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HOUSE BILL NO. 638

Offered January 9, 2002

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A *BILL to amend and reenact §§ 46.2-323, 46.2-330, and 46.2-334 of the Code of Virginia, to amend the Code of Virginia by adding a section numbered 46.2-203.2, and to repeal § 46.2-323.1 of the Code of Virginia, relating to driver's licenses, commercial driver's licenses, temporary driver's permits, learner's permits, motorcycle learner's permits, and special identification cards; penalties.*

Patrons—O'Brien and Bolvin

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-323, 46.2-330, and 46.2-334 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 46.2-203.2 as follows:

§ 46.2-203.2. *Proofs of identity, Virginia residency, American citizenship, legal presence in the United States, and immigration status required; certain documents not valid beyond length of time during which holder is lawfully present in the United States.*

A. *On and after July 1, 2002, every applicant for a driver's license, commercial driver's license, temporary driver's permit, learner's permit, motorcycle learner's permit, special identification card, or renewal thereof shall make application therefor in person. If the applicant is a citizen of the United States he shall (i) so certify on a form provided by the Commissioner, (ii) submit proof or proofs of such citizenship in a number and form satisfactory to the Commissioner, and (iii) submit a birth certificate or other proof satisfactory to the Commissioner of his name and date of birth. However, once such certification has been made, such proofs of citizenship, name, and date of birth have been provided, and the applicable document has been duly issued by the Department, such document shall be sufficient proof of United States citizenship when applying for other permits and documents issued by the Department and the foregoing requirements of application in person, certification of citizenship, and submission of proof thereof shall not apply.*

Every driver's license, commercial driver's license, temporary driver's permit, learner's permit, motorcycle learner's permit, and special identification card issued to a United States citizen under this subsection shall state on its face that the person to whom it is issued is a United States citizen.

B. *On and after July 1, 2002, every applicant for a driver's license, commercial driver's license, temporary driver's permit, learner's permit, motorcycle learner's permit, special identification card, or renewal thereof shall make application therefor in person and, if he is not a citizen of the United States, he shall (i) certify, on a form prescribed by the Commissioner, that his presence in the United States is in conformity with federal law, (ii) submit proof or proofs, in a number and form satisfactory to the Commissioner, that his presence in the United States is in conformity with federal law, (iii) submit proof or proofs, in a number and form satisfactory to the Commissioner, of his immigration status, including, but not limited to, his visa or other document authorizing his presence in the United States, and (iv) submit a birth certificate or other proof satisfactory to the Commissioner of his name and date of birth. However, once the foregoing requirements of this subsection have been complied with, and the applicable document has been duly issued by the Department, the foregoing provisions of this subsection shall not apply to persons who are not citizens of the United States but have, under the foregoing provisions of this subsection, submitted proof that they have been granted permanent residency status in the United States. Nevertheless, the foregoing provisions of this subsection shall continue to apply to any application for a driver's license, commercial driver's license, temporary driver's permit, learner's permit, motorcycle learner's permit, special identification card or renewal thereof, when the applicant is not a citizen of the United States and his presence in the United States is subject to a visa issued by the United States Department of State.*

Notwithstanding any other provision of Chapter 3 (§ 46.2-300 et seq.) of this title, no driver's license, commercial driver's license, temporary driver's permit, learner's permit, motorcycle learner's permit, or special identification card issued to any applicant shall be (i) valid for a length of time that exceeds the length of time during which the applicant is permitted by federal law to be present in the United States or (ii) issued to any person whose presence in the United States is not in conformity with federal law. No driver's license, commercial driver's license, temporary driver's permit, learner's permit, motorcycle learner's permit, or special identification card shall be issued to any applicant when the length of time he is permitted by federal law to be present in the United States is less than one year; however, the Commissioner may waive this prohibition on a case-by-case basis for good cause shown.

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59 Every driver's license, commercial driver's license, temporary driver's permit, learner's permit,
60 motorcycle learner's permit, and special identification card issued under this subsection to a person who
61 is not a United States citizen shall state on its face either that the person to whom it is issued is a
62 permanent immigrant or that he is a temporary immigrant.

