

# VIRGINIA ACTS OF ASSEMBLY -- 1995 SESSION

## CHAPTER 672

*An Act to amend and reenact §§ 46.2-351.1, 46.2-489, 46.2-490, 46.2-491, 46.2-495, 46.2-498, 46.2-499, 46.2-500, 46.2-501, 46.2-502, 46.2-503, 46.2-505, and 46.2-506 of the Code of Virginia; to amend the Code of Virginia by adding a section numbered 46.2-490.2; and to repeal §§ 46.2-496 and 46.2-497 of the Code of Virginia, relating to driver improvement programs.*

[H 2318]

Approved March 25, 1995

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

**1. That §§ 46.2-351.1, 46.2-489, 46.2-490, 46.2-491, 46.2-495, 46.2-498, 46.2-499, 46.2-500, 46.2-501, 46.2-502, 46.2-503, 46.2-505, and 46.2-506 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 46.2-490.2 as follows:**

§ 46.2-351.1. Intervention required for certain offenders; fee; penalty; notice.

A. Upon receiving notification of any conviction entered on or after January 1, 1994, which will result in the offender's being subject to adjudication as an habitual offender if convicted of one additional offense, the Commissioner shall, ~~if any offense which may be used for such adjudication is alcohol related or drug related,~~ notify the person that he shall report to an alcohol safety action program *a Virginia Alcohol Safety Action Program* within sixty days of the date of such notice for intervention. Intervention shall be in accordance with § 18.2-271.1. The program shall provide the Commissioner with information of compliance.

B. ~~Upon receiving notification of any conviction entered on or after January 1, 1994, which will result in the offender's being subject to adjudication as an habitual offender if convicted of one additional offense, the Commissioner shall, if none of the offenses which may be used for such adjudication is alcohol related or drug related, notify the person that he shall attend a driver intervention interview within sixty days of the date of the notice. The~~ An interview shall be conducted by a representative of the Department, to be designated by the Commissioner *a Virginia Alcohol Safety Action Program*. The representative shall review with the person attending the interview the habitual offender laws and explain the consequences of future offenses and may refer the person to any driver improvement program approved by the Commissioner *clinic*. A fee of thirty dollars shall be paid to the *Virginia Alcohol Safety Action Program* for attendance at a driver intervention interview. *All fees collected by a Virginia Alcohol Safety Action Program shall be used to meet their expenses.*

C. The Commissioner shall suspend the driving privilege of any person who fails to ~~report complete and pay the required fee for an~~ intervention interview within the sixty-day period. The suspension shall continue until such time as the person ~~reports has completed and paid for the~~ intervention interview.

D. Notice to report for intervention shall be sent by the Department by certified mail, return receipt requested, to the driver at the last known address supplied by the driver and on file with the Department.

E. Failure of the offender to attend as required or failure of the Department to notify the offender upon the second qualifying offense shall not be used to prohibit adjudication as an habitual offender upon receipt of the third qualifying offense.

§ 46.2-489. Regulations; appeals.

The Commissioner ~~shall~~ *may*, subject to the provisions of § 46.2-203, promulgate regulations which he deems necessary to carry out the provisions of this article.

Any person receiving an order of the Commissioner to suspend or revoke his driver's license or licensing privilege or to require attendance at a driver improvement clinic or placing him on probation may, within thirty days from the date of the order, file a petition of appeal in accordance with § 46.2-410.

§ 46.2-490. Establishment of driver improvement clinic program; application fees.

~~The Commissioner shall, in his discretion, designate persons to act for the Department as driver improvement analysts to examine and evaluate the driving records of the problem drivers and to conduct group interviews, personal interviews and driver improvement clinics.~~

A. *The Commissioner shall, in his discretion, contract with such entities as the Commissioner deems fit, including private or governmental entities, to develop curricula for a statewide driver improvement clinic program. The driver improvement clinic program shall be established for the purpose of instructing persons identified by the Department and the court system as problem drivers in need of driver improvement education and training and for those drivers interested in improved driving safety. The clinics shall be composed of uniform education and training programs designed for the rehabilitation of problem drivers, and for the purpose of creating a lasting and corrective influence on their driving performance. The clinics shall operate in localities based on their geographical location so*

as to be reasonably accessible to persons attending these clinics.

