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SENATE BILL NO. 487

Offered January 14, 2004

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A BILL to amend and reenact §§ 46.2-320, 46.2-334 and 46.2-335 of the Code of Virginia, relating to driver eligibility certificates for students.

Patrons—Obenshain; Delegate: Weatherholtz

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-320, 46.2-334 and 46.2-335 of the Code of Virginia are amended and reenacted as follows:

§ 46.2-320. Other grounds for refusal or suspension.

A. The Department may refuse to grant an application for a driver's license in any of the circumstances set forth in § 46.2-608 as circumstances justifying the refusal of an application for the registration of a motor vehicle. The Department may refuse to issue or reissue a driver's license for the willful failure or refusal to pay any taxes or fees required to be collected or authorized to be collected by the Department.

B. The Commissioner may enter into an agreement with the Department of Social Services whereby the Department may suspend or refuse to renew the driver's license of any person upon receipt of notice from the Department of Social Services that the person (i) is delinquent in the payment of child support by ~~ninety~~90 days or more or in an amount of \$5,000 or more or (ii) has failed to comply with a subpoena, summons or warrant relating to paternity or child support proceedings. A suspension or refusal to renew authorized pursuant to this section shall not be effective until ~~thirty~~30 days after service on the delinquent obligor of notice of intent to suspend or refuse to renew. The notice of intent shall be served on the obligor by the Department of Social Services (i) by certified mail, return receipt requested, sent to the obligor's last known addresses as shown in the records of the Department or the Department of Social Services or (ii) pursuant to § 8.01-296, or (iii) service may be waived by the obligor in accordance with procedures established by the Department of Social Services. The obligor shall be entitled to a judicial hearing if a request for a hearing is made, in writing, to the Department of Social Services within ~~ten~~10 days from service of the notice of intent. Upon receipt of the request for a hearing, the Department of Social Services shall petition the court that entered or is enforcing the order, requesting a hearing on the proposed suspension or refusal to renew. The court shall authorize the suspension or refusal to renew only if it finds that the obligor's noncompliance with the child support order was willful. Upon a showing by the Department of Social Services that the obligor is delinquent in the payment of child support by ~~ninety~~90 days or more or in an amount of \$5,000 or more, the burden of proving that the delinquency was not willful shall rest upon the obligor. The Department shall not suspend or refuse to renew the driver's license until a final determination is made by the court.

C. At any time after service of a notice of intent, the person may petition the juvenile and domestic relations district court in the jurisdiction where he resides for the issuance of a restricted license to be used if the suspension or refusal to renew becomes effective. Upon such petition and a finding of good cause, the court may provide that such person be issued a restricted permit to operate a motor vehicle for any of the purposes set forth in subsection E of § 18.2-271.1. A restricted license issued pursuant to this subsection shall not permit any person to operate a commercial motor vehicle as defined in § 46.2-341.4. The court shall order the surrender of the person's license to operate a motor vehicle, to be disposed of in accordance with the provisions of § 46.2-398, and shall forward to the Commissioner a copy of its order entered pursuant to this subsection. The order shall specifically enumerate the restrictions imposed and contain such information regarding the person to whom such a permit is issued as is reasonably necessary to identify him.

D. The Department shall not renew a driver's license or terminate a license suspension imposed pursuant to this section until it has received from the Department of Social Services a certification that the person has (i) paid the delinquency in full, (ii) reached an agreement with the Department of Social Services to satisfy the delinquency within a period not to exceed ~~ten~~10 years and at least one payment, representing at least five percent of the total delinquency or \$500, whichever is greater, has been made pursuant to the agreement, or (iii) complied with a subpoena, summons or warrant relating to a paternity or child support proceeding. Certification by the Department of Social Services shall be made by electronic or telephonic communication and shall be made on the same work day that payment required by clause (i) or (ii) is made.

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59 *E. The Department shall suspend for one year the license or learner's permit, as the case may be,*
60 *issued to minors pursuant to § 46.2-334 or § 46.2-335 when such minor student (i) has been suspended*
61 *for more than 10 consecutive days or expelled from public or nonpublic school for violations of school*
62 *policies addressing alcohol, illegal substances, weapons, or physical assault upon a teacher or other*
63 *school personnel; or (ii) has been required to attend an alternative education program for more than 10*
64 *consecutive days for such violations of school policies.*

65 *The public school principal or relevant administrative authority of the private school, as the case*
66 *may be, shall notify the Department of such suspensions, expulsions, and alternative education*
67 *placements warranting license or permit suspension.*

68 § 46.2-334. Conditions and requirements for licensure of persons under 18; requests for cancellation
69 of minor's driver's license; temporary driver's licenses; driver eligibility certificates; Board of Education
70 approved programs; home-schooled students; fee.

