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SENATE BILL NO. 533

Offered January 11, 2006

Prefiled January 11, 2006

A BILL to amend and reenact § 46.2-334.01 of the Code of Virginia, relating to provisional driver's license; restriction on using wireless devices; changes section from secondary to primary offenses.

Patrons—O'Brien, Howell, Ticer and Whipple; Delegates: Amundson, Callahan, Moran, Scott, J.M., Sickles and Watts

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:**1. That § 46.2-334.01 of the Code of Virginia is 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

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58 the driver's family or household" means (i) the driver's spouse, children, stepchildren, brothers, sisters,
59 half brothers, half sisters, and any individual who has a child in common with the driver, whether or not
60 they reside in the same home with the driver; (ii) the driver's brothers-in-law and sisters-in-law who
61 reside in the same home with the driver; and (iii) any individual who cohabits with the driver, and any
62 children of such individual residing in the same home with the driver.

63 C. The holder of a provisional driver's license shall not:

64 1. ~~operate~~ *Operate* a motor vehicle on the highways of the Commonwealth between the hours of
65 midnight and 4:00 a.m. except when driving (i) to or from a place of business where he is employed;
66 (ii) to or from a school-sponsored activity; (iii) accompanied by a parent, a person acting in loco
67 parentis, or by a spouse who is 18 years old or older, provided that such person accompanying the
68 driver is actually occupying a seat beside the driver and is lawfully permitted to operate a motor vehicle
69 at the time; or (iv) in cases of emergency, including response by volunteer firefighters and volunteer
70 rescue squad personnel to emergency calls.

71 2. *Use any cellular telephone or other wireless device while driving a motor vehicle on the highways*
72 *of the Commonwealth, except in an emergency.*

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

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

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