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HOUSE BILL NO. 2702

Offered January 10, 2007

Prefiled January 10, 2007

A *BILL to amend and reenact §§ 22.1-205, 46.2-324.1, 46.2-325, 46.2-334, 46.2-335, 46.2-490.8, 46.2-1700, 46.2-1701, 46.2-1701.2, 46.2-1701.3, 46.2-1702, 46.2-1705, and 46.2-1707 of the Code of Virginia, relating to professional driver training schools and professional driving instructors.*

 Patron—Hugo

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That §§ 22.1-205, 46.2-324.1, 46.2-325, 46.2-334, 46.2-335, 46.2-490.8, 46.2-1700, 46.2-1701, 46.2-1701.2, 46.2-1701.3, 46.2-1702, 46.2-1705, and 46.2-1707 of the Code of Virginia are amended and reenacted as follows:

§ 22.1-205. Driver education programs.

A. The Board of Education shall establish for the public school system a standardized program of driver education in the safe operation of motor vehicles. Such program shall consist of classroom training and behind-the-wheel driver training. However, any student who participates in such a program of driver education shall meet the academic requirements established by the Board, and no student in a course shall be permitted to operate a motor vehicle without a license or permit to do so issued by the Department of Motor Vehicles. The program shall include instruction concerning (i) alcohol and drug abuse, (ii) aggressive driving, (iii) distracted driving, (iv) motorcycle awareness, and (v) organ and tissue donor awareness. Such instruction shall be developed by the Department in cooperation with the Virginia Alcohol Safety Action Program, the Department of Health, and the Department of Mental Health, Mental Retardation and Substance Abuse Services, as appropriate. Such program shall require a minimum number of miles driven during the behind-the-wheel driver training.

B. The Board shall assist school divisions by preparation, publication and distribution of competent driver education instructional materials to ensure a more complete understanding of the responsibilities and duties of motor vehicle operators.

C. Each school board shall determine whether to offer the program of driver education in the safe operation of motor vehicles and, if offered, whether such program shall be an elective or a required course. Only school divisions complying with the standardized program and regulations established by the Board of Education and the provisions of § 46.2-335 shall be entitled to participate in the distribution of state funds appropriated for driver education.

D. The actual initial driving instruction shall be conducted, with motor vehicles equipped as may be required by regulation of the Board of Education, on private or public property removed from public highways if practicable; if impracticable, then, at the request of the school board, the Commonwealth Transportation Board shall designate a suitable section of road near the school to be used for such instruction. Such section of road shall be marked with signs, which the Commonwealth Transportation Board shall supply, giving notice of its use for driving instruction. Such signs shall be removed at the close of the instruction period. No vehicle other than those used for driver training shall be operated between such signs at a speed in excess of 25 miles per hour. Violation of this limit shall be a Class 4 misdemeanor.

E. The Board of Education may, in its discretion, promulgate regulations for the use and certification of paraprofessionals as teaching assistants in the driver education programs of school divisions.

F. The Board of Education shall approve correspondence courses for the classroom training component of driver education. These correspondence courses shall be consistent in quality with instructional programs developed by the Board for classroom training in the public schools. Students completing the correspondence courses for classroom training, who are eligible to take behind-the-wheel driver training, may receive behind-the-wheel driver training (i) from a public school, upon payment of the required fee, if the school division offers behind-the-wheel driver training and space is available, (ii) from a *professional* driver training school licensed by the Department of Motor Vehicles, or (iii) in the case of a home schooling parent or guardian instructing his own child who meets the requirements for home school instruction under § 22.1-254.1 or subdivision B 1 of § 22.1-254, from a behind-the-wheel training course approved by the Board. Nothing herein shall be construed to require any school division to provide behind-the-wheel driver training to nonpublic school students.

§ 46.2-324.1. Requirements for initial licensure of certain applicants.

No driver's license shall be issued to any applicant unless he either (i) provides written evidence of

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59 having satisfactorily completed a course of driver instruction at a *professional* driver training school
60 licensed under Chapter 17 (§ 46.2-1700 et seq.) of this title or a comparable course approved by the
61 Department or Department of Education or (ii) has held a learner's permit issued by the Department for
62 at least 30 days prior to his first behind-the-wheel examination by the Department.

