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HOUSE BILL NO. 2028

Offered January 12, 2005

Prefiled January 11, 2005

A BILL to amend and reenact §§ 46.2-100, 46.2-915.2, and 46.2-1051 of the Code of Virginia, relating to mopeds; regulation of certain vehicles by local ordinances; penalty.

Patrons—Amundson, Ebbin, Rust, Scott, J.M. and Sickles; Senators: Ticer and Whipple

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-100, 46.2-915.2, and 46.2-1051 of the Code of Virginia are amended and reenacted as follows:

§ 46.2-100. Definitions.

The following words and phrases when used in this title shall, for the purpose of this title, have the meanings respectively ascribed to them in this section except in those instances where the context clearly indicates a different meaning:

"Antique motor vehicle" means every motor vehicle, as defined in this section, which was actually manufactured or designated by the manufacturer as a model manufactured in a calendar year not less than 25 years prior to January 1 of each calendar year and is owned solely as a collector's item.

"Antique trailer" means every trailer or semitrailer, as defined in this section, that was actually manufactured or designated by the manufacturer as a model manufactured in a calendar year not less than 25 years prior to January 1 of each calendar year and is owned solely as a collector's item.

"Automobile or watercraft transporters" means any tractor truck, lowboy, vehicle, or combination, including vehicles or combinations that transport motor vehicles or watercraft on their power unit, designed and used exclusively for the transportation of motor vehicles or watercraft.

"Bicycle" means a device propelled solely by human power, upon which a person may ride either on or astride a regular seat attached thereto, having two or more wheels in tandem, including children's bicycles, except a toy vehicle intended for use by young children. For purposes of Chapter 8 (§ 46.2-800 et seq.) of this title, a bicycle shall be a vehicle while operated on the highway.

"Bicycle lane" means that portion of a roadway designated by signs and/or pavement markings for the preferential use of bicycles, electric power-assisted bicycles, and mopeds.

"Business district" means the territory contiguous to a highway where 75 percent or more of the property contiguous to a highway, on either side of the highway, for a distance of 300 feet or more along the highway, is occupied by land and buildings actually in use for business purposes.

"Camping trailer" means every vehicle that has collapsible sides and contains sleeping quarters but may or may not contain bathing and cooking facilities and is designed to be drawn by a motor vehicle.

"Cancel" or "cancellation" means that the document or privilege cancelled has been annulled or terminated because of some error, defect, or ineligibility, but the cancellation is without prejudice and reapplication may be made at any time after cancellation.

"Chauffeur" means every person employed for the principal purpose of driving a motor vehicle and every person who drives a motor vehicle while in use as a public or common carrier of persons or property.

"Commission" means the State Corporation Commission.

"Commissioner" means the Commissioner of the Department of Motor Vehicles of the Commonwealth.

"Crosswalk" means that part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or, in the absence of curbs, from the edges of the traversable roadway; or any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface.

"Decal" means a device to be attached to a license plate that validates the license plate for a predetermined registration period.

"Department" means the Department of Motor Vehicles of the Commonwealth.

"Disabled parking license plate" means a license plate that displays the international symbol of access in the same size as the numbers and letters on the plate and in a color that contrasts with the background.

"Disabled veteran" means a veteran who (i) has either lost, or lost the use of, a leg, arm, or hand; (ii) is blind; or (iii) is permanently and totally disabled as certified by the U.S. Veterans Administration.

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59 A veteran shall be considered blind if he has a permanent impairment of both eyes to the following
60 extent: (i) central visual acuity of 20/200 or less in the better eye, with corrective lenses, or central
61 visual acuity of more than 20/200, if there is a field defect in which the peripheral field has contracted
62 to such an extent that the widest diameter of visual field subtends an angular distance no greater than 20
63 degrees in the better eye.

64 "Driver's license" means any license, including a commercial driver's license as defined in the
65 Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.), issued under the laws of the
66 Commonwealth authorizing the operation of a motor vehicle.

67 "Electric personal assistive mobility device" means a self-balancing two-nontandem-wheeled device
68 that is designed to transport only one person and powered by an electric propulsion system that limits
69 the device's maximum speed to 15 miles per hour or less. For purposes of Chapter 8 of this title, an
70 electric personal assistive mobility device shall be a vehicle when operated on a highway.

