

SENATE BILL NO. 1006
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee for Courts of Justice
on)
(Patron Prior to Substitute—Senator Surovell)

*A BILL to amend and reenact § 18.2-271.1 of the Code of Virginia, relating to driving while intoxicated;
pre-conviction ignition interlock for certain offenders.*

on _____)

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-271.1 of the Code of Virginia is amended and reenacted as follows:

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

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~~ and may have such ignition interlock system installed. Any installation period of time accrued by such person prior to trial for the pending charge shall count toward any (i) ignition interlock system on any

31 ~~such vehicle until~~ or restricted license period of time ordered by a court ~~issues to the person a restricted~~
32 ~~license with the ignition interlock restriction~~ or (ii) restricted license, suspension, or revocation issued by the
33 Department of Motor Vehicles pursuant to § 46.2-389.

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

41 C. Upon conviction of a violation of § 18.2-266 or any ordinance of a county, city or town similar to the
42 provisions thereof, or subsection A of § 46.2-341.24, the court shall impose the sentence authorized by §
43 18.2-270 or 46.2-341.28 and the license revocation as authorized by § 18.2-271. In addition, if the conviction
44 was for a second offense committed within less than 10 years after a first such offense, the court shall order
45 that restoration of the person's license to drive be conditioned upon the installation of an ignition interlock
46 system on each motor vehicle, as defined in § 46.2-100, owned by or registered to the person, in whole or in
47 part, for a period of six months beginning at the end of the three year license revocation, unless such a system
48 has already been installed for six months prior to that time pursuant to a restricted license order under
49 subsection E. Upon a finding that a person so convicted is required to participate in the program described
50 herein, the court shall enter the conviction on the warrant, and shall note that the person so convicted has
51 been referred to such program. The court may then proceed to issue an order in accordance with subsection E,
52 if the court finds that the person so convicted is eligible for a restricted license. If the court finds good cause
53 for a person not to participate in such program or subsequently that such person has violated, without good
54 cause, any of the conditions set forth by the court in entering the program, the court shall dispose of the case
55 as if no program had been entered, in which event the revocation provisions of § 46.2-389 and subsection A
56 of § 46.2-391 shall be applicable to the conviction. The court shall, upon final disposition of the case, send a
57 copy of its order to the Commissioner of the Department of Motor Vehicles. If such order provides for the
58 issuance of a restricted license, the Commissioner of the Department of Motor Vehicles, upon receipt thereof,
59 shall issue a restricted license. The period of time during which the person (i) is prohibited from operating a

motor vehicle that is not equipped with an ignition interlock system, (ii) is required to have an ignition interlock system installed on each motor vehicle owned by or registered to the person, in whole or in part, or (iii) 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. 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

89 the person (a) is prohibited from operating a motor vehicle that is not equipped with an ignition interlock
90 system or (b) is required to use a remote alcohol monitoring device shall be calculated from the date the
91 person is issued a restricted license by the court; however, such period of time shall be tolled upon the
92 expiration of the restricted license issued by the court until such time as the person is issued a restricted
93 license by the Department of Motor Vehicles.

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

98 E. Except as otherwise provided herein, if a person enters a certified program pursuant to this section, and
99 such person's license to operate a motor vehicle, engine, or train in the Commonwealth has been suspended or
100 revoked, or a person's license to operate a motor vehicle, engine, or train in the Commonwealth has been
101 suspended or revoked pursuant to former § 18.2-259.1 or 46.2-390.1, the court may, in its discretion and for
102 good cause shown, provide that such person be issued a restricted permit to operate a motor vehicle for any of
103 the following purposes: (i) travel to and from his place of employment; (ii) travel to and from an alcohol
104 rehabilitation or safety action program; (iii) travel during the hours of such person's employment if the
105 operation of a motor vehicle is a necessary incident of such employment; (iv) travel to and from school if
106 such person is a student, upon proper written verification to the court that such person is enrolled in a
107 continuing program of education; (v) travel for health care services, including medically necessary
108 transportation of an elderly parent or, as designated by the court, any person residing in the person's
109 household with a serious medical problem upon written verification of need by a licensed health professional;
110 (vi) travel necessary to transport a minor child under the care of such person to and from school, day care,
111 and facilities housing medical service providers; (vii) travel to and from court-ordered visitation with a child
112 of such person; (viii) travel to a screening, evaluation, and education program entered pursuant to § 18.2-251
113 or subsection H of § 18.2-258.1; (ix) travel to and from court appearances in which he is a subpoenaed
114 witness or a party and appointments with his probation officer and to and from any programs required by the
115 court or as a condition of probation; (x) travel to and from a place of religious worship one day per week at a
116 specified time and place; (xi) travel to and from appointments approved by the Division of Child Support
117 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; (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 receive a restricted license as provided in subsection C of § 18.2-270.1 or (b) any such person ordered to use a remote alcohol monitoring device pursuant to subsection E of § 18.2-270.1 who has a functioning, certified ignition interlock system as required by law may be issued a restricted permit to operate a motor vehicle for any lawful purpose. No restricted license issued pursuant to this subsection shall permit any person to operate a commercial motor vehicle as defined in the Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.). The court shall order the surrender of such person's license to operate a motor vehicle to be disposed of in accordance with the provisions of § 46.2-398 and shall forward to the Commissioner of the Department of Motor Vehicles a copy of its order entered pursuant to this subsection, which shall specifically enumerate the restrictions imposed and contain such information regarding the person to whom such a permit is issued as is reasonably necessary to identify such person. The court shall also provide a copy of its order to the person so convicted who may operate a motor vehicle on the order until receipt from the Commissioner of the Department of Motor Vehicles of a restricted license, if the order provides for a restricted license for that time period. A copy of such order and, after receipt thereof, the restricted license shall be carried at all times while operating a motor vehicle. Any person who operates a motor vehicle in violation of any restrictions imposed pursuant to this section is guilty of a violation of § 18.2-272. Such restricted license shall be conditioned upon enrollment within 15 days in, and successful completion of, a program as described in subsection A. No restricted license shall be issued during the first four months of a revocation imposed pursuant to subsection B of § 18.2-271 or subsection A of § 46.2-391 for a second offense of the type described therein committed within 10 years of a first such offense. No restricted license shall be issued during the first year of a revocation imposed pursuant to subsection B of § 18.2-271 or subsection A of § 46.2-391 for a second offense of the type described therein committed within