63 The provisions of this section shall only apply to persons who are at least 19 years old and who
64 either (i) have never held a driver's license issued by Virginia or any other state or territory of the
65 United States or foreign country or (ii) have never been licensed or held the license endorsement or
66 classification required to operate the type of vehicle which they now propose to operate, except that the
67 provisions of this section shall apply to applicants for commercial driver's licenses who are 18 years old
68 or older and have never before held a commercial driver's license or have never held the license
69 endorsement or classification required to operate the type of commercial motor vehicle that they now
70 propose to operate. Nothing in this section shall be construed to prohibit the Department from requiring
71 any person to complete the skills examination as prescribed in § 46.2-325 and the written or automated
72 examinations as prescribed in § 46.2-335.

73 § 46.2-325. Examination of applicants; waiver of Department's examination under certain
74 circumstances.

75 The Department shall examine every applicant for a driver's license before issuing any license to
76 determine (i) his physical and mental qualifications and his ability to drive a motor vehicle without
77 jeopardizing the safety of persons or property and (ii) if any facts exist which would bar the issuance of
78 a license under §§ 46.2-311 through 46.2-316, 46.2-334 or § 46.2-335. The examination, however, shall
79 not include investigation of any facts other than those directly pertaining to the ability of the applicant
80 to drive a motor vehicle with safety, or other than those facts declared to be prerequisite to the issuance
81 of a license under this chapter. No applicant otherwise competent shall be required to demonstrate
82 ability to park any motor vehicle except in an adequate parking space between horizontal markers, and
83 not between flags or sticks simulating parked vehicles. Applicants for licensure to drive motor vehicles
84 of the classifications referred to in § 46.2-328 shall submit to examinations which relate to the operation
85 of those vehicles.

86 Except for applicants subject to § 46.2-312, if the Commissioner is satisfied that an applicant has
87 demonstrated the same proficiency as required by the Department's examination through successful
88 completion of either (i) the driver education course approved by the Department of Education or (ii) a
89 driver training course offered by a *professional* driver training school licensed under Chapter 17
90 (§ 46.2-1700 et seq.) of this title, he may waive those parts of the Department's examination provided
91 for in this section that require the applicant to drive and park a motor vehicle.

92 § 46.2-334. Conditions and requirements for licensure of persons under 18; requests for cancellation
93 of minor's driver's license; temporary driver's licenses; Board of Education approved programs;
94 home-schooled students; fee.

95 A. Minors at least 16 years and three months old may be issued driver's licenses under the following
96 conditions:

97 1. The minor shall submit a proper application and satisfactory evidence that he (i) is a resident of
98 the Commonwealth; (ii) has successfully completed a driver education course approved by either the
99 State Department of Education or, in the case of a course offered by a *professional* driver training
100 school licensed under Chapter 17 (§ 46.2-1700 et seq.) of this title, by the Department of Motor
101 Vehicles; and (iii) is mentally, physically, and otherwise qualified to drive a motor vehicle safely.

102 2. The minor's application for a driver's license must be signed by a parent of the applicant,
103 otherwise by the guardian having custody of him. However, in the event a minor has no parent or
104 guardian, then a driver's license shall not be issued to him unless his application is signed by the judge
105 of the juvenile and domestic relations district court of the city or county in which he resides. If the
106 minor making the application is married or otherwise emancipated, in lieu of any parent's, guardian's or
107 judge's signature, the minor may present proper evidence of the solemnization of the marriage or the
108 order of emancipation.

109 3. The minor shall be required to state in his application whether or not he has been convicted of an
110 offense triable by, or tried in, a juvenile and domestic relations district court or found by such court to
111 be a child in need of supervision, as defined in § 16.1-228. If it appears that the minor has been
112 adjudged not innocent of the offense alleged or has been found to be a child in need of supervision, the
113 Department shall not issue a license without the written approval of the judge of the juvenile and
114 domestic relations district court making an adjudication as to the minor or the like approval of a similar
115 court of the county or city in which the parent or guardian, respectively, of the minor resides.

