

VIRGINIA ACTS OF ASSEMBLY -- 2004 SESSION

CHAPTER 734

An Act to amend and reenact §§ 46.2-1188 through 46.2-1192 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 46.2-1190.1 through 46.2-1190.7, relating to motorcycle rider safety; penalties.

[H 532]

Approved April 12, 2004

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-1188 through 46.2-1192 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 46.2-1190.1 through 46.2-1190.7 as follows:

§ 46.2-1188. Motorcycle rider safety training courses.

"Motorcycle rider safety training courses" shall mean courses of instruction in the operation of motorcycles, including instruction in the safe on-road operation of motorcycles, the rules of the road, and the laws of the Commonwealth relating to motor vehicles. Courses shall meet the requirements of this article and be approved by the Department of Motor Vehicles. *Qualifying providers of such courses shall either be reimbursed for eligible costs or not be reimbursed as provided in § 46.2-1192.*

§ 46.2-1189. Authority of the Department of Motor Vehicles.

The Department of Motor Vehicles may do all things necessary to carry out the purposes of this article, including ~~the promulgation of regulations not inconsistent with law. Where such course is authorized at a high school, the Department shall work with the Department of Education's section of driver education to implement such course entering into contracts for administrative and other operational support for motorcycle rider safety training centers.~~

§ 46.2-1190. Regional motorcycle rider safety training centers; requirements.

~~Any high school, institution of higher education, or safety training expert authorized by the Department~~ A. Any public or private agency, organization, school, institution of higher education, partnership, corporation, or individual that meets the program requirements set forth in this article shall be eligible for participation in the program and may organize a regional motorcycle rider safety training center and offer motorcycle rider safety training courses.

B. No such agency, organization, business or individual shall operate a motorcycle rider safety training center without a license. Such agencies, organizations, businesses and individuals shall apply to the Department for a license pursuant to § 46.2-1192. The applications for training center licenses shall include, but not be limited to:

1. The address and detailed description of the facility or facilities where the course shall be conducted;

2. The name, address, federal identification number, and telephone number of the agency, organization, school, institution of higher education, partnership, or corporation organized as a training center;

3. The name, address, social security number, and telephone number of the individual who is authorized to obligate the training center;

4. The names, addresses, social security numbers, and telephone numbers of the administrator and the instructors;

5. For those agencies, organizations, businesses, and individuals that apply to receive reimbursement, the names, addresses, social security numbers, and telephone numbers of all individuals who are to receive reimbursement;

6. A planned course schedule including course type, dates, and hours of course conduct;

7. The projected number of students to be trained in the program during the calendar year;

8. Detailed specifications of the curricula intended for use;

9. For those agencies, organizations, businesses, and individuals that apply to receive reimbursement, a planned course budget to include all estimated costs for course operation, administration, instructors' salaries, insurance, advertising, purchase of test books, equipment and materials, and other course-related expenses;

10. For those agencies, organizations, businesses, and individuals that apply to receive reimbursement, estimated course fees to be charged to participants;

11. Verification of adequate insurance coverage to protect both the Commonwealth and the training center and all instructors, aides, and participants in any course conducted under the program, including the following:

a. Minimum employers liability - \$100,000;

b. Minimum commercial general liability - \$500,000 combined single limit;

c. Minimum automobile liability - \$500,000 combined single limit; and
d. Workers' compensation insurance in accordance with § 2.2-4332 and Chapter 8 (§ 65.2-800 et seq.) of Title 65;

12. Verification of proper safety equipment and a sufficient number of training motorcycles for novice rider courses;

13. Verification that the designated classrooms, ranges, and motorcycle and equipment storage areas are available for all training courses offered by the training center at that site and that they comply with all necessary zoning, health, and safety codes;

14. Criminal background checks on all corporate officers, owners, administrators, and all individuals authorized to obligate the training center; and

15. A statement as to the ability and willingness to meet all requirements set forth in this article.

The Department shall issue licenses to applicants whose curricula, facilities, equipment, corporate officers, administrators, instructors, and all individuals authorized to obligate the training center meet the requirements established by the Department and set forth in this article, subject to the provisions of § 46.2-1192.