63 C. Every applicant for a driver's license, commercial driver's license, temporary driver's permit,
64 learner's permit, motorcycle learner's permit, special identification card, or renewal thereof shall also
65 certify that he is a resident of the Commonwealth by signing a certification statement, on a form
66 prescribed by the Commissioner, and by providing satisfactory proof that he is a resident of the
67 Commonwealth. No driver's license, commercial driver's license, temporary driver's permit, learner's
68 permit, motorcycle learner's permit, or special identification card shall be issued to or renewed for any
69 person who is not a resident of Virginia. The Commissioner may adopt regulations to determine the
70 process by which applicants prove that they are residents of the Commonwealth. The Commissioner
71 may, on a case-by-case basis, waive any provision of such regulations for good cause shown, provided
72 that neither an immigration visa nor a signed written statement, whether or not such statement is
73 notarized, wherein the maker of the statement vouches for the Virginia residency of the applicant, shall
74 be an acceptable proof of Virginia residency.

75 If the applicant is a minor, the applicant's parent or guardian shall also certify that the applicant is
76 a resident by signing the certification. Any minor providing proper evidence of the solemnization of his
77 marriage or a certified copy of a court order of emancipation shall not be required to provide the
78 parent's certification of residence.

79 D. It shall be unlawful for any applicant for a driver's license, commercial driver's license,
80 temporary driver's permit, learner's permit, motorcycle learner's permit, special identification card, or
81 renewal thereof knowingly to make a false statement or certification or supply false or fictitious
82 evidence in connection with any of the information required to be provided to the Department under this
83 section. Any violation of this section shall be punished as provided in § 46.2-348.

84 E. In the event of a conflict between the provisions of this section and any provision of Chapter 3
85 (§ 46.2-300 et seq.) of this title, the provisions of this section shall be controlling.

86 § 46.2-323. Application for driver's license; proof of completion of driver education program; penalty.

87 A. Every application for a driver's license, temporary driver's permit, learner's permit, or motorcycle
88 learner's permit shall be made on a form prescribed by the Department and the applicant shall write his
89 usual signature in ink in the space provided on the form. The form shall include notice to the applicant
90 of the duty to register with the Department of State Police as provided in § 19.2-298.1, if the applicant
91 has been convicted of a felony in violation of §§ 18.2-61, 18.2-63, 18.2-64.1, 18.2-67.1, 18.2-67.2,
92 18.2-67.3, 18.2-67.5, 18.2-370 or § 18.2-370.1 or, where the victim is a minor or is physically helpless
93 or mentally incapacitated as defined in § 18.2-67.10, subsection B of § 18.2-361 or subsection B of
94 § 18.2-366, including juveniles tried and convicted in the circuit courts pursuant to § 16.1-269.1 whether
95 sentenced as adults or juveniles, or a felony under a substantially similar law of the United States or any
96 other state.

97 B. Every application shall state the name, year, month and date of birth, social security number, sex,
98 and residence address of the applicant; whether or not the applicant has previously been licensed as a
99 driver and, if so, when and by what state, and whether or not his license has ever been suspended or
100 revoked and, if so, the date of and reason for such suspension or revocation. The Department, as a
101 condition for the issuance of any driver's license, temporary driver's permit, learner's permit, or
102 motorcycle learner's permit may require the surrender of any driver's license or, in the case of a
103 motorcycle learner's permit, a motorcycle license issued by another state and held by the applicant. The
104 applicant shall also answer any questions on the application form or otherwise propounded by the
105 Department incidental to the examination. The applicant may also be required to present to the person
106 conducting the examination a birth certificate or other evidence, reasonably acceptable to the
107 Department, of his name and date of birth.

108 The applicant shall also certify that he is a resident of the Commonwealth by signing a certification
109 statement, on a form prescribed by the Commissioner, and by providing satisfactory proof that he is a
110 resident of the Commonwealth. The Commissioner may adopt regulations to determine the process by
111 which applicants prove that they are residents of the Commonwealth.

112 If the applicant either (i) fails or refuses to sign the certification statement or (ii) fails to follow the
113 process determined by the Commissioner for proving residency, the Department shall not issue the
114 applicant a driver's license, temporary driver's permit, learner's permit or motorcycle learner's permit.

115 Any applicant who knowingly makes a false certification of Virginia residency or supplies false or
116 fictitious evidence of Virginia residency shall be punished as provided in § 46.2-348.

117 The Commissioner may, on a case-by-case basis, waive any provision of such regulations for good
118 cause shown.

119 C. Every application for a driver's license shall include a color photograph of the applicant supplied
120 under arrangements made by the Department. The photograph shall be processed by the Department so

that the photograph can be made part of the issued license.

D. Notwithstanding the provisions of § 46.2-334, every unlicensed applicant for a driver's license who is under nineteen years of age shall furnish the Department with satisfactory proof of his successful completion of a driver education program approved by the State Department of Education.

