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SENATE BILL NO. 256

Offered January 13, 2010

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A BILL to amend and reenact §§ 46.2-323, 46.2-323.1, 46.2-328.1, 46.2-330, 46.2-341.12, 46.2-343, and 46.2-345 of the Code of Virginia, relating to driver's licenses; REAL ID.

Patron—Miller, Y.B.

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-323, 46.2-323.1, 46.2-328.1, 46.2-330, 46.2-341.12, 46.2-343, and 46.2-345 of the Code of Virginia are amended and reenacted as follows:

§ 46.2-323. Application for driver's license; proof of completion of driver education program; penalty.

A. Every application for a driver's license, temporary driver's permit, learner's permit, or motorcycle learner's permit shall be made on a form prescribed by the Department and the applicant shall write his usual signature in ink in the space provided on the form. The form shall include notice to the applicant of the duty to register with the Department of State Police as provided in Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, if the applicant has been convicted of an offense for which registration with the Sex Offender and Crimes Against Minors Registry is required.

B. Every application shall state the full legal name, year, month, and date of birth, social security number, sex, and residence address of the applicant; whether or not the applicant has previously been licensed as a driver and, if so, when and by what state, and whether or not his license has ever been suspended or revoked and, if so, the date of and reason for such suspension or revocation. The Department, as a condition for the issuance of any driver's license, temporary driver's permit, learner's permit, or motorcycle learner's permit shall require the surrender of any driver's license ~~or, in the case of a motorcycle learner's permit, a motorcycle license, permit, or identification card~~ issued by another a state Department of Motor Vehicles or equivalent state office and held by the applicant. The applicant shall also answer any questions on the application form or otherwise propounded by the Department incidental to the examination. The applicant ~~may~~ shall also be required to present proof of identity, date of birth, legal presence, residency, and social security number or non-work authorized status, if required to appear the application is for an original issue license or permit, or if the applicant appears in person before the Department on or after May 1, 2011, to apply for a renewal or for a duplicate or reissue of a license or permit pursuant to § 46.2-330 or 46.2-343, unless the applicant has appeared before the Department on or after May 1, 2011, and presented proof of identity, date of birth, legal presence, residency, and social security number or non-work authorized status and such proof has been verified and a record of such proof has been retained in the Department's records.

The Commissioner shall require that each application include a certification statement to be signed by the applicant under penalty of perjury, certifying that the information presented on the application is true and correct.

If the applicant fails or refuses to sign the certification statement, the Department shall not issue the applicant a driver's license, temporary driver's permit, learner's permit or motorcycle learner's permit.

Any applicant who knowingly makes a false certification or supplies false or fictitious evidence shall be punished as provided in § 46.2-348.

C. Every application for a driver's license shall include a photograph of the applicant supplied under arrangements made by the Department. The photograph shall be processed by the Department so that the photograph can be made part of the issued license.

D. Notwithstanding the provisions of § 46.2-334, every applicant for a driver's license who is under 19 years of age shall furnish the Department with satisfactory proof of his successful completion of a driver education program approved by the State Department of Education.

E. Every application for a driver's license submitted by a person less than 18 years old and attending a public school in the Commonwealth shall be accompanied by a document, signed by the applicant's parent or legal guardian, authorizing the principal, or his designee, of the school attended by the applicant to notify the juvenile and domestic relations district court within whose jurisdiction the minor resides when the applicant has had 10 or more unexcused absences from school on consecutive school days.

F. The Department shall electronically transmit application information to the Department of State Police, in a format approved by the State Police, for comparison with information contained in the Virginia Criminal Information Network and National Crime Information Center Convicted Sexual

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59 Offender Registry Files, at the time of issuance of a driver's license, temporary driver's permit, learner's
60 permit, or motorcycle learner's permit. Whenever it appears from the records of the State Police that a
61 person has failed to comply with the duty to register or reregister pursuant to Chapter 9 (§ 9.1-900 et
62 seq.) of Title 9.1, the State Police shall promptly investigate and, if there is probable cause to believe a
63 violation has occurred, obtain a warrant or assist in obtaining an indictment charging a violation of
64 § 18.2-472.1 in the jurisdiction in which the person made application of licensure.

