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**HOUSE BILL NO. 438**

Offered January 9, 2008

Prefiled January 4, 2008

*A BILL to amend and reenact § 46.2-335 of the Code of Virginia, relating to issuance of learner's permits to minors.*

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Patron—Miller, J.H.

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Referred to Committee on Transportation

**Be it enacted by the General Assembly of Virginia:****1. That § 46.2-335 of the Code of Virginia is amended and reenacted as follows:**

§ 46.2-335. Learner's permits; fees.

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

The Department shall not issue a learner's permit or motorcycle learner's permit to any minor applicant who, according to the records of the school the minor attends, has had more than five unexcused absences from school in the six months immediately prior to his application; nor shall the Department ~~shall not, however,~~ issue a learner's permit or motorcycle learner's permit to any minor applicant required to provide evidence of compliance with the compulsory school attendance law set forth in Article 1 (§ 22.1-254 et seq.) of Chapter 14 of Title 22.1, unless such applicant 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 learner's permit 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 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

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59 maintenance of a motor vehicle, nor shall anything in this subsection change any existing law, rule, or  
60 procedure pertaining to any such civil action.

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

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

68 H. The Department shall charge a fee of \$3 for each learner's permit and motorcycle learner's permit  
69 issued under this section. Fees for issuance of learner's permits shall be paid into the driver education  
70 fund of the state treasury; fees for issuance of motorcycle learner's permits shall be paid into the state  
71 treasury and credited to the Motorcycle Rider Safety Training Program Fund created pursuant to  
72 § 46.2-1191. It shall be unlawful for any person, after having received a learner's permit, to drive a  
73 motor vehicle without being accompanied by a licensed driver as provided in the foregoing provisions of  
74 this section; however, a learner's permit other than a motorcycle learner's permit, accompanied by  
75 documentation verifying that the driver is at least 16 years and three months old and has successfully  
76 completed an approved driver's education course, signed by the minor's parent, guardian, legal custodian  
77 or other person standing in loco parentis, shall constitute a temporary driver's license for the purpose of  
78 driving unaccompanied by a licensed driver 18 years of age or older, if all other requirements of this  
79 chapter have been met. Such temporary driver's license shall only be valid until the driver has received  
80 his permanent license pursuant to § 46.2-336.

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

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

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

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

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

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

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