116 4. The application for a permanent driver's license by a minor of the age of persons required to
117 attend school pursuant to § 22.1-254 shall be accompanied by evidence of compliance with the
118 compulsory school attendance law set forth in Article 1 (§ 22.1-254 et seq.) of Chapter 14 of Title 22.1.
119 This evidence shall be provided in writing by the minor's parent. If the minor is unable to provide such
120 evidence, he shall not be granted a driver's license until he reaches the age of 18 or presents proper

evidence of the solemnization of his marriage or an order of emancipation, or the parent, as defined in § 22.1-1, or other person standing in loco parentis has provided written authorization for the minor to obtain a driver's license.

A minor may, however, present a high school diploma or its equivalent or a certificate indicating completion of a prescribed course of study as defined by the local school board pursuant to § 22.1-253.13:4 as evidence of compulsory school attendance compliance.

5. The minor applicant shall certify in writing, on a form prescribed by the Commissioner, that he is a resident of the Commonwealth. The applicant's parent or guardian shall also certify that the applicant is a resident by signing the certification. 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 parent's certification of residence.

B. Any custodial parent or guardian of an unmarried or unemancipated minor may, after the issuance of a permanent driver's license to such minor, file with the Department a written request that the license of the minor be canceled. When such request is filed, the Department shall cancel the license of the minor and the license shall not thereafter be reissued by the Department until a period of six months has elapsed from the date of cancellation or the minor reaches his eighteenth birthday, whichever shall occur sooner. Notwithstanding the foregoing provisions of this subsection, in the case of a minor whose parents have been awarded joint legal custody, a request that the license of the minor be cancelled must be signed by both legal custodians. In the event one parent is not reasonably available or the parents do not agree, one parent may petition the juvenile and domestic relations district court to make a determination that the license of the minor be cancelled.

C. The provisions of subsection A of this section requiring that an application for a driver's license be signed by the parent or guardian shall be waived by the Commissioner if the application is accompanied by proper evidence of the solemnization of the minor's marriage or a certified copy of a court order, issued under the provisions of Article 15 (§ 16.1-331 et seq.) of Chapter 11 of Title 16.1, declaring the applicant to be an emancipated minor.

D. A learner's permit accompanied by documentation verifying the minor's successful completion of an approved driver education course, signed by the minor's parent, guardian, legal custodian or other person standing in loco parentis, shall constitute a temporary driver's license for purposes of driving unaccompanied by a licensed driver as required in § 46.2-335, if all other requirements of this chapter have been met. The temporary license shall only be valid until the permanent license is presented as provided in § 46.2-336.

E. Notwithstanding the provisions of subsection A of this section requiring the successful completion of a driver education course approved by the State Department of Education, the Commissioner, on application therefor by a person at least 16 years and three months old but less than 18 years old, shall issue to the applicant a temporary driver's license valid for six months if he (i) certifies by signing, together with his parent or guardian, on a form prescribed by the Commissioner that he is a resident of the Commonwealth; (ii) is the holder of a valid driver's license from another state; and (iii) has not been found guilty of or otherwise responsible for an offense involving the operation of a motor vehicle. No temporary license issued under this subsection shall be renewed, nor shall any second or subsequent temporary license under this subsection be issued to the same applicant. Any such 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 obtain the signature of his parent or guardian for the temporary driver's license.

F. For persons qualifying for a driver's license through driver education courses approved by the Department of Education or courses offered by *professional* driver training schools licensed by the Department, the application for the learner's permit shall be used as the application for the driver's license pursuant to § 46.2-335.

