

080317404

HOUSE BILL NO. 161

Offered January 9, 2008

Prefiled December 21, 2007

A BILL to amend and reenact § 46.2-395 of the Code of Virginia, to amend the Code of Virginia by adding a section numbered 46.2-206.2, and to repeal § 46.2-206.1 of the Code of Virginia, relating to fees paid by abusive drivers.

Patrons—Albo, Carrico, Crockett-Stark, Landes and Rust

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That § 46.2-395 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 46.2-206.2 as follows:

§ 46.2-206.2. Implied consent of drivers on highways of Virginia; imposition of liquidated damage fees upon abusive drivers.

A. The highways of the Commonwealth are paid for by the taxpayers of the Commonwealth and are made available to the public for use under an implied contract that these highways shall be used responsibly and safely. Thus, any person who drives a motor vehicle upon a highway, as defined in § 46.2-100, in the Commonwealth in violation of any of the offenses set forth in subsection E, F, G, or H, shall be deemed to be in breach of the implied contract and, as a condition of such breach, to have consented to pay, in addition to any fines, court costs, fees, forfeitures, restitution and penalties assessed against him for violations of the laws of the Commonwealth and of any county, city, or town, civil liquidated damage fees in an amount as set forth in this section upon a conviction of any offense set forth in subsection E, F, G, or H.

B. The civil liquidated damage fees established by this section are civil fees to be collected in addition to any other civil or criminal fees, costs, forfeitures, fines, or penalties imposed pursuant to the Code of Virginia and shall not be suspended unless suspension is specifically provided for in this section.

C. Convictions for offenses committed prior to July 1, 2008, shall not be considered when civil liquidated damage fees are imposed under this section.

D. For the purposes of this section, a finding of guilty or not innocent in the case of a juvenile and a conviction under any substantially similar valid local ordinance of any locality of the Commonwealth shall be a conviction.

E. The court shall impose a civil liquidated damage fee of \$3,000 to be paid in three annual payments of \$1,000 upon a person convicted of any the following felony offenses involving the operation of a motor vehicle:

- 1. Voluntary manslaughter;*
- 2. Involuntary manslaughter;*
- 3. Vehicular manslaughter in violation of § 18.2-36.1;*
- 4. DUI maiming in violation of § 18.2-51.4;*
- 5. Third offense of driving while intoxicated in violation of § 18.2-270;*
- 6. Eluding police in violation of subsection B of § 46.2-817;*
- 7. Reckless driving (racing and causing death or injury) in violation of § 46.2-865.1 or reckless driving (causing death or injury while unlicensed) in violation of subsection B of 46.2-868;*
- 8. Driving after having been declared a habitual offender in violation of subdivision B 2 of § 46.2-357;*
- 9. Driving dangerously or intoxicated when such person's license has been suspended for multiple convictions of driving while intoxicated in violation of subdivision D 2 of § 46.2-391;*
- 10. Hit and run with injury or with more than \$1,000 in property damage in violation of § 46.2-894;*
- 11. Operation of a motor vehicle with a smoke screen device in violation of § 46.2-1086; or*
- 12. Any other felony in which the operation of a motor vehicle is a component of the offense.*

F. The court shall impose a civil liquidated damage fee of \$2,250 to be paid in three annual payments of \$750 upon a person convicted of any of the following offenses:

- 1. Driving while intoxicated in violation of § 18.2-266, or*
- 2. Driving a commercial vehicle while intoxicated in violation of § 46.2-341.24.*

G. The court shall impose a civil liquidated damage fee of \$1,050 to be paid in three annual payments of \$350 upon a person convicted of any the following offenses:

- 1. Criminal refusal to allow blood or breath test in violation of subsection D of § 18.2-268.3;*

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59 2. Driving on a suspended license where such suspension or revocation arises from a violation of
60 § 18.2-36.1, 18.2-51.4, 18.2-266, 18.2-266.1, 18.2-272, 46.2-341.21, 46.2-341.24, 46.2-389, 46.2-390.1,
61 or 46.2-391;

62 3. Driving on a suspended license in violation of § 46.2-301, provided that upon a finding that the
63 suspension was solely based upon a person's failure to pay a court fine, fee imposed by the Department
64 of Motor Vehicles, or liquidated damage fee, the court may suspend the imposition of the liquidated
65 damage fee;

