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HOUSE BILL NO. 612

Offered January 10, 2018

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A BILL to amend and reenact §§ 16.1-278.9 and 46.2-335 of the Code of Virginia, relating to delinquent children; issuance of learner's permits.

Patron—Habeeb

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-278.9 and 46.2-335 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-278.9. Delinquent children; loss of driving privileges for alcohol, firearm, and drug offenses; truancy.

A. If a court has found facts which would justify a finding that a child at least 13 years of age at the time of the offense is delinquent and such finding involves (i) a violation of § 18.2-266 or of a similar ordinance of any county, city or town, (ii) a refusal to take a breath test in violation of § 18.2-268.2, (iii) a felony violation of § 18.2-248, 18.2-248.1 or 18.2-250, (iv) a misdemeanor violation of § 18.2-248, 18.2-248.1, or 18.2-250 or a violation of § 18.2-250.1, (v) the unlawful purchase, possession or consumption of alcohol in violation of § 4.1-305 or the unlawful drinking or possession of alcoholic beverages in or on public school grounds in violation of § 4.1-309, (vi) public intoxication in violation of § 18.2-388 or a similar ordinance of a county, city or town, (vii) the unlawful use or possession of a handgun or possession of a "streetsweeper" as defined below, or (viii) a violation of § 18.2-83, the court shall order, in addition to any other penalty that it may impose as provided by law for the offense, that the child be denied a driver's license. In addition to any other penalty authorized by this section, if the offense involves a violation designated under clause (i) and the child was transporting a person 17 years of age or younger, the court shall impose the additional fine and order community service as provided in § 18.2-270. If the offense involves a violation designated under clause (i), (ii), (iii) or (viii), the denial of a driver's license shall be for a period of one year or until the juvenile reaches the age of 17, whichever is longer, for a first such offense or for a period of one year or until the juvenile reaches the age of 18, whichever is longer, for a second or subsequent such offense. If the offense involves a violation designated under clause (iv), (v) or (vi) the denial of driving privileges shall be for a period of six months unless the offense is committed by a child under the age of 16 years and three months, in which case the child's ability to apply for a driver's license shall be delayed for a period of six months following the date he reaches the age of 16 and three months. If the offense involves a first violation designated under clause (v) or (vi), the court shall impose the license sanction and may enter a judgment of guilt or, without entering a judgment of guilt, may defer disposition of the delinquency charge until such time as the court disposes of the case pursuant to subsection F of this section. If the offense involves a violation designated under clause (iii) or (iv), the court shall impose the license sanction and shall dispose of the delinquency charge pursuant to the provisions of this chapter or § 18.2-251. If the offense involves a violation designated under clause (vii), the denial of driving privileges shall be for a period of not less than 30 days, except when the offense involves possession of a concealed handgun or a striker 12, commonly called a "streetsweeper," or any semi-automatic folding stock shotgun of like kind with a spring tension drum magazine capable of holding 12 shotgun shells, in which case the denial of driving privileges shall be for a period of two years unless the offense is committed by a child under the age of 16 years and three months, in which event the child's ability to apply for a driver's license shall be delayed for a period of two years following the date he reaches the age of 16 and three months.

A1. If a court finds that a child at least 13 years of age has failed to comply with school attendance and meeting requirements as provided in § 22.1-258, the court shall order the denial of the child's driving privileges for a period of not less than 30 days. If such failure to comply involves a child under the age of 16 years and three months, the child's ability to apply for a driver's license shall be delayed for a period of not less than 30 days following the date he reaches the age of 16 and three months.

If the court finds a second or subsequent such offense, it may order the denial of a driver's license for a period of one year or until the juvenile reaches the age of 18, whichever is longer, or delay the child's ability to apply for a driver's license for a period of one year following the date he reaches the age of 16 and three months, as may be appropriate.

A2. If a court finds that a child at least 13 years of age has refused to take a blood test in violation of § 18.2-268.2, the court shall order that the child be denied a driver's license for a period of one year

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59 or until the juvenile reaches the age of 17, whichever is longer, for a first such offense or for a period
60 of one year or until the juvenile reaches the age of 18, whichever is longer, for a second or subsequent
61 such offense.

