

VIRGINIA ACTS OF ASSEMBLY -- 2016 SESSION

CHAPTER 488

An Act to amend and reenact §§ 46.2-323, 46.2-324.1, 46.2-334, 46.2-334.01, 46.2-335, and 46.2-335.2 of the Code of Virginia, relating to operating a motor vehicle by a holder of a learner's permit or provisional driver's license holder.

[S 555]

Approved March 25, 2016

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-323, 46.2-324.1, 46.2-334, 46.2-334.01, 46.2-335, and 46.2-335.2 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 issued by another state 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 also be required to present proof of identity, residency, and social security number or non-work authorized status, if required to appear in person before the Department to apply.

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 18 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 Offender Registry Files, at the time of issuance of a driver's license, temporary driver's permit, learner's permit, or motorcycle learner's permit. 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 made application of licensure.

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

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

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

The provisions of this section shall only apply to persons who are at least 18 years old and who either (a) have never held a driver's license issued by Virginia or any other state or territory of the United States or foreign country or (b) have never been licensed or held the license endorsement or classification required to operate the type of vehicle which they now propose to operate. Completion of a course of driver instruction approved by the Department or the Department of Education at a driver training school may include the final behind-the-wheel examination for a driver's license; however, a driver training school shall not administer the behind-the-wheel examination to any applicant who is under medical control pursuant to § 46.2-322. Applicants completing a course of driver instruction approved by the Department or the Department of Education at a driver training school retain the option of having the behind-the-wheel examination administered by the Department.

B. No commercial driver's license shall be issued to any applicant unless he is 18 years old or older and has complied with the requirements of subsection A of § 46.2-341.9. Applicants for a commercial driver's license who have never before held a commercial driver's license shall apply for a commercial learner's permit and either (i) provide written evidence of having satisfactorily completed a course of driver instruction at a driver training school licensed under Chapter 17 (§ 46.2-1700 et seq.) or a comparable course approved by the Department or Department of Education and hold the commercial learner's permit for a minimum of 14 days prior to taking the behind-the-wheel examination for the commercial driver's license or (ii) hold the commercial learner's permit for a minimum of 30 days before taking the behind-the-wheel examination for the commercial driver's license.

Holders of a commercial driver's license who have never held the license endorsement or classification required to operate the type of commercial motor vehicle which they now propose to operate must apply for a commercial learner's permit if the upgrade requires a skills test and hold the permit for a minimum of 14 days prior to taking the behind-the-wheel examination for the commercial driver's license.

C. Nothing in this section shall be construed to prohibit the Department from requiring any person to complete the skills examination as prescribed in § 46.2-325 and the written or automated examinations as prescribed in § 46.2-335.

D. Notwithstanding the provisions of subsection B, applicants for a commercial driver's license who have never before held a commercial driver's license who are members of the active duty military, military reserves, National Guard, active duty United States Coast Guard, or Coast Guard Auxiliary and provide written evidence of having satisfactorily completed a military commercial driver training program shall hold the commercial learner's permit for a minimum of 14 days prior to taking the behind-the-wheel examination for the commercial driver's license.

E. Notwithstanding the provisions of subsection B, applicants for a commercial driver's license who have never before held a commercial driver's license who are employed by a public school division as a bus driver and provide written evidence of having satisfactorily completed a commercial driver training program with a public school division shall hold the commercial learner's permit for a minimum of 14 days prior to taking the behind-the-wheel examination for the commercial driver's license.

§ 46.2-334. Conditions and requirements for licensure of persons under 18.

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

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

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

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

court of the county or city in which the parent or guardian, respectively, of the minor resides.

4. The application for a permanent driver's license by a minor of the age of persons required to attend school pursuant to § 22.1-254 shall be accompanied by evidence of compliance with the compulsory school attendance law set forth in Article 1 (§ 22.1-254 et seq.) of Chapter 14 of Title 22.1. This evidence shall be provided in writing by the minor's parent. If the minor is unable to provide such 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 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 ~~19~~ 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, if applicable, 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 U.S. state, U.S. territory, Canadian province, or Canadian territory; 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.

