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SENATE BILL NO. 392

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on January 25, 2006)

(Patrons Prior to Substitute—Senators Stolle and O'Brien [SB 133])

A *BILL to amend and reenact §§ 46.2-301 and 46.2-302 of the Code of Virginia, relating to third offense of driving while license, permit, or privilege to drive suspended or revoked; penalty.*

Be it enacted by the General Assembly of Virginia:**1. That §§ 46.2-301 and 46.2-302 of the Code of Virginia are amended and reenacted as follows:**

§ 46.2-301. Driving while license, permit, or privilege to drive suspended or revoked; penalty.

A. In addition to any other penalty provided by this section, any motor vehicle administratively impounded or immobilized under the provisions of § 46.2-301.1 may, in the discretion of the court, be impounded or immobilized for an additional period of up to 90 days upon conviction of an offender for driving while his driver's license, learner's permit, or privilege to drive a motor vehicle has been suspended or revoked for (i) a violation of §§ 18.2-36.1, 18.2-51.4, 18.2-266 or § 46.2-341.24 or a substantially similar ordinance or law in any other jurisdiction 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. However, if, at the time of the violation, the offender was driving a motor vehicle owned by another person, the court shall have no jurisdiction over such motor vehicle but may order the impoundment or immobilization of a motor vehicle owned solely by the offender at the time of arrest. All costs of impoundment or immobilization, including removal or storage expenses, shall be paid by the offender prior to the release of his motor vehicle.

B. Except as provided in §§ 46.2-304 and 46.2-357, no resident or nonresident (i) whose driver's license, learner's permit, or privilege to drive a motor vehicle has been suspended or revoked or (ii) who has been directed not to drive by any court or by the Commissioner, or (iii) who has been forbidden, as prescribed by operation of any statute of the Commonwealth or a substantially similar ordinance of any county, city or town, to operate a motor vehicle in the Commonwealth shall thereafter drive any motor vehicle or any self-propelled machinery or equipment on any highway in the Commonwealth until the period of such suspension or revocation has terminated or the privilege has been reinstated. A clerk's notice of suspension of license for failure to pay fines or costs given in accordance with § 46.2-395 shall be sufficient notice for the purpose of maintaining a conviction under this section. For the purposes of this section, the phrase "motor vehicle or any self-propelled machinery or equipment" shall not include mopeds.

C. A violation of subsection B is a Class 1 misdemeanor. A third or subsequent offense *involving driving with a suspended driver's license, learner's permit, or privilege to drive a motor vehicle*, occurring within a 10-year period shall include a mandatory minimum term of confinement in jail of 10 days. *A third or subsequent offense involving driving with a revoked driver's license, learner's permit, or privilege to drive a motor vehicle shall be a Class 6 felony.* However, the court shall not be required to impose a mandatory minimum term of confinement in any case where a motor vehicle is operated in violation of this section in a situation of apparent extreme emergency which requires such operation to save life or limb.

D. Upon a violation of subsection B, the court shall suspend the person's license or privilege to drive a motor vehicle for the same period for which it had been previously suspended or revoked.

In the event the person violated subsection B by driving during a period of suspension or revocation which was not for a definite period of time, the court shall suspend the person's license, permit or privilege to drive for an additional period not to exceed 90 days, to commence upon the expiration of the previous suspension or revocation or to commence immediately if the previous suspension or revocation has expired.

E. Any person who operates a motor vehicle or any self-propelled machinery or equipment in violation of the terms of a restricted license issued pursuant to subsection E of § 18.2-271.1 is not guilty of a violation of this section but is guilty of a violation of § 18.2-272.

§ 46.2-302. Driving while restoration of license is contingent on furnishing proof of financial responsibility.

No resident or nonresident (i) whose driver's license or learner's permit has been suspended or revoked by any court or by the Commissioner or by operation of law, pursuant to the provisions of this title or of § 18.2-271, or who has been disqualified pursuant to the provisions of the Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.), or (ii) who has been forbidden as prescribed by law by the Commissioner, the State Corporation Commission, the Commonwealth Transportation

60 Commissioner, or the Superintendent of State Police, to drive a motor vehicle in the Commonwealth
61 shall drive any motor vehicle in the Commonwealth during any period wherein the restoration of license
62 or privilege is contingent upon the furnishing of proof of financial responsibility, unless he has given
63 proof of financial responsibility in the manner provided in Article 15 (§ 46.2-435 et seq.) of Chapter 3
64 of this title. Any person who drives a motor vehicle on the roads of the Commonwealth and has
65 furnished proof of financial responsibility but who has failed to pay a reinstatement fee, shall be tried
66 under § 46.2-300.

67 A first offense violation of this section shall constitute a Class 2 misdemeanor. A second or
68 subsequent violation of this section shall constitute a Class 1 misdemeanor. *A third or subsequent*
69 *violation of this section, involving driving with a revoked driver's license or learner's permit is a Class*
70 *6 felony.*

71 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
72 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is**
73 **\$6,913,634 for periods of imprisonment in state adult correctional facilities and is \$ 0 for periods**
74 **of commitment to the custody of the Department of Juvenile Justice.**