71 "Electric power-assisted bicycle" means a bicycle equipped with an electric motor that reduces the
72 pedal effort required of the rider, but does not eliminate the rider's need to pedal. For the purposes of
73 Chapter 8 of this title, an electric power-assisted bicycle shall be a vehicle when operated on a highway.

74 "Essential parts" means all integral parts and body parts, the removal, alteration, or substitution of
75 which will tend to conceal the identity of a vehicle.

76 "Farm tractor" means every motor vehicle designed and used as a farm, agricultural, or horticultural
77 implement for drawing plows, mowing machines, and other farm, agricultural, or horticultural machinery
78 and implements including self-propelled mowers designed and used for mowing lawns.

79 "Federal safety requirements" means applicable provisions of 49 U.S.C. § 30101 et seq. and all
80 administrative regulations and policies adopted pursuant thereto.

81 "Financial responsibility" means the ability to respond in damages for liability thereafter incurred
82 arising out of the ownership, maintenance, use, or operation of a motor vehicle, in the amounts provided
83 for in § 46.2-472.

84 "Foreign market vehicle" means any motor vehicle originally manufactured outside the United States,
85 which was not manufactured in accordance with 49 U.S.C. § 30101 et seq. and the policies and
86 regulations adopted pursuant to that Act, and for which a Virginia title or registration is sought.

87 "Foreign vehicle" means every motor vehicle, trailer, or semitrailer that is brought into the
88 Commonwealth otherwise than in the ordinary course of business by or through a manufacturer or dealer
89 and that has not been registered in the Commonwealth.

90 "Golf cart" means a self-propelled vehicle that is designed to transport persons playing golf and their
91 equipment on a golf course.

92 "Governing body" means the board of supervisors of a county, council of a city, or council of a
93 town, as context may require.

94 "Gross weight" means the aggregate weight of a vehicle or combination of vehicles and the load
95 thereon.

96 "Highway" means the entire width between the boundary lines of every way or place open to the use
97 of the public for purposes of vehicular travel in the Commonwealth, including the streets and alleys,
98 and, for law-enforcement purposes, the entire width between the boundary lines of all private roads or
99 private streets that have been specifically designated "highways" by an ordinance adopted by the
100 governing body of the county, city, or town in which such private roads or streets are located.

101 "Intersection" means (i) the area embraced within the prolongation or connection of the lateral
102 curblines or, if none, then the lateral boundary lines of the roadways of two highways that join one
103 another at, or approximately at, right angles, or the area within which vehicles traveling on different
104 highways joining at any other angle may come in conflict; (ii) where a highway includes two roadways
105 30 feet or more apart, then every crossing of each roadway of such divided highway by an intersecting
106 highway shall be regarded as a separate intersection, in the event such intersecting highway also
107 includes two roadways 30 feet or more apart, then every crossing of two roadways of such highways
108 shall be regarded as a separate intersection; or (iii) for purposes only of authorizing installation of
109 traffic-control devices, every crossing of a highway or street at grade by a pedestrian crosswalk.

110 "Law-enforcement officer" means any officer authorized to direct or regulate traffic or to make
111 arrests for violations of this title or local ordinances authorized by law. For the purposes of access to
112 law-enforcement databases regarding motor vehicle registration and ownership only, this term shall also
113 include city and county commissioners of the revenue and treasurers, together with their duly designated
114 deputies and employees, when such officials are actually engaged in the enforcement of §§ 46.2-752,
115 46.2-753 and 46.2-754 and local ordinances enacted thereunder.

116 "License plate" means a device containing letters, numerals, or a combination of both, attached to a
117 motor vehicle, trailer, or semitrailer to indicate that the vehicle is properly registered with the
118 Department.

119 "Light" means a device for producing illumination or the illumination produced by the device.

120 "Low-speed vehicle" means any four-wheeled electrically-powered vehicle, except a motor vehicle or

low-speed vehicle that is used exclusively for agricultural or horticultural purposes or a golf cart, whose maximum speed is greater than 20 miles per hour but not greater than 25 miles per hour and is manufactured to comply with safety standards contained in Title 49 of the Code of Federal Regulations, § 571.500.

