

031346874

HOUSE BILL NO. 2404

Offered January 8, 2003

Prefiled January 8, 2003

A BILL to amend and reenact §§ 46.2-323, 46.2-325, 46.2-334, 46.2-335, 46.2-335.2, 46.2-340, and 46.2-1702 of the Code of Virginia, relating to driver education for minors receiving home schooling.

Patrons—Oder, Black, Cole, Councill, Cox, Kilgore, Marrs, Nixon, Sears and Stump; Senators: Cuccinelli, Lambert, Martin, Newman, Puckett, Quayle, Wagner and Williams

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-323, 46.2-325, 46.2-334, 46.2-335, 46.2-335.2, 46.2-340, and 46.2-1702 of the Code of Virginia are amended and reenacted as follows:

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

A. Every application for a driver's license, temporary driver's permit, learner's permit, or motorcycle learner's permit shall be made on a form prescribed by the Department and the applicant shall write his usual signature in ink in the space provided on the form. The form shall include notice to the applicant of the duty to register with the Department of State Police as provided in § 19.2-298.1, if the applicant has been convicted of an offense for which registration with the Sex Offender and Crimes Against Minors Registry is required.

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

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

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

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

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

C. Every application for a driver's license shall include a color photograph of the applicant supplied 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 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 or by the Commissioner as provided in § 46.2-1702.

§ 46.2-325. Examination of applicants; waiver of Department's examination under certain circumstances.

The Department shall examine every applicant for a driver's license before issuing any license to determine (i) his physical and mental qualifications and his ability to drive a motor vehicle without jeopardizing the safety of persons or property and (ii) if any facts exist which would bar the issuance of a license under §§ 46.2-311 through 46.2-316, 46.2-334 or § 46.2-335. The examination, however, shall not include investigation of any facts other than those directly pertaining to the ability of the applicant to drive a motor vehicle with safety, or other than those facts declared to be prerequisite to the issuance of a license under this chapter. No applicant otherwise competent shall be required to demonstrate

INTRODUCED

HB2404

58 ability to park any motor vehicle except in an adequate parking space between horizontal markers, and
59 not between flags or sticks simulating parked vehicles. Applicants for licensure to drive motor vehicles
60 of the classifications referred to in § 46.2-328 shall submit to examinations which relate to the operation
61 of those vehicles.

62 Except for applicants subject to § 46.2-312, if the Commissioner is satisfied that an applicant has
63 demonstrated the same proficiency as required by the Department's examination through successful
64 completion of either (i) the driver education course approved by the Department of Education *or by the*
65 *Commissioner as provided in § 46.2-1702* or (ii) a driver training course offered by a commercial driver
66 training school licensed under Chapter 17 (§ 46.2-1700 et seq.) of this title, he may waive those parts of
67 the Department's examination provided for in this section that require the applicant to drive and park a
68 motor vehicle.

69 § 46.2-334. Conditions and requirements for licensure of persons under eighteen; requests for
70 cancellation of minor's driver's license; temporary driver's licenses; Board of Education approved
71 programs; fee.

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

74 1. The minor shall submit a proper application and satisfactory evidence that he (i) is a resident of
75 the Commonwealth; (ii) has successfully completed a driver education course approved by either the
76 State Department of Education, *by the Commissioner as provided in § 46.2-1702* or, in the case of a
77 course offered by a commercial driver training school licensed under Chapter 17 (§ 46.2-1700 et seq.) of
78 this title, by the Department of Motor Vehicles; and (iii) is mentally, physically, and otherwise qualified
79 to drive a motor vehicle safely.

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

87 3. The minor shall be required to state in his application whether or not he has been convicted of an
88 offense triable by, or tried in, a juvenile and domestic relations district court or found by such court to
89 be a child in need of supervision, as defined in § 16.1-228. If it appears that the minor has been
90 adjudged not innocent of the offense alleged or has been found to be a child in need of supervision, the
91 Department shall not issue a license without the written approval of the judge of the juvenile and
92 domestic relations district court making an adjudication as to the minor or the like approval of a similar
93 court of the county or city in which the parent or guardian, respectively, of the minor resides.

