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HOUSE BILL NO. 1695

Offered January 14, 2009

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A *BILL to amend and reenact § 19.2-390, as it shall become effective, §§ 46.2-301.1 and 46.2-936 of the Code of Virginia, relating to arrest and procedure following arrest for driving without a driver's license.*

Patrons—Albo and Rust

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-390, as it shall become effective, §§ 46.2-301.1 and 46.2-936 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-390. Reports to be made by local law-enforcement officers, conservators of the peace, clerks of court, Secretary of the Commonwealth and Corrections officials to State Police; material submitted by other agencies.

A. 1. Every state official or agency having the power to arrest, the sheriffs of counties, the police officials of cities and towns, and any other local law-enforcement officer or conservator of the peace having the power to arrest for a felony shall make a report to the Central Criminal Records Exchange, on forms provided by it, of any arrest, including those arrests involving the taking into custody of, or service of process upon, any person on charges resulting from an indictment, presentment or information, the arrest on *capias* or warrant for failure to appear, and the service of a warrant for another jurisdiction, on any of the following charges:

a. Treason;

b. Any felony;

c. Any offense punishable as a misdemeanor under Title 54.1; ~~or~~

d. Any misdemeanor punishable by confinement in jail (i) under Title 18.2 or 19.2, except an arrest for a violation of § 18.2-119, Article 2 (§ 18.2-415 et seq.) of Chapter 9 of Title 18.2, or any similar ordinance of any county, city or town, or (ii) under § 20-61; *or*

e. *Any violation of § 46.2-300 when the arrest is made pursuant to the provisions of § 46.2-936.*

The reports shall contain such information as is required by the Exchange and shall be accompanied by fingerprints of the individual arrested. Effective January 1, 2006, the corresponding photograph of the individual arrested shall accompany the report. Fingerprint cards prepared by a law-enforcement agency for inclusion in a national criminal justice file shall be forwarded to the Exchange for transmittal to the appropriate bureau. Nothing in this section shall preclude each local law-enforcement agency from maintaining its own separate photographic database.

2. For persons arrested and released on summonses in accordance with § 19.2-74, such report shall not be required until (i) a conviction is entered and no appeal is noted or if an appeal is noted, the conviction is upheld upon appeal or the person convicted withdraws his appeal; (ii) the court dismisses the proceeding pursuant to § 18.2-251; or (iii) an acquittal by reason of insanity pursuant to § 19.2-182.2 is entered. Upon such conviction or acquittal, the court shall remand the individual to the custody of the office of the chief law-enforcement officer of the county or city. It shall be the duty of the chief law-enforcement officer, or his designee who may be the arresting officer, to ensure that such report is completed after a determination of guilt or acquittal by reason of insanity. The court shall require the officer to complete the report immediately following the person's conviction or acquittal, and the individual shall be discharged from custody forthwith, unless the court has imposed a jail sentence to be served by him or ordered him committed to the custody of the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services.

B. Within 72 hours following the receipt of (i) a warrant or *capias* for the arrest of any person on a charge of a felony or (ii) a Governor's warrant of arrest of a person issued pursuant to § 19.2-92, the law-enforcement agency which received the warrant shall enter the person's name and other appropriate information required by the Department of State Police into the "information systems" known as the Virginia Criminal Information Network (VCIN), established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the National Crime Information Center (NCIC), maintained by the Federal Bureau of Investigation. The report shall include the person's name, date of birth, social security number and such other known information which the State Police or Federal Bureau of Investigation may require. Where feasible and practical, the magistrate or court issuing the warrant or *capias* may transfer information electronically into VCIN. When the information is

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59 electronically transferred to VCIN, the court or magistrate shall forthwith forward the warrant or capias
60 to the local police department or sheriff's office. When criminal process has been ordered destroyed
61 pursuant to § 19.2-76.1, the law-enforcement agency destroying such process shall ensure the removal of
62 any information relating to the destroyed criminal process from the VCIN and NCIC.