62 B. Any child who has a driver's license at the time of the offense or at the time of the court's finding
63 as provided in subsection A1 or A2 shall be ordered to surrender his driver's license, which shall be
64 held in the physical custody of the court during any period of license denial.

65 C. The court shall report any order issued under this section to the Department of Motor Vehicles,
66 which shall preserve a record thereof. The report and the record shall include a statement as to whether
67 the child was represented by or waived counsel or whether the order was issued pursuant to subsection
68 A1 or A2. Notwithstanding the provisions of Article 12 (§ 16.1-299 et seq.) of this chapter or the
69 provisions of Title 46.2, this record shall be available only to all law-enforcement officers, attorneys for
70 the Commonwealth and courts. No other record of the proceeding shall be forwarded to the Department
71 of Motor Vehicles unless the proceeding results in an adjudication of guilt pursuant to subsection F.

72 The Department of Motor Vehicles shall refuse to issue a driver's license to any child denied a
73 driver's license until such time as is stipulated in the court order or until notification by the court of
74 withdrawal of the order of denial under subsection E.

75 D. If the finding as to the child involves a violation designated under clause (i), (ii), (iii) or (vi) of
76 subsection A or a violation designated under subsection A2, the child may be referred to a certified
77 alcohol safety action program in accordance with § 18.2-271.1 upon such terms and conditions as the
78 court may set forth. If the finding as to such child involves a violation designated under clause (iii),
79 (iv), (v), (vii) or (viii) of subsection A, such child may be referred to appropriate rehabilitative or
80 educational services upon such terms and conditions as the court may set forth.

81 The court, in its discretion and upon a demonstration of hardship, may authorize the use of a
82 restricted permit to operate a motor vehicle by any child who has a driver's license at the time of the
83 offense or at the time of the court's finding as provided in subsection A1 or A2 for any of the purposes
84 set forth in subsection E of § 18.2-271.1 or for travel to and from school, except that no restricted
85 license shall be issued for travel to and from home and school when school-provided transportation is
86 available and no restricted license shall be issued if the finding as to such child involves a violation
87 designated under clause (iii) or (iv) of subsection A, or if it involves a second or subsequent violation of
88 any offense designated in subsection A, a second finding by the court of failure to comply with school
89 attendance and meeting requirements as provided in subsection A1, or a second or subsequent finding by
90 the court of a refusal to take a blood test as provided in subsection A2. The issuance of the restricted
91 permit shall be set forth within the court order, a copy of which shall be provided to the child, and shall
92 specifically enumerate the restrictions imposed and contain such information regarding the child as is
93 reasonably necessary to identify him. The child may operate a motor vehicle under the court order in
94 accordance with its terms. Any child who operates a motor vehicle in violation of any restrictions
95 imposed pursuant to this section is guilty of a violation of § 46.2-301.

96 *The court, in its discretion, may, during any period of license denial imposed pursuant to this*
97 *section, authorize the issuance of a learner's permit in accordance with the provisions of § 46.2-335 to*
98 *any child who did not have a driver's license at the time of the offense or at the time of the court's*
99 *finding as provided in subsection A1 or A2. If the child does not satisfy the age requirement for the*
100 *issuance of a learner's permit set forth in subsection A of § 46.2-335, the court may authorize the*
101 *issuance of a learner's permit upon the child's satisfying such age requirement. A child issued a learner's*
102 *permit in accordance with this subsection shall comply with the provisions of § 46.2-335, and the court*
103 *may impose additional restrictions on the child's driving privilege. No learner's permit shall be issued*
104 *(i) to a child who had a driver's license at the time of the offense or at the time of the court's finding as*
105 *provided in subsection A1 or A2 who is eligible for a restricted license or (ii) if the finding as to such*
106 *child involves a second or subsequent violation of any offense designated in subsection A, a second*
107 *finding by the court of failure to comply with school attendance and meeting requirements as provided*
108 *in subsection A1, or a second or subsequent finding by the court of a refusal to take a blood test as*
109 *provided in subsection A2. The issuance of the learner's permit shall be set forth within the court order,*
110 *a copy of which shall be provided to the child, and shall specifically enumerate the restrictions imposed*
111 *and contain such information regarding the child as is reasonably necessary to identify him. The child*
112 *may operate a motor vehicle under the court order in accordance with its terms. Any child who*
113 *operates a motor vehicle in violation of any restrictions imposed pursuant to this section is guilty of a*
114 *violation of § 46.2-301.*

