

VIRGINIA ACTS OF ASSEMBLY -- 2004 SESSION

CHAPTER 622

An Act to amend and reenact § 46.2-490 of the Code of Virginia, to amend the Code of Virginia by adding sections numbered 46.2-490.3 through 46.2-490.11, and to repeal § 46.2-490.2 of the Code of Virginia, relating to driver improvement clinics.

[H 847]

Approved April 12, 2004

Be it enacted by the General Assembly of Virginia:

1. That § 46.2-490 of the Code of Virginia is amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 46.2-490.3 through 46.2-490.11 as follows:

§ 46.2-490. Establishment of driver improvement clinic program; application fees.

A. The Commissioner shall, in his discretion, contract with such entities as the Commissioner deems fit, including private or governmental entities, to develop curricula for a statewide driver improvement clinic program. Such program shall include instruction concerning *but not limited to* (i) alcohol and drug abuse, (ii) aggressive driving, (iii) distracted driving, ~~and~~ (iv) motorcycle awareness, *and* (v) *work zone safety*. The driver improvement clinic program shall be established for the purpose of instructing persons identified by the Department and the court system as problem drivers in need of driver improvement education and training and for those drivers interested in improved driving safety. The clinics shall be composed of uniform education and training programs designed for the rehabilitation of problem drivers, and for the purpose of creating a lasting and corrective influence on their driving performance. The clinics shall operate in localities based on their geographical location so as to be reasonably accessible to persons attending these clinics.

B. All businesses, organizations, governmental entities or individuals that want to provide driver improvement clinic instruction *as a driver improvement clinic or instructor* in the Commonwealth using approved curricula shall apply to the Department to be ~~certified~~ *licensed* to do so, based on criteria established by the Department. A nonrefundable annual *license* application fee of \$100 shall be paid to the Department by all such businesses, organizations, governmental entities or individuals. A *nonrefundable annual license fee of \$25 shall also be paid for each additional clinic location operated by a clinic. A nonrefundable annual license fee of \$50 shall be paid to the Department by a person applying for a clinic instructor license.* All such application fees collected by the Department shall be paid by the Commissioner into the state treasury and shall be set aside as a special fund to be used to meet the expenses of the Department.

§ 46.2-490.3. *Definitions.*

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

"Computer-based clinic provider," means any clinic licensed by the Department to conduct driver improvement clinics via the Internet or other electronic means approved by the Department.

"Driver improvement clinic" or "clinic" means an individual, partnership or corporation, college or university, or government entity licensed by the Department as prescribed by this chapter for the purpose of instructing persons identified by the Department and the court system as problem drivers; in need of driver improvement education and training; and for drivers interested in improving their own knowledge of highway safety.

"Instructor" means any person, whether acting for himself as operator of a driver training clinic or for such clinic for compensation, who is licensed by the Department as prescribed by this chapter and who teaches, conducts classes, gives demonstrations, or supervises persons undergoing mandatory or voluntary driver improvement training.

§ 46.2-490.4. *Action on applications; hearing on denial.*

The Commissioner shall act on any application for a clinic or instructor license under this chapter within 30 days after receipt by either granting or denying the application. Any applicant denied a clinic or instructor license shall, on his written request, made within 30 days, be given a hearing at a time and place determined by the Commissioner or his designee. All hearings under this section shall be public and shall be held promptly. The applicant may be represented by counsel. Any applicant denied a license may not apply again for a license for 30 days from the date of denial of the application or outcome of the hearing.

§ 46.2-490.5. *Suspension, revocation, cancellation or refusal to renew clinic license or instructor license; 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, and no monetary penalty shall be imposed pursuant to § 46.2-490.6, 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, canceling, or denying renewal of a license, or imposing a monetary penalty, except as otherwise provided in subsection D of this section, shall not become effective until the licensee has had 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 30-day period, the order shall become effective and no hearing shall thereafter be held. Except as provided in subsection D of this section, a timely request for a hearing shall automatically stay operation of the order until after the hearing.

C. Notice of an order suspending, revoking, canceling or denying renewal of a license, 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 clinic address as shown in the Department's records and shall be considered served when mailed.

D. Notwithstanding the provisions of subsection B of this section, if the Commissioner makes a finding, after conducting a preliminary investigation, that the conduct of a licensee (i) is in violation of this chapter, regulations adopted pursuant to this chapter, or criteria established by the Department pursuant to this chapter, and (ii) such violation constitutes a danger to public safety, the Commissioner may issue an order suspending, revoking, or denying renewal of the instructor's license, the clinic's license, or both, as deemed appropriate by the Commissioner. Orders suspending, revoking, or denying renewal of such license pursuant to this subsection shall be effective immediately. Notice of the suspension, revocation or denial 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 as soon as practicable, but no longer than 30 days of receipt of the hearing request. The suspension shall remain in effect pending the outcome of the hearing.

