

LD8380112

HOUSE BILL NO. 768

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on December 8, 1994)

(Patron Prior to Substitute—Delegate Almand)

A BILL to amend and reenact §§ 46.2-360 and 46.2-391 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 18.2-270.1 and 18.2-270.2, relating to an ignition interlock system; application where restricted license issued; penalty.

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-360 and 46.2-391 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 18.2-270.1 and 18.2-270.2 as follows:

§ 18.2-270.1. Ignition interlock systems; penalty.

A. For purposes of this section and § 18.2-270.2:

"Ignition interlock system" means a device that (i) connects a motor vehicle ignition system to a breath 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 0.025 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 operational rolling retest.

"Rolling retest" means a test of the vehicle operator's blood alcohol content required at random intervals of two to ten minutes during operation of the vehicle, which triggers the sounding of the horn and flashing of lights if the test indicates that the operator has a blood alcohol content which exceeds 0.025 percent.

"Department" means the Department of Motor Vehicles.

"Commission" means the Commission on VASAP.

B. In addition to any other penalty provided by law for conviction of a first or subsequent offense under § 18.2-266 or a substantially similar ordinance of any county, city or town, any court of proper jurisdiction may 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 or restriction. A fee of twenty dollars 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 and shall be required to provide to such program, at least quarterly during the period of probation, 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. The court may order the installation of an ignition interlock system to commence, immediately upon conviction, whether the privilege to operate a motor vehicle is restricted or not. In a case where the court orders that the operator's license be suspended or revoked, the court, in its discretion, may order the immediate installation of an ignition interlock system or may defer the order of installation until the expiration of the period of revocation or suspension, or until the issuance of a restricted operator's license.

D. In any case in which the court requires the installation of an ignition interlock system, the court shall direct the offender not to operate any motor vehicle which is not equipped with such a system for a specified period of time not to exceed the period of license suspension or restriction. 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 in conjunction with the Commission on VASAP shall issue to the offender for the installation period required by the court, a special operator's license which shall appropriately set forth the restrictions required by the court under this subsection and shall also set forth any exception granted by the court under subsection G.

E. The offender shall be ordered to provide the appropriate ASAP program, within thirty days of the effective date of the order of court, proof of the installation of the ignition interlock system. The Program shall require the offender to have the system monitored and calibrated for proper operation at least every thirty days by an entity approved by the Commission on VASAP under the provisions of § 18.2-270.2 and to demonstrate proof thereof as requested by the court. The offender shall pay the cost

60 of leasing or buying, monitoring and maintaining the ignition interlock system. Absent good cause
61 shown, the court may revoke the offender's probation for failing to (i) timely install such system or (ii)
62 have the system properly monitored and calibrated. If the offender's license is not suspended or revoked
63 by the court, the license shall be surrendered to the court until (i) installation of the ignition interlock
64 system is verified or (ii) the court is satisfied the offender will have the system properly monitored and
65 calibrated.

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

75 G. Any person prohibited from operating a motor vehicle under subsection B may operate a motor
76 vehicle solely in the course of his employment which is owned or provided by his employer without
77 installation of an ignition interlock system, if the court expressly permits such operation. This subsection
78 shall not apply if such employer is an entity wholly or partially owned or controlled by the person
79 prohibited from operating a vehicle without an ignition interlock system.

80 H. The Commission on VASAP and the Department of Motor Vehicles shall promulgate such
81 regulations and forms as are necessary to implement the procedures outlined in this section.

82 § 18.2-270.2. Ignition interlock system; certification by Commission on VASAP; regulations; sale or
83 lease; monitoring use; reports.

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

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

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

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

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

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

95 5. Have the capability to provide an accurate written measure of blood alcohol content for each
96 ignition, attempted ignition, and rolling retest, and record each attempt to circumvent or tamper with
97 the equipment;

98 6. Minimize inconvenience to a sober user;

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

102 8. Operate reliably over the range of motor vehicle environments or motor vehicle manufacturing
103 standards;

104 9. Be manufactured by an entity which is adequately insured, in an amount established by the
105 Commission, for products liability and installation and maintenance errors;

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

109 11. Provide for a rolling retest of the operator's blood alcohol content.

