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SENATE BILL NO. 958

Offered January 14, 2015

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A *BILL to amend and reenact §§ 18.2-270, 19.2-386.34, 46.2-300, and 46.2-301.1 of the Code of Virginia, relating to driving while intoxicated; no operator's license; forfeiture; penalties.*

Patron—Lewis

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-270, 19.2-386.34, 46.2-300, and 46.2-301.1 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-270. Penalty for driving while intoxicated; subsequent offense; prior conviction.

A. Except as otherwise provided herein, any person violating any provision of § 18.2-266 shall be guilty of a Class 1 misdemeanor with a mandatory minimum fine of \$250. If the person's blood alcohol level as indicated by the chemical test administered as provided in this article or by any other scientifically reliable chemical test performed on whole blood under circumstances reliably establishing the identity of the person who is the source of the blood and the accuracy of the results (i) was at least 0.15, but not more than 0.20, he shall be confined in jail for an additional mandatory minimum period of five days or, (ii) if the level was more than 0.20, for an additional mandatory minimum period of 10 days.

B. 1. Any person convicted of a second offense committed within less than five years after a prior offense under § 18.2-266 shall upon conviction of the second offense be punished by a mandatory minimum fine of \$500 and by confinement in jail for not less than one month nor more than one year. Twenty days of such confinement shall be a mandatory minimum sentence.

2. Any person convicted of a second offense committed within a period of five to 10 years of a prior offense under § 18.2-266 shall upon conviction of the second offense be punished by a mandatory minimum fine of \$500 and by confinement in jail for not less than one month. Ten days of such confinement shall be a mandatory minimum sentence.

3. Upon conviction of a second offense within 10 years of a prior offense, if the person's blood alcohol level as indicated by the chemical test administered as provided in this article or by any other scientifically reliable chemical test performed on whole blood under circumstances reliably establishing the identity of the person who is the source of the blood and the accuracy of the results (i) was at least 0.15, but not more than 0.20, he shall be confined in jail for an additional mandatory minimum period of 10 days or, (ii) if the level was more than 0.20, for an additional mandatory minimum period of 20 days. In addition, such person shall be fined a mandatory minimum fine of \$500.

C. 1. Any person convicted of three offenses of § 18.2-266 committed within a 10-year period shall upon conviction of the third offense be guilty of a Class 6 felony. The sentence of any person convicted of three offenses of § 18.2-266 committed within a 10-year period shall include a mandatory minimum sentence of 90 days, unless the three offenses were committed within a five-year period, in which case the sentence shall include a mandatory minimum sentence of confinement for six months. In addition, such person shall be fined a mandatory minimum fine of \$1,000.

2. A person who has been convicted of § 18.2-36.1, 18.2-36.2, 18.2-51.4, 18.2-51.5, or a felony violation of § 18.2-266 shall upon conviction of a subsequent violation of § 18.2-266 be guilty of a Class 6 felony. The punishment of any person convicted of such a subsequent violation of § 18.2-266 shall include a mandatory minimum term of imprisonment of one year and a mandatory minimum fine of \$1,000.

3. The punishment of any person convicted of a fourth or subsequent offense of § 18.2-266 committed within a 10-year period shall, upon conviction, include a mandatory minimum term of imprisonment of one year. In addition, such person shall be fined a mandatory minimum fine of \$1,000.

4. The vehicle solely owned and operated by the accused during the commission of a felony violation of § 18.2-266 shall be subject to seizure and forfeiture. After an arrest for a felony violation of § 18.2-266, the Commonwealth may file an information in accordance with § 19.2-386.34.

D. In addition to the penalty otherwise authorized by this section or § 16.1-278.9, any person convicted of a violation of § 18.2-266 committed while transporting a person 17 years of age or younger shall be (i) fined an additional minimum of \$500 and not more than \$1,000 and (ii) sentenced to a mandatory minimum period of confinement of five days.

E. For the purpose of determining the number of offenses committed by, and the punishment

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appropriate for, a person under this section, an adult conviction of any person, or finding of guilty in the case of a juvenile, under the following shall be considered a conviction of § 18.2-266: (i) the provisions of § 18.2-36.1 or the substantially similar laws of any other state or of the United States, (ii) the provisions of §§ 18.2-51.4, 18.2-266, former § 18.1-54 (formerly § 18-75), the ordinance of any county, city or town in this Commonwealth or the laws of any other state or of the United States substantially similar to the provisions of § 18.2-51.4, or § 18.2-266, or (iii) the provisions of subsection A of § 46.2-341.24 or the substantially similar laws of any other state or of the United States.

F. Mandatory minimum punishments imposed pursuant to this section shall be cumulative, and mandatory minimum terms of confinement shall be served consecutively. However, in no case shall punishment imposed hereunder exceed the applicable statutory maximum Class 1 misdemeanor term of confinement or fine upon conviction of a first or second offense, or Class 6 felony term of confinement or fine upon conviction of a third or subsequent offense.

G. *Any person convicted of an offense listed in subsection E who does not hold a valid driver's license or who is not authorized by law to operate a motor vehicle in the Commonwealth at the time of the offense shall be confined in jail for a mandatory minimum period of 30 days, and the vehicle solely owned and operated by such person during the commission of the offense shall be subject to seizure and forfeiture and the Commonwealth may file an information in accordance with § 19.2-386.34.*

§ 19.2-386.34. Forfeiture of vehicle used in certain violations of § 18.2-266.

