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HOUSE BILL NO. 3066

Offered January 15, 2007

A BILL to amend and reenact §§ 46.2-334.01 and 46.2-335 of the Code of Virginia, relating to use of wireless telecommunications devices by drivers holding provisional driver's licenses, learner's permits, and motorcycle learner's permits; penalty.

Patron—Miller, P.J.

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:**1. That §§ 46.2-334.01 and 46.2-335 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; penalty.

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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HB3066

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

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

71 D. *Except in an emergency, when the vehicle is parked, or when the vehicle is stationary on that*
72 *portion of a highway improved, designed, and ordinarily used for vehicular travel, the holder of a*
73 *provisional driver's license shall not operate a motor vehicle on the highways of the Commonwealth*
74 *while using any cellular telephone or any other wireless telecommunications device, regardless of*
75 *whether such device is or is not hand-held.*

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

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

87 F.G. No citation for a violation of this section, *other than a violation of subsection D*, shall be issued
88 unless the officer issuing such citation has cause to stop or arrest the driver of such motor vehicle for
89 the violation of some other provision of this Code or local ordinance relating to the operation,
90 ownership, or maintenance of a motor vehicle or any criminal statute.

91 § 46.2-335. Learner's permits; fees.

92 A. The Department, on receiving from any Virginia resident over the age of 15 years and six months
93 an application for a learner's permit or motorcycle learner's permit, may, subject to the applicant's
94 satisfactory documentation of meeting the requirements of this chapter and successful completion of the
95 written or automated knowledge and vision examinations and, in the case of a motorcycle learner's
96 permit applicant, the automated motorcycle test, issue a permit entitling the applicant, while having the
97 permit in his immediate possession, to drive a motor vehicle or, if the application is made for a
98 motorcycle learner's permit, a motorcycle, on the highways, when accompanied by any licensed driver
99 21 years of age or older or by his parent or legal guardian, or by a brother, sister, half-brother,
100 half-sister, step-brother, or step-sister 18 years of age or older. The accompanying person shall be (i)
101 alert, able to assist the driver, and actually occupying a seat beside the driver or, for motorcycle
102 instruction, providing immediate supervision from a separate accompanying motor vehicle and (ii)
103 lawfully permitted to operate the motor vehicle or accompanying motorcycle at that time. *Except in an*
104 *emergency, when the vehicle is parked, or when the vehicle is stationary on that portion of a highway*
105 *improved, designed, and ordinarily used for vehicular travel, the holder of a learner's permit or*
106 *motorcycle learner's permit shall not operate a motor vehicle on the highways of the Commonwealth*
107 *while using any cellular telephone or any other wireless telecommunications device, regardless of*
108 *whether such device is or is not hand-held.*

109 The Department shall not, however, issue a learner's permit or motorcycle learner's permit to any
110 minor applicant required to provide evidence of compliance with the compulsory school attendance law
111 set forth in Article 1 (§ 22.1-254 et seq.) of Chapter 14 of Title 22.1, unless such applicant is in good
112 academic standing or, if not in such standing or submitting evidence thereof, whose parent or guardian,
113 having custody of such minor, provides written authorization for the minor to obtain a learner's permit
114 or motorcycle learner's permit, which written authorization shall be obtained on forms provided by the
115 Department and indicating the Commonwealth's interest in the good academic standing and regular
116 school attendance of such minors. Any minor providing proper evidence of the solemnization of his
117 marriage or a certified copy of a court order of emancipation shall not be required to provide the
118 certification of good academic standing or any written authorization from his parent or guardian to
119 obtain a learner's permit or motorcycle learner's permit.

120 Such permit, except a motorcycle learner's permit, shall be valid until the holder thereof either is

issued a driver's license as provided for in this chapter or no longer meets the qualifications for issuance of a learner's permit as provided in this section. Motorcycle learner's permits shall be valid for 12 months. When a motorcycle learner's permit expires, the permittee may, upon submission of an application, payment of the application fee, and successful completion of the examinations, be issued another motorcycle learner's permit valid for 12 months.

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

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

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

E. A violation of subsection C or D 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 subsection change any existing law, rule, or procedure pertaining to any such civil action.

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

G. For persons qualifying for a driver's license through driver education courses approved by the Department of Education or courses offered by 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.

H. The Department shall charge a fee of \$3 for each learner's permit and motorcycle learner's permit issued under this section. Fees for issuance of learner's permits shall be paid into the driver education fund of the state treasury; fees for issuance of motorcycle learner's permits shall be paid into the state treasury and credited to the Motorcycle Rider Safety Training Program Fund created pursuant to § 46.2-1191. It shall be unlawful for any person, after having received a learner's permit, to drive a motor vehicle without being accompanied by a licensed driver as provided in the foregoing provisions of this section; however, a learner's permit other than a motorcycle learner's permit, accompanied by documentation verifying that the driver is at least 16 years and three months old and has successfully completed an approved driver's 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 the purpose of driving unaccompanied by a licensed driver 18 years of age or older, if all other requirements of this chapter have been met. Such temporary driver's license shall only be valid until the driver has received his permanent license pursuant to § 46.2-336.

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

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

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

2. Operation shall be under the immediate supervision of a person licensed to operate a motorcycle who is 21 years of age or older.

3. No person other than the operator shall occupy the motorcycle.

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

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