

VIRGINIA ACTS OF ASSEMBLY -- 2004 SESSION

CHAPTER 587

An Act to amend and reenact §§ 46.2-1700, 46.2-1701, 46.2-1702, 46.2-1703, 46.2-1705, and 46.2-1707 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 46.2-1701.2 and 46.2-1701.3, relating to driver training schools.

[S 288]

Approved April 12, 2004

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-1700, 46.2-1701, 46.2-1702, 46.2-1703, 46.2-1705, and 46.2-1707 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 46.2-1701.2 and 46.2-1701.3 as follows:

§ 46.2-1700. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Class A licensee" means a *driver training school which that provides occupational training in the operation of tractor-trailers or motor vehicles in excess of 20,000 pounds, exclusive of any load commercial motor vehicles as defined in § 46.2-341.4.*

"Class B licensee" means a *driver training school which that provides training in the operation of any type of motor vehicle other than those included in Class A licensure other than motorcycles and commercial motor vehicles as defined in § 46.2-341.4.*

"~~Commercial driver~~ "Driver training school" or "school" means a business enterprise conducted by an individual, association, partnership, or corporation, for the education and training of persons, either practically or theoretically or both, to operate or drive motor vehicles, and charging a consideration or tuition for such services. "~~Commercial driver~~ "Driver training school" or "school" does not mean any college, university, school established pursuant to § 46.2-1314, school maintained or classes conducted by employers for their own employees where no fee or tuition is charged, schools or classes owned and operated by or under the authority of bona fide religious institutions, or by the Commonwealth or any political subdivision thereof, *training programs for school bus operators established pursuant to § 22.1-181, driver education programs established pursuant to § 22.1-205, or schools accredited by accrediting associations approved by the Department of Education; however, if any such entity or program excluded from the definition of "driver training school" offers driver education and training through a contractual arrangement with another person for consideration, then that other person shall be considered a driver training school subject to the requirements of this chapter.*

"Instructor" means any person, whether acting for himself as operator of a ~~commercial~~ driver training school or for such school for compensation, who teaches, conducts classes, gives demonstrations, or supervises persons learning to operate or drive a motor vehicle.

§ 46.2-1701. Licenses required for school and instructor; fees.

No ~~commercial~~ driver training school shall be established or continue operation unless the school obtains from the Commissioner a license authorizing the school to operate within this Commonwealth.

No instructor shall perform the actions enumerated in the definition of "instructor" in § 46.2-1700 unless he obtains from the Commissioner a license authorizing him to act as driving instructor.

The Commissioner shall have authority to set and collect school and instructor licensing fees. All licensing fees collected by the Commissioner under this chapter shall be paid into the state treasury and set aside as a special fund to meet the expenses of the Department of Motor Vehicles.

§ 46.2-1701.2. *Schools required to have established places of business.*

No license shall be issued or renewed to any driver training school unless it has an established place of business in the Commonwealth that:

- 1. Satisfies all local zoning regulations;*
- 2. Has office space in which the driver training school houses all records required to be maintained under § 46.2-1701.3 and which:*
 - a. Is equipped with a desk, chairs, filing space, a working telephone listed in the name of the school, and working utilities;*
 - b. Complies with federal, state, and local health, fire, and building code requirements; and*
 - c. Meets all other place of business and recordkeeping requirements set forth in this chapter and established in regulations promulgated by the Department.*

§ 46.2-1701.3. *Student records to be maintained.*

All student records and other records, as required by the Department, shall be maintained on the premises of the licensed location. The Commissioner may, on written request from a driver training school, permit records to be maintained at a location other than the premises of the licensed location for good cause shown. All records shall be preserved in original form or in film, magnetic, electronic,

or optical media, including but not limited to microfilm or microfiche, for a period of three years in a manner that permits systematic retrieval. All records required to be maintained by the provisions of this section or by regulation shall be available to the Commissioner or his agents during regular business hours or at any other reasonable time, as determined by the Commissioner.

§ 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 requirements of teachers in the Commonwealth's public schools.

The Commissioner shall have authority to approve any driver education course offered by any Class A licensee if he finds the course meets the requirements for such courses as set forth in this chapter and as otherwise established by the Department. Driver education courses offered by any Class B licensee shall be based on the driver education curriculum currently approved by the Department of Education and the Department.

The Commissioner may accept ~~twenty~~ 20 years' service with the Virginia Department of State Police by a person who retired or resigned while in good standing from such Department in lieu of requirements established by the Department of Education for instructor qualification.

§ 46.2-1703. Authority to promulgate regulations.

The Commissioner may promulgate regulations necessary to (i) enforce the provisions of this chapter, ~~to~~ (ii) provide adequate training for students, (iii) *protect student and public safety* and ~~to~~ (iv) carry out the other provisions of this chapter. These regulations shall include but need not be limited to curriculum requirements, contractual arrangements with students, obligations to students, facilities and equipment, qualifications ~~of~~ *and other requirements for* instructors, *school ownership requirements*, *surety bond requirements*, and financial stability of schools.

§ 46.2-1705. Suspension, revocation, cancellation or refusal to renew license; limitations on operations; imposition of monetary penalties.