The vehicle solely owned and operated by the accused during the commission of a (i) felony violation of § 18.2-266 or (ii) misdemeanor violation of § 18.2-266 when the accused does not hold a valid driver's license or is not authorized by law to operate a motor vehicle in the Commonwealth at the time of the offense pursuant to subsection G of § 18.2-270 shall be subject to seizure and forfeiture. After an arrest upon a felony violation of § 18.2-266, or after a conviction for a misdemeanor violation of subsection G of § 18.2-266, the vehicle may be forfeited to the Commonwealth pursuant to the procedures set forth in Chapter 22.1 (§ 19.2-386.1 et seq.). Any seizure shall be stayed until conviction and the exhaustion of all appeals at which time, if the information has been filed, the Commonwealth shall give notice of seizure to all appropriate parties pursuant to § 19.2-386.3.

An immediate family member of the owner of any motor vehicle for which an information has been filed under this section who was not the driver at the time of the violation may petition the court in which such information was filed for the release of the motor vehicle. If the immediate family member 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 seized and forfeited, the court, in its discretion, may release the vehicle.

In the event the vehicle was sold to a bona fide purchaser subsequent to the arrest but prior to seizure in order to avoid seizure and forfeiture, the Commonwealth shall have a right of action against the seller for the proceeds of the sale.

§ 46.2-300. Driving without license prohibited; penalties.

No person, except those expressly exempted in §§ 46.2-303 through 46.2-308, shall drive any motor vehicle on any highway in the Commonwealth until such person has applied for a driver's license, as provided in this article, satisfactorily passed the examination required by § 46.2-325, and obtained a driver's license, nor unless the license is valid.

A violation of this section is a Class 2 misdemeanor; ~~A, a second or subsequent violation of this section is a Class 1 misdemeanor, and a third or subsequent violation of this section is a Class 6 felony.~~

Any person who has been at liberty after being convicted of an offense listed in subsection E of § 18.2-270 and this section arising out of a common act and who is convicted under this section a second or subsequent time is guilty of a Class 6 felony.

Upon conviction under this section, the court may suspend the person's privilege to drive for a period not to exceed 90 days.

§ 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 18.2-272 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; (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 having been previously convicted of such offense or a substantially similar ordinance of any county, city, or town 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 an operator's license in violation of § 46.2-300 having been previously convicted of such offense or a substantially similar ordinance of any county, city, or town or law in any other jurisdiction. The impoundment or immobilization for a violation of clauses (i) through (iii) shall be for a period of 30 days. The period of impoundment or immobilization for a violation of clause (iv) shall be until the offender obtains a valid operator's license pursuant to § 46.2-300 or ~~three~~ 30 days, whichever is less. In the event that ~~the~~ *an offender in violation of clause (iv)* obtains a valid operator's license at any time during the ~~three-day~~ 30-day impoundment period and presents such license to the court, the court shall authorize the release of the vehicle upon payment of all reasonable costs of impoundment or immobilization to the person holding the vehicle.

The provisions of this section as to the offense described in clause (iv) of this subsection shall not apply to a person who drives a motor vehicle with no operator's license ~~(i)~~ (a) whose license has been expired for less than one year prior to the offense or ~~(ii)~~ (b) who is under 18 years of age at the time of the offense. 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; however, for a violation of clause (iv) above, such information shall be provided at the time of arrest.

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; (ii) did not know that the offender had no operator's license and that the operator had been previously convicted of driving a motor vehicle without an operator's license in violation of § 46.2-300 or a substantially similar ordinance of any county, city, or town or law in any other jurisdiction when he authorized the offender to drive such motor vehicle; or (iii) 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 the period of impoundment that otherwise would be imposed pursuant to this section, the court, in its discretion, may release the vehicle after some period of less than such impoundment period.

D. Notwithstanding any provision of this section, a subsequent dismissal or acquittal of the charge of driving without an operator's license or of driving on a suspended or revoked license shall result in an

182 immediate rescission of the impoundment or immobilization provided in subsection A. Upon rescission,
183 the motor vehicle shall be released and the Commonwealth shall pay or reimburse the person for all
184 reasonable costs of impoundment or immobilization, including removal or storage costs, incurred or paid
185 by him.

186 E. Any person who knowingly authorizes the operation of a motor vehicle by (i) a person he knows
187 has had his driver's license, learner's permit or privilege to drive a motor vehicle suspended or revoked
188 for any of the reasons set forth in subsection A or (ii) a person who he knows has no operator's license
189 and who he knows has been previously convicted of driving a motor vehicle without an operator's
190 license in violation of § 46.2-300 or a substantially similar ordinance of any county, city, or town or law
191 in any other jurisdiction shall be guilty of a Class 1 misdemeanor.

192 F. Notwithstanding the provisions of this section or § 46.2-301, nothing in this section shall impede
193 or infringe upon a valid lienholder's rights to cure a default under an existing security agreement.
194 Furthermore, such lienholder shall not be liable for any cost of impoundment or immobilization,
195 including removal or storage expenses which may accrue pursuant to the provisions of this section or
196 § 46.2-301. In the event a lienholder repossesses or removes a vehicle from storage pursuant to an
197 existing security agreement, the Commonwealth shall pay all reasonable costs of impoundment or
198 immobilization, including removal and storage expenses, to any person or entity providing such services
199 to the Commonwealth, except to the extent such costs or expenses have already been paid by the
200 offender to such person or entity. Such payment shall be made within seven calendar days after a
201 request is made by such person or entity to the Commonwealth for payment. Nothing herein, however,
202 shall relieve the offender from liability to the Commonwealth for reimbursement or payment of all such
203 reasonable costs and expenses.

204 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
205 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at**
206 **least \$5,698 for periods of imprisonment in state adult correctional facilities and cannot be**
207 **determined for periods of commitment to the custody of the Department of Juvenile Justice.**