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

102 A minor may, however, present a high school diploma or its equivalent or a certificate indicating
103 completion of a prescribed course of study as defined by the local school board pursuant to
104 § 22.1-253.13:4 as evidence of compulsory school attendance compliance.

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

110 B. Any custodial parent or guardian of an unmarried or unemancipated minor may, after the issuance
111 of a permanent driver's license to such minor, file with the Department a written request that the license
112 of the minor be canceled. When such request is filed, the Department shall cancel the license of the
113 minor and the license shall not thereafter be reissued by the Department until a period of six months has
114 elapsed from the date of cancellation or the minor reaches his eighteenth birthday, whichever shall occur
115 sooner. Notwithstanding the foregoing provisions of this subsection, in the case of a minor whose
116 parents have been awarded joint legal custody, a request that the license of the minor be cancelled must
117 be signed by both legal custodians. In the event one parent is not reasonably available or the parents do
118 not agree, one parent may petition the juvenile and domestic relations district court to make a
119 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 *or by the Commissioner as provided in § 46.2-1702*, 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 by the Commissioner as provided in § 46.2-1702*, 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 *or by the Commissioner as provided in § 46.2-1702* (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 be obtained on forms provided by the Department and indicating the Commonwealth's interest in the good academic standing and regular school attendance of such minors; and (ii) upon payment of a fee of \$2.40 per year, based on the period of the license's validity. For applicants attending public schools, good academic standing may be certified by the public school principal or any of his designees. For applicants attending nonpublic schools, such certification shall be made by the private school principal or any of his designees; for minors receiving home schooling, such certification shall be made by the home schooling parent or ~~the~~ guardian as provided in § 46.2-1702. 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 certification of good academic standing or any written authorization from his parent or guardian to obtain a driver's license.

§ 46.2-335. Learner's permits; fees.

A. The Department, on receiving from any Virginia resident over the age of fifteen years and six months an application for a learner's permit or motorcycle learner's permit, may, subject to the applicant's satisfactory documentation of meeting the requirements of this chapter and successful completion of the written or automated knowledge and vision examinations and, in the case of a motorcycle learner's permit applicant, the automated motorcycle test, issue a permit entitling the applicant, while having the permit in his immediate possession, to drive a motor vehicle or, if the application is made for a motorcycle learner's permit, a motorcycle, on the highways, when accompanied by any licensed driver twenty-one years of age or older or by his parent or legal guardian, or by a brother, sister, half-brother, half-sister, step-brother, or step-sister eighteen years of age or older. The accompanying person shall be (i) alert, able to assist the driver, and actually occupying a seat beside the driver or, for motorcycle instruction, providing immediate supervision from a separate accompanying motorcycle and (ii) lawfully permitted to operate the motor vehicle or accompanying motorcycle at that time.

The Department shall not, however, issue a learner's permit or motorcycle learner's permit to any minor applicant required to provide 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, unless such applicant is in good

181 academic standing or, if not in such standing or submitting evidence thereof, whose parent or guardian,
182 having custody of such minor, provides written authorization for the minor to obtain a learner's permit
183 or motorcycle learner's permit, which written authorization shall be obtained on forms provided by the
184 Department and indicating the Commonwealth's interest in the good academic standing and regular
185 school attendance of such minors. Any minor providing proper evidence of the solemnization of his
186 marriage or a certified copy of a court order of emancipation shall not be required to provide the
187 certification of good academic standing or any written authorization from his parent or guardian to
188 obtain a learner's permit or motorcycle learner's permit.

189 Such permit, except a motorcycle learner's permit, shall be valid until the holder thereof either is
190 issued a driver's license as provided for in this chapter or no longer meets the qualifications for issuance
191 of a learner's permit as provided in this section. Motorcycle learner's permits shall be valid for twelve
192 months. When a motorcycle learner's permit expires, the permittee may, upon submission of an
193 application, payment of the application fee, and successful completion of the examinations, be issued
194 another motorcycle learner's permit valid for twelve months.