C. The Commissioner shall act on any application for a license under this article within 30 days after receipt by either granting or denying the application. The Commissioner may, as may be necessary during the initial review and evaluation of an application, request additional information from an applicant, thereby extending the period for granting or denying a license by not more than 30 days from the receipt of such additional information. Any applicant denied a license shall, on his written request made within 30 days of the Commissioner's action, 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 as soon as practicable, but in no case later than 30 days from receipt of the hearing request. The applicant may be represented by counsel. Any applicant denied a license may not apply again for the same type of license for 180 calendar days from the date of denial of the application.

D. The facilities, equipment, curriculum, accreditation, and geographic areas in which each training center may offer courses shall be approved by the Department. The location of the training centers shall be in accordance with the Department's administrative districts. No training center shall change its location without the approval of the Department. Training centers shall provide courses for either novice, experienced or sidecar and three-wheeled motorcyclists or any of the three, depending upon the curricula used. Training centers shall maintain such records and provide such reports as determined by the Department. Training centers shall submit all reports required by the Department for evaluation. The Department shall monitor and evaluate the performance of the training centers and the effectiveness of the program in training motorcyclists.

E. Training centers shall ensure that instructors maintain the minimum qualifications and meet any other instructor requirements established in this article or otherwise established by the Department. The Department may, pursuant to subsection C of § 46.2-1190.5, terminate a training course if it finds an instructor in violation of any provision of this article.

Instructors shall meet the requirements of this article, the Department and the requirements of the institution, or safety training expert public or private agency, organization, school, institution of higher education, partnership, corporation or individual offering the program. ~~Instructors may be employed on a calendar year basis.~~

§ 46.2-1190.1. Curricula requirements.

A. The curriculum used in a novice rider-training course to train novice riders shall be approved by the Department. Each participant enrolled in a novice rider-training course shall receive no less than the minimum number of hours of classroom and on-cycle instruction as specified in the current approved curriculum.

All novice rider courses shall include a module on the effects of alcohol and other drugs on motorcycle operation, and a thorough review of Virginia laws and rules of the road applicable to motorcycles. All novice rider course participants shall be provided one copy of the course textbook and one copy of the Virginia Motorcycle Operator Manual. During the on-cycle instruction no more than six students may be under the supervision of any one instructor at any one time. No more than 12 students may operate motorcycles on the same range at the same time.

B. The curriculum used to train experienced riders shall be approved by the Department. Each participant enrolled in an experienced rider course shall receive no less than the minimum number of hours of classroom and on-cycle instruction as specified in the current approved curriculum.

All experienced rider courses shall include a module on the effects of alcohol and other drugs on motorcycle operation, and a review of Virginia laws and rules of the road applicable to motorcycles. During on-cycle instruction no more than six students may be under the supervision of any one instructor at any one time, and no more than 12 students may operate motorcycles on the same range at the same time.

C. The curriculum used to train sidecar and three-wheeled motorcycle riders shall be approved by the Department. Each participant enrolled in a sidecar and three-wheeled motorcycle course shall receive no less than the minimum number of hours of classroom and on-cycle instruction as specified in

the current curriculum.

All sidecar and three-wheeled motorcycle course participants shall include a module on the effects of alcohol and other drugs on motorcycle operation, and a thorough review of Virginia laws and rules of the road applicable to motorcycles. During on-cycle instruction no more than six students may be under the supervision of any one instructor at any one time, and no more than six students may operate sidecars or three-wheeled motorcycles on the same range at the same time.

D. All course participants shall be required to wear the following protective gear during on-cycle instruction:

1. A minimum three-quarter shell motorcycle helmet that meets U.S. Department of Transportation Safety standards;

2. Eye protection;

3. A pair of boots or shoes that cover and protect the ankles and feet;

4. A long sleeved jacket or long sleeved shirt and long pants of denim or other material of equivalent durability; and

5. A pair of full-fingered gloves of leather or other material with resistance to abrasion.

§ 46.2-1190.2. Facilities and equipment; requirements and approval.