"Manufactured home" means a structure subject to federal regulation, transportable in one or more sections, which in the traveling mode is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein.

"Moped" means a conveyance that is either (i) a bicycle-like device with pedals and a helper motor that is rated at no more than two brake horsepower and that produces speeds up to a maximum of 30 miles per hour or (ii) a motorcycle with (a) *an electric motor* or (b) an engine displacement of *no more than 50 cubic centimeters or less* and a maximum speed of less than 30 miles per hour. For purposes of Chapter 8 (§ 46.2-800 et seq.) of this title, a moped shall be a vehicle while operated on a highway.

"Motor home" means every private motor vehicle with a normal seating capacity of not more than 10 persons, including the driver, designed primarily for use as living quarters for human beings.

"Motor vehicle" means every vehicle as defined in this section that is self-propelled or designed for self-propulsion except as otherwise provided in this title. Any structure designed, used, or maintained primarily to be loaded on or affixed to a motor vehicle to provide a mobile dwelling, sleeping place, office, or commercial space shall be considered a part of a motor vehicle. For the purposes of this title, any device herein defined as a bicycle, electric personal assistive mobility device, electric power-assisted bicycle, or moped shall be deemed not to be a motor vehicle.

"Motorcycle" means every motor vehicle designed to travel on not more than three wheels in contact with the ground, except any vehicle included within the term "farm tractor" or "moped" as defined in this section.

"Nonresident" means every person who is not domiciled in the Commonwealth, except: (i) any foreign corporation that is authorized to do business in the Commonwealth by the State Corporation Commission shall be a resident of the Commonwealth for the purpose of this title; in the case of corporations incorporated in the Commonwealth but doing business outside the Commonwealth, only such principal place of business or branches located within the Commonwealth shall be dealt with as residents of the Commonwealth; (ii) a person who becomes engaged in a gainful occupation in the Commonwealth for a period exceeding 60 days shall be a resident for the purposes of this title except for the purposes of Chapter 3 (§ 46.2-300 et seq.) of this title; (iii) a person, other than a nonresident student as defined in this section, who has actually resided in the Commonwealth for a period of six months, whether employed or not, or who has registered a motor vehicle, listing an address in the Commonwealth in the application for registration shall be deemed a resident for the purposes of this title, except for the purposes of the Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.).

"Nonresident student" means every nonresident person who is enrolled as a full-time student in an accredited institution of learning in the Commonwealth and who is not gainfully employed.

"Operation or use for rent or for hire, for the transportation of passengers, or as a property carrier for compensation," and "business of transporting persons or property" mean any owner or operator of any motor vehicle, trailer, or semitrailer operating over the highways in the Commonwealth who accepts or receives compensation for the service, directly or indirectly; but these terms do not mean a "truck lessor" as defined in this section and do not include persons or businesses that receive compensation for delivering a product that they themselves sell or produce, where a separate charge is made for delivery of the product or the cost of delivery is included in the sale price of the product, but where the person or business does not derive all or a substantial portion of its income from the transportation of persons or property except as part of a sales transaction.

"Operator" or "driver" means every person who either (i) drives or is in actual physical control of a motor vehicle on a highway or (ii) is exercising control over or steering a vehicle being towed by a motor vehicle.

"Owner" means a person who holds the legal title to a vehicle; however, if a vehicle is the subject of an agreement for its conditional sale or lease with the right of purchase on performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee or if a mortgagor of a vehicle is entitled to possession, then the conditional vendee or lessee or mortgagor shall be the owner for the purpose of this title. In all such instances when the rent paid by the lessee includes charges for services of any nature or when the lease does not provide that title shall pass to the lessee on payment of the rent stipulated, the lessor shall be regarded as the owner of the vehicle, and the vehicle shall be subject to such requirements of this title as are applicable to vehicles operated for compensation. A "truck lessor" as defined in this section shall be regarded as the

owner, and his vehicles shall be subject to such requirements of this title as are applicable to vehicles of private carriers.

