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HOUSE BILL NO. 1846

Offered January 13, 2021

Prefiled January 7, 2021

A *BILL to amend and reenact § 46.2-334.01, as it is currently effective and as it shall become effective, of the Code of Virginia, relating to license restrictions for minors; use of handheld personal communications devices.*

Patron—Robinson

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That § 46.2-334.01, as it is currently effective and as it shall become effective, of the Code of Virginia is amended and reenacted as follows:

§ 46.2-334.01. (Effective until March 1, 2021) Licenses issued to persons less than 18 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 education 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 education 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 education 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.

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 21 years

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

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

78 C1. Except in a driver emergency or when the vehicle is lawfully parked or stopped, the holder of a
79 provisional driver's license shall not operate a motor vehicle on the highways of the Commonwealth
80 while using any ~~cellular telephone or any other wireless telecommunications handheld personal~~
81 ~~communications device or other wireless communications~~ device, regardless of whether such device is or
82 is not ~~hand-held~~ *being held by the driver or used for communications purposes. However, nothing in*
83 *this subsection shall prohibit the holder of a provisional driver's license from using (i) an application on*
84 *such device for solely navigation purposes and (ii) factory-installed or aftermarket global positioning*
85 *systems (GPS), provided that the driver does not (a) hold such device or system or (b) enter any*
86 *information into or manually manipulate such device or system while operating the vehicle.*

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

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

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

102 **§ 46.2-334.01. (Effective March 1, 2021) Licenses issued to persons less than 18 years old**
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104 A. Any learner's permit or driver's license issued to any person less than 18 years old shall be
105 subject to the following:

106 1. Notwithstanding the provisions of § 46.2-498, whenever the driving record of a person less than
107 19 years old shows that he has been convicted of committing, when he was less than 18 years old, (i)
108 an offense for which demerit points have been assessed or are assessable under Article 19 (§ 46.2-489
109 et seq.) or (ii) a violation of any provision of Article 12 (§ 46.2-1091 et seq.) or Article 13
110 (§ 46.2-1095 et seq.) of Chapter 10, the Commissioner shall direct such person to attend a driver
111 improvement clinic. No safe driving points shall be awarded for such clinic attendance, nor shall any
112 safe driving points be awarded for voluntary or court-assigned clinic attendance. Such person's parent,
113 guardian, legal custodian, or other person standing in loco parentis may attend such clinic and receive a
114 reduction in demerit points and/or an award of safe driving points pursuant to § 46.2-498. The
115 provisions of this subdivision shall not be construed to prohibit awarding of safe driving points to a
116 person less than 18 years old who attends and successfully completes a driver improvement clinic
117 without having been directed to do so by the Commissioner or required to do so by a court.

118 2. If any person less than 19 years old is convicted a second time of committing, when he was less
119 than 18 years old, (i) an offense for which demerit points have been assessed or are assessable under
120 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 education 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 education 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 education 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.

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 21 years old. After the first year the provisional license is issued, the holder may operate a motor vehicle with up to three passengers who are less than 21 years old (i) when the holder is driving to or from a school-sponsored activity, (ii) when a licensed driver who is at least 21 years old is occupying the seat beside the driver, or (iii) in cases of emergency. These passenger limitations, however, shall not apply to members of the driver's family or household. For the purposes of this subsection, "a member of the driver's family or household" means any of the following: (a) the driver's spouse, children, stepchildren, brothers, sisters, half-brothers, half-sisters, first cousins, and any individual who has a child in common with the driver, whether or not they reside in the same home with the driver; (b) the driver's brothers-in-law and sisters-in-law who reside in the same home with the driver; and (c) any individual who cohabits with the driver, and any children of such individual residing in the same home with the driver.

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

C1. Except in a driver emergency or when the vehicle is lawfully parked or stopped, the holder of a provisional driver's license shall not operate a motor vehicle on the highways of the Commonwealth while using any ~~cellular telephone or any other wireless telecommunications handheld personal communications device or other wireless communications device~~, regardless of whether such device is or is not ~~hand-held~~ being held by the driver or used for communications purposes. However, nothing in this subsection shall prohibit the holder of a provisional driver's license from using (i) an application on such device for solely navigation purposes and (ii) factory-installed or aftermarket global positioning systems (GPS), provided that the driver does not (a) hold such device or system or (b) enter any information into or manually manipulate such device or system while operating the vehicle.

D. The provisional driver's license restrictions in subsections B, C, and C1 shall expire on the holder's eighteenth birthday. A violation of the provisional driver's license restrictions in subsection B, C, or C1 shall constitute a traffic infraction. For a second or subsequent violation of the provisional driver's license restrictions in subsection B, C, or C1, in addition to any other penalties that may be imposed pursuant to § 16.1-278.10, the court may suspend the juvenile's privilege to drive for a period not to exceed six months.

E. A violation of subsection B, C, or C1 shall not constitute negligence, be considered in mitigation

182 of damages of whatever nature, be admissible in evidence, or be the subject of comment by counsel in
183 any action for the recovery of damages arising out of the operation, ownership, or maintenance of a
184 motor vehicle, nor shall anything in this subsection change any existing law, rule, or procedure
185 pertaining to any such civil action.

186 F. No law-enforcement officer shall stop a motor vehicle for a violation of this section. No evidence
187 discovered or obtained as the result of a stop in violation of this subsection, including evidence
188 discovered or obtained with the operator's consent, shall be admissible in any trial, hearing, or other
189 proceeding.