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SENATE BILL NO. 1075

Offered January 12, 2011

Prefiled January 11, 2011

A BILL to amend and reenact § 46.2-391.2 of the Code of Virginia, relating to term of administrative suspension of license upon arrest for DUI.

Patron—Barker

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That § 46.2-391.2 of the Code of Virginia is amended and reenacted as follows:

§ 46.2-391.2. Administrative suspension of license or privilege to operate a motor vehicle.

A. If a breath test is taken pursuant to § 18.2-268.2 or any similar ordinance and (i) the results show a blood alcohol content of 0.08 percent or more by weight by volume or 0.08 grams or more per 210 liters of breath, or (ii) the results, for persons under 21 years of age, show a blood alcohol concentration of 0.02 percent or more by weight by volume or 0.02 grams or more per 210 liters of breath or (iii) the person refuses to submit to the breath test in violation of § 18.2-268.3 or any similar ordinance, and upon issuance of a petition or summons, or upon issuance of a warrant by the magistrate, for a violation of § 18.2-51.4, 18.2-266, or 18.2-266.1, or any similar ordinance, or upon the issuance of a warrant or summons by the magistrate or by the arresting officer at a medical facility for a violation of § 18.2-268.3, or any similar ordinance, the person's license shall be suspended immediately or in the case of (i) an unlicensed person, (ii) a person whose license is otherwise suspended or revoked, or (iii) a person whose driver's license is from a jurisdiction other than the Commonwealth, such person's privilege to operate a motor vehicle in the Commonwealth shall be suspended immediately. The period of suspension of the person's license or privilege to drive shall be ~~seven days, unless the petition, summons or warrant issued charges the person with a second or subsequent offense. If the person is charged with a second offense the suspension shall be for~~ 60 days. If not already expired, the period of suspension shall expire on the day and time of trial of the offense charged on the petition, summons or warrant, except that it shall not so expire during the first ~~seven~~ *60* days of the suspension. If the person is charged with a ~~third~~ *second* or subsequent offense, the suspension shall be until the day and time of trial of the offense charged on the petition, summons or warrant.

A law-enforcement officer, acting on behalf of the Commonwealth, shall serve a notice of suspension personally on the arrested person. When notice is served, the arresting officer shall promptly take possession of any driver's license held by the person and issued by the Commonwealth and shall promptly deliver it to the magistrate. Any driver's license taken into possession under this section shall be forwarded promptly by the magistrate to the clerk of the general district court or, as appropriate, the court with jurisdiction over juveniles of the jurisdiction in which the arrest was made together with any petition, summons or warrant, the results of the breath test, if any, and the report required by subsection B. A copy of the notice of suspension shall be forwarded forthwith to both (a) the general district court or, as appropriate, the court with jurisdiction over juveniles of the jurisdiction in which the arrest was made and (b) the Commissioner. Transmission of this information may be made by electronic means.

The clerk shall promptly return the suspended license to the person at the expiration of the suspension. Whenever a suspended license is to be returned under this section or § 46.2-391.4, the person may elect to have the license returned in person at the clerk's office or by mail to the address on the person's license or to such other address as he may request.

B. Promptly after arrest and service of the notice of suspension, the arresting officer shall forward to the magistrate a sworn report of the arrest that shall include (i) information which adequately identifies the person arrested and (ii) a statement setting forth the arresting officer's grounds for belief that the person violated § 18.2-51.4, 18.2-266, or 18.2-266.1, or a similar ordinance or refused to submit to a breath test in violation of § 18.2-268.3 or a similar ordinance. The report required by this subsection shall be submitted on forms supplied by the Supreme Court.

C. Any person whose license or privilege to operate a motor vehicle has been suspended under subsection A may, during the period of the suspension, request the general district court or, as appropriate, the court with jurisdiction over juveniles of the jurisdiction in which the arrest was made to review that suspension. The court shall review the suspension 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 officer did not have probable cause for the arrest, that

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the magistrate did not have probable cause to issue the warrant, or that there was not probable cause for issuance of the petition, the court shall rescind the suspension, or that portion of it that exceeds ~~seven days if there was not probable cause to charge a second offense or~~ 60 days if there was not probable cause to charge a ~~third~~ *second* or subsequent offense, and the clerk of the court shall forthwith, or at the expiration of the reduced suspension time, (i) return the suspended license, if any, to the person unless the license has been otherwise suspended or revoked, (ii) deliver to the person a notice that the suspension under § 46.2-391.2 has been rescinded or reduced, and (iii) forward to the Commissioner a copy of the notice that the suspension under § 46.2-391.2 has been rescinded or reduced. Otherwise, the court shall affirm the suspension. 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 suspension or to any other potential party as to any proceedings, civil or criminal, and shall not be evidence in any proceedings, civil or criminal.

D. ~~If a person whose~~ *When a person's* license or privilege to operate a motor vehicle is suspended under subsection A is convicted under § 18.2-36.1, 18.2-51.4, 18.2-266, or 18.2-266.1, or any similar ordinance during the suspension imposed by subsection A, and ~~if~~ the court decides to issue the person a restricted permit under subsection E of § 18.2-271.1, *the court shall order that* such restricted permit shall not ~~be issued to the person before~~ *become effective until* the expiration of the ~~first seven days of the~~ suspension imposed under subsection A.