65 § 46.2-323.1. Certification of Virginia residency; nonresidents not to be issued driver's licenses,
66 commercial driver's licenses, learner's permits, or special identification card; penalty.

67 No driver's license, commercial driver's license, temporary driver's permit, learner's permit,
68 motorcycle learner's permit, or special identification card shall be issued to any person who is not a
69 Virginia resident. Every person applying for a driver's license, commercial driver's license, temporary
70 driver's permit, learner's permit, motorcycle learner's permit, or special identification card, *including any*
71 *application for a renewal, reissue, or duplicate of any of the foregoing*, shall execute and furnish to the
72 Commissioner his certificate that he is a resident of Virginia. The Commissioner or his duly authorized
73 agent may require any such applicant to supply, along with his application, such evidence of his
74 Virginia residency as the Commissioner may deem appropriate and adequate, provided that neither an
75 immigration visa nor a signed written statement, whether or not such statement is notarized, wherein the
76 maker of the statement vouches for the Virginia residency of the applicant, shall be acceptable proof of
77 Virginia residency. If the applicant is less than ~~nineteen~~ 19 years old and cannot otherwise provide proof
78 of Virginia residency, the Commissioner may accept proof of the applicant's parent's or guardian's
79 Virginia residency. Any minor providing proper evidence of the solemnization of his marriage or a
80 certified copy of a court order of emancipation shall not be required to provide the parent's certification
81 of residency. It shall be unlawful for any applicant knowingly to make a false certification of Virginia
82 residency or supply false or fictitious evidence of Virginia residency. Any violation of this section shall
83 be punished as provided in § 46.2-348.

84 § 46.2-328.1. Licenses, permits and special identification cards to be issued only to United States
85 citizens, legal permanent resident aliens, or holders of valid unexpired nonimmigrant visas; exceptions;
86 renewal, duplication, or reissuance.

87 A. Notwithstanding any other provision of this title, ~~except as provided in subsection G of~~
88 ~~§ 46.2-345~~, the Department shall not issue an original license, permit, or special identification card to
89 any applicant who has not presented to the Department, with the application, valid documentary
90 evidence that the applicant is either (i) a citizen of the United States, (ii) a legal permanent resident of
91 the United States, or (iii) a conditional resident alien of the United States.

92 B. Notwithstanding the provisions of subsection A and the provisions of §§ 46.2-330 and 46.2-345,
93 an applicant who presents in person valid documentary evidence of (i) a valid, unexpired nonimmigrant
94 visa or nonimmigrant visa status for entry into the United States, (ii) a pending or approved application
95 for asylum in the United States, (iii) entry into the United States in refugee status, (iv) a pending or
96 approved application for temporary protected status in the United States, (v) approved deferred action
97 status, or (vi) a pending application for adjustment of status to legal permanent residence status or
98 conditional resident status, may be issued a temporary license, permit, or special identification card.
99 Such temporary license, permit, or special identification card shall be valid only during the period of
100 time of the applicant's authorized stay in the United States or if there is no definite end to the period of
101 authorized stay a period of one year. No license, permit, or special identification card shall be issued if
102 an applicant's authorized stay in the United States is less than 30 days from the date of application. Any
103 temporary license, permit, or special identification card issued pursuant to this subsection shall clearly
104 indicate that it is temporary and shall state the date that it expires. Such a temporary license, permit, or
105 identification card may be renewed only upon presentation of valid documentary evidence that the status
106 by which the applicant qualified for the temporary license, permit, or special identification has been
107 extended by the United States Immigration and Naturalization Service or the Bureau of Citizenship and
108 Immigration Services of the Department of Homeland Security.

