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**HOUSE BILL NO. 1826**

Offered January 14, 2009

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*A BILL to amend and reenact §§ 46.2-323 and 46.2-335 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 46.2-334.001, relating to the suspension of the driver's licenses and learner's permits of minors attending public schools in the Commonwealth who have 10 or more unexcused absences on consecutive school days; penalty.*

Patron—Fralin

Referred to Committee on Transportation

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 46.2-323 and 46.2-335 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 46.2-334.001 as follows:**

§ 46.2-323. Application for driver's license; proof of completion of driver education program; penalty.

A. Every application for a driver's license, temporary driver's permit, learner's permit, or motorcycle learner's permit shall be made on a form prescribed by the Department and the applicant shall write his usual signature in ink in the space provided on the form. The form shall include notice to the applicant of the duty to register with the Department of State Police as provided in Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, if the applicant has been convicted of an offense for which registration with the Sex Offender and Crimes Against Minors Registry is required.

B. Every application shall state the full legal name, year, month, and date of birth, social security number, sex, and residence address of the applicant; whether or not the applicant has previously been licensed as a driver and, if so, when and by what state, and whether or not his license has ever been suspended or revoked and, if so, the date of and reason for such suspension or revocation. The Department, as a condition for the issuance of any driver's license, temporary driver's permit, learner's permit, or motorcycle learner's permit may require the surrender of any driver's license or, in the case of a motorcycle learner's permit, a motorcycle license issued by another state and held by the applicant. The applicant shall also answer any questions on the application form or otherwise propounded by the Department incidental to the examination. The applicant may also be required to present to the person conducting the examination a birth certificate or other evidence, reasonably acceptable to the Department, of his name and date of birth.

The applicant shall also certify that he is a resident of the Commonwealth by signing a certification statement, on a form prescribed by the Commissioner, and by providing satisfactory proof that he is a resident of the Commonwealth. The Commissioner may adopt regulations to determine the process by which applicants prove that they are residents of the Commonwealth.

If the applicant either (i) fails or refuses to sign the certification statement or (ii) fails to follow the process determined by the Commissioner for proving residency, the Department shall not issue the applicant a driver's license, temporary driver's permit, learner's permit or motorcycle learner's permit.

Any applicant who knowingly makes a false certification of Virginia residency or supplies false or fictitious evidence of Virginia residency shall be punished as provided in § 46.2-348.

The Commissioner may, on a case-by-case basis, waive any provision of such regulations for good cause shown.

C. Every application for a driver's license shall include a color photograph of the applicant supplied under arrangements made by the Department. The photograph shall be processed by the Department so that the photograph can be made part of the issued license.

D. Notwithstanding the provisions of § 46.2-334, every applicant for a driver's license who is under 19 years of age shall furnish the Department with satisfactory proof of his successful completion of a driver education program approved by the State Department of Education.

E. Every application for a driver's license or a learner's permit submitted by a person less than 18 years old and attending a public school in the Commonwealth shall be accompanied by a document, signed by the applicant's parent or legal guardian, authorizing the principal, or his designee, of the school attended by the applicant to notify the Department when the applicant has had 10 or more unexcused absences from school on consecutive school days.

F. The Department shall electronically transmit application information to the Department of State Police, in a format approved by the State Police, for comparison with information contained in the Virginia Criminal Information Network and National Crime Information Center Convicted Sexual Offender Registry Files, at the time of issuance of a driver's license, temporary driver's permit, learner's

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59 permit, or motorcycle learner's permit. Whenever it appears from the records of the State Police that a  
60 person has failed to comply with the duty to register or reregister pursuant to Chapter 9 (§ 9.1-900 et  
61 seq.) of Title 9.1, the State Police shall promptly investigate and, if there is probable cause to believe a  
62 violation has occurred, obtain a warrant or assist in obtaining an indictment charging a violation of  
63 § 18.2-472.1 in the jurisdiction in which the person made application of licensure.

64 § 46.2-334.001. *Court to suspend driver's license or learner's permit issued to certain minors.*

65 A. *Upon receipt by the Commissioner of written notice from the principal, or his designee, of any*  
66 *public school in the Commonwealth that any person who is less than 18 years old and attending that*  
67 *public school has had 10 or more unexcused absences from school on consecutive school days, the*  
68 *Commissioner shall transmit such notice to the juvenile and domestic relations district court within*  
69 *whose jurisdiction the minor resides, which court shall give notice and opportunity for the minor to*  
70 *show cause why his driver's license or learner's permit should not be suspended. Upon failure to show*  
71 *cause for the license or permit not to be suspended, the court shall suspend the minor's driver's license*  
72 *or learner's permit until the minor is 18 years old.*