"Passenger car" means every motor vehicle other than a motorcycle designed and used primarily for the transportation of no more than 10 persons including the driver.

"Payment device" means any credit card as defined in 15 U.S.C. § 1602(k) or any "accepted card or other means of access" set forth in 15 U.S.C. § 1693a(1). For the purposes of this title, this definition shall also include a card that enables a person to pay for transactions through the use of value stored on the card itself.

"Pickup or panel truck" means every motor vehicle designed for the transportation of property and having a registered gross weight of 7,500 pounds or less.

"Private road or driveway" means every way in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

"Reconstructed vehicle" means every vehicle of a type required to be registered under this title materially altered from its original construction by the removal, addition, or substitution of new or used essential parts.

"Residence district" means the territory contiguous to a highway, not comprising a business district, where 75 percent or more of the property abutting such highway, on either side of the highway, for a distance of 300 feet or more along the highway consists of land improved for dwelling purposes, or is occupied by dwellings, or consists of land or buildings in use for business purposes.

"Revoke" or "revocation" means that the document or privilege revoked is not subject to renewal or restoration except through reapplication after the expiration of the period of revocation.

"Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the shoulder. A highway may include two or more roadways if divided by a physical barrier or barriers or an unpaved area.

"Safety zone" means the area officially set apart within a roadway for the exclusive use of pedestrians and that is protected or is so marked or indicated by plainly visible signs.

"School bus" means any motor vehicle, other than a station wagon, automobile, truck, or commercial bus, which is: (i) designed and used primarily for the transportation of pupils to and from public, private or parochial schools, or used for the transportation of the mentally or physically handicapped to and from a sheltered workshop; (ii) painted yellow and bears the words "School Bus" in black letters of a specified size on front and rear; and (iii) is equipped with warning devices prescribed in § 46.2-1090. A yellow school bus may have a white roof provided such vehicle is painted in accordance with regulations promulgated by the Department of Education.

"Semitrailer" means every vehicle of the trailer type so designed and used in conjunction with a motor vehicle that some part of its own weight and that of its own load rests on or is carried by another vehicle.

"Shared-use path" means a bikeway that is physically separated from motorized vehicular traffic by an open space or barrier and is located either within the highway right-of-way or within a separate right-of-way. Shared-use paths may also be used by pedestrians, skaters, users of wheel chairs or wheel chair conveyances, joggers, and other nonmotorized users.

"Shoulder" means that part of a highway between the portion regularly travelled by vehicular traffic and the lateral curbline or ditch.

"Sidewalk" means the portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, intended for use by pedestrians.

"Snowmobile" means a self-propelled vehicle designed to travel on snow or ice, steered by skis or runners, and supported in whole or in part by one or more skis, belts, or cleats.

"Specially constructed vehicle" means any vehicle that was not originally constructed under a distinctive name, make, model, or type by a generally recognized manufacturer of vehicles and not a reconstructed vehicle as herein defined.

"Stinger-steered automobile or watercraft transporter" means an automobile or watercraft transporter configured as a semitrailer combination wherein the fifth wheel is located on a drop frame behind and below the rearmost axle of the power unit.

"Superintendent" means the Superintendent of the Department of State Police of the Commonwealth.

"Suspend" or "suspension" means that the document or privilege suspended has been temporarily withdrawn, but may be reinstated following the period of suspension unless it has expired prior to the end of the period of suspension.

"Towing and recovery operator" means a person engaged in the business of (i) removing disabled vehicles, parts of vehicles, their cargoes, and other objects to facilities for repair or safekeeping and (ii) restoring to the highway or other location where they either can be operated or removed to other locations for repair or safekeeping vehicles that have come to rest in places where they cannot be operated.

"Tractor truck" means every motor vehicle designed and used primarily for drawing other vehicles

and not so constructed as to carry a load other than a part of the load and weight of the vehicle attached thereto.

"Traffic infraction" means a violation of law punishable as provided in § 46.2-113, which is neither a felony nor a misdemeanor.

"Traffic lane" or "lane" means that portion of a roadway designed or designated to accommodate the forward movement of a single line of vehicles.