A. A training center shall possess or have access to the use of all classroom, range, storage facilities, and equipment. A training center's facilities and equipment shall be approved by the Department and include, but not be limited to:

1. A classroom for the presentation of the off-cycle instructional portion of the novice, experienced, and sidecar and three-wheeled motorcycle rider courses;

2. A paved range area for the on-cycle portion of the novice, experienced rider, and sidecar and three-wheeled motorcycle courses with a minimum size of 90 feet by 160 feet and a minimum of 20 feet of run-out room;

3. For those agencies, organizations, businesses and individuals that apply to receive reimbursement, adequate storage to protect motorcycles and equipment from vandalism, theft, and environmental damage;

4. Audio-visual equipment; and

5. Fire extinguisher and first aid kit.

B. The training center shall be responsible for procuring and providing a minimum of one motorcycle that may lawfully be operated on the highways of the Commonwealth, has an engine displacement of no more than 500 cubic centimeters, weighs less than 400 pounds, and is equipped with a seat whose height will accommodate each novice rider course participant. Each participant in the experienced rider course shall provide a motorcycle for use in the course. One sidecar rig or three-wheeled motorcycle, provided by either a participant or the training center, shall be required for use by every two students in the sidecar and three-wheeled motorcycle course.

C. The training center shall be responsible for the normal maintenance and repair of all motorcycles it provides for each novice rider and sidecar and three-wheeled motorcycle course participant. All motorcycles used in course instruction shall pass a safety inspection performed by the instructors prior to use in any motorcycle rider-training course.

D. The Department, or its authorized agent, shall inspect and approve each training center's facilities and equipment prior to issuance or renewal of a license.

§ 46.2-1190.3. Instructor qualifications.

A. Training centers shall employ only motorcycle safety instructors who meet the following minimum qualifications:

1. Have a current, valid driver's license, endorsed for motorcycle operation, that is neither suspended, revoked, cancelled, nor under probation, with less than six demerit points in a 12-month period and no conviction for any of the offenses enumerated in subsection E of § 18.2-270;

2. Be a valid training course instructor, as approved by the Department, which includes:

a. Having instructor certification to teach the current curriculum approved by the Department;

b. Attending all required program clinics offered by the Department that provide continuously updated course instructor and motorcycle safety education; and

c. Avoiding putting course participants or others associated with course instruction in physical danger during periods of instruction through the use of appropriate instruction techniques and methods;

3. Conduct themselves in a professional manner, including, but not limited to, using appropriate language and having interactions with participants and others involved in the course that are free from threat and intimidation; and

4. Comply with other requirements specified in this article or otherwise established by the Department.

B. The requirements of subsection A of this section shall not apply to those persons who are valid training course instructors prior to being stationed outside the United States, during the period of such person's service, if any, in the armed services of the United States, and 60 days thereafter. However, no such temporary exemption granted under this section shall exceed five years. Any person who receives a temporary exemption under this section shall provide documentary or other proof that he is entitled to

the benefits of this section, and shall be required to meet the requirements of subsection A of this section prior to being eligible to provide course instruction.

§ 46.2-1190.4. Administrative and reporting requirements.

A. Training centers shall be responsible for verifying that all participants are eligible for enrollment in a course under the program, based on the following:

1. Persons enrolling in a novice rider course shall (i) possess a valid learner's permit or valid driver's license; (ii) have written parental or guardian permission if under the age of 18 years of age; and (iii) be physically able to balance and operate a motorcycle.

2. Persons enrolling in an experienced rider course shall (i) possess a valid driver's license endorsed for motorcycle operation; (ii) have written parental or guardian permission if under the age of 18; (iii) use a motorcycle that may lawfully be operated on the highways of the Commonwealth during course training; and (iv) have valid proof of ownership of such motorcycle, or have its owner's written permission to use it and valid proof of insurance.

