

VIRGINIA ACTS OF ASSEMBLY -- 2005 RECONVENED SESSION

CHAPTER 943

An Act to amend and reenact §§ 18.2-268.4 and 46.2-398 of the Code of Virginia, relating to disposition of surrendered licenses on revocation or suspension.

[S 1205]

Approved April 6, 2005

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-268.4 and 46.2-398 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-268.4. Appeal and trial; penalties for refusal.

A. The procedure for appeal and trial of a first offense of § 18.2-268.3 shall be the same as provided by law for misdemeanors; if requested by either party on appeal to the circuit court, trial by jury shall be as provided in Article 4 (§ 19.2-260 et seq.) of Chapter 15 of Title 19.2, and the Commonwealth shall be required to prove its case beyond a reasonable doubt.

If the court or jury finds the defendant guilty of a first offense as charged in the warrant or summons issued pursuant to § 18.2-268.3, the court shall suspend the defendant's privilege to drive for a period of one year.

B. Any person convicted of a violation of § 18.2-268.3 committed within 10 years of a prior offense of § 18.2-266, § 18.2-268.3 or any offense set forth in subsection E of § 18.2-270 arising out of separate occurrences or incidents, as charged in the warrant or summons issued pursuant to § 18.2-268.3, is guilty of a Class 2 misdemeanor and the court shall suspend the defendant's privilege to drive for a period of three years. This suspension period is in addition to the suspension period provided under § 46.2-391.2.

C. Any person convicted of a violation of § 18.2-268.3 committed within 10 years of any combination of two or more offenses of § 18.2-266, § 18.2-268.3 or any offense set forth in subsection E of § 18.2-270 arising out of separate occurrences or incidents, as charged in the warrant or summons issued pursuant to § 18.2-268.3, is guilty of a Class 1 misdemeanor and the court shall suspend the defendant's privilege to drive for a period of three years. This suspension period is in addition to the suspension period provided under § 46.2-391.2.

D. If the defendant pleads guilty to a violation of § 18.2-266 or § 18.2-266.1 or of a similar ordinance, the court may dismiss the warrant or summons.

~~The court shall forward the defendant's license to the Commissioner of the Department of Motor Vehicles of Virginia as in other cases of similar nature for suspension of license. If the defendant appeals his conviction, the court shall return the license to him upon his appeal being perfected dispose of the defendant's license in accordance with the provisions of § 46.2-398; however, the defendant's license shall not be returned during any period of suspension imposed under § 46.2-391.2.~~

~~§ 46.2-398. Disposition of surrendered licenses on revocation or suspension.~~

In any case in which the accused is convicted of an offense, on the conviction of which the law requires or permits revocation or suspension of the driver's license of the person so convicted, the court shall order the surrender of such license, which shall remain in the custody of the court during the period of revocation or suspension if the period does not exceed ~~thirty~~ 30 days; ~~or (+).~~

~~If the revocation or suspension period exceeds thirty days 30 days, and the conviction was obtained in a court not of record, the license shall remain in the custody of that court (i) until the time allowed by law for an appeal to the circuit court has elapsed, when it shall be forwarded to the Commissioner, or (ii) until an appeal to the circuit court is effected and proper bond posted noted, at which time it shall be returned to the accused.~~

~~However, when the time of suspension or revocation coincides or approximately coincides with the appeal time, the court may retain the license and return it to the accused on the expiration of the suspension or revocation.~~

~~If the revocation or suspension period exceeds 30 days, and the conviction was obtained in the circuit court, the circuit court shall forward the license to the Commissioner forthwith upon the conviction.~~