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SENATE BILL NO. 985

Offered January 10, 2001

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A BILL to amend and reenact §§ 18.2-259.1, 46.2-320, 46.2-392 and 46.2-499 of the Code of Virginia, relating to restricted license.

 Patron—Rerras

 Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-259.1, 46.2-320, 46.2-392 and 46.2-499 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-259.1. Forfeiture of driver's license for violations of article.

A. In addition to any other sanction or penalty imposed for a violation of this article, the (i) judgment of conviction under this article or (ii) placement on probation following deferral of further proceedings under § 18.2-251 or subsection H of § 18.2-258.1 for any such offense shall of itself operate to deprive the person so convicted or placed on probation after deferral of proceedings under § 18.2-251 or subsection H of § 18.2-258.1 of the privilege to drive or operate a motor vehicle, engine, or train in the Commonwealth for a period of six months from the date of such judgment or placement on probation. Such license forfeiture shall be in addition to and shall run consecutively with any other license suspension, revocation or forfeiture in effect or imposed upon the person so convicted or placed on probation. However, a juvenile who has had his license suspended or denied pursuant to § 16.1-278.9 shall not have his license forfeited pursuant to this section for the same offense.

B. The court trying the case shall order any person so convicted or placed on probation to surrender his driver's license to be disposed of in accordance with the provisions of § 46.2-398 and shall notify the Department of Motor Vehicles of any such conviction entered and of the license forfeiture to be imposed.

C. In those cases where the court determines there are compelling circumstances warranting an exception, the court may provide that any individual be issued a restricted license to operate a motor vehicle for any ~~or all of the following purposes: set forth in subsection E of § 18.2-271.1 and (i) travel to and from his place of employment;~~ (ii) travel to a screening, evaluation and education program entered pursuant to § 18.2-251 or subsection H of § 18.2-258.1; (iii) ~~travel during the hours of such person's employment if the operation of a motor vehicle is a necessary incident of such employment;~~ (iv) travel to and from school if such person is a student; ~~upon proper written verification to the court that such person is enrolled in a continuing program of education; or (v) such other medically necessary travel as the court deems necessary and proper upon written verification of need by a licensed health professional.~~ No restricted license issued pursuant to this subsection shall permit any person to operate a commercial motor vehicle as defined in the Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.). The court shall order the surrender of such person's license in accordance with the provisions of subsection B and shall forward to the Commissioner of the Department of Motor Vehicles a copy of its order entered pursuant to this subsection. This order shall specifically enumerate the restrictions imposed and contain such information regarding the person to whom such a permit is issued as is reasonably necessary to identify such person. The court shall also provide a copy of its order to such person who may operate a motor vehicle on the order until receipt from the Commissioner of the Department of Motor Vehicles of a restricted license, but only if the order provides for a restricted license for that period. A copy of the order and, after receipt thereof, the restricted license shall be carried at all times by such person while operating a motor vehicle. The court may require a person issued a restricted permit under the provisions of this subsection to be monitored by an alcohol safety action program during the period of license suspension. Any violation of the terms of the restricted license or of any condition set forth by the court related thereto, or any failure to remain drug-free during such period shall be reported forthwith to the court by such program. Any person who operates a motor vehicle in violation of any restriction imposed pursuant to this section shall be guilty of a violation of § 46.2-301.

§ 46.2-320. Other grounds for refusal or suspension.

A. The Department may refuse to grant an application for a driver's license in any of the circumstances set forth in § 46.2-608 as circumstances justifying the refusal of an application for the registration of a motor vehicle. The Department may refuse to issue or reissue a driver's license for the willful failure or refusal to pay any taxes or fees required to be collected or authorized to be collected by the Department.

