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HOUSE BILL NO. 79

Offered January 11, 2006

Prefiled December 16, 2005

A BILL to amend and reenact § 46.2-301.1 of the Code of Virginia, relating to impoundment of motor vehicle for driving with a suspended operator's license.

Patrons—Spruill, O'Bannon and Scott, J.M.

Referred to Committee for Courts of Justice

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 driving while license suspended or revoked; 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 ~~(i)~~ 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; in a court of law for a violation of Virginia law or a substantially similar ordinance or (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 Title 46.2; 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 while his driver's license, learner's permit or privilege to drive ~~has been so~~ is revoked or suspended. The impoundment or immobilization shall be for a period of 30 days or for the same period as the suspension or revocation, whichever is greater.

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. 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 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

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59 where the violation occurred for the release of his motor vehicle. The motor vehicle shall be released if
60 the owner or co-owner proves by a preponderance of the evidence that he (i) did not know that the
61 offender's driver's license was suspended or revoked when he authorized the offender to drive such
62 motor vehicle or (ii) did not consent to the operation of the motor vehicle by the offender. If the owner
63 proves by a preponderance of the evidence that his immediate family has only one motor vehicle and
64 will suffer a substantial hardship if that motor vehicle is impounded or immobilized for 30 days, the
65 court, in its discretion, may release the vehicle after some period of less than 30 days.

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

71 E. Any person who knowingly authorizes the operation of a motor vehicle by a person he knows has
72 had his driver's license, learner's permit or privilege to drive a motor vehicle suspended or revoked for
73 ~~any of the reasons set forth in subsection A,~~ shall be (i) a violation of § 18.2-51.4 or driving while
74 under the influence in violation of § 18.2-266, 46.2-341.24, or a substantially similar ordinance or law
75 in any other jurisdiction; (ii) driving after adjudication as an habitual offender, where such adjudication
76 was based in whole or in part on an alcohol-related offense, or where such person's license has been
77 administratively suspended under the provisions of § 46.2-391.2; or (iii) driving after such person's
78 driver's license, learner's permit or privilege to drive a motor vehicle has been suspended or revoked for
79 unreasonable refusal of tests in violation of § 18.2-268.3, 46.2-341.26:3 or a substantially similar
80 ordinance or law in any other jurisdiction is guilty of a Class 1 misdemeanor.

81 F. Notwithstanding the provisions of this section or § 46.2-301, nothing in this section shall impede
82 or infringe upon a valid lienholder's rights to cure a default under an existing security agreement.
83 Furthermore, such lienholder shall not be liable for any cost of impoundment or immobilization,
84 including removal or storage expenses which may accrue pursuant to the provisions of this section or
85 § 46.2-301. In the event a lienholder repossesses or removes a vehicle from storage pursuant to an
86 existing security agreement, the Commonwealth shall pay all reasonable costs of impoundment or
87 immobilization, including removal and storage expenses, to any person or entity providing such services
88 to the Commonwealth, except to the extent such costs or expenses have already been paid by the
89 offender to such person or entity. Such payment shall be made within seven calendar days after a
90 request is made by such person or entity to the Commonwealth for payment. Nothing herein, however,
91 shall relieve the offender from liability to the Commonwealth for reimbursement or payment of all such
92 reasonable costs and expenses.