

# VIRGINIA ACTS OF ASSEMBLY -- 2005 SESSION

## CHAPTER 312

*An Act to amend and reenact § 46.2-301.1 of the Code of Virginia, relating to administrative impoundment of motor vehicles.*

[H 2435]

Approved March 20, 2005

**Be it enacted by the General Assembly of Virginia:**

**1. That § 46.2-301.1 of the Code of Virginia is amended and reenacted as follows:**

§ 46.2-301.1. Administrative impoundment of motor vehicle for certain driving while license suspended or revoked offenses; judicial impoundment upon conviction; penalty for permitting violation with one's vehicle.

A. The motor vehicle being driven by any person (i) whose driver's license, learner's permit or privilege to drive a motor vehicle has been suspended or revoked for a violation of § 18.2-51.4 or driving while under the influence in violation of §§ 18.2-266, 46.2-341.24 or a substantially similar ordinance or law in any other jurisdiction; (ii) driving after adjudication as an habitual offender, where such adjudication was based in whole or in part on an alcohol-related offense, or where such person's license has been administratively suspended under the provisions of § 46.2-391.2; or (iii) driving after such person's driver's license, learner's permit or privilege to drive a motor vehicle has been suspended or revoked for unreasonable refusal of tests in violation of §§ 18.2-268.3, 46.2-341.26:3 or a substantially similar ordinance or law in any other jurisdiction, shall be impounded or immobilized by the arresting law-enforcement officer at the time the person is arrested for driving after his driver's license, learner's permit or privilege to drive has been so revoked or suspended. The impoundment or immobilization shall be for a period of ~~thirty~~ 30 days.

The arresting officer, acting on behalf of the Commonwealth, shall serve notice of the impoundment upon the arrested person. The notice shall include information on the person's right to petition for review of the impoundment pursuant to subsection B. A copy of the notice of impoundment shall be delivered to the magistrate and thereafter promptly forwarded to the clerk of the general district court of the jurisdiction where the arrest was made ~~and to the Commissioner~~. Transmission of the notice may be by electronic means.

At least five days prior to the expiration of the period of impoundment imposed pursuant to this section or § 46.2-301, the clerk shall provide the offender with information on the location of the motor vehicle and how and when the vehicle will be released.

All reasonable costs of impoundment or immobilization, including removal and storage expenses, shall be paid by the offender prior to the release of his motor vehicle. Notwithstanding the above, where the arresting law-enforcement officer discovers that the vehicle was being rented or leased from a vehicle renting or leasing company, the officer shall not impound the vehicle or continue the impoundment but shall notify the rental or leasing company that the vehicle is available for pickup and shall notify the clerk ~~and the Commissioner if they have~~ *if the clerk has* previously been notified of the impoundment.

B. Any driver who is the owner of the motor vehicle that is impounded or immobilized under subsection A may, during the period of the impoundment, petition the general district court of the jurisdiction in which the arrest was made to review that impoundment. The court shall review the impoundment within the same time period as the court hears an appeal from an order denying bail or fixing terms of bail or terms of recognizance, giving this matter precedence over all other matters on its docket. If the person proves to the court by a preponderance of the evidence that the arresting law-enforcement officer did not have probable cause for the arrest, or that the magistrate did not have probable cause to issue the warrant, the court shall rescind the impoundment. Upon rescission, the motor vehicle shall be released and the Commonwealth shall pay or reimburse the person for all reasonable costs of impoundment or immobilization, including removal or storage costs paid or incurred by him. Otherwise, the court shall affirm the impoundment. If the person requesting the review fails to appear without just cause, his right to review shall be waived.

The court's findings are without prejudice to the person contesting the impoundment or to any other potential party as to any proceedings, civil or criminal, and shall not be evidence in any proceedings, civil or criminal.

C. The owner or co-owner of any motor vehicle impounded or immobilized under subsection A who was not the driver at the time of the violation, may petition the general district court in the jurisdiction where the violation occurred for the release of his motor vehicle. The motor vehicle shall be released if the owner or co-owner proves by a preponderance of the evidence that he (i) did not know that the offender's driver's license was suspended or revoked when he authorized the offender to drive such

motor vehicle or (ii) did not consent to the operation of the motor vehicle by the offender. If the owner proves by a preponderance of the evidence that his immediate family has only one motor vehicle and will suffer a substantial hardship if that motor vehicle is impounded or immobilized for ~~thirty~~ 30 days, the court, in its discretion, may release the vehicle after some period of less than ~~thirty~~ 30 days.

D. Notwithstanding any provision of this section, a subsequent dismissal or acquittal of the charge of driving on a suspended or revoked license shall result in an immediate rescission of the impoundment or immobilization provided in subsection A. Upon rescission, the motor vehicle shall be released and the Commonwealth shall pay or reimburse the person for all reasonable costs of impoundment or immobilization, including removal or storage costs, incurred or paid by him.

E. Any person who knowingly authorizes the operation of a motor vehicle by a person he knows has had his driver's license, learner's permit or privilege to drive a motor vehicle suspended or revoked for any of the reasons set forth in subsection A, shall be guilty of a Class 1 misdemeanor.

F. Notwithstanding the provisions of this section or § 46.2-301, nothing in this section shall impede or infringe upon a valid lienholder's rights to cure a default under an existing security agreement. Furthermore, such lienholder shall not be liable for any cost of impoundment or immobilization, including removal or storage expenses which may accrue pursuant to the provisions of this section or § 46.2-301. In the event a lienholder repossesses or removes a vehicle from storage pursuant to an existing security agreement, the Commonwealth shall pay all reasonable costs of impoundment or immobilization, including removal and storage expenses, to any person or entity providing such services to the Commonwealth, except to the extent such costs or expenses have already been paid by the offender to such person or entity. Such payment shall be made within seven calendar days after a request is made by such person or entity to the Commonwealth for payment. Nothing herein, however, shall relieve the offender from liability to the Commonwealth for reimbursement or payment of all such reasonable costs and expenses.