3. Persons enrolling in a sidecar and three-wheeled motorcycle course shall (i) possess a valid learner's permit or a valid driver's license; (ii) have written parental or guardian permission if under the age of 18; (iii) use a sidecar rig or three-wheeled motorcycle that may lawfully be operated on the highways of the Commonwealth during course training; and (iv) if providing their own sidecar rig or three-wheeled motorcycle, have valid proof of ownership of such sidecar rig or three-wheeled motorcycle, or have its owner's written permission to use it and valid proof of insurance.

B. Training centers shall provide the following information to the Department on each course within 20 business days of course completion, on forms provided by the Department:

1. The type of course and date of completion;

2. The name, address, social security number, and certification number of each instructor;

3. The name, address, driver's license number, and date of birth of all participants enrolled in each course; and

4. The course completion status of each participant.

C. The training center shall issue a Department-approved certificate of completion to each participant who successfully completes a course in the program.

D. Training centers shall (i) retain a copy of each participant's waiver form and original course evaluation form and (ii) establish and maintain records of course administration, including the information outlined in subsection B of this section, for a three-year period following the course completion. The Department may audit course records, and monitor and evaluate any and all aspects of a training center's operation.

§ 46.2-1190.5. Penalties and remedies for violations of article.

A. The Department shall impose the following penalties on any training center for violations of the requirements established by the Department or of this article:

1. Limit the type of instruction provided by the training center;

2. Suspend or revoke the license of the training center;

3. Impose a civil penalty as set forth in § 46.2-1190.7; or

4. Impose any combination of the penalties set forth in this subsection.

B. When violations occur that are not found by the Department to pose a threat to the health, safety or welfare of the public or the course participants, instructors or others associated with the course, the Department shall (i) notify the training center of the violations that have occurred, (ii) direct corrective action to be completed by the training center within 30 calendar days, and (iii) require a formal written response documenting that corrections have been made as directed. Such violations shall typically be associated with, but not limited to, training center administration and operations. If corrections are not completed as directed, the Department shall notify the training center and may impose any or all of the sanctions set forth in subsection A of this section. Such penalties shall continue until all required corrections are made and the Department receives formal documentation confirming compliance.

The Department shall suspend the license of any training center that receives three or more notices under this subsection within any 12-month period. Such suspensions shall be for an initial 90-day period and shall continue until all required corrections are made and the Department receives formal documentation confirming compliance.

C. When violations occur that are found by the Department to pose a threat to the health, safety or welfare of the public or the course participants, instructors or others associated with the course, the Department shall (i) notify the training center of the violations that have occurred and immediately limit all types of instruction provided by the training center, (ii) direct corrective action to be completed by the training center within 30 calendar days of receipt of notice of such violations and (iii) shall require a formal written response documenting that corrections have been made as directed. If corrections are not completed as directed, the Department shall suspend the license of the training center and impose a civil penalty as set forth in § 46.2-1190.7. The period of such license suspension shall continue until all required corrections are made and the Department receives formal documentation confirming compliance. If the required corrections are not made within 30 calendar days of the suspension, the Department shall revoke the license.

D. Once a training center license is revoked, the Department shall not renew or reissue the license until (i) it receives formal documentation confirming compliance with the required corrective actions, and (ii) the training center applies for renewal or reissuance. Such training centers shall not be eligible to apply for a license again until 180 calendar days after the Department receives formal documentation confirming compliance with the required corrective actions.

E. Notice of an order suspending or revoking a license, imposing a limitation on training center operations or imposing a civil penalty, and advising the licensee of the opportunity for a hearing as a result of such order, shall be in writing and mailed to the licensee by registered mail to the training center address as shown on the most recent licensee's application for license and shall be considered served when mailed.

Upon receipt of a request for a hearing appealing the order, 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.

§ 46.2-1190.6. Other grounds for denying, suspending, or revoking licenses.