63 C. The clerk of each circuit court and district court shall make an electronic report to the Central
64 Criminal Records Exchange of (i) any dismissal, indefinite postponement or continuance, charge still
65 pending due to mental incompetency or incapacity, nolle prosequi, acquittal, or conviction of, including
66 any sentence imposed, or failure of a grand jury to return a true bill as to, any person charged with an
67 offense listed in subsection A, including any action which may have resulted from an indictment,
68 presentment or information, and (ii) any adjudication of delinquency based upon an act which, if
69 committed by an adult, would require fingerprints to be filed pursuant to subsection A. In the case of
70 offenses not required to be reported to the Exchange by subsection A, the reports of any of the
71 foregoing dispositions shall be filed by the law-enforcement agency making the arrest with the arrest
72 record required to be maintained by § 15.2-1722. Upon conviction of any person, including juveniles
73 tried and convicted in the circuit courts pursuant to § 16.1-269.1, whether sentenced as adults or
74 juveniles, for an offense for which registration is required as defined in § 9.1-902, the clerk shall within
75 seven days of sentencing submit a report to the Sex Offender and Crimes Against Minors Registry. The
76 report to the Registry shall include the name of the person convicted and all aliases which he is known
77 to have used, the date and locality of the conviction for which registration is required, his date of birth,
78 social security number, last known address, and specific reference to the offense for which he was
79 convicted. No report of conviction or adjudication in a district court shall be filed unless the period
80 allowed for an appeal has elapsed and no appeal has been perfected. In the event that the records in the
81 office of any clerk show that any conviction or adjudication has been nullified in any manner, he shall
82 also make a report of that fact to the Exchange and, if appropriate, to the Registry. In addition, each
83 clerk of a circuit court, upon receipt of certification thereof from the Supreme Court, shall report to the
84 Exchange or the Registry, or to the law-enforcement agency making the arrest in the case of offenses
85 not required to be reported to the Exchange, on forms provided by the Exchange or Registry, as the case
86 may be, any reversal or other amendment to a prior sentence or disposition previously reported. When
87 criminal process is ordered destroyed pursuant to § 19.2-76.1, the clerk shall report such action to the
88 law-enforcement agency that entered the warrant or capias into the VCIN.

89 D. In addition to those offenses enumerated in subsection A of this section, the Central Criminal
90 Records Exchange may receive, classify and file any other fingerprints, photographs, and records of
91 arrest or confinement submitted to it by any law-enforcement agency or any correctional institution.

92 E. Corrections officials, sheriffs, and jail superintendents of regional jails, responsible for maintaining
93 correctional status information, as required by the regulations of the Department of Criminal Justice
94 Services, with respect to individuals about whom reports have been made under the provisions of this
95 chapter shall make reports of changes in correctional status information to the Central Criminal Records
96 Exchange. The reports to the Exchange shall include any commitment to or release or escape from a
97 state or local correctional facility, including commitment to or release from a parole or probation
98 agency.

99 F. Any pardon, reprieve or executive commutation of sentence by the Governor shall be reported to
100 the Exchange by the office of the Secretary of the Commonwealth.

101 G. Officials responsible for reporting disposition of charges, and correctional changes of status of
102 individuals under this section, including those reports made to the Registry, shall adopt procedures
103 reasonably designed at a minimum (i) to ensure that such reports are accurately made as soon as feasible
104 by the most expeditious means and in no instance later than 30 days after occurrence of the disposition
105 or correctional change of status; and (ii) to report promptly any correction, deletion, or revision of the
106 information.

107 H. Upon receiving a correction, deletion, or revision of information, the Central Criminal Records
108 Exchange shall notify all criminal justice agencies known to have previously received the information.

109 As used in this section:

110 "Chief law-enforcement officer" means the chief of police of cities and towns and sheriffs of
111 counties, unless a political subdivision has otherwise designated its chief law-enforcement officer by
112 appropriate resolution or ordinance, in which case the local designation shall be controlling.

113 "Electronic report" means a report transmitted to, or otherwise forwarded to, the Central Criminal
114 Records Exchange in an electronic format approved by the Exchange. The report shall contain the name
115 of the person convicted and all aliases, which he is known to have used, the date and locality of the
116 conviction, his date of birth, social security number, last known address, and specific reference to the
117 offense including the Virginia Code section and any subsection, the Virginia crime code for the offense,
118 and the offense tracking number for the offense for which he was convicted.