"Trailer" means every vehicle without motive power designed for carrying property or passengers wholly on its own structure and for being drawn by a motor vehicle, including manufactured homes.

"Truck" means every motor vehicle designed to transport property on its own structure independent of any other vehicle and having a registered gross weight in excess of 7,500 pounds.

"Truck lessor" means a person who holds the legal title to any motor vehicle, trailer, or semitrailer that is the subject of a bona fide written lease for a term of one year or more to another person, provided that: (i) neither the lessor nor the lessee is a common carrier by motor vehicle or restricted common carrier by motor vehicle or contract carrier by motor vehicle as defined in § 46.2-2000; (ii) the leased motor vehicle, trailer, or semitrailer is used exclusively for the transportation of property of the lessee; (iii) the lessor is not employed in any capacity by the lessee; (iv) the operator of the leased motor vehicle is a bona fide employee of the lessee and is not employed in any capacity by the lessor; and (v) a true copy of the lease, verified by affidavit of the lessor, is filed with the Commissioner.

"Utility vehicle" means a motor vehicle that is (i) designed for off-road use, (ii) powered by an engine of no more than 25 horsepower, and (iii) used for general maintenance, security, agricultural, or horticultural purposes. "Utility vehicle" does not include all-terrain vehicles as defined in § 46.2-915.1, riding lawn mowers, or any other vehicle whose definition is included in this section.

"Vehicle" means every device in, on or by which any person or property is or may be transported or drawn on a highway, except devices moved by human power or used exclusively on stationary rails or tracks. For the purposes of Chapter 8 (§ 46.2-800 et seq.) of this title, bicycles, electric personal assistive mobility devices, electric power-assisted bicycles, and mopeds shall be vehicles while operated on a highway.

"Wheel chair or wheel chair conveyance" means a chair or seat equipped with wheels, typically used to provide mobility for persons who, by reason of physical disability, are otherwise unable to move about as pedestrians. The term includes both three-wheeled and four-wheeled devices. So long as it is operated only as provided in § 46.2-677, a self-propelled wheel chair or self-propelled wheel chair conveyance shall not be considered a motor vehicle.

§ 46.2-915.2. Ordinances providing for regulation of the operation of mopeds and certain other vehicles; effect of violation; penalty.

A. The governing body of any county, city, or town may, by ordinance, provide that every person operating a moped, as defined in § 46.2-100, on a public street or highway shall wear a face shield, safety glasses, or goggles of a type approved by the Superintendent or have his moped equipped with safety glass or a windshield at all times while operating such vehicle, and operators and passengers thereon, if any, shall wear protective helmets of a type approved by the Superintendent. A violation of any such ordinance 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 moped or motor vehicle, nor shall anything in this section change any existing law, rule, or procedure pertaining to any such civil action. ~~Any person who knowingly violates any such ordinance shall be guilty of a traffic infraction and be subject to a fine of not more than fifty dollars.~~

B. In addition to the power granted under § 46.2-1051, the governing body of any county, city, or town may provide by ordinance to restrict, limit, regulate, control, or prohibit the operation, either on a highway or on public or private property, of any moped, electric power-assisted bicycle, motorcycle-like device commonly known as a trail-bike or mini-bike, motorized cart commonly known as a go-cart, or motorized skateboard, provided that any limitation imposed on the operation of mopeds by any such ordinance is no less stringent than those contained in § 46.2-914.

C. The penalty for violation of any ordinance adopted under this section shall not exceed that provided for traffic infractions under § 46.2-113.

§ 46.2-1051. Local governments may impose restrictions on operations of certain mopeds, mini-bikes, trail-bikes, and go-carts.

The governing body of any county, city, or town ~~which is located within the Northern Virginia Planning District~~ may provide by ordinance that no person shall operate and no owner shall permit the operation of, either on a highway or on public or private property within 500 feet of any residential district, any motorcycle, moped, electric power-assisted bicycle, motorcycle-like device commonly known as a trail-bike or mini-bike, or motorized cart commonly known as a go-cart unless it is equipped with an exhaust system of a type installed as standard equipment, or comparable to that designed for use

305 on that particular vehicle or device as standard factory equipment, in good working order and in
306 constant operation to prevent excessive noise.