A license issued pursuant to this article may be denied, suspended, or revoked on any one or more of the following grounds, where applicable:

1. Material misstatement or omission in application for license;
2. Failure to comply subsequent to receipt of a written notice from the Department or any willful failure to comply with a lawful order, any provision of this article, or any term, condition, or restriction of a license;
3. Failure to comply with zoning or other land use regulations, ordinances, or statutes;
4. Use of deceptive business acts or practices;
5. Knowingly advertising by any means any assertion, representation, or statement of fact that is untrue, misleading, or deceptive relating to the conduct of the business for which a license is held or sought;
6. Having been found, through a judicial or administrative hearing, to have committed fraudulent or deceptive acts in connection with the training center for which a license is held or sought, or any consumer-related fraud;
7. Having been convicted of any criminal act involving the training center for which a license is held or sought;
8. Improper assignment, lending, or otherwise allowing the improper use of a license;
9. Any corporate officer, owner, administrator and any individual authorized to obligate the training center having been convicted of a felony;
10. Any corporate officer, owner, administrator and any individual authorized to obligate the training center having been convicted of any misdemeanor involving lying, cheating, stealing, or moral turpitude;
11. Failure to furnish the Department information, documentation, or records required or requested pursuant to this article;
12. Knowingly and willfully filing any false report, account, record, or memorandum;
13. Willfully altering or changing the appearance or wording of a training center license or a course completion certificate;
14. Failure to provide services in accordance with the terms, limitations, conditions, or requirements of the license; or
15. Failure to comply with other state and federal requirements relating to training center operations.

§ 46.2-1190.7. Civil penalties.

In addition to any other penalties or remedies available to the Commissioner under this article, the Commissioner may assess a civil penalty for any violation of any provision of this article not to exceed (i) \$5,000 for training centers that are not reimbursed or (ii) the amount of funds disbursed to a training center for eligible costs, as set forth in § 46.2-1192. The penalty may be sued for and recovered in the name of the Commonwealth.

Any business, individual or entity operating a training center without a valid license issued by the Department after its license was suspended or revoked shall be subject to a civil penalty of \$10,000.

§ 46.2-1191. Motorcycle Rider Safety Training Program Fund.

To finance the cost of the Motorcycle Rider Safety Training Program, the Department of Motor Vehicles shall deposit the fee collected for the issuance of each motorcycle learner's permit and ~~three dollars~~ \$3 of the fee collected for the issuance of each motorcycle registration and all motorcycle driver's license endorsement fees into a special fund to be known as the Motorcycle Rider Safety Training Program Fund. The Department shall use the Fund as necessary for: (i) the costs of the Department of Motor Vehicles incurred in the administration of this article, (ii) the funding ~~of~~ ~~contracts~~ ~~with~~ of licensed, approved regional cycle rider safety training centers for the conducting of courses, as set forth in § 46.2-1192 and (iii) any other purposes related to the administration of this article, including contractual costs related to administrative and other operational support for the reimbursed training centers.

§ 46.2-1192. Issuance and renewal of licenses by Department; payments to regional training centers.

The Department of Motor Vehicles is authorized to ~~enter into contracts with~~ *issue or renew licenses* for regional motorcycle rider safety training centers for the conducting of motorcycle rider safety training courses, and to make payments in fulfillment of those ~~contracts~~ *licenses requiring reimbursement* from funds appropriated from the Motorcycle Rider Safety Training Program Fund. *The Department shall determine the number of such reimbursed licenses issued or renewed based on (i) the training centers meeting the requirements established by the Department and set forth in this article, (ii) regional demand for such training, and (iii) availability of funding. Costs eligible for reimbursement, method of payment, and required documentation associated with such payment shall be specified by the Department at the time the license is issued or renewed. Such licenses shall be valid for the period specified, but shall not exceed three years.*

Those licenses issued or renewed for providers of such training courses that do not require reimbursement shall be awarded based on the training centers meeting the requirements established by the Department and set forth in this article. Such licenses shall be valid for the period specified, but shall not exceed three years.

No license shall be transferred or assigned as a result of any change in (i) the individual who is authorized to obligate the training center, (ii) ownership or (iii) officers in a corporation or other business entity without the approval of the Department. Such approval shall be based on the licensing requirements established by the Department and set forth in this article.

2. That the provisions of this act shall become effective on January 1, 2005.