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HOUSE BILL NO. 319

Offered January 19, 1994

A *BILL to amend and reenact § 46.2-357 of the Code of Virginia, relating to operation of a motor vehicle after adjudication as an habitual offender.*

Patrons—Reynolds and Armstrong; Senator: Goode

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 46.2-357 of the Code of Virginia is amended and reenacted as follows:**

§ 46.2-357. Operation of motor vehicle or self-propelled machinery or equipment by habitual offender prohibited; penalty; enforcement of section.

A. It shall be unlawful for any person to drive any motor vehicle or self-propelled machinery or equipment on the highways of the Commonwealth while the order of the court prohibiting such operation remains in effect. However, an order shall not prohibit the person from operating any farm tractor on the highways when it is necessary to move the tractor from one tract of land used for agricultural purposes to another tract of land used for agricultural purposes, provided that the distance between the said tracts of land is no more than five miles.

B. Any person found to be an habitual offender under this article, who is thereafter convicted of driving a motor vehicle or self-propelled machinery or equipment in the Commonwealth while the order of the court prohibiting such driving is in effect, shall be punished as follows:

1. If such driving does not, of itself, endanger the life, limb, or property of another, such person shall be guilty of a misdemeanor punishable by confinement in jail for no more than ninety days and a fine of not more than \$2,500, either or both. However, ten days of any such confinement shall not be suspended except in cases designated in subdivision 2 (ii) of this section.

2. If such driving, of itself, does endanger the life, limb, or property of another, such person shall be guilty of a felony punishable by confinement in the state correctional facility for not less than one year nor more than five years or, in the discretion of the jury or the court trying the case without a jury, by confinement in jail for twelve months and no portion of such sentence shall be suspended except that (i) if the sentence is more than one year in the state correctional facility, any portion of such sentence in excess of one year may be suspended or (ii) in cases wherein such operation is necessitated in situations of apparent extreme emergency which require such operation to save life or limb, said sentence, or any part thereof may be suspended.

3. If the offense of driving while an order of adjudication as an habitual offender is in effect is a second or subsequent such offense, such person shall be punished as provided in subdivision 2 of this section, irrespective of whether the offense, of itself, endangers the life, limb, or property of another.

C. For the purpose of enforcing this section, in any case in which the accused is charged with driving a motor vehicle or self-propelled machinery or equipment while his license, permit, or privilege to drive is suspended or revoked or is charged with driving without a license, the court before hearing the charge shall determine whether the person has been held an habitual offender and, by reason of this holding, is barred from driving a motor vehicle or self-propelled machinery or equipment on the highways in the Commonwealth. If the court determines the accused has been held to be an habitual offender *and that there is probable cause to believe the alleged violation under this section constitutes a felony*, it shall certify the case to the *circuit court of record* of its jurisdiction for trial.

INTRODUCED

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