109 C. Any license or special identification card for which an application has been made *before May 1,*
110 *2011*, for renewal, duplication, or reissuance shall be presumed to have been issued in accordance with
111 the provisions of subsection A, provided that, at the time the application is made, the license or special
112 identification card has not expired; or been cancelled, suspended, or revoked. ~~The requirements of~~
113 ~~subsection A shall apply, however, to a renewal, duplication or reissuance if the Department is notified~~
114 ~~by a local, state or federal government agency that the individual seeking such renewal, duplication or~~
115 ~~reissuance is neither a citizen of the United States nor legally in the United States~~ Any license or special
116 *identification card for which an application has been made on or after May 1, 2011, for renewal,*
117 *duplication, or reissuance shall be subject to the provisions of subsection A if the applicant applies in*
118 *person before the Department for such renewal, duplication, or reissuance pursuant to the provisions of*
119 *§ 46.2-330, 46.2-343, or 46.2-345, unless the applicant has appeared before the Department on or after*
120 *May 1, 2011, and presented proof of legal presence pursuant to the provisions of subsection A and such*

proof has been verified and a record of such proof has been retained in the Department's records.

§ 46.2-330. Expiration and renewal of licenses; examinations required.

A. Every driver's license shall expire on the applicant's birthday at the end of the period of years for which a driver's license has been issued. At no time shall any driver's license be issued for more than eight years. Thereafter the driver's license shall be renewed on or before the birthday of the licensee and shall be valid for a period not to exceed eight years except as otherwise provided by law. In determining the number of years for which a driver's license shall be renewed, the Commissioner shall take into consideration the examinations, conditions, requirements, and other criteria provided under this title that relate to the issuance of a license to operate a vehicle. Any driver's license issued to a person required to register pursuant to Chapter 9 of Title 9.1 shall expire on the applicant's birthday in years which the applicant attains an age equally divisible by five.

B. Within one year prior to the date shown on the driver's license as the date of expiration, the Department shall mail notice, to the holder thereof, at the address shown on the records of the Department in its driver's license file, that his license will expire on a date specified therein, whether he must be reexamined, and when he may be reexamined. Nonreceipt of the notice shall not extend the period of validity of the driver's license beyond its expiration date.

Any driver's license may be renewed by application after the applicant has taken and successfully completed those parts of the examination provided for in §§ 46.2-311, 46.2-325, and the Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.), including vision and written tests, other than the parts of the examination requiring the applicant to drive a motor vehicle. All drivers applying in person for renewal of a license shall take and successfully complete the examination each renewal year. Every applicant for a renewal shall appear in person before the Department, unless specifically notified by the Department that renewal may be accomplished in another manner as provided in the notice. *On and after May 1, 2011, the Department may issue such notice that renewal may be accomplished in another manner only if (i) the applicant was born on or before December 1, 1964, and is applying to renew a license expiring on or before December 1, 2014, or (ii) the applicant has appeared before the Department on or after May 1, 2011, and presented proof of identity, date of birth, legal presence, residency, and social security number or non-work authorized status and such proof has been verified and a record of such proof has been retained in the Department's records.* ~~Applicants~~ *An applicant who are required to appear* appears in person before the Department *on or after May 1, 2011, to apply for a renewal may also* shall be required to present proof of identity, date of birth, legal presence, residency, and social security number or non-work authorized status, *unless the applicant has appeared before the Department on or after May 1, 2011, and presented such proof and such proof has been verified and a record of such proof has been retained in the Department's records.*

C. Notwithstanding any other provision of this section, the Commissioner, in his discretion, may require any applicant for renewal to be fully examined as provided in §§ 46.2-311, 46.2-325, and the Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.). Furthermore, if the applicant is less than 80 years old, the Commissioner may waive the vision examination for any applicant for renewal of a driver's license which is not a commercial driver's license, and the requirement or the taking of the written test as provided in subsection B of this section, § 46.2-325 and the Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.), for any applicant for renewal who is at least 21 years old. Such written test shall not be waived for an applicant less than 21 years old if such applicant's driver's license record on file with the Department contains a record of one or more convictions for any offense reportable under §§ 46.2-382, 46.2-382.1, and 46.2-383. However, in no case shall there be any waiver of the vision examination for applicants for renewal of a commercial driver's license or of the knowledge test required by the Virginia Commercial Driver's License Act for the hazardous materials endorsement on a commercial driver's license. No driver's license or learner's permit issued to any person who is 80 years old or older shall be renewed unless the applicant for renewal appears in person and either (i) passes a vision examination or (ii) presents a report of a vision examination, made within 90 days prior thereto by an ophthalmologist or optometrist, indicating that the applicant's vision meets or exceeds the standards contained in § 46.2-311.

