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HOUSE BILL NO. 2021

Offered January 14, 2009

Prefiled January 13, 2009

A *BILL to amend the Code of Virginia by adding a section numbered 46.2-301.2, relating to administrative impoundment of a motor vehicle for driving without an operator's license or while the driver's license is suspended; penalty.*

Patrons—Rust and Albo

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 46.2-301.2 as follows:

§ 46.2-301.2. Administrative impoundment of motor vehicle for second or subsequent offense driving with no operator's license or while license suspended or revoked; penalty.

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 any reason other than for a violation of any offense listed in § 46.2-301.1, or who does not have a valid driver's license, issued in his name at the time of the driving, in violation of § 46.2-300, and (ii) who has previously been convicted one or more times of a violation of § 46.2-300 or 46.2-301, or of a substantially similar ordinance or of a substantially similar law of another jurisdiction, shall be impounded or immobilized by the arresting law-enforcement officer, at the time the person is arrested, pursuant to § 46.2-300 for driving without a valid driver's license or pursuant to § 46.2-301 for driving after his driver's license, learner's permit, or privilege to drive has been revoked or suspended.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 court shall release the motor vehicle 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, or that the offender did not have a valid

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

64 D. Notwithstanding any provision of this section, a subsequent dismissal or acquittal of the charge of
65 driving without a valid driver's license or driving on a suspended or revoked license shall result in an
66 immediate rescission of the impoundment or immobilization provided in subsection A. Upon rescission,
67 the motor vehicle shall be released and the Commonwealth shall pay or reimburse the person for all
68 reasonable costs of impoundment or immobilization, including removal or storage costs, incurred or
69 paid by him.

70 E. Any person who knowingly authorizes the operation of a motor vehicle by a person he knows (i)
71 does not possess a valid driver's license or has had his driver's license, learner's permit, or privilege to
72 drive a motor vehicle suspended or revoked, and (ii) has previously been convicted of a violation of
73 driving without a valid operator's license or driving while suspended or revoked, is guilty of a Class 1
74 misdemeanor.

75 F. Notwithstanding the provisions of this section or § 46.2-301, nothing in this section shall impede
76 or infringe upon a valid lienholder's rights to cure a default under an existing security agreement.
77 Furthermore, such lienholder shall not be liable for any cost of impoundment or immobilization,
78 including removal or storage expenses, which may accrue pursuant to the provisions of this section or
79 § 46.2-301. In the event a lienholder repossesses or removes a vehicle from storage pursuant to an
80 existing security agreement, the Commonwealth shall pay all reasonable costs of impoundment or
81 immobilization, including removal and storage expenses, to any person or entity providing such services
82 to the Commonwealth, except to the extent such costs or expenses have already been paid by the
83 offender to such person or entity. Such payment shall be made within seven calendar days after a
84 request is made by such person or entity to the Commonwealth for payment. Nothing herein, however,
85 shall relieve the offender from liability to the Commonwealth for reimbursement or payment of all such
86 reasonable costs and expenses.

87 G. The provisions of this section shall not apply to a person who drives a motor vehicle with no
88 operator's license (i) whose license has been expired for less than one year prior to the offense or (ii)
89 who is less than 18 years of age at the time of the offense.