195 B. No driver's license shall be issued to any such person who is less than eighteen years old unless,
196 while holding a learner's permit, he has driven a motor vehicle for at least forty hours, at least ten of
197 which were after sunset, as certified by his parent or legal guardian unless the person is married or
198 otherwise emancipated.

199 C. No learner's permit shall authorize its holder to operate a motor vehicle with more than one
200 passenger who is less than eighteen years old, except when participating in a driver education program
201 approved by the Department of Education *or by the Commissioner as provided in § 46.2-1702* or a
202 course offered by a commercial driver training school licensed by the Department. This passenger
203 limitation, however, shall not apply to the driver's family or household as defined in subsection B of
204 § 46.2-334.01.

205 D. No learner's permit shall authorize its holder to operate a motor vehicle between midnight and
206 four o'clock a.m.

207 E. A violation of subsection C or D of this section shall not constitute negligence, be considered in
208 mitigation of damages of whatever nature, be admissible in evidence or be the subject of comment by
209 counsel in any action for the recovery of damages arising out of the operation, ownership, or
210 maintenance of a motor vehicle, nor shall anything in this subsection change any existing law, rule, or
211 procedure pertaining to any such civil action.

212 F. The provisions of §§ 46.2-323 and 46.2-334 relating to evidence and certification of Virginia
213 residence and, in the case of persons of school age, compliance with the compulsory school attendance
214 law shall apply, mutatis mutandis, to applications for learner's permits and motorcycle learner's permits
215 issued under this section.

216 G. For persons qualifying for a driver's license through driver education courses approved by the
217 Department of Education *or by the Commissioner as provided in § 46.2-1702* or courses offered by
218 commercial driver training schools licensed by the Department, the application for the learner's permit
219 shall be used as the application for the driver's license.

220 H. The Department shall charge a fee of three dollars for each learner's permit and motorcycle
221 learner's permit issued under this section. Fees for issuance of learner's permits shall be paid into the
222 driver education fund of the state treasury; fees for issuance of motorcycle learner's permits shall be paid
223 into the state treasury and credited to the Motorcycle Rider Safety Training Program Fund created
224 pursuant to § 46.2-1191. It shall be unlawful for any person, after having received a learner's permit, to
225 drive a motor vehicle without being accompanied by a licensed driver as provided in the foregoing
226 provisions of this section; however, a learner's permit other than a motorcycle learner's permit,
227 accompanied by documentation verifying that the driver is at least sixteen years and three months old
228 and has successfully completed an approved driver's education course, signed by the minor's parent,
229 guardian, legal custodian or other person standing in loco parentis, shall constitute a temporary driver's
230 license for the purpose of driving unaccompanied by a licensed driver eighteen years of age or older, if
231 all other requirements of this chapter have been met. Such temporary driver's license shall only be valid
232 until the driver has received his permanent license pursuant to § 46.2-336.

233 I. Nothing in this section shall be construed to permit the issuance of a learner's permit entitling a
234 person to drive a commercial motor vehicle, except as provided by the Virginia Commercial Driver's
235 License Act (§ 46.2-341.1 et seq.).

236 J. The following limitations shall apply to operation of motorcycles by all persons holding
237 motorcycle learner's permits:

238 1. Operation shall be limited to the period between one-half hour after sunrise and one-half hour
239 before sunset.

240 2. Operation on limited access highways is prohibited.

241 3. The operator shall wear an approved safety helmet as provided in § 46.2-910.

242 4. Operation shall be under the immediate supervision of a person licensed to operate a motorcycle

who is twenty-one years of age or older or by his parent or legal guardian, or by a brother, sister, half-brother, half-sister, step-brother, or step-sister eighteen years of age or older.

5. No person other than the operator shall occupy the motorcycle.

K. No holder of a learner's permit or motorcycle learner's permit shall be allowed to take the behind-the-wheel examination administered by the Department more than three times in any three-month period.

L. Any violation of this section shall be punishable as a Class 2 misdemeanor.

§ 46.2-335.2. Learner's permits; required before driver's license; minimum holding period.