73 B. *The foregoing provisions of this section shall not apply in cases where the student has withdrawn*  
74 *from school for a reason or reasons beyond the control of the student, for the purpose of transferring to*  
75 *another school as confirmed in writing by the student's parent or guardian, or when the student's parent*  
76 *or guardian expresses in open court his desire to allow the student to retain his license. The juvenile*  
77 *and domestic relations district court judge may also decline to suspend the driver's license as provided*  
78 *in subsection A upon the request of the parent or guardian of the licensee. The juvenile and domestic*  
79 *relations district court judge shall be the sole authority as to whether (i) to accede to the request of the*  
80 *licensee's parent or guardian to refrain from suspending the license and (ii) the licensee's withdrawal*  
81 *from school is due to circumstances beyond the control of the student.*

82 C. *Any person whose driver's license or learner's permit is suspended as provided in this section may*  
83 *apply to a juvenile and domestic relations court for issuance of a restricted driver's license or learner's*  
84 *permit for any of the purposes set forth in subsection E of § 18.2-271.1. No restricted license or*  
85 *learner's permit shall be issued pursuant to this section unless the licensee or permittee (i) is employed*  
86 *at least four hours per day and at least 20 hours per week, (ii) has a medical condition that requires*  
87 *him to be able to drive a motor vehicle, or (iii) is the only licensee or permittee in his household. The*  
88 *court shall order the surrender of such person's license and shall forward to the Commissioner a copy*  
89 *of its order entered pursuant to this subsection. This order shall specifically enumerate the restrictions*  
90 *imposed and contain such information regarding the person to whom such a permit is issued as is*  
91 *reasonably necessary to identify such person. The court shall also provide a copy of its order to such*  
92 *person, who may operate a motor vehicle on the order until receipt from the Commissioner of the*  
93 *Department of Motor Vehicles of a restricted driver's license or learner's permit, but only if the order*  
94 *provides for a restricted driver's license or learner's permit for that period. Any person who operates a*  
95 *motor vehicle in violation of any restriction imposed pursuant to this section shall be guilty of a*  
96 *violation of § 46.2-301.*

97 § 46.2-335. *Learner's permits; fees; certification required.*

98 A. The Department, on receiving from any Virginia resident over the age of 15 years and six months  
99 an application for a learner's permit or motorcycle learner's permit, may, subject to the applicant's  
100 satisfactory documentation of meeting the requirements of this chapter and successful completion of the  
101 written or automated knowledge and vision examinations and, in the case of a motorcycle learner's  
102 permit applicant, the automated motorcycle test, issue a permit entitling the applicant, while having the  
103 permit in his immediate possession, to drive a motor vehicle or, if the application is made for a  
104 motorcycle learner's permit, a motorcycle, on the highways, when accompanied by any licensed driver  
105 21 years of age or older or by his parent or legal guardian, or by a brother, sister, half-brother,  
106 half-sister, step-brother, or step-sister 18 years of age or older. The accompanying person shall be (i)  
107 alert, able to assist the driver, and actually occupying a seat beside the driver or, for motorcycle  
108 instruction, providing immediate supervision from a separate accompanying motor vehicle and (ii)  
109 lawfully permitted to operate the motor vehicle or accompanying motorcycle at that time.

110 *Every application for a learner's permit submitted by a person less than 18 years old and attending*  
111 *a public school in the Commonwealth shall be accompanied by a document, signed by the applicant's*  
112 *parent or legal guardian, authorizing the principal, or his designee, of the school attended by the*  
113 *applicant to notify the Department when the applicant has had 10 or more unexcused absences from*  
114 *school on consecutive school days.*

115 The Department shall not, however, issue a learner's permit or motorcycle learner's permit to any  
116 minor applicant required to provide evidence of compliance with the compulsory school attendance law  
117 set forth in Article 1 (§ 22.1-254 et seq.) of Chapter 14 of Title 22.1, unless such applicant is in good  
118 academic standing or, if not in such standing or submitting evidence thereof, whose parent or guardian,  
119 having custody of such minor, provides written authorization for the minor to obtain a learner's permit  
120 or motorcycle learner's permit, 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. 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 or any written authorization from his parent or guardian to obtain a learner's permit or motorcycle learner's permit.

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 45 hours, at least 15 of which were after sunset, as certified by his parent, foster parent, or legal guardian unless the person is married or otherwise emancipated. Such certification shall be on a form provided by the Commissioner and shall contain the following statement:

"It is illegal for anyone to give false information in connection with obtaining a driver's license. This certification is considered part of the driver's license application, and anyone who certifies to a false statement may be prosecuted. I certify that the statements made and the information submitted by me regarding this certification are true and correct."

Such form shall also include the driver's license or Department of Motor Vehicles-issued identification card number of the person making the certification.

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

**182** who is 21 years of age or older.

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

**184** K. Any violation of this section shall be punishable as a Class 2 misdemeanor.