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

114 The Commission shall publish a list of certified ignition interlock systems and shall ensure that such
115 systems are available throughout the Commonwealth. A manufacturer or distributor of an ignition
116 interlock system that seeks to sell or lease the ignition interlock system to persons subject to the
117 provisions of § 18.2-270.1 shall pay the reasonable costs of obtaining the required certification, as set
118 forth by the Commission.

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

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

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

C. The ignition interlock program provided by a manufacturer or distributor under this section shall provide the services required at no cost to the Commonwealth, and the service provider shall provide for service calls a toll free, twenty-four-hour telephone number for the users of interlock devices.

§ 46.2-360. Restoration of privilege of operating motor vehicle; restoration of privilege to persons convicted under certain other provisions of Habitual Offender Act.

Any person who has been found to be an habitual offender where the adjudication was based in part and dependent on a conviction as set out in subdivision 1 b of § 46.2-351, may petition the court in which he was found to be an habitual offender, or the circuit court in the political subdivision in which he then resides:

1. For restoration of his privilege to drive a motor vehicle in the Commonwealth after the expiration of five years from the date of the adjudication. On such petition, and for good cause shown, the court may, in its discretion, restore to the person the privilege to drive a motor vehicle in the Commonwealth on whatever conditions the court may prescribe, subject to other provisions of law relating to the issuance of driver's licenses, if the court is satisfied from the evidence presented that: (i) at the time of the previous convictions, the petitioner was addicted to or psychologically dependent on the use of alcohol or other drugs; (ii) at the time of the hearing on the petition, he is no longer addicted to or psychologically dependent on the use of alcohol or such other drug; and (iii) the defendant does not constitute a threat to the safety and welfare of himself or others with regard to the driving of a motor vehicle. However, prior to acting on the petition, the court shall order that an evaluation of the person be conducted by a Virginia Alcohol Safety Action Program and recommendations therefrom be submitted to the court. The court may, in lieu of restoring the person's privilege to drive, authorize the issuance of a restricted license for a period not to exceed five years in accordance with the provisions of subsection E of § 18.2-271.1. The Virginia Alcohol Safety Action Program shall during the term of the restricted license monitor the person's compliance with the terms of the restrictions imposed by the court. Any violation of the restrictions shall be reported to the court, and the court may then modify the restrictions or revoke the license.

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

In the computation of the five- and three-year periods under subdivisions 1 and 2 of this section, such person shall be given credit for any period his driver's license was administratively revoked under § 46.2-391 prior to his adjudication as an habitual offender.

§ 46.2-391. Revocation of license for conviction of driving while under influence of drugs or intoxicants; 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 is adjudged to be a second offender in violation of the provisions of subsection A of § 46.2-341.24 pertaining to driving a commercial motor vehicle under the influence of drugs or intoxicants, or of § 18.2-266 pertaining to driving under the influence of drugs or intoxicants or of § 18.2-272 pertaining to driving while the driver's license has been forfeited for a conviction under § 18.2-266, or on receiving a record of conviction as a second offender for a violation of a federal law or a law of any other state or a valid ordinance of any county, city, or town of the Commonwealth or of any other state similar to subsection A of § 46.2-341.24 pertaining to driving a commercial motor vehicle under the influence of drugs or intoxicants, or of § 18.2-266 or § 18.2-272, if the subsequent violation adjudication as a second offender is within ten years from the prior violation. However, if the Commissioner has received a copy of a

183 court order as provided in subsection E of § 18.2-271.1, he shall proceed as provided in the order of the
184 court.