§ 46.2-330. Expiration and renewal of licenses; examinations required.

A. Every driver's license shall expire on the last day of the month of birth of the applicant in years in which the applicant attains an age equally divisible by five. At no time shall any driver's license be issued for less than three nor more than seven years. Thereafter the driver's license shall be renewed in the birthday month of the licensee and shall be valid for five years, expiring in the next year in which the licensee's age is equally divisible by five.

B. Within one year prior to the date shown on the driver's license as the date of expiration, the Department shall mail notice, to the holder thereof, at the address shown on the records of the Department in its driver's license file, that his license will expire on a date specified therein, whether he must be reexamined, and when he may be reexamined. Nonreceipt of the notice shall not extend the period of validity of the driver's license beyond its expiration date.

Any driver's license may be renewed by application, ~~which shall include the applicant's certification of Virginia residency~~, after the applicant has taken and successfully completed those parts of the examination provided for in §§ 46.2-311, 46.2-325 and the Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.), including vision and written tests, other than the parts of the examination requiring the applicant to drive a motor vehicle. All drivers applying in person for renewal of a license shall take and successfully complete the examination each renewal year.

C. Notwithstanding any other provision of this section, the Commissioner, in his discretion, may require any applicant for renewal to be fully examined as provided in §§ 46.2-311, 46.2-325 and the Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.). Furthermore, the Commissioner may waive the vision examination for any applicant for renewal of a driver's license which is not a commercial driver's license, and the requirement or the taking of the written test as provided in subsection B of this section, § 46.2-325 and the Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.), for any applicant for renewal who is at least twenty-one years old if the applicant's driver's license record on file at the Department contains, for the five years prior to the expiration date of the license being renewed, a record of no more than one conviction for any offense reportable under §§ 46.2-382, 46.2-382.1, and 46.2-383. Such written test shall not be waived for an applicant less than twenty-one years old if he has one or more such convictions. However, in no case shall there be any waiver of the vision examination for applicants for renewal of a commercial driver's license or of the knowledge test required by the Virginia Commercial Driver's License Act for the hazardous materials endorsement on a commercial driver's license.

D. Every applicant for renewal of a driver's license, whether renewal shall or shall not be dependent on any examination of the applicant, shall appear in person before the Department to apply for renewal, unless specifically notified by the Department that renewal may be accomplished in another manner as provided in the notice.

E. This section shall not modify the provisions of § 46.2-331.

§ 46.2-334. Conditions and requirements for licensure of persons under eighteen; requests for cancellation of minor's driver's license; temporary driver's licenses; Board of Education approved programs; fee.

A. Minors at least sixteen years and three months old may be issued driver's licenses under the following conditions:

1. The minor shall submit a proper application and satisfactory evidence that he (i) is a resident of the Commonwealth; (ii) has successfully completed a driver education course approved by either the State Department of Education or, in the case of a course offered by a commercial driver training school licensed under Chapter 17 (§ 46.2-1700 et seq.) of this title, by the Department of Motor Vehicles; and (iii) is mentally, physically, and otherwise qualified to drive a motor vehicle safely.

2. The minor's application for a driver's license must be signed by a parent of the applicant, otherwise by the guardian having custody of him. However, in the event a minor has no parent or guardian, then a driver's license shall not be issued to him unless his application is signed by the judge of the juvenile and domestic relations district court of the city or county in which he resides. If the minor making the application is married or otherwise emancipated, in lieu of any parent's, guardian's or judge's signature, the minor may present proper evidence of the solemnization of the marriage or the order of emancipation.

3. The minor shall be required to state in his application whether or not he has been convicted of an offense triable by, or tried in, a juvenile and domestic relations district court or found by such court to be a child in need of supervision, as defined in § 16.1-228. If it appears that the minor has been adjudged not innocent of the offense alleged or has been found to be a child in need of supervision, the

Department shall not issue a license without the written approval of the judge of the juvenile and domestic relations district court making an adjudication as to the minor or the like approval of a similar court of the county or city in which the parent or guardian, respectively, of the minor resides.

4. The application for a permanent driver's license by a minor of the age of persons required to attend school pursuant to § 22.1-254 shall be accompanied by evidence of compliance with the compulsory school attendance law set forth in Article 1 (§ 22.1-254 et seq.) of Chapter 14 of Title 22.1. This evidence shall be provided in writing by the minor's parent. If the minor is unable to provide such evidence, he shall not be granted a driver's license until he reaches the age of eighteen or presents proper evidence of the solemnization of his marriage or an order of emancipation, or the parent, as defined in § 22.1-1, or other person standing in loco parentis has provided written authorization for the minor to obtain a driver's license.

