

VIRGINIA ACTS OF ASSEMBLY -- 2002 SESSION

CHAPTER 724

An Act to amend and reenact § 46.2-505 of the Code of Virginia, and to amend the Code of Virginia by adding sections numbered 46.2-341.18:1, 46.2-341.20:1, and 46.2-341.20:2, relating to violations committed while operating a commercial motor vehicle; driver improvement clinics; penalties.

[H 934]

Approved April 6, 2002

Be it enacted by the General Assembly of Virginia:

1. That § 46.2-505 of the Code of Virginia is amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 46.2-341.18:1, 46.2-341.20:1, and 46.2-341.20:2 as follows:

§ 46.2-341.18:1. Disqualification for certain alcohol-related offenses committed in other jurisdictions whose laws provide for disqualification for such offenses without a conviction.

A. Notwithstanding the provisions of § 46.2-341.18 that require the Commissioner act to disqualify only on the basis of conviction records for certain offenses committed while operating a commercial motor vehicle, the Commissioner shall also act to disqualify, as provided in § 46.2-341.18, where he has received a record from another jurisdiction indicating that a Virginia licensee has been disqualified in that jurisdiction, solely as a result of his violation in that jurisdiction, of either of the two offenses listed in subdivisions 1 and 2, committed while operating a commercial motor vehicle, even though the disqualification was imposed as the result of an administrative or civil action and there was no court proceeding that could result in a conviction for such offense. The two offenses for which such action shall be taken are:

1. Operation of a commercial motor vehicle with a blood alcohol content of 0.04 percent or more, or
2. Refusal to submit to a chemical test to determine the alcohol or drug content of blood or breath of the operator of a commercial motor vehicle under the implied consent laws of that jurisdiction.

B. The Commissioner shall treat such a record of disqualification as though it were a conviction record from that jurisdiction under a law substantially similar to subsection B of § 46.2-341.24 or § 46.2-341.26:4, respectively, for purposes of implementing the disqualification provisions of § 46.2-341.18, but such record shall not be considered a conviction for any other purpose and shall not be recorded as a conviction on the driving record of the individual. Moreover, such treatment as a conviction for purposes of § 46.2-341.18 shall be applicable only if the disqualification action is final and unappealable or has been appealed and the appeal dismissed or the action affirmed and no further appeals are possible under the laws of the jurisdiction wherein the offense was committed, and only if the disqualification period imposed by that jurisdiction is at least as long as the periods set out in § 46.2-341.18 for such an offense.

C. In no case shall the Commissioner act more than once to disqualify a Virginia licensee for any single violation committed in another jurisdiction, even though such violation may be reported by that jurisdiction as both an administrative or civil disqualification action and as a conviction from a court in that jurisdiction. Moreover, the Commissioner shall rescind a disqualification imposed pursuant to this section if the disqualification has been vacated or rescinded by the other jurisdiction as a result of the licensee's acquittal in the court proceedings, or the dismissal of those proceedings, in that jurisdiction.

§ 46.2-341.20:1. Disqualification for railroad/highway grade crossing violations.

A. Except as otherwise provided in subsection B, the Commissioner shall disqualify for a period of sixty days any person whose record, as maintained by the Department, shows that he has been convicted of any offense committed while operating a commercial motor vehicle in violation of any law relating to the operation of a motor vehicle at a railroad/highway grade crossing, including but not limited to the provisions of Article 9 (§ 46.2-884 et seq.) of Chapter 8 of this title and the provisions of the Virginia and Federal Motor Carrier Safety Regulations, and any similar law of any other state or any locality.

B. The period of disqualification shall be for 120 days if the conviction was for an offense described in subsection A, committed within three years of a prior such offense, or for one year if for a third or subsequent such offense committed within three years, provided each offense arose from separate incidents.

§ 46.2-341.20:2. Employer penalty; railroad/highway grade crossing violations.

Any employer who knowingly allows, permits, authorizes, or requires an employee to operate a commercial motor vehicle in violation of any law or regulation pertaining to railroad/highway grade crossings shall be subject to a civil penalty of not more than \$10,000, which shall be imposed by the Commissioner upon receipt of notification from federal or state motor carrier officials that an employer may have violated this provision, and upon notice to the employer of the charge and a hearing conducted as provided under the Administrative Process Act (§ 2.2-4000 et seq.), to determine whether

such employer has violated this provision. Civil penalties collected under this section shall be deposited into the Transportation Trust Fund.

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

A. 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.

B. *Notwithstanding the provisions of subsection A, no court shall, as a result of a person's attendance at a driver improvement clinic, reduce, dismiss, or defer the conviction of a person charged with any offense committed while operating a commercial motor vehicle as defined in the Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.).*

C. 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.