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59 B. The Commissioner may enter into an agreement with the Department of Social Services whereby
60 the Department may suspend or refuse to renew the driver's license of any person upon receipt of notice
61 from the Department of Social Services that the person (i) is delinquent in the payment of child support
62 by ninety days or more or in an amount of \$5,000 or more or (ii) has failed to comply with a subpoena,
63 summons or warrant relating to paternity or child support proceedings. A suspension or refusal to renew
64 authorized pursuant to this section shall not be effective until thirty days after service on the delinquent
65 obligor of notice of intent to suspend or refuse to renew. The notice of intent shall be served on the
66 obligor by the Department of Social Services (i) by certified mail, return receipt requested, sent to the
67 obligor's last known addresses as shown in the records of the Department or the Department of Social
68 Services or (ii) pursuant to § 8.01-296, or (iii) service may be waived by the obligor in accordance with
69 procedures established by the Department of Social Services. The obligor shall be entitled to a judicial
70 hearing if a request for a hearing is made, in writing, to the Department of Social Services within ten
71 days from service of the notice of intent. Upon receipt of the request for a hearing, the Department of
72 Social Services shall petition the court that entered or is enforcing the order, requesting a hearing on the
73 proposed suspension or refusal to renew. The court shall authorize the suspension or refusal to renew
74 only if it finds that the obligor's noncompliance with the child support order was willful. Upon a
75 showing by the Department of Social Services that the obligor is delinquent in the payment of child
76 support by ninety days or more or in an amount of \$5,000 or more, the burden of proving that the
77 delinquency was not willful shall rest upon the obligor. The Department shall not suspend or refuse to
78 renew the driver's license until a final determination is made by the court.

79 C. At any time after service of a notice of intent, the person may petition the juvenile and domestic
80 relations district court in the jurisdiction where he resides for the issuance of a restricted license to be
81 used if the suspension or refusal to renew becomes effective. Upon such petition and a finding of good
82 cause, the court may provide that such person be issued a restricted permit to operate a motor vehicle
83 for any ~~or all~~ of the following purposes: ~~(i) travel to and from his place of employment and for travel~~
84 ~~during the hours of such person's employment if the operation of a motor vehicle is a necessary incident~~
85 ~~of such employment; (ii) travel to and from school if such person is a student, upon proper written~~
86 ~~verification to the court that such person is enrolled in a continuing program of education; (iii) travel to~~
87 ~~and from visitation with a child of such person; or (iv) such other medically necessary travel as the~~
88 ~~court deems necessary and proper upon written verification of need by a licensed health professional set~~
89 ~~forth in subsection E of § 18.2-271.1.~~ A restricted license issued pursuant to this subsection shall not
90 permit any person to operate a commercial motor vehicle as defined in § 46.2-341.4. The court shall
91 order the surrender of the person's license to operate a motor vehicle, to be disposed of in accordance
92 with the provisions of § 46.2-398, and shall forward to the Commissioner a copy of its order entered
93 pursuant to this subsection. The order shall specifically enumerate the restrictions imposed and contain
94 such information regarding the person to whom such a permit is issued as is reasonably necessary to
95 identify him.

96 D. The Department shall not renew a driver's license or terminate a license suspension imposed
97 pursuant to this section until it has received from the Department of Social Services a certification that
98 the person has (i) paid the delinquency in full, (ii) reached an agreement with the Department of Social
99 Services to satisfy the delinquency within a period not to exceed ten years and at least one payment,
100 representing at least five percent of the total delinquency or \$500, whichever is greater, has been made
101 pursuant to the agreement, or (iii) complied with a subpoena, summons or warrant relating to a paternity
102 or child support proceeding. Certification by the Department of Social Services shall be made by
103 electronic or telephonic communication and shall be made on the same work day that payment required
104 by clause (i) or (ii) is made.

105 § 46.2-392. Suspension of license or issuance of a restricted license on conviction of reckless driving;
106 probationary conditions required; generally.

107 In addition to the penalties for reckless driving prescribed in § 46.2-868 any court may suspend any
108 license issued to a convicted person under Articles 1 through 9 (§ 46.2-300 et seq.) of this chapter for a
109 period of not less than ten days nor more than six months and the court shall require the convicted
110 person to surrender his license so suspended to the court where it will be disposed of in accordance with
111 § 46.2-398. Additionally, any person convicted of a reckless driving offense which the court has reason
112 to believe is alcohol-related or drug-related may be required as a condition of probation or otherwise to
113 enter into and successfully complete an alcohol safety action program.

