46.2-391. Notwithstanding the provisions of § 46.2-411,
330 the fee charged pursuant to § 46.2-411 for reinstatement of the driver's license of any person whose
331 privilege or license has been suspended or revoked as a result of a violation of § 18.2-266, subsection A
332 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
333 other state similar to the provisions of § 18.2-266 or subsection A of § 46.2-341.24 shall be \$105. Forty
334 dollars of such reinstatement fee shall be retained by the Department of Motor Vehicles as provided in
335 § 46.2-411, \$40 shall be transferred to the Commission on VASAP, and \$25 shall be transferred to the
336 Commonwealth Neurotrauma Initiative Trust Fund.

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

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

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

365 I. The Commission on VASAP, or any county, city, town, or any combination thereof may establish
366 and, if established, shall operate, in accordance with the standards and criteria required by this
367 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.

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 46.2-341.26:3 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, 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 46.2-341.26:3 or a similar ordinance or law of another state or the United States 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.

D. Any person who drives or operates a motor vehicle who has tampered with, or in any way attempted to circumvent the operation of, a remote alcohol monitoring device that an offender is ordered to use under § 18.2-270.1 is not guilty of a violation of this section but is guilty of a violation of subsection H of § 18.2-270.1.

2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 854 of the Acts of Assembly of 2019 requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.