185 B. The Commissioner shall forthwith revoke and not thereafter reissue the driver's license of any
186 person after receiving a record of the conviction of any person adjudged to be a third offender within a
187 period of ten years in violation of the provisions of subsection A of § 46.2-341.24 pertaining to driving
188 a commercial motor vehicle under the influence of drugs or intoxicants, or of § 18.2-266 pertaining to
189 driving under the influence of drugs or intoxicants or after receiving a record of conviction as a third
190 offender within a period of ten years for a violation of federal law or a law of any other state or a valid
191 ordinance of any county, city, or town of the Commonwealth or of any other state similar to subsection
192 A of § 46.2-341.24 pertaining to driving a commercial motor vehicle under the influence of drugs or
193 intoxicants, or of § 18.2-266 or § 18.2-272. At the expiration of ten years from the date of the
194 revocation hereunder, the person may petition the circuit court in the county or city in which he resides,
195 and for good cause shown, his license may in the discretion of the court be restored on such conditions
196 as the court may prescribe.

197 C. Any person who has had his driver's license revoked in accordance with subsection B of this
198 section may petition the circuit court of his residence:

199 1. For restoration of his privilege to drive a motor vehicle in the Commonwealth after the expiration
200 of five years from the date of his last conviction. On such petition, and for good cause shown, the court
201 may, in its discretion, restore to the person the privilege to drive a motor vehicle in the Commonwealth
202 on whatever conditions the court may prescribe, subject to the provisions of law relating to issuance of
203 driver's licenses, if the court is satisfied from the evidence presented that: (i) at the time of his previous
204 convictions, the petitioner was addicted to or psychologically dependent on the use of alcohol or other
205 drugs; (ii) at the time of the hearing on the petition, he is no longer addicted to or psychologically
206 dependent on the use of alcohol or other drugs; and (iii) the defendant does not constitute a threat to the
207 safety and welfare of himself or others with regard to the driving of a motor vehicle. However, prior to
208 acting on the petition, the court shall order that an evaluation of the person be conducted by a Virginia
209 Alcohol Safety Action Program and recommendations therefrom be submitted to the court. The court
210 may, in lieu of restoring the person's privilege to drive, authorize the issuance of a restricted license for
211 a period not to exceed five years in accordance with the provisions of subsection E of § 18.2-271.1. The
212 Virginia Alcohol Safety Action Program shall during the term of the restricted license monitor the
213 person's compliance with the terms of the restrictions imposed by the court. Any violation of the
214 restrictions shall be reported to the court, and the court may then modify the restrictions or revoke the
215 license.

216 2. For a restricted permit to authorize such person to drive a motor vehicle in the Commonwealth in
217 the course of his employment and to drive a motor vehicle to and from his home to the place of his
218 employment after the expiration of three years from the date of his last conviction. The court may order
219 that a restricted license for such purposes be issued in accordance with the procedures of subsection E
220 of § 18.2-271.1, if the court is satisfied from the evidence presented that (i) at the time of the previous
221 convictions, the petitioner was addicted to or psychologically dependent on the use of alcohol or other
222 drugs; (ii) at the time of the hearing on the petition, he is no longer addicted to or psychologically
223 dependent on the use of alcohol or such other drugs; and (iii) the defendant does not constitute a threat
224 to the safety and welfare of himself and others with regard to the driving of a motor vehicle. *The court*
225 *may prohibit the person to whom a restricted license is issued from operating a motor vehicle that is*
226 *not equipped with a functioning, certified ignition interlock system during all or any part of the term for*
227 *which the restricted license is issued, in accordance with the provisions set forth in § 18.2-270.1.*
228 However, prior to acting on the petition, the court shall order that an evaluation of the person be
229 conducted by a Virginia Alcohol Safety Action Program and recommendations therefrom be submitted
230 to the court. The Virginia Alcohol Safety Action Program shall during the term of the restricted license
231 monitor the person's compliance with the terms of the restrictions imposed by the court. Any violation
232 of the restrictions shall be reported to the court, and the court may then modify the restrictions or
233 revoke the license.

234 In the computation of the five-year and three-year periods under subdivisions 1 and 2 of this
235 subsection, such person shall be given credit for any period his driver's license was revoked under
236 § 46.2-360 after adjudication as an habitual offender.

237 **2. That this act shall become effective on January 1, 1996.**