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**HOUSE BILL NO. 10**

Offered January 10, 1996

Prefiled December 18, 1995

*A BILL to amend and reenact §§ 18.2-36.1, 46.2-391.2 and 46.2-391.4 of the Code of Virginia, relating to administrative license suspension; vehicular manslaughter.*

Patron—Marshall

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 18.2-36.1, 46.2-391.2 and 46.2-391.4 of the Code of Virginia are amended and reenacted as follows:**

§ 18.2-36.1. Certain conduct punishable as involuntary manslaughter.

A. Any person who, as a result of driving under the influence in violation of subdivision (ii), (iii), or (iv) of § 18.2-266, unintentionally causes the death of another person, shall be guilty of involuntary manslaughter.

B. If, in addition, the conduct of the defendant was so gross, wanton and culpable as to show a reckless disregard for human life, he shall be guilty of aggravated involuntary manslaughter, a felony punishable by a term of imprisonment of not less than one nor more than twenty years, one year of which shall be a mandatory, minimum term of imprisonment.

C. The provisions of this section shall not preclude prosecution under any other homicide statute. The driver's license of any person convicted under this section may be suspended for a period of up to five years, *which shall be in addition to the suspension period provided under § 46.2-391.2.* This section shall not preclude any other revocation or suspension required by law.

§ 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 of any county, city or town and 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 the person refuses to submit to the breath test in violation of § 18.2-268.3 or any similar local ordinance, and upon issuance of a warrant by the magistrate for a violation of § 18.2-36.1, § 18.2-266 or § 18.2-268.3, or any similar local ordinance, the person's license shall be suspended immediately ~~for seven days or in~~. *The license suspension shall be for seven days if the warrant is issued for a violation of § 18.2-266 or § 18.2-268.3. If the accused is charged with a violation of § 18.2-36.1 and has been convicted of a violation of § 18.2-36.1 or § 18.2-266 within the ten-year period immediately preceding the alleged offense, the license suspension shall continue in effect until a subsequent dismissal, acquittal, nolle prosequi or conviction of the charge. If the accused has not previously been convicted of such a violation within the ten-year period, the suspension shall be for seven days and, within the seven-day period, the court in which the charge will be heard shall issue a restricted permit to the accused to operate a motor vehicle for the purposes specified in subsection E of § 18.2-271.1 and in accordance with procedures for issuance of the permit set forth in that section. The restricted permit shall continue in effect until an acquittal, dismissal, nolle prosequi or conviction of the charge. As a condition of issuing the restricted permit and for the period during which the permit is in effect, the court shall further prohibit the accused from operating a motor vehicle that is not equipped with a functioning, certified ignition interlock system in the same manner as provided in § 18.2-270.1.*

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 ~~for seven days~~.

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 of the jurisdiction in which the arrest was made together with the warrant or warrants, 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 the general district court of the jurisdiction in which the arrest was made and 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 ~~seven-day~~ suspension. Whenever a suspended license is to be returned under this section or § 46.2-391.4, the

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60 person may elect to have the license returned in person at the clerk's office or by mail to the address on  
61 the person's license or to such other address as he may request.

62 B. Promptly after arrest and service of the notice of suspension, the arresting officer shall forward to  
63 the magistrate a sworn report of the arrest that shall include (i) information which adequately identifies  
64 the person arrested and (ii) a statement setting forth the arresting officer's grounds for belief that the  
65 person violated § 18.2-266 or a similar local ordinance ~~or~~, refused to submit to a breath test in violation  
66 of § 18.2-268.3 or a similar local ordinance, *or violated § 18.2-36.1*. The report required by this  
67 subsection shall be submitted on forms supplied by the Supreme Court.

68 C. Any person whose license or privilege to operate a motor vehicle has been suspended under  
69 subsection A may, during the period of the suspension, request the general district court of the  
70 jurisdiction in which the arrest was made to review that suspension. The court shall review the  
71 suspension within the same time period as the court hears an appeal from an order denying bail or  
72 fixing terms of bail or terms of recognizance, giving this matter precedence over all other matters on its  
73 docket. If the person proves to the court by a preponderance of the evidence that the arresting officer  
74 did not have probable cause for the arrest, or that the magistrate did not have probable cause to issue  
75 the warrant, the court shall rescind the suspension, and the clerk of the court shall forthwith (i) return  
76 the suspended license, if any, to the person unless the license has been otherwise suspended or revoked,  
77 (ii) deliver to the person a notice that the suspension under § 46.2-391.2 has been rescinded and (iii)  
78 forward to the Commissioner a copy of the notice that the suspension under § 46.2-391.2 has been  
79 rescinded. Otherwise, the court shall affirm the suspension. If the person requesting the review fails to  
80 appear without just cause, his right to review shall be waived.

81 The court's findings are without prejudice to the person contesting the suspension or to any other  
82 potential party as to any proceedings, civil or criminal, and shall not be evidence in any proceedings,  
83 civil or criminal.

84 D. If a person whose license or privilege to operate a motor vehicle is suspended under subsection A  
85 is convicted ~~under § 18.2-266 or any similar local ordinance~~ during the seven-day suspension imposed  
86 by subsection A, and if the court decides to issue the person a restricted permit under subsection E of  
87 § 18.2-271.1, such restricted permit shall not be issued to the person before the expiration of the  
88 seven-day suspension imposed under subsection A.

89 § 46.2-391.4. When suspension to be rescinded.

90 Notwithstanding any other provision of § 46.2-391.2, a subsequent dismissal or acquittal of all the  
91 charges under §§ 18.2-266 and 18.2-268.3 or any similar local ordinances *or under § 18.2-36.1*, for the  
92 same offense for which a person's driver's license or privilege to operate a motor vehicle was suspended  
93 under § 46.2-391.2 shall result in the immediate rescission of the suspension. In any such case, the clerk  
94 of the court shall forthwith (i) return the suspended license, if any, to the person unless the license has  
95 been otherwise suspended or revoked, (ii) deliver to the person a notice that the suspension under  
96 § 46.2-391.2 has been rescinded and (iii) forward to the Commissioner a copy of the notice that the  
97 suspension under § 46.2-391.2 has been rescinded.