119 § 46.2-301.1. Administrative impoundment of motor vehicle for certain driving while license
120 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 a substantially similar ordinance or law in any other jurisdiction; *or (iv) driving without an operator's license in violation of § 46.2-300 after having been previously convicted of such offense*, shall be impounded or immobilized by the arresting law-enforcement officer at the time the person is arrested *(a) pursuant to § 46.2-936 for driving without an operator's license or (b) after his driver's license, learner's permit or privilege to drive has been so revoked or suspended*. The impoundment or immobilization shall be for a period of 30 days.

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

D. Notwithstanding any provision of this section, a subsequent dismissal or acquittal of the charge of driving on a suspended or revoked license shall result in an immediate rescission of the impoundment or immobilization provided in subsection A. 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, incurred or paid by him.

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

182 F. Notwithstanding the provisions of this section or § 46.2-301, nothing in this section shall impede
183 or infringe upon a valid lienholder's rights to cure a default under an existing security agreement.
184 Furthermore, such lienholder shall not be liable for any cost of impoundment or immobilization,
185 including removal or storage expenses which may accrue pursuant to the provisions of this section or
186 § 46.2-301. In the event a lienholder repossesses or removes a vehicle from storage pursuant to an
187 existing security agreement, the Commonwealth shall pay all reasonable costs of impoundment or
188 immobilization, including removal and storage expenses, to any person or entity providing such services
189 to the Commonwealth, except to the extent such costs or expenses have already been paid by the
190 offender to such person or entity. Such payment shall be made within seven calendar days after a
191 request is made by such person or entity to the Commonwealth for payment. Nothing herein, however,
192 shall relieve the offender from liability to the Commonwealth for reimbursement or payment of all such
193 reasonable costs and expenses.

194 § 46.2-936. Arrest for misdemeanor; release on summons and promise to appear; right to demand
195 hearing immediately or within 24 hours; issuance of warrant on request of officer for violations of
196 §§ 46.2-301 and 46.2-302; refusal to promise to appear; violations.

197 Whenever any person is detained by or in the custody of an arresting officer, including an arrest on a
198 warrant, for a violation of any provision of this title punishable as a misdemeanor, the arresting officer
199 shall, except as otherwise provided in § 46.2-940, take the name and address of such person and the
200 license number of his motor vehicle and issue a summons or otherwise notify him in writing to appear
201 at a time and place to be specified in such summons or notice. Such time shall be at least five days
202 after such arrest unless the person arrested demands an earlier hearing. Such person shall, if he so
203 desires, have a right to an immediate hearing, or a hearing within ~~twenty-four~~ 24 hours at a convenient
204 hour, before a court having jurisdiction under this title within the county, city, or town wherein such
205 offense was committed. Upon the giving by such person of his written promise to appear at such time
206 and place, the officer shall forthwith release him from custody.

207 Notwithstanding the foregoing provisions of this section, if prior general approval has been granted
208 by order of the general district court for the use of this section in cases involving violations of
209 §§ 46.2-300, 46.2-301 and 46.2-302, the arresting officer may take the person before the appropriate
210 judicial officer of the county or city in which the violation occurred and make oath as to the offense and
211 request issuance of a warrant. If a warrant is issued, the judicial officer shall proceed in accordance with
212 the provisions of Article 1 (§ 19.2-119 et seq.) of Chapter 9 of Title 19.2.

213 Notwithstanding any other provision of this section, in cases involving a violation of § 46.2-341.24
214 or § 46.2-341.31, the arresting officer shall take the person before a magistrate as provided in
215 §§ 46.2-341.26:2 and 46.2-341.26:3. The magistrate may issue either a summons or a warrant as he shall
216 deem proper.

217 Any person refusing to give such written promise to appear under the provisions of this section shall
218 be taken immediately by the arresting officer before a magistrate or other issuing officer having
219 jurisdiction who shall proceed according to the provisions of § 46.2-940.

220 Any person who willfully violates his written promise to appear, given in accordance with this
221 section, shall be treated in accordance with the provisions of § 46.2-938.

222 Any officer violating any of the provisions of this section shall be guilty of misconduct in office and
223 subject to removal therefrom upon complaint filed by any person in a court of competent jurisdiction.
224 This section shall not be construed to limit the removal of a law-enforcement officer for other
225 misconduct in office.