71 A. Minors at least 16 years and three months old may be issued driver's licenses under the following
72 conditions:

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

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

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

92 4. The application for a permanent driver's license by a minor of the age of persons required to
93 attend school pursuant to § 22.1-254 shall be accompanied by evidence of compliance with the
94 compulsory school attendance law set forth in Article 1 (§ 22.1-254 et seq.) of Chapter 14 of Title 22.1.
95 This evidence shall be provided in writing by the minor's parent. If the minor is unable to provide such
96 evidence, he shall not be granted a driver's license until he reaches the age of 18 or presents proper
97 evidence of the solemnization of his marriage or an order of emancipation, or the parent, as defined in
98 § 22.1-1, or other person standing in loco parentis has provided written authorization for the minor to
99 obtain a driver's license.

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

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

108 B. Any custodial parent or guardian of an unmarried or unemancipated minor may, after the issuance
109 of a permanent driver's license to such minor, file with the Department a written request that the license
110 of the minor be canceled. When such request is filed, the Department shall cancel the license of the
111 minor and the license shall not thereafter be reissued by the Department until a period of six months has
112 elapsed from the date of cancellation or the minor reaches his eighteenth birthday, whichever shall occur
113 sooner. Notwithstanding the foregoing provisions of this subsection, in the case of a minor whose
114 parents have been awarded joint legal custody, a request that the license of the minor be cancelled must
115 be signed by both legal custodians. In the event one parent is not reasonably available or the parents do
116 not agree, one parent may petition the juvenile and domestic relations district court to make a
117 determination that the license of the minor be cancelled.

118 C. The provisions of subsection A of this section requiring that an application for a driver's license
119 be signed by the parent or guardian shall be waived by the Commissioner if the application is
120 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, the Commissioner, on application therefor by a person at least 16 years and three months old but less than 18 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 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 (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) *has a valid driver eligibility certificate issued pursuant to this section indicating that the student* 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, *a driver eligibility certificate indicating regular attendance and good academic standing may be certified shall be issued* by the public school principal or any of his designees. For applicants attending nonpublic schools, such ~~certification~~ *driver eligibility certificate* shall be made by the private school principal or any of his designees; for minors receiving home schooling, such ~~certification~~ *driver eligibility certificate* shall be made by the home schooling parent or tutor. *For purposes of the issuance of the driver eligibility certificate, "good academic standing" means that the applicant has successfully completed three out of four courses for the relevant semester. The Department shall develop guidelines specifying those circumstances of hardship under which applicants who cannot present a driver eligibility certificate may be issued a driver's license.*

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~~ *driver eligibility certificate* or any written authorization from his parent or guardian to obtain a driver's license.

H. For those home schooled students completing driver education courses approved by the Board of Education and instructed by his own parent or guardian, no driver's license shall be issued until the student has successfully completed the driver's license examination administered by the Department *and the parent or tutor of such student has issued a valid driver eligibility certificate as set forth in subsection G.* Furthermore, the Commissioner shall not issue a driver's license for those home schooled students completing driver education courses approved by the Board of Education and instructed by his own parent or guardian if it is determined by the Commissioner that, at the time of such instruction, such parent or guardian had accumulated six or more driver demerit points in the most recently preceding 12 months, had been convicted within the most recent 11 preceding years of driving while intoxicated in violation of § 18.2-266 or a substantially similar law in another state, or had ever been convicted of voluntary or involuntary manslaughter in violation of § 18.2-35 or § 18.2-36 or a substantially similar law in another state.

I. *The principal, parent, or tutor issuing the driver eligibility certificate to a minor student pursuant to subsections G or H shall notify the Department if the student fails to maintain regular attendance or*

182 *good academic standing, and the Department shall revoke the license of such student until such time as*
183 *another driver eligibility certificate is issued.*

184 § 46.2-335. Learner's permits; fees.

185 A. The Department, on receiving from any Virginia resident over the age of ~~fifteen~~15 years and six
186 months an application for a learner's permit or motorcycle learner's permit, may, subject to the
187 applicant's satisfactory documentation of meeting the requirements of this chapter and successful
188 completion of the written or automated knowledge and vision examinations and, in the case of a
189 motorcycle learner's permit applicant, the automated motorcycle test, issue a permit entitling the
190 applicant, while having the permit in his immediate possession, to drive a motor vehicle or, if the
191 application is made for a motorcycle learner's permit, a motorcycle, on the highways, when accompanied
192 by any licensed driver ~~twenty-one~~21 years of age or older or by his parent or legal guardian, or by a
193 brother, sister, half-brother, half-sister, step-brother, or step-sister ~~eighteen~~18 years of age or older. The
194 accompanying person shall be (i) alert, able to assist the driver, and actually occupying a seat beside the
195 driver or, for motorcycle instruction, providing immediate supervision from a separate accompanying
196 motorcycle and (ii) lawfully permitted to operate the motor vehicle or accompanying motorcycle at that
197 time.

