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HOUSE BILL NO. 374

Offered January 14, 2004

Prefiled January 12, 2004

A BILL to amend and reenact §§ 46.2-328 and 46.2-910 of the Code of Virginia, relating to use of helmets by motorcyclists; penalty.

Patrons—Lingamfelter, Black and Cline

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:**1. That §§ 46.2-328 and 46.2-910 of the Code of Virginia are amended and reenacted as follows:**

§ 46.2-328. Department to issue licenses; endorsements, classifications, and restrictions authorizing operation of certain vehicles.

A. The Department shall issue to every person licensed as a driver, a driver's license. Every driver's license shall contain all appropriate endorsements, classifications, and restrictions, where applicable, if the licensee has been licensed:

1. To operate a motorcycle as defined in § 46.2-100, or

2. To operate a school bus as defined in § 46.2-100, or

3. To operate a commercial motor vehicle pursuant to the provisions of the Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.).

B. Every applicant intending to operate one or more of the motor vehicles described in subsection A of this section, when applying for a driver's license, shall state in his application the classification of the vehicle or vehicles that he intends to operate and for which he seeks to be licensed and submit to and pass the examination provided for in § 46.2-325 and, if applicable, §§ 46.2-337 and 46.2-341.14, using the type of vehicle or vehicles for which he seeks to be licensed.

C. Upon application therefor, holders of driver's licenses endorsed for the operation of motorcycles may, upon the payment of a fee of \$1 per year, obtain from the Department an additional endorsement authorizing helmet-free operation of a motorcycle. Endorsements issued under this subsection shall have the same expiration date as the applicant's driver's license. No endorsement shall be issued under this subsection unless the applicant (i) is more than 21 years old and (ii) has successfully completed a motorcycle rider safety training course as provided in Article 23 (§ 46.2-1188 et seq.) of Chapter 10 of this title. Notwithstanding subsection F, no endorsement shall be issued under this section to any motorcycle learner's permit.

D. Every applicant intending to drive a motorcycle, when applying for a license endorsed to authorize the driving of a motorcycle, shall submit to and pass the examination provided for in § 46.2-337. A classification on any license to drive a motorcycle shall indicate that the license is classified for the purpose of authorizing the licensee to drive only motorcycles. However, if the applicant has a valid license at the time of application for a classification to drive a motorcycle, or if the applicant, at the time of such application, applies for a regular driver's license and submits to and passes the examination provided for in § 46.2-325, he shall be granted a classification on his license to drive motorcycles in addition to any other vehicles his driver's license or commercial driver's license may authorize him to operate.

~~D.~~ E. The Department may make any changes in the classifications and endorsements during the validity of the license as may be appropriate.

~~E.~~ F. Except as provided in subsection C, provisions of this section shall be applicable to persons applying for learner's permits as otherwise provided for in this title.

~~F.~~ G. Every person issued a driver's license or commercial driver's license who drives any motor vehicle of the classifications in this section, and whose driver's license does not carry an endorsement or indication that the licensee is licensed as provided in this section shall be guilty of a Class 1 misdemeanor.

§ 46.2-910. Motorcyclist to wear helmets, etc.; certain sales prohibited; penalty.

A. Every person operating a motorcycle shall wear a face shield, safety glasses or goggles, or have his motorcycle equipped with safety glass or a windshield at all times while operating the vehicle, and operators and any passengers thereon shall wear protective helmets, *unless such operator or passenger is more than 21 years old and has either (i) held a Virginia driver's license with a motorcycle endorsement for at least two years or (ii) successfully completed a Virginia Motorcycle Rider Safety Training Program and holds an unexpired endorsement, issued by the Department as provided in subsection C of § 46.2-328, that authorizes helmet-free operation of a motorcycle.* Operators and

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59 passengers riding on motorcycles with wheels of eight inches or less in diameter or in three-wheeled
60 motorcycles which have nonremovable roofs, windshields and enclosed bodies shall not be required to
61 wear protective helmets. The windshields, face shields, glasses or goggles, and protective helmets
62 required by this section shall meet or exceed the standards and specifications of the Snell Memorial
63 Foundation, the American National Standards Institute, Inc., or the federal Department of Transportation.
64 Failure to wear a face shield, safety glasses or goggles, or protective helmets shall not constitute
65 negligence per se in any civil proceeding. The provisions of this section requiring the wearing of
66 protective helmets shall not apply to operators of or passengers on motorcycles being operated (i) as part
67 of an organized parade authorized by the Department of Transportation or the locality in which the
68 parade is being conducted and escorted, accompanied, or participated in by law-enforcement officers of
69 the jurisdiction wherein the parade is held and (ii) at speeds of no more than ~~fifteen~~ 15 miles per hour.

70 No motorcycle operator shall use any face shield, safety glasses or goggles, or have his motorcycle
71 equipped with safety glass or a windshield unless of a type either (i) approved by the Superintendent
72 prior to July 1, 1996, or (ii) that meets or exceeds the standards and specifications of the Snell
73 Memorial Foundation, the American National Standards Institute, Inc., or the federal Department of
74 Transportation and is marked in accordance with such standards.

75 B. Any violation of subsection A of this section shall be punishable by a civil penalty of \$25, which
76 shall be paid into the Motorcycle Rider Safety Training Fund. No assignment of demerit points shall be
77 made under Article 19 (§ 46.2-489 et seq.) of Chapter 3 of this title, and no court costs shall be
78 assessed for violations of subsection A of this section.

79 C. Violation of subsection A shall not constitute negligence, be considered in mitigation of damages
80 of whatever nature, be admissible in evidence or be the subject of comment by counsel in any action for
81 the recovery of damages arising out of the operation, ownership, or maintenance of a motor vehicle, nor
82 shall anything in subsection A of this section change any existing law, rule, or procedure pertaining to
83 such civil action.

84 D. A violation of subsection A may be charged on the uniform traffic summons form.

85 E. No citation for a violation of subsection A shall be issued unless the officer issuing such citation
86 has cause to stop or arrest the driver of such motor vehicle for the violation of some other provision of
87 this Code or local ordinance relating to the operation, ownership, or maintenance of a motor vehicle or
88 any criminal statute.

89 F. It shall be unlawful to sell or offer for sale, for highway use in Virginia, any protective helmet
90 that fails to meet or exceed any standard as provided in the foregoing provisions of this section. Any
91 violation of this subsection shall constitute a Class 4 misdemeanor.