114 If a person so convicted has not obtained the license required by this chapter, or is a nonresident, the
115 court may direct in the judgment of conviction that he shall not, for a period of not less than ten days
116 or more than six months as may be prescribed in the judgment, drive any motor vehicle in the
117 Commonwealth. The court or the clerk of court shall transmit the license to the Commissioner along
118 with the report of the conviction required to be sent to the Department.

119 The court may, in its discretion and for good cause shown, provide that such person be issued a
120 restricted permit to operate a motor vehicle during the period of suspension for any ~~or all~~ of the

following purposes: (i) travel to and from his place of employment; (ii) travel during the hours of such person's employment if the operation of a motor vehicle is a necessary incident of such employment; (iii) travel to and from school if such person is a student, upon proper written verification to the court that such person is enrolled in a continuing program of education; or (iv) such other medically necessary travel as the court deems necessary and proper upon written verification of need by a licensed health professional set forth in subsection E of § 18.2-271.1. The court shall order the surrender of such person's license to operate a motor vehicle to be disposed of in accordance with the provisions of § 46.2-398 and shall forward to the Commissioner a copy of its order entered pursuant to this subsection, which shall specifically enumerate the restrictions imposed and contain such information regarding the person to whom such a permit is issued as is reasonably necessary to identify such person. The court shall also provide a copy of its order to the person who may operate a motor vehicle on the order until receipt from the Commissioner of a restricted license. A copy of such order and, after receipt thereof, the restricted license shall be carried at all times while operating a motor vehicle. Any person who operates a motor vehicle in violation of any restrictions imposed pursuant to this section shall be punished as provided in subsection C of § 46.2-301. No restricted license issued pursuant to this section shall permit any person to operate a commercial motor vehicle as defined in the Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.).

§ 46.2-499. Driver's license probation.

A. The Commissioner shall place on probation for a period of six months any person who has been directed to attend a driver improvement clinic pursuant to the provisions of § 46.2-498. In addition, the Commissioner shall place any person on probation for a period of six months on receiving a record of a conviction of such person of any offense for which demerit points are assessed and the offense was committed within any driver control period imposed pursuant to § 46.2-500. Whenever a person who has been placed on probation is convicted, or found not innocent in the case of a juvenile, of any offense for which demerit points are assessed, and the offense was committed during the probation period, the Commissioner shall suspend the person's license for a period of ninety days when six demerit points are assigned, for a period of sixty days when four demerit points are assigned, and for a period of forty-five days when three demerit points are assigned. In addition, the Commissioner shall again place the person on probation for a period of six months, effective on termination of the suspension imposed pursuant to this section.

B. Upon request, the Commissioner shall grant a restricted license during the first period of suspension imposed pursuant to subsection A of this section provided the person is otherwise eligible to be licensed. Any person whose driver's license is suspended for a second or subsequent time under subsection A of this section shall be eligible to receive a restricted driver's license only if the violation occurred within a probation period that was immediately preceded by a control period. A restricted license may be issued for any or all of the following purposes: (i) travel to and from his place of employment; (ii) travel during the hours of such person's employment if the operation of a motor vehicle is a necessary incident of such employment; (iii) travel to and from school if such person is a student; or (iv) such other medically necessary travel set forth in subsection E of § 18.2-271.1. Written verifications of the person's employment, continuing education or medically necessary travel shall also be required and made available to the Commissioner. Whenever a person who has been granted a restricted license pursuant to this subsection is convicted, or found not innocent in the case of a juvenile, of any offense for which demerit points are assessed, and the offense was committed during the restricted license period, the Commissioner shall suspend the person's license using the same demerit point criteria and suspension periods set forth in subsection A of this section. No restricted license issued pursuant to this subsection shall permit any person to operate a commercial motor vehicle as defined in the Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.).

C. Whenever the Department receives notice from the court that restricted license privileges have been granted to a person who has an existing restricted license issued pursuant to subsection B of this section, the existing restricted license shall be cancelled, and the Commissioner shall suspend the person's license for the period of time remaining on the original order of suspension. No court-granted restricted license shall be issued until the end of the suspension period imposed by the Commissioner.