B. All businesses, organizations, governmental entities or individuals that want to provide driver improvement clinic instruction in the Commonwealth using approved curricula shall apply to the Department to be certified to do so, based on criteria established by the Department. A nonrefundable annual application fee of \$100 shall be paid to the Department by all such businesses, organizations, governmental entities or individuals. All such application fees collected by the Department shall be paid by the Commissioner into the state treasury and shall be set aside as a special fund to be used to meet the expenses of the Department.

§ 46.2-490.2. Time frame for program transition.

A. The Department shall continue to provide group interviews and personal interviews through September 30, 1995, in order to accommodate persons notified by the Department prior to July 1, 1995, to attend such interviews.

The group interview order shall be terminated on October 1, 1995, for those persons who fail to complete a required group interview by September 30, 1995. Any associated group interview and reinstatement fees shall be waived. The Department shall mail notices to these persons informing them of the termination.

The personal interview order shall be terminated on October 1, 1995, for those persons who fail to complete a required personal interview by September 30, 1995. Any associated personal interview and reinstatement fees shall be waived. The Department shall mail notices to these persons informing them of the termination, requiring them to complete a driver improvement clinic and placing them on a six-month probation period in accordance with §§ 46.2-498 and 46.2-499 of this article.

No group or personal interview notices shall be issued on or after July 1, 1995. Persons required to complete a driver improvement clinic as a result of a notice issued prior to July 1, 1995, shall continue to be required to satisfy such notice.

B. As necessary, the Department shall provide clinic instruction until such time as curricula for use in driver improvement clinics have been approved and are in use by those businesses, organizations, governmental entities or individuals certified by the Department to provide driver improvement clinic instruction. No materials, instructors, instructor fees or any other form of subsidy shall be provided by the Department to any business, organization, governmental entity or individual providing driver improvement clinic instruction on or after July 1, 1995.

§ 46.2-491. Persons included within scope of article.

This ~~chapter~~ article shall apply to (i) every resident of the Commonwealth, regardless of whether he possesses a driver's license issued by the Department and (ii) every nonresident to whom the Department has issued a driver's license.

§ 46.2-495. Advisory letters.

Whenever the driving record of any person shows an accumulation of at least ~~six~~ eight demerit points based on convictions, or findings of not innocent in the case of a juvenile, for traffic offenses committed within a period of twelve consecutive months, or at least ~~nine~~ twelve demerit points based on convictions, or findings of not innocent in the case of a juvenile, for traffic offenses committed within a period of twenty-four consecutive months, respectively, the Commissioner may mail, by first-class mail, to the last known address of the person an advisory letter listing his convictions, or findings of not innocent in the case of a juvenile, and the demerit points assigned thereto, including his safe driving points, if any, and furnish any other information deemed appropriate and applicable to the rehabilitation of the person, for the purpose of preventing subsequent traffic offenses.

The Department's failure to mail, or the citizen's nonreceipt of the advisory letter shall not be grounds for waiving any other provision of this article.

§ 46.2-498. Driver improvement clinics; voluntary attendance.

The Commissioner shall implement a system of driver improvement clinics for the purpose of dealing with those persons identified as problem drivers in need of driver improvement education and training. The clinics shall be composed of uniform education and training programs designed for the rehabilitation of the problem drivers, and for the purpose of creating a lasting and corrective influence on their driving performances.

The clinic classes shall be scheduled to begin at a reasonable hour during the evenings and shall be conducted for a two-hour period, one night each week for four consecutive weeks. The Commissioner may, when he deems it necessary because of unusual conditions or circumstances, schedule and conduct clinic classes between the hours of 8:30 a.m. and 5:00 p.m.

A. Whenever the driving record of any person shows an accumulation of at least twelve demerit points based on convictions, or findings of not innocent in the case of a juvenile, for traffic offenses committed within a period of twelve consecutive months, or at least eighteen demerit points based on convictions, or findings of not innocent in the case of a juvenile, for traffic offenses committed within a period of twenty-four consecutive months, respectively, the Commissioner shall direct the person to attend a driver improvement clinic.

