

LD4239112

HOUSE BILL NO. 768

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on February 15, 1995)

(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:

"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 0.025 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 (i) the test indicates that the operator has a blood alcohol content which exceeds 0.025 percent or (ii) the operator fails to take the test.

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 and restriction. The court may order the installation of an ignition interlock system to commence immediately upon conviction. 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. 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 and 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.

D. The offender shall be ordered to provide the appropriate VASAP 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 required by the court. The offender shall pay the cost of leasing or buying, monitoring and maintaining the ignition interlock system. Absent good cause shown, the court may revoke the offender's probation for failing to (i) timely install such system or (ii) have the system properly monitored and calibrated.

E. No person shall start or attempt to start a motor vehicle equipped with an ignition interlock system for the purpose of providing an operable motor vehicle to a person who is prohibited under this

60 section from operating a motor vehicle that is not equipped with an ignition interlock system. No person
61 shall tamper with, or in any way attempt to circumvent the operation of, an ignition interlock system
62 that has been installed in the motor vehicle of a person under this section. Except as authorized in
63 subsection G, no person shall knowingly furnish a motor vehicle not equipped with a functioning
64 ignition interlock system to any person prohibited under subsection B from operating any motor vehicle
65 which is not equipped with such system. A violation of this subsection shall be punishable as a Class 1
66 misdemeanor.

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

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

74 § 18.2-270.2. Ignition interlock system; certification by Commission on VASAP; regulations; sale or
75 lease; monitoring use; reports.

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

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

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

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

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

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

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

90 6. Minimize inconvenience to a sober user;

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

94 8. Operate reliably over the range of motor vehicle environments or motor vehicle manufacturing
95 standards;

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

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

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

102 Such regulations shall also provide for the establishment of a fund, using a percentage of fees
103 received by the service provider, to assist persons found by the court to be indigent with the costs of
104 having an ignition interlock system.

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

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

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

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

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

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

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

B. The Commissioner shall forthwith revoke and not thereafter reissue the driver's license of any person after receiving a record of the conviction of any person adjudged to be a third offender within a period of ten years in violation of the provisions of subsection A of § 46.2-341.24 pertaining to driving

183 a commercial motor vehicle under the influence of drugs or intoxicants, or of § 18.2-266 pertaining to
184 driving under the influence of drugs or intoxicants or after receiving a record of conviction as a third
185 offender within a period of ten years for a violation of federal law or a law of any other state or a valid
186 ordinance of any county, city, or town of the Commonwealth or of any other state similar to subsection
187 A of § 46.2-341.24 pertaining to driving a commercial motor vehicle under the influence of drugs or
188 intoxicants, or of § 18.2-266 or § 18.2-272. At the expiration of ten years from the date of the
189 revocation hereunder, the person may petition the circuit court in the county or city in which he resides,
190 and for good cause shown, his license may in the discretion of the court be restored on such conditions
191 as the court may prescribe.

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

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

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

229 In the computation of the five-year and three-year periods under subdivisions 1 and 2 of this
230 subsection, such person shall be given credit for any period his driver's license was revoked under
231 § 46.2-360 after adjudication as an habitual offender.