147 five years of a first such offense. No restricted license shall be issued during any revocation period imposed
148 pursuant to subsection C of § 18.2-271 or subsection B of § 46.2-391. Notwithstanding the provisions of §
149 46.2-411, the fee charged pursuant to § 46.2-411 for reinstatement of the driver's license of any person whose
150 privilege or license has been suspended or revoked as a result of a violation of § 18.2-266, subsection A of §
151 46.2-341.24 or of any ordinance of a county, city, or town, or of any federal law or the laws of any other state
152 similar to the provisions of § 18.2-266 or subsection A of § 46.2-341.24 shall be \$105. Forty dollars of such
153 reinstatement fee shall be retained by the Department of Motor Vehicles as provided in § 46.2-411, \$40 shall
154 be transferred to the Commission on VASAP, and \$25 shall be transferred to the Commonwealth
155 Neurotrauma Initiative Trust Fund. Any person who is otherwise eligible to receive a restricted license issued
156 in accordance with this subsection or as otherwise provided by law shall not be required to pay in full his
157 fines and costs, as defined in § 19.2-354.1, before being issued such restricted license.

158 F. The court shall have jurisdiction over any person entering such program under any provision of this
159 section, or under any provision of § 46.2-392, until such time as the case has been disposed of by either
160 successful completion of the program, or revocation due to ineligibility or violation of a condition or
161 conditions imposed by the court, whichever shall first occur. Revocation proceedings shall be commenced by
162 notice to show cause why the court should not revoke the privilege afforded by this section. Such notice shall
163 be made by first-class mail to the last known address of such person, and shall direct such person to appear
164 before the court in response thereto on a date contained in such notice, which shall not be less than 10 days
165 from the date of mailing of the notice. Failure to appear in response to such notice shall of itself be grounds
166 for revocation of such privilege. Notice of revocation under this subsection shall be sent forthwith to the
167 Commissioner of the Department of Motor Vehicles.

168 G. For the purposes of this section, any court that has convicted a person of a violation of § 18.2-266,
169 subsection A of § 46.2-341.24, any ordinance of a county, city, or town similar to the provisions of §
170 18.2-266, or any reckless driving violation under Article 7 (§ 46.2-852 et seq.) of Chapter 8 of Title 46.2 and
171 such person was initially charged with a violation of § 18.2-266, subsection A of § 46.2-341.24, or any
172 ordinance of a county, city, or town similar to the provisions of § 18.2-266 shall have continuing jurisdiction
173 over such person during any period of license revocation related to that conviction, for the limited purposes
174 of (i) referring such person to a certified alcohol safety action program, (ii) providing for a restricted permit
175 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, any ordinance of a county, city, or town similar to the provisions of § 18.2-266, or any reckless driving violation under Article 7 (§ 46.2-852 et seq.) of Chapter 8 of Title 46.2 and such person was initially charged with 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, or 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. Such local independent policy board shall be chosen in accordance with procedures approved and promulgated by the Commission on VASAP. Such procedures shall provide that the board shall endeavor to select one criminal defense attorney who has specialized knowledge in representing persons charged with driving while intoxicated offenses and one local attorney for the Commonwealth to sit on such local independent policy board. 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

205 the Commission on VASAP to offset the costs of state programs and local programs run in conjunction with
206 any county, city or town and costs incurred by the Commission. The Commission shall submit an annual
207 report as to actions taken at the close of each calendar year to the Governor and the General Assembly.

208 J. Notwithstanding any other provisions of this section or of § 18.2-271, nothing in this section shall
209 permit the court to suspend, reduce, limit, or otherwise modify any disqualification from operating a
210 commercial motor vehicle imposed under the provisions of the Virginia Commercial Driver's License Act (§
211 46.2-341.1 et seq.).