115 E. Upon petition made at least 90 days after issuance of the order, the court may review and
116 withdraw any order of denial of a driver's license if for a first such offense or finding as provided in
117 subsection A1 or A2. For a second or subsequent such offense or finding, the order may not be
118 reviewed and withdrawn until one year after its issuance.

119 F. If the finding as to such child involves a first violation designated under clause (vii) of subsection
120 A, upon fulfillment of the terms and conditions prescribed by the court and after the child's driver's

license has been restored, the court shall or, in the event the violation resulted in the injury or death of any person or if the finding involves a violation designated under clause (i), (ii), (v), or (vi) of subsection A, may discharge the child and dismiss the proceedings against him. Discharge and dismissal under these provisions shall be without an adjudication of guilt but a record of the proceeding shall be retained for the purpose of applying this section in subsequent proceedings. Failure of the child to fulfill such terms and conditions shall result in an adjudication of guilt. If the finding as to such child involves a violation designated under clause (iii) or (iv) of subsection A, the charge shall not be dismissed pursuant to this subsection but shall be disposed of pursuant to the provisions of this chapter or § 18.2-251. If the finding as to such child involves a second violation under clause (v), (vi) or (vii) of subsection A, the charge shall not be dismissed pursuant to this subsection but shall be disposed of under § 16.1-278.8.

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

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, 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.

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.

Any minor who has been adjudicated delinquent of any offense that resulted in restrictions on his driving privilege being ordered by a juvenile and domestic relations district court pursuant to § 16.1-278.9 who is otherwise eligible to receive a learner's permit may be issued a learner's permit even though restrictions on his driving privilege have been ordered by a court. The Department shall not issue a learner's permit to such a minor without the written approval of the court that adjudicated the minor delinquent, and 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."

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

184 C. No learner's permit shall authorize its holder to operate a motor vehicle with more than one
185 passenger who is less than 21 years old, except when participating in a driver education program
186 approved by the Department of Education or a course offered by a driver training school licensed by the
187 Department. This passenger limitation, however, shall not apply to the members of the driver's family or
188 household as defined in subsection B of § 46.2-334.01.

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

191 E. Except in a driver emergency or when the vehicle is lawfully parked or stopped, no holder of a
192 learner's permit shall operate a motor vehicle on the highways of the Commonwealth while using any
193 cellular telephone or any other wireless telecommunications device, regardless of whether or not such
194 device is handheld. No citation for a violation of this subsection shall be issued unless the officer
195 issuing such citation has cause to stop or arrest the driver of such motor vehicle for the violation of
196 some other provision of this Code or local ordinance relating to the operation, ownership, or
197 maintenance of a motor vehicle or any criminal statute.

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

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

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

210 I. The Department shall charge a fee of \$3 for each learner's permit and motorcycle learner's permit
211 issued under this section. Fees for issuance of learner's permits shall be paid into the driver education
212 fund of the state treasury; fees for issuance of motorcycle learner's permits shall be paid into the state
213 treasury and credited to the Motorcycle Rider Safety Training Program Fund created pursuant to
214 § 46.2-1191. It shall be unlawful for any person, after having received a learner's permit, to drive a
215 motor vehicle without being accompanied by a licensed driver as provided in the foregoing provisions of
216 this section; however, a learner's permit other than a motorcycle learner's permit, accompanied by
217 documentation verifying that the driver is at least 16 years and three months old and has successfully
218 completed an approved driver's education course, signed by the minor's parent, guardian, legal custodian
219 or other person standing in loco parentis, shall constitute a temporary driver's license for the purpose of
220 driving unaccompanied by a licensed driver 18 years of age or older, if all other requirements of this
221 chapter have been met. Such temporary driver's license shall only be valid until the driver has received
222 his permanent license pursuant to § 46.2-336.

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

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

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

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

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

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