198 The Department shall not, however, issue a learner's permit or motorcycle learner's permit to any
199 minor applicant required to provide evidence of compliance with the compulsory school attendance law
200 set forth in Article 1 (§ 22.1-254 et seq.) of Chapter 14 of Title 22.1, unless such applicant ~~is in~~has a
201 *driver eligibility certificate indicating good academic standing and issued pursuant to § 46.2-334* or, if
202 ~~not in such standing or submitting evidence thereof~~such certificate, whose parent or guardian, having
203 custody of such minor, provides written authorization for the minor to obtain a learner's permit or
204 motorcycle learner's permit, which written authorization shall be obtained on forms provided by the
205 Department and indicating the Commonwealth's interest in the good academic standing and regular
206 school attendance of such minors.

207 *The Department shall develop guidelines specifying those circumstances of hardship under which*
208 *applicants who cannot present a driver eligibility certificate may be issued a learner's permit.*

209 Any minor providing proper evidence of the solemnization of his marriage or a certified copy of a
210 court order of emancipation shall not be required to provide the certification of good academic standing
211 or any written authorization from his parent or guardian to obtain a learner's permit or motorcycle
212 learner's permit.

213 Such permit, except a motorcycle learner's permit, shall be valid until the holder thereof either is
214 issued a driver's license as provided for in this chapter or no longer meets the qualifications for issuance
215 of a learner's permit as provided in this section. Motorcycle learner's permits shall be valid for ~~twelve~~12
216 months. When a motorcycle learner's permit expires, the permittee may, upon submission of an
217 application, payment of the application fee, and successful completion of the examinations, be issued
218 another motorcycle learner's permit valid for ~~twelve~~12 months.

219 B. No driver's license shall be issued to any such person who is less than ~~eighteen~~18 years old
220 unless, while holding a learner's permit, he has driven a motor vehicle for at least ~~forty~~40 hours, at least
221 ~~ten~~10 of which were after sunset, as certified by his parent or legal guardian unless the person is
222 married or otherwise emancipated.

223 C. No learner's permit shall authorize its holder to operate a motor vehicle with more than one
224 passenger who is less than ~~eighteen~~18 years old, except when participating in a driver education
225 program approved by the Department of Education or a course offered by a commercial driver training
226 school licensed by the Department. This passenger limitation, however, shall not apply to the driver's
227 family or household as defined in subsection B of § 46.2-334.01.

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

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

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

239 G. For persons qualifying for a driver's license through driver education courses approved by the
240 Department of Education or courses offered by commercial driver training schools licensed by the
241 Department, the application for the learner's permit shall be used as the application for the driver's
242 license.

243 H. The Department shall charge a fee of ~~three dollars~~\$3 for each learner's permit and motorcycle

244 learner's permit issued under this section. Fees for issuance of learner's permits shall be paid into the
245 driver education fund of the state treasury; fees for issuance of motorcycle learner's permits shall be paid
246 into the state treasury and credited to the Motorcycle Rider Safety Training Program Fund created
247 pursuant to § 46.2-1191. It shall be unlawful for any person, after having received a learner's permit, to
248 drive a motor vehicle without being accompanied by a licensed driver as provided in the foregoing
249 provisions of this section; however, a learner's permit other than a motorcycle learner's permit,
250 accompanied by documentation verifying that the driver is at least ~~sixteen~~16 years and three months old
251 and has successfully completed an approved driver's education course, signed by the minor's parent,
252 guardian, legal custodian or other person standing in loco parentis, shall constitute a temporary driver's
253 license for the purpose of driving unaccompanied by a licensed driver ~~eighteen~~18 years of age or older,
254 if all other requirements of this chapter have been met. Such temporary driver's license shall only be
255 valid until the driver has received his permanent license pursuant to § 46.2-336.

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

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

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

263 2. Operation on limited access highways is prohibited.

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

265 4. Operation shall be under the immediate supervision of a person licensed to operate a motorcycle
266 who is ~~twenty-one~~21 years of age or older or by his parent or legal guardian, or by a brother, sister,
267 half-brother, half-sister, step-brother, or step-sister ~~eighteen~~18 years of age or older.

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

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

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