66 4. Second or subsequent offense of driving without a license in violation of § 46.2-300;

67 5. Operating a motor vehicle after having been declared a habitual offender in violation of
68 subdivision B 1 of § 46.2-357;

69 6. Reckless driving (driving a vehicle on any highway recklessly or at a speed or in a manner so as
70 to endanger life, limb, or property) in violation of § 46.2-852;

71 7. Reckless driving (passing a stopped school bus) in violation of § 46.2-859;

72 8. Racing in violation of § 46.2-865;

73 9. Aiding or abetting racing in violation of § 46.2-866;

74 10. Aggressive driving in violation of § 46.2-868.1;

75 11. Using a commercial vehicle in commission of a felony involving a controlled substance in
76 violation of § 46.2-341.19; or

77 12. Reckless driving (passing or overtaking moving emergency vehicle) in violation of § 46.2-829.

78 H. For any conviction of reckless driving in violation of § 46.2-862, the court shall impose a civil
79 liquidated damage fee of \$120 to be paid in three annual payments of \$40 for each one mile-per-hour
80 in excess of 25 miles per hour over the posted speed limit up to a maximum of \$1,920, or \$640
81 annually.

82 I. The court shall collect the first annual liquidated damage fee payment at the time of conviction
83 and shall order the person to submit the second annual payment to the Department within 14 calendar
84 months of the date of conviction and the third annual payment to the Department within 26 months of
85 the date of conviction. When transmitting conviction information to the Department the court shall also
86 transmit notice that a fee has been imposed under this section and the deadline upon which the second
87 and third annual payments are to be submitted to the Department. The court shall order suspension of
88 the driver's license or privilege to drive a motor vehicle in Virginia as provided in § 46.2-395 of any
89 person failing to make the first annual payment of the fee.

90 J. For all convictions reported to the Department for which three annual liquidated damage fee
91 payments are imposed, the person assessed the fee shall submit the second annual payment to the
92 Department within 14 calendar months of the date of conviction and the third annual payment within 26
93 months of the date of conviction. The Commissioner shall establish guidelines, policies, or procedures to
94 notify every person assessed a liquidated damage fee of the second and third annual payments. If the
95 person fails to make such a payment, the Commissioner shall suspend his driver's license or privilege to
96 operate a motor vehicle in Virginia. No license shall be reissued or reinstated nor shall any privilege to
97 drive in the Commonwealth be restored to any person until all fees that are due as of that date have
98 been paid and all other reinstatement requirements as provided in this title have been satisfied.

99 K. In addition to any fees set forth herein, any person whose driver's record with the Department
100 shows a balance of eight or more driver demerit points on July 15 of any year shall be assessed a
101 dangerous driver annual fee of \$100 plus \$75 for each demerit point in excess of eight, but no more
102 than \$700, provided that only those demerit points attributable to offenses which occurred on or after
103 July 1, 2007, shall be used to calculate and assess such fees. The Department shall impose such fees on
104 July 15 of each year in which the person's driver's record shows a balance of eight or more driver
105 demerit points after credit for any reduction in driver demerit points upon completion of an approved
106 safe driving course. The Department shall notify the person assessed such fee by first class mail
107 addressed to the person's most recent address as shown in the Department's records. Such mailing shall
108 constitute notice of assessment of the fee. If the person fails to make the payment within 60 days
109 following the date of the mailing of notice, the Department shall suspend his driver's license or privilege
110 to operate a motor vehicle in Virginia. No license shall be reissued or reinstated nor shall any privilege
111 to drive in the Commonwealth be restored to any person until all fees that are due as of that date have
112 been paid and all other reinstatement requirements as provided in this title have been satisfied.

113 L. If a person disputes a conviction on his driver's record based upon mistaken or erroneous identity
114 and presents to the Department a certified copy of a petition to a court of competent jurisdiction seeking
115 to vacate an order of such conviction, the Department shall suspend the imposition of the fee for one
116 year or until 30 days following entry of a final order on such petition, whichever period expires first.

117 M. Funds collected through the imposition of the fees as provided for in this section shall be used to
118 pay the Department's cost in imposing and collecting such assessments as provided in the general
119 appropriation act, and any remainder shall be deposited into the Highway Maintenance and Operating
120 Fund.

