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HOUSE BILL NO. 178

Offered January 9, 2008

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A BILL to amend and reenact §§ 19.2-386.16 and 46.2-301.1 of the Code of Virginia, relating to forfeiture of motor vehicle for two or more offenses of driving an uninsured motor vehicle.

Patron—Marshall, R.G.

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-386.16 and 46.2-301.1 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-386.16. Forfeiture of motor vehicles used in commission of certain crimes.

Any vehicle knowingly used by the owner thereof or used by another with his knowledge of and during the commission of, or in an attempt to commit, a second or subsequent offense of §§ 18.2-346, 18.2-347, 18.2-348, 18.2-349, 18.2-355, 18.2-356 ~~or~~, § 18.2-357, a second or subsequent offense of § 46.2-707 within three years, or of a similar ordinance of any county, city or town or knowingly used for the transportation of any stolen goods, chattels or other property, when the value of such stolen goods, chattels or other property is \$200 or more, or any stolen property obtained as a result of a robbery, without regard to the value of the property, shall be forfeited to the Commonwealth. The vehicle shall be seized by any law-enforcement officer arresting the operator of such vehicle for the criminal offense, and delivered to the sheriff of the county or city in which the offense occurred. The officer shall take a receipt therefor. *Any vehicle knowingly used to commit a second violation within three years of § 46.2-707 by a person who is not the owner thereof shall be subject to impoundment under § 46.2-301.1 and the person shall be fined an amount equivalent to the fair market value of the vehicle.*

Forfeiture of such vehicle shall be enforced as is provided in §§ 4.1-339 through 4.1-348 as to vehicles used for the transportation of illegally acquired alcoholic beverages, and the provisions of §§ 4.1-339 through 4.1-348 shall apply, mutatis mutandis, to proceedings for the enforcement of such forfeiture except that venue for the forfeiture proceeding shall be in the county or city in which the offense occurred.

The agency seizing the motor vehicle or other conveyance shall, for such period of time as the court prescribes, be permitted the use and operation of the motor vehicle or other conveyance, after court forfeiture, for the investigation of crimes against the Commonwealth by the agency seizing the motor vehicle or other conveyance. The agency using or operating each motor vehicle shall have insurance on each vehicle used or operated for liability and property damage.

§ 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 (iv) *second offense within a three-year period of driving without insurance or payment of uninsured motorist fee in violation of § 46.2-707 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 or for driving without insurance or payment of uninsured motorist fee. The impoundment or immobilization shall be for a period of 30 days unless it is subject to immediate seizure and subsequent forfeiture under § 19.2-386.16.*

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

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59 the jurisdiction where the arrest was made. Transmission of the notice may be by electronic means.

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

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

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

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

84 C. The owner or co-owner of any motor vehicle impounded or immobilized under subsection A who
85 was not the driver at the time of the violation, may petition the general district court in the jurisdiction
86 where the violation occurred for the release of his motor vehicle. The motor vehicle shall be released if
87 the owner or co-owner proves by a preponderance of the evidence that he (i) did not know that the
88 offender's driver's license was suspended or revoked when he authorized the offender to drive such
89 motor vehicle or (ii) did not consent to the operation of the motor vehicle by the offender. If the owner
90 proves by a preponderance of the evidence that his immediate family has only one motor vehicle and
91 will suffer a substantial hardship if that motor vehicle is impounded or immobilized for 30 days, the
92 court, in its discretion, may release the vehicle after some period of less than 30 days.

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

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

101 F. Notwithstanding the provisions of this section or § 46.2-301, nothing in this section shall impede
102 or infringe upon a valid lienholder's rights to cure a default under an existing security agreement.
103 Furthermore, such lienholder shall not be liable for any cost of impoundment or immobilization,
104 including removal or storage expenses which may accrue pursuant to the provisions of this section or
105 § 46.2-301. In the event a lienholder repossesses or removes a vehicle from storage pursuant to an
106 existing security agreement, the Commonwealth shall pay all reasonable costs of impoundment or
107 immobilization, including removal and storage expenses, to any person or entity providing such services
108 to the Commonwealth, except to the extent such costs or expenses have already been paid by the
109 offender to such person or entity. Such payment shall be made within seven calendar days after a
110 request is made by such person or entity to the Commonwealth for payment. Nothing herein, however,
111 shall relieve the offender from liability to the Commonwealth for reimbursement or payment of all such
112 reasonable costs and expenses.