G. Driver's licenses shall be issued by the Department to minors successfully completing driver education courses approved by the Department of Education (i) when the Department receives from the school proper certification that the student (a) has successfully completed such course, including a road skills examination and (b) is regularly attending school and 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 driver's license, 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; and (ii) upon payment of a fee of \$2.40 per year, based on the period of the license's validity. For applicants attending public schools, good academic standing may be certified by the public school principal or any of his designees. For applicants attending nonpublic schools, such certification shall be made by the private school principal or any of his designees; for minors receiving home schooling, such certification shall be made by the home schooling parent or tutor. Any minor providing proper evidence of the solemnization of his

182 marriage or a certified copy of a court order of emancipation shall not be required to provide the
183 certification of good academic standing or any written authorization from his parent or guardian to
184 obtain a driver's license.

185 H. For those home schooled students completing driver education courses approved by the Board of
186 Education and instructed by his own parent or guardian, no driver's license shall be issued until the
187 student has successfully completed the driver's license examination administered by the Department.
188 Furthermore, the Commissioner shall not issue a driver's license for those home schooled students
189 completing driver education courses approved by the Board of Education and instructed by his own
190 parent or guardian if it is determined by the Commissioner that, at the time of such instruction, such
191 parent or guardian had accumulated six or more driver demerit points in the most recently preceding 12
192 months, had been convicted within the most recent 11 preceding years of driving while intoxicated in
193 violation of § 18.2-266 or a substantially similar law in another state, or had ever been convicted of
194 voluntary or involuntary manslaughter in violation of § 18.2-35 or § 18.2-36 or a substantially similar
195 law in another state.

196 § 46.2-335. Learner's permits; fees.

197 A. The Department, on receiving from any Virginia resident over the age of 15 years and six months
198 an application for a learner's permit or motorcycle learner's permit, may, subject to the applicant's
199 satisfactory documentation of meeting the requirements of this chapter and successful completion of the
200 written or automated knowledge and vision examinations and, in the case of a motorcycle learner's
201 permit applicant, the automated motorcycle test, issue a permit entitling the applicant, while having the
202 permit in his immediate possession, to drive a motor vehicle or, if the application is made for a
203 motorcycle learner's permit, a motorcycle, on the highways, when accompanied by any licensed driver
204 21 years of age or older or by his parent or legal guardian, or by a brother, sister, half-brother,
205 half-sister, step-brother, or step-sister 18 years of age or older. The accompanying person shall be (i)
206 alert, able to assist the driver, and actually occupying a seat beside the driver or, for motorcycle
207 instruction, providing immediate supervision from a separate accompanying motor vehicle and (ii)
208 lawfully permitted to operate the motor vehicle or accompanying motorcycle at that time.

209 The Department shall not, however, issue a learner's permit or motorcycle learner's permit to any
210 minor applicant required to provide evidence of compliance with the compulsory school attendance law
211 set forth in Article 1 (§ 22.1-254 et seq.) of Chapter 14 of Title 22.1, unless such applicant is in good
212 academic standing or, if not in such standing or submitting evidence thereof, whose parent or guardian,
213 having custody of such minor, provides written authorization for the minor to obtain a learner's permit
214 or motorcycle learner's permit, which written authorization shall be obtained on forms provided by the
215 Department and indicating the Commonwealth's interest in the good academic standing and regular
216 school attendance of such minors. Any minor providing proper evidence of the solemnization of his
217 marriage or a certified copy of a court order of emancipation shall not be required to provide the
218 certification of good academic standing or any written authorization from his parent or guardian to
219 obtain a learner's permit or motorcycle learner's permit.

220 Such permit, except a motorcycle learner's permit, shall be valid until the holder thereof either is
221 issued a driver's license as provided for in this chapter or no longer meets the qualifications for issuance
222 of a learner's permit as provided in this section. Motorcycle learner's permits shall be valid for 12
223 months. When a motorcycle learner's permit expires, the permittee may, upon submission of an
224 application, payment of the application fee, and successful completion of the examinations, be issued
225 another motorcycle learner's permit valid for 12 months.

226 B. No driver's license shall be issued to any such person who is less than 18 years old unless, while
227 holding a learner's permit, he has driven a motor vehicle for at least 40 hours, at least 10 of which were
228 after sunset, as certified by his parent, foster parent, or legal guardian unless the person is married or
229 otherwise emancipated.