D. Every applicant for renewal of a driver's license, whether renewal shall or shall not be dependent on any examination of the applicant, shall appear in person before the Department to apply for renewal, unless specifically notified by the Department that renewal may be accomplished in another manner as provided in the notice.

E. This section shall not modify the provisions of § 46.2-221.2.

F. 1. The Department shall electronically transmit application information, including a photograph, to the Department of State Police, in a format approved by the State Police, for comparison with information contained in the Virginia Criminal Information Network and National Crime Information Center Convicted Sexual Offender Registry Files, at the time of the renewal of a driver's license. Whenever it appears from the records of the State Police that a person has failed to comply with the

duty to register or reregister pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, the State Police shall promptly investigate and, if there is probable cause to believe a violation has occurred, obtain a warrant or assist in obtaining an indictment charging a violation of § 18.2-472.1 in the jurisdiction in which the person last registered or reregistered or in the jurisdiction where the person made application for licensure. The Department of State Police shall electronically transmit to the Department, in a format approved by the Department, for each person required to register pursuant to Chapter 9 of Title 9.1, registry information consisting of the person's name, all aliases that he has used or under which he may have been known, his date of birth and social security number as set out in § 9.1-903.

2. For each person required to register pursuant to Chapter 9 of Title 9.1, the Department may not waive the requirement that each such person shall appear for each renewal or the requirement to obtain a photograph in accordance with subsection C of § 46.2-323.

§ 46.2-341.12. Application for commercial driver's license.

A. Every application to the Department for a commercial driver's license shall be made upon a form approved and furnished by the Department, and the applicant shall write his usual signature in ink in the space provided. The applicant shall provide the following information:

1. Full legal name;
2. Current mailing and residential addresses;
3. Physical description including sex, height, weight and eye and hair color;
4. Year, month and date of birth;
5. Social Security number; and
6. Any other information required on the application form.

B. Every applicant for a commercial driver's license shall also submit to the Department the following:

1. A consent to release driving record information;
2. Certifications that:
 - a. He either meets the federal qualification requirements of 49 C.F.R. Part 391, or he is exempt from or is not subject to such federal requirements;
 - b. He either meets the state qualification requirements established pursuant to § 52-8.4, or he is exempt from or is not subject to such requirements;
 - c. The motor vehicle in which the applicant takes the skills test is representative of the class and, if applicable, the type of motor vehicle for which the applicant seeks to be licensed;
 - d. He is not subject to any disqualification, suspension, revocation or cancellation of his driving privileges;
 - e. He does not have more than one driver's license;
3. Other certifications required by the Department;
4. Any evidence required by the Department to establish proof of identity, *date of birth*, legal presence, residency, and social security number; and
5. A statement indicating whether (i) the applicant has previously been licensed to drive any type of motor vehicle during the previous 10 years and, if so, all states that licensed the applicant and the dates he was licensed, and (ii) whether or not he has ever been disqualified, or his license suspended, revoked or cancelled and, if so, the date of and reason therefor.

C. Every application for a commercial driver's license shall include a photograph of the applicant supplied under arrangements made therefor by the Department in accordance with § 46.2-323.

D. The Department shall disqualify any commercial driver for a period of one year when the records of the Department clearly show to the satisfaction of the Commissioner that such person has made a material false statement on any application or certification made for a commercial driver's license. The Department shall take such action within 30 days after discovering such falsification.

E. The Department shall review the driving record of any person who applies for a Virginia commercial driver's license, for the renewal or reinstatement of such license or for an additional commercial classification or endorsement, including the driving record from all jurisdictions where, during the previous 10 years, the applicant was licensed to drive any type of motor vehicle. If appropriate, the Department shall incorporate information from such other jurisdictions' records into the applicant's Virginia driving record, and shall make a notation on the applicant's driving record confirming that such review has been completed and the date it was completed. The Department's review shall include research through the Commercial Driver License Information System established pursuant to the Commercial Motor Vehicle Safety Act and the National Driver Register in addition to the driver record maintained by the applicant's previous jurisdictions of licensure. This research shall be completed prior to the issuance, renewal, or reinstatement of a commercial driver's license or additional commercial classification or endorsement.

