

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact § 46.2-301.1 of the Code of Virginia, relating to vehicle operation; unlicensed minor; penalty.

[H 1549]

Approved

Be it enacted by the General Assembly of Virginia:

1. That § 46.2-301.1 of the Code of Virginia is amended and reenacted as follows:

§ 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) 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 clause (i), (ii), or (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 days, whichever is less. In the event that the offender obtains a valid operator's license at any time during the three-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) shall not apply to a person who drives a motor vehicle with no operator's license (a) whose license has been expired for less than one year prior to the offense or (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), 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

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57 storage costs paid or incurred by him. Otherwise, the court shall affirm the impoundment. If the person
58 requesting the review fails to appear without just cause, his right to review shall be waived.

59 The court's findings are without prejudice to the person contesting the impoundment or to any other
60 potential party as to any proceedings, civil or criminal, and shall not be evidence in any proceedings, civil or
61 criminal.

62 C. The owner or co-owner of any motor vehicle impounded or immobilized under subsection A who was
63 not the driver at the time of the violation may petition the general district court in the jurisdiction where the
64 violation occurred for the release of his motor vehicle. The motor vehicle shall be released if the owner or
65 co-owner proves by a preponderance of the evidence that he (i) did not know that the offender's driver's
66 license was suspended or revoked when he authorized the offender to drive such motor vehicle; (ii) did not
67 know that the offender had no operator's license and that the operator had been previously convicted of
68 driving a motor vehicle without an operator's license in violation of § 46.2-300 or a substantially similar
69 ordinance of any county, city, or town or law in any other jurisdiction when he authorized the offender to
70 drive such motor vehicle; or (iii) did not consent to the operation of the motor vehicle by the offender. If the
71 owner proves by a preponderance of the evidence that his immediate family has only one motor vehicle and
72 will suffer a substantial hardship if that motor vehicle is impounded or immobilized for the period of
73 impoundment that otherwise would be imposed pursuant to this section, the court, in its discretion, may
74 release the vehicle after some period of less than such impoundment period.

75 D. Notwithstanding any provision of this section, a subsequent dismissal or acquittal of the charge of
76 driving without an operator's license or of driving on a suspended or revoked license shall result in an
77 immediate rescission of the impoundment or immobilization provided in subsection A. Upon rescission, the
78 motor vehicle shall be released and the Commonwealth shall pay or reimburse the person for all reasonable
79 costs of impoundment or immobilization, including removal or storage costs, incurred or paid by him.

80 E. Any person who knowingly authorizes the operation of a motor vehicle by (i) a person he knows has
81 had his driver's license, learner's permit, or privilege to drive a motor vehicle suspended or revoked for any of
82 the reasons set forth in subsection A or (ii) a person who he knows has no operator's license and who he
83 knows has been previously convicted of driving a motor vehicle without an operator's license in violation of §
84 46.2-300 or a substantially similar ordinance of any county, city, or town or law in any other jurisdiction shall
85 be guilty of a Class 1 misdemeanor. *Any person who knowingly authorizes the operation of a motor vehicle*
86 *by a minor who he knows has no operator's license or learner's permit or who has a learner's permit but who*
87 *he knows will operate such motor vehicle in violation of any provision of § 46.2-335 is guilty of Class 1*
88 *misdemeanor if such violation results in a motor vehicle accident that causes injury or death to any person,*
89 *provided that such violation does not otherwise constitute a felony.*

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