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SENATE BILL NO. 966

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Transportation)

(Patrons Prior to Substitute—Senators O'Brien and Mims [SB 784])

Senate Amendments in [] — January 28, 2005

A *BILL to amend and reenact §§ 46.2-334.01 and 46.2-1094 of the Code of Virginia, relating to provisional driver's licenses; use of wireless telecommunications devices; use of safety belts.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-334.01 and 46.2-1094 of the Code of Virginia are amended and reenacted as follows:

§ 46.2-334.01. Licenses issued to persons less than 19 years old subject to certain restrictions.

A. Any learner's permit or driver's license issued to any person less than 18 years old shall be subject to the following:

1. Notwithstanding the provisions of § 46.2-498, whenever the driving record of a person less than 19 years old shows that he has been convicted of committing, when he was less than 18 years old, (i) an offense for which demerit points have been assessed or are assessable under Article 19 (§ 46.2-489 et seq.) of this chapter or (ii) a violation of any provision of Article 12 (§ 46.2-1091 et seq.) or Article 13 (§ 46.2-1095 et seq.) of Chapter 10 of this title, the Commissioner shall direct such person to attend a driver improvement clinic. No safe driving points shall be awarded for such clinic attendance, nor shall any safe driving points be awarded for voluntary or court-assigned clinic attendance. Such person's parent, guardian, legal custodian, or other person standing in loco parentis may attend such clinic and receive a reduction in demerit points and/or an award of safe driving points pursuant to § 46.2-498. The provisions of this subdivision shall not be construed to prohibit awarding of safe driving points to a person less than 18 years old who attends and successfully completes a driver improvement clinic without having been directed to do so by the Commissioner or required to do so by a court.

2. If any person less than 19 years old is convicted a second time of committing, when he was less than 18 years old, (i) an offense for which demerit points have been assessed or are assessable under Article 19 (§ 46.2-489 et seq.) of this chapter or (ii) a violation of any provision of Article 12 (§ 46.2-1091 et seq.) or Article 13 (§ 46.2-1095 et seq.) of Chapter 10 of this title, the Commissioner shall suspend such person's driver's license or privilege to operate a motor vehicle for 90 days. Such suspension shall be consecutive to, and not concurrent with, any other period of license suspension, revocation or denial. Any person who has had his driver's license or privilege to operate a motor vehicle suspended in accordance with this subdivision may petition the juvenile and domestic relations district court of his residence for a restricted license to authorize such person to drive a motor vehicle in the Commonwealth to and from his home to the place of his employment, provided there is no other means of transportation by which such person may travel between his home and his place of employment. On such petition the court may, in its discretion, authorize the issuance of a restricted license for a period not to exceed the term of the suspension of the person's license or privilege to operate a motor vehicle in the Commonwealth. Such restricted license shall be valid solely for operation of a motor vehicle between such person's home and his place of employment.

3. If any person is convicted a third time of committing, when he was less than 18 years old, (i) an offense for which demerit points have been assessed or are assessable under Article 19 (§ 46.2-489 et seq.) of this chapter or (ii) a violation of any provision of Article 12 (§ 46.2-1091 et seq.) or Article 13 (§ 46.2-1095 et seq.) of Chapter 10 of this title, the Commissioner shall revoke such person's driver's license or privilege to operate a motor vehicle for one year or until such person reaches the age of 18 years, whichever is longer. Such revocation shall be consecutive to, and not concurrent with, any other period of license suspension, revocation or denial.

4. In no event shall any person subject to the provisions of this section, be subject to the suspension or revocation provisions of subdivision 2 or 3 of this section for multiple convictions arising out of the same transaction or occurrence.

B. The initial license issued to any person younger than 18 years of age shall be deemed a provisional driver's license. Until the holder is 18 years old, a provisional driver's license shall not authorize its holder to operate a motor vehicle with more than one passenger who is less than 18 years old for the first year after the license is issued nor more than three passengers who are less than 18 years old thereafter until the holder's eighteenth birthday. This passenger limitation, however, shall not apply to members of the driver's family or household. For the purposes of this subsection, "members of the driver's family or household" means (i) the driver's spouse, children, stepchildren, brothers, sisters, half brothers, half sisters, and any individual who has a child in common with the driver, whether or not they reside in the same home with the driver; (ii) the driver's brothers-in-law and sisters-in-law who

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60 reside in the same home with the driver; and (iii) any individual who cohabits with the driver, and any
61 children of such individual residing in the same home with the driver.