§ 46.2-343. Duplicate driver's license, reissued driver's licenses, learner's permit; fees.

If a driver's license or learner's permit issued under the provisions of this chapter is lost, stolen, or destroyed, the person to whom it was issued may obtain a duplicate or substitute thereof on furnishing

proof satisfactory to the Department that his license or permit has been lost, stolen, or destroyed, or that there are good reasons why a duplicate should be issued. Every applicant for a duplicate or reissued driver's license shall appear in person before the Department to apply, unless *specifically* permitted by the Department to apply for duplicate or reissue in another manner. *On and after May 1, 2011, the Department may grant such permission only if (i) the applicant was born on or before December 1, 1964, and is applying for a duplicate or reissue of a license expiring on or before December 1, 2017, or (ii) the applicant has appeared before the Department on or after May 1, 2011, and presented proof of identity, date of birth, legal presence, residency, and social security number or non-work authorized status and such proof has been verified and a record of such proof has been retained in the Department's records.* Applicants An applicant who are required to apply applies in person may on or after May 1, 2011, for a duplicate or reissue shall be required to present proof of identity, date of birth, legal presence, residency, and social security number or non-work authorized status, unless the applicant has appeared before the Department on or after May 1, 2011, and presented such proof and such proof has been verified and a record of such proof has been retained in the Department's records.

There shall be a fee of ~~five dollars~~ \$5 for each duplicate license and ~~two dollars~~ \$2 for each duplicate learner's permit. An additional fee of ~~five dollars~~ \$5 shall be charged to add or change the scene on a duplicate license or duplicate learner's permit.

There shall be a fee of ~~five dollars~~ \$5 for reissuance of any driver's license upon the termination of driving restrictions imposed upon the licensee by the Department or a court. An additional fee of ~~five dollars~~ \$5 shall be charged to add or change the scene on a license upon reissuance.

§ 46.2-345. Issuance of special identification cards; fee; confidentiality; penalties.

A. On the application of any person who is a resident of the Commonwealth or the parent or legal guardian of any such person who is under the age of 15, the Department shall issue a special identification card to the person provided:

1. Application is made on a form prescribed by the Department and includes the applicant's full legal name; year, month, and date of birth; social security number, *if authorized by federal law*; sex; and residence address;

2. The applicant presents, ~~when required by the Department~~, proof of identity, *date of birth*, legal presence, residency, and, *if authorized by federal law*, social security number or non-work authorized status;

3. The Department is satisfied that the applicant needs an identification card or the applicant shows he has a bona fide need for such a card; and

4. The applicant does not hold a driver's license, commercial driver's license, temporary driver's permit, learner's permit, ~~or motorcycle learner's permit, or identification card issued by a state Department of Motor Vehicles or equivalent state office.~~

Persons 70 years of age or older may exchange a valid Virginia driver's license for a special identification card at no fee. Special identification cards subsequently issued to such persons shall be subject to the regular fees for special identification cards.

B. The fee for the issuance of an original or renewal special identification card is \$5. The fee for the issuance of a duplicate or reissue of a special identification card is \$5. Persons 21 years old or older may be issued a scenic special identification card for an additional fee of \$5.

C. Every special identification card shall expire on the last day of the month of birth of the applicant in years in which the applicant attains an age exactly divisible by five. At no time shall any special identification card be issued for less than three nor more than seven years, except under the provisions of subsection B of § 46.2-328.1 and except that those cards issued to children under the age of 15 shall expire on the child's sixteenth birthday, thereafter the special identification card may be renewed on or before the last day of the month of birth of the applicant and shall be valid for five years, expiring in the next year in which the applicant's age is exactly divisible by five, except under the provisions of subsection B of § 46.2-328.1.