B. Except as provided for in subsection C of this section and in § 46.2-505, every person who attends a driver improvement clinic conducted by the Department or those businesses, organizations,

*governmental entities or individuals certified by the Department to provide driver improvement clinic instruction and who satisfactorily completes the clinic shall have five demerit points subtracted from his total accumulation of demerit points, except in those instances where a person has not accumulated five demerit points, in which case a reduction in demerit points and/or the award of safe driving points will be made. No person shall be allowed to accumulate more than five safe driving points.*

*No person Safe driving points shall be rescheduled to attend a driver improvement clinic for awarded or reductions in premium charges, as set forth in § 38.2-2217, shall be received for the completion of a driver improvement clinic only once within a period of two years from the date he a person satisfactorily completes the clinic; however, the provisions of this section shall not apply to any person who is required to attend a driver improvement clinic in accordance with the provisions of § 46.2-505. Persons shall be eligible to voluntarily attend a driver improvement clinic again for either safe driving points or a reduction in premium charges, whichever was not awarded or received previously, one year from the date of satisfactory completion of a driver improvement clinic in which safe driving points or a reduction in premium charges was received or awarded.*

*The Commissioner may solicit organizations or persons, knowledgeable in highway safety driving standards, to participate in conjunction with the Department of Motor Vehicles in the development of the local driver improvement clinic program and in conducting the driver improvement clinic classes. The Commissioner may employ the services of qualified professional instructors for the purpose of conducting driver improvement clinic classes in those areas of the Commonwealth where it is not economically practicable to maintain the full-time services of a driver improvement analyst.*

*C. Any resident or nonresident person holding a valid license to drive a motor vehicle in Virginia, whether or not he has accumulated demerit points, may apply to the Department in writing any business, organization, governmental entity or individual certified by the Department to provide driver improvement clinic instruction for permission to attend a driver improvement clinic on a voluntary basis. The Commissioner Such businesses, organizations, governmental entities or individuals may, when seating space is available, schedule the person to attend a driver improvement clinic.*

*Persons who voluntarily attend and satisfactorily complete a driver improvement clinic shall be eligible (i) to have five demerit points subtracted from their total accumulation of demerit points, except in those instances where a person has not accumulated five demerit points, in which case a reduction in demerit points and/or the award of safe driving points will be made, or (ii) to receive a reduction in premium charges as set forth under § 38.2-2217, either of which, but not both, shall be awarded or received no more than once in a two-year period, as set forth in subsection B of this section. Such persons shall inform the business, organization or individual providing instruction if they are attending to be awarded safe driving points or to receive a reduction in premium charges as set forth under § 38.2-2217.*

#### *§ 46.2-499. Driver's license probation.*

*A. The Commissioner may shall place any person on probation for a period of not more than one year six months when probation is used in conjunction with the provisions of § 46.2-497 and 46.2-498. In addition, the Commissioner shall place any person on probation for a period of six months on receiving a record of a conviction of such person of any offense for which demerit points are assessed and the offense was committed within any driver control period imposed pursuant to § 46.2-500. Whenever a person who has been placed on probation is convicted, or found not innocent in the case of a juvenile, of any offense for which demerit points are assessed, and the offense was committed during the probation period, the Commissioner shall suspend the person's license or licenses for a period of one half of the probation period ninety days when six demerit points are assigned, for a period of one-third of the probation period sixty days when four demerit points are assigned, and for a period of one-fourth of the probation period forty-five days when three demerit points are assigned. In addition, the Commissioner shall again place the person on probation for a period equal to the probationary period originally prescribed for the person pursuant to § 46.2-497 or this section of six months, effective on termination of the suspension imposed pursuant to this section.*

*B. Upon request, the Commissioner may shall grant a restricted license during the first period of suspension imposed pursuant to subsection A of this section provided the person is otherwise eligible to be licensed. Any person whose driver's license is suspended for a second or subsequent time under subsection A of this section may request a hearing to be conducted by a driver improvement analyst for the purpose of securing shall be eligible to receive a restricted driver's license. The analyst may, in his discretion, for good cause shown, provide that such person be issued a only if the violation occurred within a probation period that was immediately preceded by a control period. A restricted license to operate a motor vehicle may be issued for any or all of the following purposes: (i) travel to and from his place of employment; (ii) travel during the hours of such person's employment if the operation of a motor vehicle is a necessary incident of such employment; (iii) travel to and from school if such person is a student; or (iv) such other medically necessary travel as the analyst deems necessary. Written verifications of the person's employment, continuing education or medically necessary travel shall also be required and made available to the Commissioner. Whenever a person who has been granted a restricted license pursuant to this subsection is convicted, or found not innocent in the case of a juvenile, of any*

offense for which demerit points are assessed, and the offense was committed during the restricted license period, the Commissioner shall suspend the person's license ~~or licenses for the period of time the person's license was to be originally suspended~~ *using the same demerit point criteria and suspension periods set forth in subsection A of this section.* No restricted license issued pursuant to this subsection shall permit any person to operate a commercial motor vehicle as defined in the Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.).

