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HOUSE BILL NO. 742

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on March 1, 2010)

(Patron Prior to Substitute—Delegate Cleaveland)

A *BILL to amend and reenact §§ 46.2-301 and 46.2-301.1 of the Code of Virginia, relating to 90-day forfeiture of vehicle for driving on suspended license, suspended for a DUI violation.*

Be it enacted by the General Assembly of Virginia:**1. That §§ 46.2-301 and 46.2-301.1 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.

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, 18.2-272, 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 or a restricted license is issued pursuant to subsection E. 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 occurring within a 10-year period shall include a mandatory minimum term of confinement in jail of 10 days. 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 is otherwise eligible for a restricted license may petition each court that suspended his license pursuant to subsection D for authorization for a restricted license, provided that the period of time for which the license was suspended by the court pursuant to subsection D, if measured from the date of conviction, has expired, even though the suspension itself has not expired. A court may, for good cause shown, authorize the Department of Motor Vehicles to issue a restricted license for any of the purposes set forth in subsection E of § 18.2-271.1. No restricted license shall be issued unless each court that issued a suspension of the person's license pursuant to subsection D authorizes the Department to issue a restricted license. Any restricted license issued pursuant to this subsection shall be in effect until the expiration of any and all suspensions issued pursuant to subsection D, except that it shall automatically terminate upon the expiration, cancellation, suspension, or revocation of the person's license or privilege to drive for any other cause. No restricted license issued pursuant to this subsection shall permit a person to operate a commercial motor vehicle as defined in the Commercial Driver's License Act (§ 46.2-341.1 et seq.). The court shall forward to the Commissioner a copy of its authorization entered pursuant to this subsection, which shall specifically enumerate the

60 restrictions imposed and contain such information regarding the person to whom such a license is issued
61 as is reasonably necessary to identify the person. The court shall also provide a copy of its authorization
62 to the person, who may not operate a motor vehicle until receipt from the Commissioner of a restricted
63 license. A copy of the restricted license issued by the Commissioner shall be carried at all times while
64 operating a motor vehicle.

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

68 § 46.2-301.1. Administrative impoundment of motor vehicle for certain driving while license
69 suspended or revoked offenses; judicial impoundment upon conviction; penalty for permitting violation
70 with one's vehicle.

71 A. The motor vehicle being driven by any person (i) whose driver's license, learner's permit or
72 privilege to drive a motor vehicle has been suspended or revoked for a violation of § 18.2-51.4 *or*
73 18.2-272 or driving while under the influence in violation of § 18.2-266, 46.2-341.24 or a substantially
74 similar ordinance or law in any other jurisdiction; (ii) driving after adjudication as an habitual offender,
75 where such adjudication was based in whole or in part on an alcohol-related offense, or where such
76 person's license has been administratively suspended under the provisions of § 46.2-391.2; or (iii)
77 driving after such person's driver's license, learner's permit or privilege to drive a motor vehicle has been
78 suspended or revoked for unreasonable refusal of tests in violation of § 18.2-268.3, 46.2-341.26:3 or a
79 substantially similar ordinance or law in any other jurisdiction, shall be impounded or immobilized by
80 the arresting law-enforcement officer at the time the person is arrested for driving after his driver's
81 license, learner's permit or privilege to drive has been so revoked or suspended. The impoundment or
82 immobilization shall be for a period of 30 days.

83 The arresting officer, acting on behalf of the Commonwealth, shall serve notice of the impoundment
84 upon the arrested person. The notice shall include information on the person's right to petition for
85 review of the impoundment pursuant to subsection B. A copy of the notice of impoundment shall be
86 delivered to the magistrate and thereafter promptly forwarded to the clerk of the general district court of
87 the jurisdiction where the arrest was made. Transmission of the notice may be by electronic means.

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

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

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

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

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

121 D. Notwithstanding any provision of this section, a subsequent dismissal or acquittal of the charge of

122 driving on a suspended or revoked license shall result in an immediate rescission of the impoundment or
123 immobilization provided in subsection A. Upon rescission, the motor vehicle shall be released and the
124 Commonwealth shall pay or reimburse the person for all reasonable costs of impoundment or
125 immobilization, including removal or storage costs, incurred or paid by him.

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

129 F. Notwithstanding the provisions of this section or § 46.2-301, nothing in this section shall impede
130 or infringe upon a valid lienholder's rights to cure a default under an existing security agreement.
131 Furthermore, such lienholder shall not be liable for any cost of impoundment or immobilization,
132 including removal or storage expenses which may accrue pursuant to the provisions of this section or
133 § 46.2-301. In the event a lienholder repossesses or removes a vehicle from storage pursuant to an
134 existing security agreement, the Commonwealth shall pay all reasonable costs of impoundment or
135 immobilization, including removal and storage expenses, to any person or entity providing such services
136 to the Commonwealth, except to the extent such costs or expenses have already been paid by the
137 offender to such person or entity. Such payment shall be made within seven calendar days after a
138 request is made by such person or entity to the Commonwealth for payment. Nothing herein, however,
139 shall relieve the offender from liability to the Commonwealth for reimbursement or payment of all such
140 reasonable costs and expenses.