230 C. No learner's permit shall authorize its holder to operate a motor vehicle with more than one
231 passenger who is less than 18 years old, except when participating in a driver education program
232 approved by the Department of Education or a course offered by a *professional* driver training school
233 licensed by the Department. This passenger limitation, however, shall not apply to the driver's family or
234 household as defined in subsection B of § 46.2-334.01.

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

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

242 F. The provisions of §§ 46.2-323 and 46.2-334 relating to evidence and certification of Virginia
243 residence and, in the case of persons of school age, compliance with the compulsory school attendance

law shall apply, mutatis mutandis, to applications for learner's permits and motorcycle learner's permits issued under this section.

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

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

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

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

1. The operator shall wear an approved safety helmet as provided in § 46.2-910.
2. Operation shall be under the immediate supervision of a person licensed to operate a motorcycle who is 21 years of age or older.

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

K. No holder of a learner's permit or motorcycle learner's permit shall be allowed to take the behind-the-wheel examination administered by the Department more than three times in any three-month period.

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

§ 46.2-490.8. Grounds for denying, suspending, or revoking licenses of clinics and clinic instructors.

A clinic or instructor license may be denied, suspended, or revoked on any one or more of the following grounds:

1. Material misstatement or omission in an application for a driver improvement clinic license or a driver improvement clinic instructor license;

2. Failure to comply subsequent to receipt of a written warning from the Department for any willful failure to comply with any provision of this chapter or any regulation promulgated by the Commissioner under this chapter; or any criteria established by the Department pursuant to this chapter;

3. Defrauding any student in a driver improvement clinic, or any other person in the conduct of a driver improvement clinic's business;

4. Employment of fraudulent devices, methods or practices in connection with compliance with the requirements under the statutes of the Commonwealth;

5. Having used deceptive acts or practices;

6. Knowingly advertising by any means any assertion, representation, or statement of fact which is untrue, misleading, or deceptive in any particular relating to the conduct of a clinic;

7. Having been convicted of any fraudulent act in connection with a driver improvement clinic or *professional* driver training school, or any consumer-related fraud;

8. Having been convicted of any criminal act involving the operation of a driver improvement clinic or *professional* driver training school;

9. Having been convicted of a felony;

10. Failing or refusing to pay civil penalties imposed by the Department pursuant to § 46.2-490.6.

§ 46.2-1700. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Class A licensee" means a *professional* driver training school that provides training in the operation of commercial motor vehicles as defined in § 46.2-341.4.

"Class B licensee" means a *professional* driver training school that provides training in the operation of any type of motor vehicle other than motorcycles and commercial motor vehicles as defined in § 46.2-341.4.

"~~Driver~~Professional driver training school" or "school" means a business enterprise conducted by an

individual, association, partnership, or corporation, for the education and training of persons, either practically or theoretically or both, to operate or drive motor vehicles, and charging a consideration or tuition for such services. "DriverProfessional driver training school" or "school" does not mean any college, university, school established pursuant to § 46.2-1314, school maintained or classes conducted by employers for their own employees where no fee or tuition is charged, schools or classes owned and operated by or under the authority of bona fide religious institutions, or by the Commonwealth or any political subdivision thereof, training programs for school bus operators established pursuant to § 22.1-181, driver education programs established pursuant to § 22.1-205, or schools accredited by accrediting associations approved by the Department of Education; however, if any such entity or program excluded from the definition of "professional driver training school" offers driver education and training through a contractual arrangement with another person for consideration, then that other person shall be considered a *professional driver training school* subject to the requirements of this chapter.

"InstructorProfessional driving instructor" means any person, whether acting for himself as operator of a *professional driver training school* or for such school for compensation, who teaches, conducts classes, gives demonstrations, or supervises persons learning to operate or drive a motor vehicle.

§ 46.2-1701. Licenses required for professional driving school and professional driving instructor; fees.

No *professional driver training school* shall be established or continue operation unless the school obtains from the Commissioner a license authorizing the school to operate within this Commonwealth.

