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HOUSE BILL NO. 1302

Offered January 9, 2008

Prefiled January 9, 2008

A BILL to amend and reenact §§ 19.2-81, 46.2-888, and 46.2-1212.1 of the Code of Virginia, relating to aspects of incident management in the Commonwealth.

Patrons—Nichols and Fralin

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-81, 46.2-888, and 46.2-1212.1 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-81. Arrest without warrant authorized in certain cases.

The following officers shall have the powers of arrest as provided in this section:

1. Members of the State Police force of the Commonwealth;
2. Sheriffs of the various counties and cities, and their deputies;
3. Members of any county police force or any duly constituted police force of any city or town of the Commonwealth;
4. The Commissioner, members and employees of the Marine Resources Commission granted the power of arrest pursuant to § 28.2-900;
5. Regular conservation police officers appointed pursuant to § 29.1-200;
6. United States Coast Guard and United States Coast Guard Reserve commissioned, warrant, and petty officers authorized under § 29.1-205 to make arrests;
7. The special policemen of the counties as provided by § 15.2-1737, provided such officers are in uniform, or displaying a badge of office; and
8. Conservation officers appointed pursuant to § 10.1-115.

Such officers may arrest, without a warrant, any person who commits any crime in the presence of the officer and any person whom he has reasonable grounds or probable cause to suspect of having committed a felony not in his presence.

Any such officer may arrest without a warrant any person whom the officer has probable cause to suspect of operating a watercraft or motor boat (i) while intoxicated in violation of subsection B of § 29.1-738 or (ii) in violation of an order issued pursuant to § 29.1-738.4, in his presence, and may thereafter transfer custody of the person suspected of the violation to another officer, who may obtain a warrant based upon statements made to him by the arresting officer.

Any such officer may, at the scene of any accident involving a motor vehicle, watercraft as defined in § 29.1-712 or motorboat, or at any hospital or medical facility to which any person involved in such accident has been transported, or in the apprehension of any person charged with the theft of any motor vehicle, on any of the highways or waters of the Commonwealth, upon reasonable grounds to believe, based upon personal investigation, including information obtained from eyewitnesses, that a crime has been committed by any person then and there present, apprehend such person without a warrant of arrest. *For purposes of this section, "the scene of any accident" shall include any location where a vehicle or person involved in an accident has been moved at the direction of a law-enforcement officer to facilitate the clearing of the highway or to ensure the safety of the motoring public.* In addition, such officer may, within three hours of the occurrence of any such accident involving a motor vehicle, arrest without a warrant at any location any person whom the officer has probable cause to suspect of driving or operating such motor vehicle while intoxicated in violation of § 18.2-266, 18.2-266.1, 46.2-341.24, or a substantially similar ordinance of any county, city, or town in the Commonwealth.

Such officers may arrest, without a warrant or a capias, persons duly charged with a crime in another jurisdiction upon receipt of a photocopy of a warrant or a capias, telegram, computer printout, facsimile printout, a radio, telephone or teletype message, in which photocopy of a warrant, telegram, computer printout, facsimile printout, radio, telephone or teletype message shall be given the name or a reasonably accurate description of such person wanted and the crime alleged.

Such officers may arrest, without a warrant or a capias, for an alleged misdemeanor not committed in his presence when the officer receives a radio message from his department or other law-enforcement agency within the Commonwealth that a warrant or capias for such offense is on file.

Such officers may also arrest without a warrant for an alleged misdemeanor not committed in their presence involving (i) shoplifting in violation of § 18.2-96 or 18.2-103 or a similar local ordinance, (ii) carrying a weapon on school property in violation of § 18.2-308.1, (iii) assault and battery, (iv)

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59 brandishing a firearm in violation of § 18.2-282, or (v) destruction of property in violation of
60 § 18.2-137, when such property is located on premises used for business or commercial purposes, or a
61 similar local ordinance, when any such arrest is based on probable cause upon reasonable complaint of
62 the person who observed the alleged offense. The arresting officer may issue a summons to any person
63 arrested under this section for a misdemeanor violation involving shoplifting.

64 § 46.2-888. Stopping on highways; general rule.

65 A. No person shall stop a vehicle in such manner as to impede or render dangerous the use of the
66 highway by others, except in the case of an emergency, an accident, or a mechanical breakdown. In the
67 event of such an emergency, accident, or breakdown, the emergency flashing lights of such vehicle shall
68 be turned on if the vehicle is equipped with such lights and such lights are in working order. If the
69 driver is capable of *safely* doing so and the vehicle is movable, the driver may move the vehicle ~~only so~~
70 ~~far as is necessary from the roadway~~ to prevent obstructing the regular flow of traffic; provided,
71 however, that the movement of the vehicle to prevent the obstruction of traffic shall not relieve the
72 law-enforcement officer of his duty pursuant to § 46.2-373. A report of the vehicle's location shall be
73 made to the nearest law-enforcement officer as soon as practicable, and the vehicle shall be moved from
74 the roadway to the shoulder as soon as possible and removed from the shoulder without unnecessary
75 delay. If the vehicle is not promptly removed, such removal may be ordered by a law-enforcement
76 officer at the expense of the owner if the disabled vehicle creates a traffic hazard.

77 B. *If a vehicle accident occurs on the highway, each vehicle involved in the accident shall be*
78 *removed as soon as possible from the travel lanes and, if necessary, directed by a law-enforcement*
79 *officer to a designated accident investigation site or the nearest exit ramp or public parking area for the*
80 *purpose of conducting an accident investigation.*

81 § 46.2-1212.1. Authority to provide for removal and disposition of vehicles and cargoes of vehicles
82 involved in accidents or incidents.

83 A. As a result of a motor vehicle accident or incident, the Department of State Police, *the Virginia*
84 *Department of Transportation*, and/or local law-enforcement agency in conjunction with other public
85 safety agencies may, without the consent of the owner or carrier, remove:

86 1. A vehicle, cargo, or other personal property that has been (i) damaged or spilled within the
87 right-of-way or any portion of a roadway in the state highway system and (ii) is blocking the roadway
88 or may otherwise be endangering public safety; or

89 2. Cargo or personal property that the Department of Transportation, Department of Emergency
90 Management, or the fire officer in charge has reason to believe is a hazardous material, hazardous waste
91 or regulated substance as defined by the Virginia Waste Management Act (§ 10.1-1400 et seq.), the
92 Hazardous Materials Transportation Act (49 U.S.C. § 1808 et seq.) or the State Water Control Law
93 (§ 62.1-44.2 et seq.), if the Department of Transportation or applicable person complies with the
94 applicable procedures and instructions defined either by the Department of Emergency Management or
95 the fire officer in charge.

96 B. The Department of Transportation, Department of State Police, Department of Emergency
97 Management, local law-enforcement agency and other local public safety agencies and their officers,
98 employees and agents, *or those acting on their behalf* shall not be held responsible for any damages or
99 claims that may result from the failure to exercise any authority granted under this section provided they
100 are acting in good faith.

101 C. The owner and carrier, if any, of the vehicle, cargo or personal property removed or disposed of
102 under the authority of this section shall reimburse the Department of Transportation, Department of State
103 Police, Department of Emergency Management, local law-enforcement agency, and local public safety
104 agencies for all costs incurred in the removal and subsequent disposition of such property.