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SENATE BILL NO. 133

Offered January 11, 2006

Prefiled January 10, 2006

A *BILL to amend and reenact § 46.2-301 of the Code of Virginia, relating to third offense of driving while license, permit, or privilege to drive suspended or revoked; penalty.*

Patron—O'Brien

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That § 46.2-301 of the Code of Virginia is amended and reenacted as follows:

§ 46.2-301. Driving while license, permit, or privilege to drive suspended or revoked; penalty.

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 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. 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 and a third or subsequent offense occurring within a 10-year period is a Class 6 felony and shall include a mandatory minimum term of confinement in jail of 10 days of one year.~~ However, the court shall not be required to impose a *felony penalty or 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.

In addition to any other license suspension provisions, in the event of a felony conviction, the court shall suspend the person's license or privilege to drive a motor vehicle for two years. The two-year suspension shall commence after the person has served any active incarceration imposed for such offense.

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

2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is

INTRODUCED

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59 \$16,790,431 for periods of imprisonment in state adult correctional facilities and is \$0 for periods
60 of commitment to the custody of the Department of Juvenile Justice.