No *professional driving instructor* shall perform the actions enumerated in the definition of "professional driving instructor" in § 46.2-1700 unless he obtains has enrolled in and successfully completed a driving instructor training course offered by the Department and received from the Commissioner a license authorizing him to act as a *professional driving instructor*.

The Commissioner shall have authority (i) to establish the curriculum, content, and qualifications for successful completion of the Department's driving instructor training course and (ii) to set and collect *professional driver training school* and *professional driving instructor* licensing fees. All licensing fees collected by the Commissioner under this chapter shall be paid into the state treasury and set aside as a special fund to meet the expenses of the Department of Motor Vehicles.

§ 46.2-1701.2. Schools required to have established places of business.

No license shall be issued or renewed to any *professional driver training school* unless it has an established place of business in the Commonwealth that:

1. Satisfies all local zoning regulations;

2. Has office space in which the *professional driver training school* houses all records required to be maintained under § 46.2-1701.3 and which:

a. Is equipped with a desk, chairs, filing space, a working telephone listed in the name of the school, and working utilities;

b. Complies with federal, state, and local health, fire, and building code requirements; and

c. Meets all other place of business and recordkeeping requirements set forth in this chapter and established in regulations promulgated by the Department.

§ 46.2-1701.3. Student records to be maintained.

All student records and other records, as required by the Department, shall be maintained on the premises of the licensed location. The Commissioner may, on written request from a *professional driver training school*, permit records to be maintained at a location other than the premises of the licensed location for good cause shown. All records shall be preserved in original form or in film, magnetic, electronic, or optical media, including but not limited to microfilm or microfiche, for a period of three years in a manner that permits systematic retrieval. All records required to be maintained by the provisions of this section or by regulation shall be available to the Commissioner or his agents during regular business hours or at any other reasonable time, as determined by the Commissioner.

§ 46.2-1702. Certification of driver education courses by Commissioner.

The Commissioner shall have the authority to approve as a driver education course satisfying the requirements of § 46.2-334 any course which is offered by any *professional driver training school* licensed under the provisions of this chapter if he finds that the course is of comparable content and quality to that offered in the Commonwealth's public schools. In making such finding, the Commissioner shall not require that the *professional driving* instructors of any *professional driver training school* meet the certification requirements of teachers in the Commonwealth's public schools.

The Commissioner shall have authority to approve any driver education course offered by any Class A licensee if he finds the course meets the requirements for such courses as set forth in this chapter and as otherwise established by the Department. Driver education courses offered by any Class B licensee shall be based on the driver education curriculum currently approved by the Department of Education and the Department.

The Commissioner may accept 20 years' service with the Virginia Department of State Police by a person who retired or resigned while in good standing from such Department in lieu of requirements

established by the Department of Education for *professional driving* instructor qualification.

§ 46.2-1705. Suspension, revocation, cancellation or refusal to renew license; limitations on operations; imposition of monetary penalties.

A. Except as otherwise provided in this section, no license issued under this chapter shall be suspended, revoked, or cancelled or renewal thereof denied, no limitation on operations shall be imposed pursuant to subsection F of this section, and no monetary penalty shall be imposed pursuant to § 46.2-1706, unless the licensee has been furnished a written copy of the complaint against him and the grounds upon which the action is taken and has been offered an opportunity for an administrative hearing to show cause why such action should not be taken.

B. The order suspending, revoking, cancelling, or denying renewal of a license, imposing a limitation on operation, or imposing a monetary penalty, except as otherwise provided in subsection E of this section, shall not become effective until the licensee has had 30 days after notice of the opportunity for a hearing to make a written request for such a hearing. If no hearing has been requested within such 30-day period, the order shall become effective and no hearing shall thereafter be held. A timely request for a hearing shall automatically stay operation of the order until after the hearing.

C. Notice of an order suspending, revoking, cancelling or denying renewal of a license, imposing a limitation on operation, or imposing a monetary penalty and advising the licensee of the opportunity for a hearing shall be mailed to the licensee by registered mail to the school address as shown on the licensee's most recent application for license and shall be considered served when mailed.

D. No licensee whose license has been revoked or cancelled or who has been denied renewal shall apply for a new license within 180 days of such action.