D. A special identification card issued under this section may be similar in size, shape, and design to a driver's license, and include a photograph of its holder, but the card shall be readily distinguishable from a driver's license and shall clearly state that it does not authorize the person to whom it is issued to drive a motor vehicle. Every applicant for a special identification card shall appear in person before the Department to apply for a renewal, duplicate or reissue unless specifically permitted by the Department to apply in another manner. *On and after May 1, 2011, the Department may grant such permission only if (i) the applicant was born on or before December 1, 1964, and is applying for a renewal, duplicate, or reissue of a special identification card expiring on or before December 1, 2017, or (ii) the applicant has appeared before the Department on or after May 1, 2011, and presented proof of identity, date of birth, legal presence, residency, and, if authorized by federal law, social security number or non-work authorized status and such proof has been verified and a record of such proof has been retained in the Department's records.* An applicant who applies in person on or after May 1, 2011,

305 *for a renewal, duplicate, or reissue shall be required to present proof of identity, date of birth, legal*
306 *presence, residency, and, if authorized by federal law, social security number or non-work authorized*
307 *status, unless the applicant has appeared before the Department on or after May 1, 2011, and presented*
308 *such proof and such proof has been verified and a record of such proof has been retained in the*
309 *Department's records.*

310 E. Special identification cards, for persons at least 15 years old but less than 21 years old, shall be
311 immediately and readily distinguishable from those issued to persons 21 years old or older.
312 Distinguishing characteristics shall include unique design elements of the document and descriptors
313 within the photograph area to identify persons who are at least 15 years old but less than 21 years old.
314 These descriptors shall include the month, day, and year when the person will become 21 years old.

315 F. Special identification cards for persons under age 15 shall bear a full face photograph. The special
316 identification card issued to persons under age 15 shall be readily distinguishable from a driver's license
317 and from other special identification cards issued by the Department. Such cards shall clearly indicate
318 that it does not authorize the person to whom it is issued to drive a motor vehicle.

319 G. ~~Unless otherwise prohibited by law~~ *Subject to the provisions of subdivision A 2, a valid Virginia*
320 *driver's license may be surrendered for a special identification card without the applicant's having to*
321 *present proof of legal presence as required by § 46.2-328.1 if the Virginia driver's license is unexpired*
322 *and it has not been revoked, suspended, or cancelled. The special identification card shall be considered*
323 *a reissue and the expiration date shall be the last day of the month of the surrendered driver's license's*
324 *month of expiration.*

325 H. Any personal information, as identified in § 2.2-3801, which is retained by the Department from
326 an application for the issuance of a special identification card is confidential and shall not be divulged to
327 any person, association, corporation, or organization, public or private, except to the legal guardian or
328 the attorney of the applicant or to a person, association, corporation, or organization nominated in
329 writing by the applicant, his legal guardian, or his attorney. This subsection shall not prevent the
330 Department from furnishing the application or any information thereon to any law-enforcement agency.

331 I. Any person who uses a false or fictitious name or gives a false or fictitious address in any
332 application for an identification card or knowingly makes a false statement or conceals a material fact or
333 otherwise commits a fraud in any such application shall be guilty of a Class 2 misdemeanor. However,
334 where the name or address is given, or false statement is made, or fact is concealed, or fraud committed,
335 with the intent to purchase a firearm or where the identification card is obtained for the purpose of
336 committing any offense punishable as a felony, a violation of this section shall constitute a Class 4
337 felony.

338 J. The Department may promulgate regulations necessary for the effective implementation of the
339 provisions of this section.

340 K. The Department shall utilize the various communications media throughout the Commonwealth to
341 inform Virginia residents of the provisions of this section and to promote and encourage the public to
342 take advantage of its provisions.

343 L. The Department shall electronically transmit application information to the Department of State
344 Police, in a format approved by the State Police, for comparison with information contained in the
345 Virginia Criminal Information Network and National Crime Information Center Convicted Sexual
346 Offender Registry Files, at the time of issuance of a special identification card. Whenever it appears
347 from the records of the State Police that a person has failed to comply with the duty to register or
348 reregister pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, the State Police shall promptly
349 investigate and, if there is probable cause to believe a violation has occurred, obtain a warrant or assist
350 in obtaining an indictment charging a violation of § 18.2-472.1 in the jurisdiction in which the person
351 made application for the special identification card.