§ 46.2-490.6. Civil penalties.

In addition to any other sanctions or remedies available to the Commissioner under this chapter, the Commissioner may assess a civil penalty not to exceed \$1,000 for any violation of any provision of this chapter, any regulation promulgated thereunder, or any criteria established by the Department pursuant to this chapter. The penalty may be sued for and recovered in the name of the Commonwealth.

§ 46.2-490.7. Acts of owners, operators, officers, directors, partners, and instructors.

If a licensee is a partnership or corporation, it shall be sufficient cause for the denial, suspension, or revocation of a clinic license if any, owner, operator, officer, director, or trustee of the partnership or corporation, or any member in the case of a partnership, has committed any act or omitted any duty which would be cause for refusing, suspending, or revoking a license issued to him as an individual under this chapter. Each licensee shall be responsible for the acts of any of his instructors while acting as his agent, if the clinic approved of those acts or had knowledge of those acts or other similar acts and after such knowledge retained the benefit, proceeds, profits, or advantages accruing from those acts or otherwise ratified those acts.

§ 46.2-490.8. Grounds for denying, suspending, or revoking licenses of clinics and clinic instructors.

A clinic or instructor license may be denied, suspended, or revoked on any one or more of the following grounds:

1. Material misstatement or omission in an application for a driver improvement clinic license or a driver improvement clinic instructor license;
2. Failure to comply subsequent to receipt of a written warning from the Department for any willful failure to comply with any provision of this chapter or any regulation promulgated by the Commissioner under this chapter; or any criteria established by the Department pursuant to this chapter;
3. Defrauding any student in a driver improvement clinic, or any other person in the conduct of a driver improvement clinic's business;
4. Employment of fraudulent devices, methods or practices in connection with compliance with the requirements under the statutes of the Commonwealth;
5. Having used deceptive acts or practices;
6. Knowingly advertising by any means any assertion, representation, or statement of fact which is untrue, misleading, or deceptive in any particular relating to the conduct of a clinic;
7. Having been convicted of any fraudulent act in connection with a driver improvement clinic or commercial driver training school, or any consumer-related fraud;
8. Having been convicted of any criminal act involving the operation of a driver improvement clinic or commercial driver training school;
9. Having been convicted of a felony;
10. Failing or refusing to pay civil penalties imposed by the Department pursuant to § 46.2-490.6.

§ 46.2-490.9. Unlawful acts; prosecution; proceedings in equity.

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

1. Operate as a driver improvement clinic or as an instructor without holding a valid license as required by statute or regulation;
2. Make use of any designation provided by statute or regulation to denote a standard of professional or occupational competence without being duly licensed;

3. *Perform any act or function that is restricted by statute or regulation to persons holding a driver improvement clinic or instructor license, without being duly licensed;*

4. *Materially misrepresenting facts in an application for a license;*

5. *Willfully refusing to furnish the Department information or records required or requested pursuant to statute, regulation, or criteria established by the Department pursuant to § 46.2-490.*

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.

C. Any person who willfully engages in any unlawful act enumerated in this section shall be guilty of a Class 1 misdemeanor.

§ 46.2-490.10. Changes in form of ownership or name.

Any change in the form of ownership or the addition or deletion of a partner shall require a new application and license. The addition or deletion of a clinic site or change in the name of a clinic shall require immediate notification to the Department and the Department may endorse the change on the license as appropriate. The change of an officer or director of a corporation shall be made at the time of license renewal.

§ 46.2-490.11. Reports, records of licensed computer-based clinic providers.

A. The Department is hereby authorized to require annual, periodical, or special reports from computer-based clinic providers the Department has authorized to conduct clinics; to prescribe the manner and form in which such reports shall be made; and to require from such computer-based clinic providers specific answers to all questions upon which the Department may deem information to be necessary. Such reports shall be under oath whenever the Department so requires. The Department may also require any computer-based clinic provider to file with it a true copy of each or any contract, agreement, or arrangement between such licensees and any person in relation to the provisions of this chapter.

B. The Department may, in its discretion, prescribe (i) the forms of any and all accounts, records, and memoranda to be kept by licensed computer-based clinic providers and (ii) the length of time such accounts, records, and memoranda shall be preserved.

2. That § 46.2-490.2 of the Code of Virginia is repealed.