*C. Whenever the Department receives notice from the court that restricted license privileges have been granted to a person who has an existing restricted license issued pursuant to subsection B of this section, the existing restricted license shall be cancelled, and the Commissioner shall suspend the person's license for the period of time remaining on the original order of suspension. No court-granted restricted license shall be issued until the end of the suspension period imposed by the Commissioner.*

§ 46.2-500. Driver control period.

Whenever an individual is placed on probation pursuant to §§ ~~46.2-497, 46.2-498, or § 46.2-499~~ *or § 46.2-506*, the Commissioner shall also place the person on driver control status for a period of eighteen months following the termination of the probationary period. If the individual commits any violation during the driver control period for which points are assessed, the Commissioner shall again place the individual on probation for a period of six months and on driver control status for an additional period of eighteen months following the probationary period.

§ 46.2-501. Notice to attend driver improvement clinic.

~~A. Any notice to attend a group interview or a personal interview shall contain:~~

~~1. A specific statement of the offense or offenses which the person has been convicted of, or found not innocent of in the case of a juvenile.~~

~~2. The date, time, and location of the group interview or the personal interview.~~

~~3. The purpose of the group interview or personal interview.~~

~~B. Any notice to attend a driver improvement clinic must contain:~~

~~1. The date, time, and location of the~~ *Information on how to schedule a driver improvement clinic.*

~~2. The purpose of the driver improvement clinic, including the consequences of not attending the clinic program.~~

~~3. An explanation of the terms of the probationary licensing period; if any.~~

~~4. A requirement stating that the clinic must be satisfactorily completed within ninety days from the date of the notice.~~

~~C. B. The notice directing any person to attend a group interview, personal interview or driver improvement clinic shall provide the addressee with a minimum of ten days' notice, and shall be forwarded by certified mail to the last known address of the person, as shown on the records of the Department.~~

§ 46.2-502. Clinic fees.

~~A. The Commissioner shall designate the localities in which the group interviews, personal interviews and driver improvement clinics are to be conducted. These localities shall be designated on the basis of their geographical location so as to be reasonably accessible to any person required to attend these interviews or clinics.~~

~~B. The Commissioner~~ *For those persons notified by the Department prior to July 1, 1995, to attend a driver improvement clinic, the Commissioner shall charge a fee of fifty dollars. The Department and all businesses, organizations, governmental entities or individuals certified by the Department to provide driver improvement clinic instruction shall charge fees a fee of seventy-five dollars to participants in the driver improvement program; attending group interviews, personal interviews or persons notified by the Department on or after July 1, 1995, to attend a driver improvement clinics according to the fee schedule in subsection C of this section clinic.* No person shall be permitted to attend a group interview, personal interview or driver improvement clinic unless ~~he~~ *the person* first pays to the Commissioner the required attendance fee to the business, organization, governmental entity or individual providing the driver improvement clinic instruction. All fees collected under the provisions of this section shall be paid by the Commissioner into the state treasury and shall be set aside as a special fund to be used to meet the expenses of the Department.

~~C. A fee of twenty-five dollars shall be paid for attendance of a group interview. A fee of thirty dollars shall be paid for attendance of a personal interview. A fee of fifty dollars shall be paid for attendance of a driver improvement clinic.~~

~~B. On or after July 1, 1995, all businesses, organizations, governmental entities or individuals certified by the Department to provide driver improvement clinic instruction shall pay to the Department a processing fee of ten dollars for each person attending a driver improvement clinic taught by such businesses, organizations, governmental entities or individuals. Such processing fee payments shall accompany the clinic rosters submitted to the Department by such businesses, organizations, governmental entities or individuals. All fees collected by the Department under this subsection shall be paid by the Commissioner into the state treasury and shall be set aside as a special fund to be used to meet the expenses of the Department.~~

§ 46.2-503. Suspension of privilege to operate a motor vehicle for failure to attend clinics.