§ 46.2-395. Suspension of license for failure or refusal to pay fines or costs.

A. Any person, whether licensed by Virginia or not, who drives a motor vehicle on the highways in the Commonwealth shall thereby, as a condition of such driving, consent to pay all lawful fines, court costs, *fees*, forfeitures, restitution, and penalties assessed against him for violations of the laws of the Commonwealth; of any county, city, or town; or of the United States. For the purpose of this section, such fines and costs shall be deemed to include any fee assessed by the court under the provisions of § 46.2-206.2 or under the provisions of § 18.2-271.1 for entry by a person convicted of a violation of § 18.2-51.4 or § 18.2-266 into an alcohol safety action program.

B. In addition to any penalty provided by law, when any person is convicted of any violation of the law of the Commonwealth or of the United States or of any valid local ordinance and fails or refuses to provide for immediate payment in full of any fine, costs, forfeitures, restitution, or penalty lawfully assessed against him, or fails to make deferred payments or installment payments as ordered by the court, the court shall forthwith suspend the person's privilege to drive a motor vehicle on the highways in the Commonwealth. The driver's license of the person shall continue suspended until the fine, costs, forfeiture, restitution, or penalty has been paid in full. However, if the defendant, after having his license suspended, pays the reinstatement fee to the Department of Motor Vehicles and enters into an agreement under § 19.2-354 that is acceptable to the court to make deferred payments or installment payments of unpaid fines, costs, forfeitures, restitution, or penalties as ordered by the court, the defendant's driver's license shall thereby be restored. If the person has not obtained a license as provided in this chapter, or is a nonresident, the court may direct in the judgment of conviction that the person shall not drive any motor vehicle in Virginia for a period to coincide with the nonpayment of the amounts due.

C. Before transmitting to the Commissioner a record of the person's failure or refusal to pay all or part of any fine, costs, forfeiture, restitution, or penalty or a failure to comply with an order issued pursuant to § 19.2-354, the clerk of the court that convicted the person shall provide or cause to be sent to the person written notice of the suspension of his license or privilege to drive a motor vehicle in Virginia, effective 15 days from the date of conviction, if the fine, costs, forfeiture, restitution, or penalty is not paid prior to the effective date of the suspension as stated on the notice. Notice shall be provided to the person at the time of trial or shall be mailed by first-class mail to the address certified on the summons or bail recognizance document as the person's current mailing address, or to such mailing address as the person has subsequently provided to the court as a change of address. If so mailed on the date of conviction or within five business days thereof, or if delivered to the person at the time of trial, such notice shall be adequate notice of the license suspension and of the person's ability to avoid suspension by paying the fine, costs, forfeiture, restitution, or penalty prior to the effective date. No other notice shall be required to make the suspension effective. A record of the person's failure or refusal and of the license suspension shall be sent to the Commissioner if the fine, costs, forfeiture, restitution, or penalty remains unpaid on the effective date of the suspension specified in the notice or on the failure to make a scheduled payment.

C1. Whenever a person provides for payment of a fine, costs, forfeiture, restitution or penalty other than by cash and such provision for payment fails, the clerk of the court that convicted the person shall cause to be sent to the person written notice of the failure and of the suspension of his license or privilege to drive in Virginia. The license suspension shall be effective 10 days from the date of the notice. The notice shall be effective notice of the suspension and of the person's ability to avoid the suspension by paying the full amount owed by cash, cashier's check or certified check prior to the effective date of the suspension if the notice is mailed by first class mail to the address provided by the person to the court pursuant to subsection C or § 19.2-354. Upon such a failure of payment and notice, the fine, costs, forfeiture, restitution or penalty due shall be paid only in cash, cashier's check or certified check, unless otherwise ordered by the court, for good cause shown.

D. If the person pays the amounts assessed against him subsequent to the time the suspended license has been transmitted to the Department, and his license is not under suspension or revocation for any other lawful reason, except pursuant to this section, then the Commissioner shall return the license to the person on presentation of the official report of the court evidencing the payment of the fine, costs, forfeiture, restitution, or penalty.

2. That § 46.2-206.1 of the Code of Virginia is repealed.