E. Notwithstanding the provisions of subsection B of this section, an order suspending, revoking, cancelling, or denying renewal of ~~an~~ a *professional driving* instructor license shall be effective immediately if the order is based upon a finding by the Commissioner (i) that the *professional driving* instructor's driving record is such that he is not presently qualified to act as ~~an~~ a *professional driving* instructor or (ii) that he is otherwise a danger to the safety of his students or the public. Such finding by the Commissioner shall be based on records of driver's license suspension or revocation, upon records of conviction of serious motor vehicle related offenses punishable as a misdemeanor or felony including driving under the influence or reckless driving, and upon such other criteria as the Commissioner may establish by regulation.

Notice of the order of suspension, revocation, cancellation, or denial shall be in writing and mailed in accordance with subsection C. Upon receipt of a request for a hearing appealing the suspension, revocation, cancellation, or denial, the licensee shall be afforded the opportunity for a hearing as soon as practicable, but in no case later than 30 days from receipt of the hearing request. The order shall remain in effect pending the outcome of the hearing.

F. If the Commissioner makes a finding that the conduct of a licensee is in violation of this chapter or regulations adopted pursuant to this chapter, he may suspend, revoke, cancel, or refuse to renew the license of such licensee or may order the licensee, in accordance with subsections A, B and C of this section, to limit the types of driver education training provided, restrict the use of the licensee's training vehicles, or both. Whenever the Commissioner takes action limiting operations under this subsection, the Commissioner shall require the licensee to post conspicuous notice of the Commissioner's action under this subsection at the same location as the licensee's license was issued under this chapter, as soon as the Commissioner's order becomes effective. Orders of the Commissioner limiting operations and requiring posting of notices shall remain in effect until (i) the time period for the limitations or restriction has expired and the Commissioner makes a finding that the violations causing the imposition of such limitations or restrictions have been remedied by the licensee or (ii) the Commissioner's order is lifted as the result of an appeal under § 46.2-1704 or by a court of competent jurisdiction.

G. If the Commissioner makes a finding, after conducting a preliminary investigation, that the conduct of a licensee (i) is in violation of this chapter or regulations adopted pursuant to this chapter and (ii) such violation constitutes a danger to public safety, the Commissioner may issue an order suspending the licensee's license to operate a *professional* driver training school. Notice of the suspension shall be in writing and mailed in accordance with subsection C of this section. Upon receipt of a request for a hearing appealing the suspension, the licensee shall be afforded the opportunity for a hearing as soon as practicable, but in no case later than 30 days from receipt of the hearing request. The suspension shall remain in effect pending the outcome of the hearing.

§ 46.2-1707. Unlawful acts; prosecution; proceedings in equity.

A. It shall be unlawful for any person to engage in any of the following acts:

1. Practicing as a *professional* driver training school or as ~~an~~ a *professional driving* instructor without holding a valid license as required by statute or regulation;

2. Making use of any designation provided by statute or regulation to denote a standard of professional or occupational competence without being duly certified or licensed;

428 3. Performing any act or function which is restricted by statute or regulation to persons holding a
429 *professional* driver training school or *professional driving* instructor license or certification, without
430 being duly certified or licensed;

431 4. Materially misrepresenting facts in an application for licensure, certification or registration;

432 5. Willfully refusing to furnish the Department information or records required or requested pursuant
433 to statute or regulation; or

434 6. Violating any statute or regulation governing the practice of any *professional* driver training school
435 or *professional driving* instructor regulated pursuant to this chapter.

436 Any person who willfully engages in any unlawful act enumerated in this section shall be guilty of a
437 Class 1 misdemeanor. However, the third or any subsequent conviction for violating this section during
438 a 36-month period shall constitute a Class 6 felony.

439 B. In addition to the provisions of subsection A of this section, the Department may institute
440 proceedings in equity to enjoin any person from engaging in any unlawful act enumerated in this
441 section. Such proceedings shall be brought in the name of the Commonwealth in the circuit court of the
442 city or county in which the unlawful act occurred or in which the defendant resides.