62 C. The holder of a provisional driver's license shall not operate a motor vehicle on the highways of
63 the Commonwealth between the hours of midnight and 4:00 a.m. except when driving (i) to or from a
64 place of business where he is employed; (ii) to or from a school-sponsored activity; (iii) accompanied by
65 a parent, a person acting in loco parentis, or by a spouse who is 18 years old or older, provided that
66 such person accompanying the driver is actually occupying a seat beside the driver and is lawfully
67 permitted to operate a motor vehicle at the time; or (iv) in cases of emergency, including response by
68 volunteer firefighters and volunteer rescue squad personnel to emergency calls.

69 D. *Except in an emergency, the holder of a provisional driver's license shall not operate a motor*
70 *vehicle on the highways of the Commonwealth while using any cellular telephone or any other wireless*
71 *telecommunications device, regardless of whether such device is or is not hand-held.*

72 E. The provisional driver's license restrictions in subsections [~~B and C~~ B, C, and D] of this section
73 shall expire on the holder's eighteenth birthday. A violation of the provisional driver's license restrictions
74 in [~~either~~] subsection [~~B or C~~ B, C, or D] of this section shall constitute a traffic infraction. For a
75 second or subsequent violation of the provisional driver's license restrictions in [~~either~~] subsection [~~B~~
76 ~~or C~~ B, C, or D], in addition to any other penalties which may be imposed pursuant to § 16.1-278.10,
77 the court may suspend the juvenile's privilege to drive for a period not to exceed six months.

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

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

87 § 46.2-1094. Occupants of front seats of motor vehicles required to use safety lap belts and shoulder
88 harnesses; penalty.

89 A. Each person at least ~~sixteen~~ 16 years of age and occupying the front seat of a motor vehicle
90 equipped or required by the provisions of this title to be equipped with a safety belt system, consisting
91 of lap belts, shoulder harnesses, combinations thereof or similar devices, shall wear the appropriate
92 safety belt system at all times while the motor vehicle is in motion on any public highway. A child
93 under the age of ~~sixteen~~ 16 years, however, shall be protected as required by the provisions of this
94 chapter.

95 B. This section shall not apply to:

96 1. Any person for whom a licensed physician determines that the use of such safety belt system
97 would be impractical by reason of such person's physical condition or other medical reason, provided the
98 person so exempted carries on his person or in the vehicle a signed written statement of the physician
99 identifying the exempted person and stating the grounds for the exemption; or

100 2. Any law-enforcement officer transporting persons in custody or traveling in circumstances which
101 render the wearing of such safety belt system impractical; or

102 3. Any person while driving a motor vehicle and performing the duties of a rural mail carrier for the
103 United States Postal Service; or

104 4. Any person driving a motor vehicle and performing the duties of a rural newspaper route carrier,
105 newspaper bundle hauler or newspaper rack carrier; or

106 5. Drivers of taxicabs; or

107 6. Personnel of commercial or municipal vehicles while actually engaged in the collection or delivery
108 of goods or services, including but not limited to solid waste, where such collection or delivery requires
109 the personnel to exit and enter the cab of the vehicle with such frequency and regularity so as to render
110 the use of safety belt systems impractical and the safety benefits derived therefrom insignificant. Such
111 personnel shall resume the use of safety belt systems when actual collection or delivery has ceased or
112 when the vehicle is in transit to or from a point of final disposition or disposal, including but not
113 limited to solid waste facilities, terminals, or other location where the vehicle may be principally
114 garaged; or

115 7. Any person driving a motor vehicle and performing the duties of a utility meter reader; or

116 8. Law-enforcement agency personnel driving motor vehicles to enforce laws governing motor
117 vehicle parking.

118 C. Any person who violates this section shall be subject to a civil penalty of ~~twenty-five dollars~~ \$25
119 to be paid into the state treasury and credited to the Literary Fund. No assignment of demerit points
120 shall be made under Article 19 of Chapter 3 (§ 46.2-489 et seq.) of this title and no court costs shall be
121 assessed for violations of this section.

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

E. A violation of this section may be charged on the uniform traffic summons form.

F. ~~No~~ *Except for violations committed by operators of motor vehicles who are less than 18 years old, no* citation for a violation of this section shall be issued unless the officer issuing such citation has cause to stop or arrest the driver of such motor vehicle for the violation of some other provision of this Code or local ordinance relating to the operation, ownership, or maintenance of a motor vehicle or any criminal statute.

G. The governing body of any city having a population of at least 66,000 but no more than 67,000 may adopt an ordinance not inconsistent with the provisions of this section, requiring the use of safety belt systems. The penalty for violating any such ordinance shall not exceed a fine or civil penalty of ~~twenty-five dollars~~ \$25.

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