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SENATE BILL NO. 555

Offered January 13, 2016

Prefiled January 13, 2016

A *BILL to amend and reenact §§ 46.2-334.01 and 46.2-335 of the Code of Virginia, relating to operating a motor vehicle by a holder of a learner's permit or provisional driver's license holder.*

Patron—Cosgrove

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.

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.) 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, 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.) 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, 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, his place of employment, or an institution of higher learning where he is enrolled, provided there is no other means of transportation by which such person may travel between his home and his place of employment or the institution of higher learning where he is enrolled. 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 or the institution of higher learning where he is enrolled.

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.) 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, 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 for multiple convictions arising out of the same transaction or occurrence.

5. *Except in a driver emergency or when the vehicle is lawfully parked or stopped, any driver less than 19 years old shall not operate a motor vehicle on the highways of the Commonwealth while using any cellular telephone or any other wireless telecommunications device, regardless of whether or not such device is handheld.*

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

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59 authorize its holder to operate a motor vehicle with more than one passenger who is less than 21 years
60 old; ~~unless the driver is accompanied by a parent or person acting in loco parentis provided that such~~
61 ~~person accompanying the driver is occupying the seat beside the driver and is lawfully permitted to~~
62 ~~operate a motor vehicle at the time.~~ After the first year the provisional license is issued the holder may
63 operate a motor vehicle with up to three passengers who are less than 21 years old when (i) the holder
64 is driving to or from a school-sponsored activity, or (ii) a licensed driver who is at least 21 years old is
65 occupying the seat beside the driver, or (iii) in cases of emergency. ~~This~~ *These* passenger limitation
66 limitations, however, shall not apply to members of the driver's family or household. For the purposes of
67 this subsection, "a member of the driver's family or household" means any of the following: (a) the
68 driver's spouse, children, stepchildren, brothers, sisters, half-brothers, half-sisters, and any individual who
69 has a child in common with the driver, whether or not they reside in the same home with the driver; (b)
70 the driver's brothers-in-law and sisters-in-law who reside in the same home with the driver; and (c) any
71 individual who cohabits with the driver, and any children of such individual residing in the same home
72 with the driver.

73 C. The holder of a provisional driver's license shall not operate a motor vehicle on the highways of
74 the Commonwealth between the hours of midnight and 4:00 a.m. except when driving (i) to or from a
75 place of business where he is employed; (ii) to or from an activity that is supervised by an adult and is
76 sponsored by a school or by a civic, religious, or public organization; (iii) accompanied by a parent, a
77 person acting in loco parentis, or by a spouse who is 18 years old or older, provided that such person
78 accompanying the driver is actually occupying a seat beside the driver and is lawfully permitted to
79 operate a motor vehicle at the time; or (iv) in cases of emergency, including response by volunteer
80 firefighters and volunteer emergency medical services personnel to emergency calls.

81 ~~C1. Except in a driver emergency or when the vehicle is lawfully parked or stopped, the holder of a~~
82 ~~provisional driver's license shall not operate a motor vehicle on the highways of the Commonwealth~~
83 ~~while using any cellular telephone or any other wireless telecommunications device, regardless of~~
84 ~~whether such device is or is not hand-held.~~

85 D. The provisional driver's license restrictions in *subdivision A 5* and subsections B₇ and C₇ ~~and C1~~
86 shall expire on the holder's eighteenth birthday. A violation of the provisional driver's license restrictions
87 in either *subdivision A 5* or subsection B₇ or C₇ ~~or C1~~ shall constitute a traffic infraction. For a second
88 or subsequent violation of the provisional driver's license restrictions in either *subdivision A 5* or
89 subsection B₇ or C₇ ~~or C1~~, in addition to any other penalties that may be imposed pursuant to §
90 16.1-278.10, the court may suspend the juvenile's privilege to drive for a period not to exceed six
91 months.

92 E. A violation of *subdivision A 5* or subsection B₇ or C₇ ~~or C1~~ shall not constitute negligence, be
93 considered in mitigation of damages of whatever nature, be admissible in evidence, or be the subject of
94 comment by counsel in any action for the recovery of damages arising out of the operation, ownership,
95 or maintenance of a motor vehicle, nor shall anything in this subsection change any existing law, rule,
96 or procedure pertaining to any such civil action.

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

101 **§ 46.2-335. Learner's permits; fees; certification required.**

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

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

Any person 25 years of age or older who is eligible to receive an operator's license in Virginia, but who is required, pursuant to § 46.2-324.1, to be issued a learner's permit for 60 days prior to his first behind-the-wheel exam, may be issued such learner's permit even though restrictions on his driving privilege have been ordered by a court. Any such learner's permit shall be subject to the restrictions ordered by the court.

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 21 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 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.).

- 182** J. The following limitations shall apply to operation of motorcycles by all persons holding
183 motorcycle learner's permits:
- 184** 1. The operator shall wear an approved safety helmet as provided in § 46.2-910.
185 2. Operation shall be under the immediate supervision of a person licensed to operate a motorcycle
186 who is 21 years of age or older.
187 3. No person other than the operator shall occupy the motorcycle.
188 K. Any violation of this section shall be punishable as a Class 2 misdemeanor.