A minor may, however, present a high school diploma or its equivalent or a certificate indicating completion of a prescribed course of study as defined by the local school board pursuant to § 22.1-253.13:4 as evidence of compulsory school attendance compliance.

~~5. The minor applicant shall certify in writing, on a form prescribed by the Commissioner, that he is a resident of the Commonwealth. The applicant's parent or guardian shall also certify that the applicant is a resident by signing the certification. Any minor providing proper evidence of the solemnization of his marriage or a certified copy of a court order of emancipation shall not be required to provide the parent's certification of residence.~~

B. Any custodial parent or guardian of an unmarried or unemancipated minor may, after the issuance of a permanent driver's license to such minor, file with the Department a written request that the license of the minor be canceled. When such request is filed, the Department shall cancel the license of the minor and the license shall not thereafter be reissued by the Department until a period of six months has elapsed from the date of cancellation or the minor reaches his eighteenth birthday, whichever shall occur sooner. Notwithstanding the foregoing provisions of this subsection, in the case of a minor whose parents have been awarded joint legal custody, a request that the license of the minor be cancelled must be signed by both legal custodians. In the event one parent is not reasonably available or the parents do not agree, one parent may petition the juvenile and domestic relations district court to make a determination that the license of the minor be cancelled.

C. The provisions of subsection A of this section requiring that an application for a driver's license be signed by the parent or guardian shall be waived by the Commissioner if the application is accompanied by proper evidence of the solemnization of the minor's marriage or a certified copy of a court order, issued under the provisions of Article 15 (§ 16.1-331 et seq.) of Chapter 11 of Title 16.1, declaring the applicant to be an emancipated minor.

D. A learner's permit accompanied by documentation verifying the minor's successful completion of an approved driver education course, signed by the minor's parent, guardian, legal custodian or other person standing in loco parentis, shall constitute a temporary driver's license for purposes of driving unaccompanied by a licensed driver as required in § 46.2-335, if all other requirements of this chapter have been met. The temporary license shall only be valid until the permanent license is presented as provided in § 46.2-336.

E. Notwithstanding the provisions of subsection A of this section requiring the successful completion of a driver education course approved by the State Department of Education, the Commissioner, on application therefor by a person at least sixteen years and three months old but less than eighteen years old, shall issue to the applicant a temporary driver's license valid for six months if he (i) certifies by signing, together with his parent or guardian, on a form prescribed by the Commissioner that he is a resident of the Commonwealth; (ii) is the holder of a valid driver's license from another state; and (iii) has not been found guilty of or otherwise responsible for an offense involving the operation of a motor vehicle. No temporary license issued under this subsection shall be renewed, nor shall any second or subsequent temporary license under this subsection be issued to the same applicant. Any such minor providing proper evidence of the solemnization of his marriage or a certified copy of a court order of emancipation shall not be required to obtain the signature of his parent or guardian for the temporary driver's license.

F. For persons qualifying for a driver's license through driver education courses approved by the Department of Education or courses offered by commercial driver training schools licensed by the Department, the application for the learner's permit shall be used as the application for the driver's license pursuant to § 46.2-335.

G. Driver's licenses shall be issued by the Department to minors successfully completing driver education courses approved by the Department of Education (i) when the Department receives from the school proper certification that the student (a) has successfully completed such course, including a road skills examination and (b) is regularly attending school and is in good academic standing or, if not in such standing or submitting evidence thereof, whose parent or guardian, having custody of such minor, provides written authorization for the minor to obtain a driver's license, which written authorization shall

244 be obtained on forms provided by the Department and indicating the Commonwealth's interest in the
245 good academic standing and regular school attendance of such minors; and (ii) upon payment of a fee of
246 \$2.40 per year, based on the period of the license's validity. For applicants attending public schools,
247 good academic standing may be certified by the public school principal or any of his designees. For
248 applicants attending nonpublic schools, such certification shall be made by the private school principal
249 or any of his designees; for minors receiving home schooling, such certification shall be made by the
250 home schooling parent or tutor. Any minor providing proper evidence of the solemnization of his
251 marriage or a certified copy of a court order of emancipation shall not be required to provide the
252 certification of good academic standing or any written authorization from his parent or guardian to
253 obtain a driver's license.
254 **2. That § 46.2-323.1 of the Code of Virginia is repealed.**