A. Except as otherwise provided in this section, no license issued under this chapter shall be suspended, revoked, or cancelled or renewal thereof denied, no limitation on operations shall be imposed pursuant to subsection F of this section, and no monetary penalty shall be imposed pursuant to § 46.2-1706, unless the licensee has been furnished a written copy of the complaint against him and the grounds upon which the action is taken and has been offered an opportunity for an administrative hearing to show cause why such action should not be taken.

B. The order suspending, revoking, cancelling, or denying renewal of a license, imposing a limitation on operation, or imposing a monetary penalty, except as otherwise provided in subsection E of this section, shall not become effective until the licensee has had ~~thirty~~ 30 days after notice of the opportunity for a hearing to make a written request for such a hearing. If no hearing has been requested within such ~~thirty~~ 30-day period, the order shall become effective and no hearing shall thereafter be held. A timely request for a hearing shall automatically stay operation of the order until after the hearing.

C. Notice of an order suspending, revoking, cancelling or denying renewal of a license, imposing a limitation on operation, or imposing a monetary penalty and advising the licensee of the opportunity for a hearing shall be mailed to the licensee by registered mail to the school address ~~and the licensee's residence address~~ as shown on the licensee's *most recent* application for license and shall be considered served when mailed.

D. No licensee whose license has been revoked or cancelled or who has been denied renewal shall apply for a new license within 180 days of such action.

E. Notwithstanding the provisions of subsection B of this section, an order suspending, revoking, *cancelling*, or denying renewal of an instructor license shall be effective immediately if the order is based upon a finding by the Commissioner (i) that the instructor's driving record is such that he is not presently qualified to act as an instructor or (ii) *that he is otherwise a danger to the safety of his students or the public*. Such finding by the Commissioner shall be based on records of driver's license suspension or revocation, upon records of conviction of serious motor vehicle related offenses punishable as a misdemeanor or felony including driving under the influence or reckless driving, and upon such other criteria as the Commissioner may establish by regulation.

Notice of the order of suspension, revocation, cancellation, or denial shall be in writing and mailed in accordance with subsection C. Upon receipt of a request for a hearing appealing the suspension, revocation, cancellation, or denial, the licensee shall be afforded the opportunity for a hearing as soon as practicable, but in no case later than 30 days from receipt of the hearing request. The order shall remain in effect pending the outcome of the hearing.

F. If the Commissioner makes a finding that the conduct of a licensee is in violation of this chapter or regulations adopted pursuant to this chapter, he may *suspend, revoke, cancel, or refuse to renew the license of such licensee or may order the licensee, in accordance with subsections A, B and C of this*

section, to limit the types of driver education training provided, restrict the use of the licensee's training vehicles, or both. Whenever the Commissioner takes action *limiting operations* under this subsection, the Commissioner shall require the licensee to post conspicuous notice of the Commissioner's action under this subsection at the same location as the licensee's license was issued under this chapter, as soon as the Commissioner's order becomes effective. Orders of the Commissioner limiting operations and requiring posting of notices shall remain in effect until (i) *the time period for the limitations or restriction has expired* and the Commissioner makes a finding that the violations causing the imposition of such limitations *or restrictions* have been remedied by the licensee or (ii) the Commissioner's order is lifted as the result of an appeal under § 46.2-1704 or by a court of competent jurisdiction.

G. If the Commissioner makes a finding, after conducting a preliminary investigation, that the conduct of a licensee (i) is in violation of this chapter or regulations adopted pursuant to this chapter and (ii) such violation constitutes a danger to public safety, the Commissioner may issue an order suspending the licensee's license to operate a ~~commercial~~ driver training school. Notice of the suspension shall be in writing and mailed in accordance with subsection C of this section. Upon receipt of a request for a hearing appealing the suspension, the licensee shall be afforded the opportunity for a hearing ~~within~~ *as soon as practicable, but in no case later than 30 days from receipt of the hearing request.* The suspension shall remain in effect pending the outcome of the hearing.

§ 46.2-1707. Unlawful acts; prosecution; proceedings in equity.

A. It shall be unlawful for any person to engage in any of the following acts:

1. Practicing as a ~~commercial~~ driver training school or as an instructor without holding a valid license as required by statute or regulation;
2. Making use of any designation provided by statute or regulation to denote a standard of professional or occupational competence without being duly certified or licensed;
3. Performing any act or function which is restricted by statute or regulation to persons holding a ~~commercial~~ driver training school or instructor license or certification, without being duly certified or licensed;
4. Materially misrepresenting facts in an application for licensure, certification or registration;
5. Willfully refusing to furnish the Department information or records required or requested pursuant to statute or regulation; or
6. Violating any statute or regulation governing the practice of any ~~commercial~~ driver training school or instructor regulated pursuant to this chapter.

Any person who willfully engages in any unlawful act enumerated in this section shall be guilty of a Class 1 misdemeanor. However, the third or any subsequent conviction for violating this section during a ~~thirty-six~~ 36-month period shall constitute a Class 6 felony.

B. In addition to the provisions of subsection A of this section, the Department may institute proceedings in equity to enjoin any person from engaging in any unlawful act enumerated in this section. Such proceedings shall be brought in the name of the Commonwealth in the circuit court of the city or county in which the unlawful act occurred or in which the defendant resides.

2. That any person offering driver education and training through a contractual arrangement for consideration with an entity or program excluded from the definition of "driver training school" set forth in § 46.2-1700 of the Code of Virginia shall have 90 days from the effective date of this act to comply with the provisions of this act and its associated regulations.