A. The Commissioner shall suspend the driver's license or other privilege to operate a motor vehicle of any person who fails to attend a scheduled group interview, personal interview or *satisfactorily complete a driver improvement clinic*. This suspension shall remain in effect until such person applies to the Department in writing for permission to attend a scheduled group interview, personal interview or driver improvement clinic, whichever is applicable, and thereafter until he is rescheduled and satisfactorily completes the assignment, except as hereinafter provided *driver improvement clinic. This section shall not be applicable to persons attending clinics on a voluntary basis.*

B. The Commissioner may, for good cause shown, cancel or terminate the suspension or reinstatement requirement, provided the person applies to the Department in writing for permission to attend a scheduled group interview, personal interview or driver improvement clinic, whichever is applicable. In the event he does not satisfactorily complete the assignment, the Commissioner shall forthwith suspend the person's driver's license or other privilege to operate a motor vehicle as required by subsection A of this section.

§ 46.2-505. Court may direct defendant to attend driver improvement clinic.

Any circuit or general district court or *juvenile court* of the Commonwealth, or any federal court, charged with the duty of hearing traffic cases for offenses committed in violation of any law of the Commonwealth, or any valid local ordinance, or any federal law regulating the movement or operation of a motor vehicle, may require any person found guilty, *or in the case of a juvenile found not innocent*, of a violation of any state law, local ordinance, or federal law, to attend a driver improvement clinic. The attendance requirement may be in lieu of or in addition to the penalties prescribed by § 46.2-113, the ordinance, or federal law. *The court shall determine if a person is to receive safe driving points upon satisfactory completion of a driver improvement clinic conducted by the Department or by any business, organization, governmental entity or individual certified by the Department to provide driver improvement clinic instruction. In the absence of such notification, no safe driving points shall be awarded by the Department.*

*Whenever any court stipulates in its judgment of conviction, or finding of not innocent in the case of a juvenile, that a person attend a driver improvement clinic, the court shall so indicate in the space provided on the abstract of conviction filed with the Department in accordance with the provisions of § 46.2-383, or any federal law, rule or regulation. On receipt of the abstract of record, the Department shall forthwith schedule the person to attend a driver improvement clinic.*

*Persons required by the court to attend a driver improvement clinic shall notify the court if the driver improvement clinic has or has not been attended and satisfactorily completed, in compliance with the court order. Failure of the person to attend and satisfactorily complete a driver improvement clinic, in compliance with the court order, may be punished as contempt of such court. In every such case, the Commissioner shall notify the court of the defendant's failure to comply with the court order.*

§ 46.2-506. Formal hearings; suspension for excessive point accumulation.

A. Whenever the operating record of any person shows an accumulation of six demerit points based on convictions, or findings of not innocent in the case of a juvenile, for traffic violations committed within any twelve consecutive months, or twelve demerit points based on convictions, or findings of not innocent in the case of a juvenile, for traffic violations committed within any twenty-four consecutive months, respectively, and subsequent to his assignment to attend a personal interview *a continued disregard of the motor vehicle laws subsequent to being placed on probation*, he may be charged as ~~an~~ *habitually* a reckless or negligent driver of a motor vehicle, and cited for a formal hearing in accordance with the provisions of §§ 46.2-402 through 46.2-408. *If the hearing results in the suspension of a person's driving privilege, the person shall be placed on probation at the end of the suspension period in accordance with the provisions of § 46.2-499.*

B. Whenever the operating record of any person shows an accumulation of at least eighteen demerit points based on convictions, or findings of not innocent in the case of a juvenile, for traffic violations committed within any twelve consecutive months, or at least twenty-four demerit points based on convictions, or findings of not innocent in the case of a juvenile, for traffic violations committed within any twenty-four consecutive months, respectively, the Commissioner shall suspend the person's license or licenses for a period of ninety days and thereafter until he attends a personal interview and satisfactorily completes a driver improvement clinic. *At the end of this suspension period, the person shall be placed on probation in accordance with the provisions of § 46.2-499.*

**2. That §§ 46.2-496 and 46.2-497 of the Code of Virginia are repealed.**