A. No person under the age of nineteen years shall be eligible to receive a driver's license pursuant to § 46.2-334 unless the Department has previously issued such person a learner's permit pursuant to § 46.2-335 and such person has satisfied the minimum holding period requirements set forth in subsection B, or unless such person is the holder of a valid driver's license from another state and qualifies for a temporary license under subsection E of § 46.2-334 or subsection C of this section.

B. Effective July 1, 2002, any person under the age of nineteen years issued a learner's permit pursuant to § 46.2-335 shall hold such permit for a minimum period of nine months or until he reaches the age of nineteen years, whichever occurs first.

C. Notwithstanding the provisions of subsection D of § 46.2-323, requiring the successful completion of a driver education course approved by the State Department of Education *or by the Commissioner as provided in § 46.2-1702*, the Commissioner, on application therefor by a person who is at least eighteen years old but less than nineteen years old, shall issue to the applicant a temporary driver's license valid for six months if he (i) certifies by signing 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 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 a second or subsequent temporary license under this subsection be issued to the same applicant.

§ 46.2-340. Information concerning school bus drivers and driver education instructors.

A. At the beginning of each school year, and whenever changes need to be made, each local school division shall furnish to the Department of Motor Vehicles the name, driver's license number, and commercial driver's license number of all persons driving school buses for that school division. Whenever any commercial driver's license with a school bus driver's endorsement is suspended or revoked, or the holder of a driver's license with a school bus driver's endorsement or commercial driver's license with a school bus driver's endorsement is convicted in any court of reckless driving or driving while intoxicated, the Department shall notify the affected local school division of the name and driver's license number or commercial driver's license number of the driver involved.

B. At the beginning of each school year, and whenever changes need to be made, each local school division, *home school*, and private school providing a driver education program approved by the Department of Education *or by the Commissioner as provided in § 46.2-1702* shall furnish to the Department of Motor Vehicles the name and driver's license number of all persons providing instruction in driver education for that school division, *home school*, or private school. Whenever a driver's license of a person providing such instruction is suspended or revoked, or such person is convicted in any court of reckless driving or driving while intoxicated, the Department shall notify the affected local school division ~~or~~, private school, *or the Commissioner* of the name and driver's license number of the driver involved.

If the driving record of such driver education instructor accumulates more than six demerit points based on convictions occurring in any calendar year, the Department shall notify the relevant local school division or private school of the name and driver's license number of the driver. Safe driving points shall not be used to reduce the six demerit points. No driver education program in a public school division or a private school shall retain its approval by the Department of Education unless such a person who has accumulated such six demerit points is removed from providing behind-the-wheel driver education instruction in the private school or public school division for a period of twenty-four months. *No driver education program in a home school shall retain its approval by the Commissioner as provided in § 46.2-1702 until such person who has accumulated such 6 demerit points has no further accumulation of demerit points for 24 months.*

C. The provisions of the Government Data Collection and Dissemination Practices Act (Chapter 38 of Title 2.2, § 2.2-3800 et seq.) shall not apply to the exchange of information under this section.

§ 46.2-1702. Certification of driver education courses by Commissioner.

The Commissioner shall have the authority to approve as a driver education course satisfying the requirements of § 46.2-334 any course which is offered by any commercial driver training school licensed under the provisions of this chapter if he finds that the course is of comparable content and quality to that offered in the Commonwealth's public schools. In making such finding, the Commissioner shall not require that the instructors of any commercial driver training school meet the certification

304 requirements of teachers in the Commonwealth's public schools. The Commissioner may accept twenty
305 years' service with the Virginia Department of State Police by a person who retired or resigned while in
306 good standing from such Department *or 20 years of driving experience by a parent or guardian who*
307 *has complied with § 22.1-254.1*, in lieu of requirements established by the Department of Education for
308 instructor qualification. *The parent or guardian shall hold a Virginia driver's license, shall not be*
309 *disabled due to a mental illness, shall not have been convicted within the previous 20 years of driving*
310 *while intoxicated, and shall not have been convicted of criminally negligent homicide, including a*
311 *sentence of probation.*