In order to obtain a permanent driver's license, applicants who transfer to Virginia from another U.S. state or any U.S. territory, Canadian province, or Canadian territory must have documentation of at least 30 hours of classroom instruction and six hours of in-car instruction from a government-approved program in the other U.S. state, U.S. territory, or Canadian province or Canadian territory. If a transfer applicant successfully completes a government-approved classroom and in-car driver education program from another state or any U.S. territory, Canadian province, or Canadian territory, the applicant must present the certificate of completion, specifying the number of instructional hours, to the Department.

F. For persons qualifying for a driver's license through driver education courses approved by the Department of Education or courses offered by 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 students 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 students 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 marriage or a certified copy of a court order of emancipation shall not be required to provide the certification of good academic standing or any written authorization from his parent or guardian to obtain a driver's license.

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

I. The Commissioner, on application therefor by a person from another U.S. state or any U.S. territory, Canadian province, or Canadian territory who is at least 16 years and three months old but less than 18 years old, shall issue a Virginia driver's license to the applicant if the applicant (i) certifies by signing, together with his parent or guardian, if applicable, on a form prescribed by the Commissioner that he is now a resident of the Commonwealth; (ii) has completed a government-approved classroom and in-car driver education program from another U.S. state or any U.S. territory, Canadian province, or Canadian territory, which shall not be required to meet the 30 hours of classroom instruction and six hours of in-car instruction requirement in subsection E; (iii) is the holder of a valid driver's license from another U.S. state or any U.S. territory, Canadian province, or Canadian territory; (iv) has held the valid driver's license for the 12 months immediately prior to applying for a Virginia license; (v) has not been found guilty of or otherwise responsible for an offense involving the operation of a motor vehicle; and (vi) successfully completes behind-the-wheel and driver knowledge examinations administered by the Department.

The applicant must present the certificate of completion specifying the number of classroom and in-car driver education program instructional hours for the government-approved classroom and in-car driver education program from another U.S. state or any U.S. territory, Canadian province, or Canadian territory to the Department.

§ 46.2-334.01. Licenses issued to persons less than 19 years old subject to certain restrictions.

A. Any learner's permit or driver's license issued to any person less than 18 years old shall be subject to the following:

1. Notwithstanding the provisions of § 46.2-498, whenever the driving record of a person less than 19 years old shows that he has been convicted of committing, when he was less than 18 years old, (i) an offense for which demerit points have been assessed or are assessable under Article 19 (§ 46.2-489 et seq.) or (ii) a violation of any provision of Article 12 (§ 46.2-1091 et seq.) or Article 13 (§ 46.2-1095 et seq.) of Chapter 10, the Commissioner shall direct such person to attend a driver improvement clinic. No safe driving points shall be awarded for such clinic attendance, nor shall any safe driving points be awarded for voluntary or court-assigned clinic attendance. Such person's parent, guardian, legal custodian, or other person standing in loco parentis may attend such clinic and receive a reduction in demerit points and/or an award of safe driving points pursuant to § 46.2-498. The provisions of this subdivision shall not be construed to prohibit awarding of safe driving points to a person less than 18 years old who attends and successfully completes a driver improvement clinic without having been directed to do so by the Commissioner or required to do so by a court.

2. If any person less than 19 years old is convicted a second time of committing, when he was less than 18 years old, (i) an offense for which demerit points have been assessed or are assessable under Article 19 (§ 46.2-489 et seq.) or (ii) a violation of any provision of Article 12 (§ 46.2-1091 et seq.) or Article 13 (§ 46.2-1095 et seq.) of Chapter 10, the Commissioner shall suspend such person's driver's license or privilege to operate a motor vehicle for 90 days. Such suspension shall be consecutive to, and not concurrent with, any other period of license suspension, revocation, or denial. Any person who has had his driver's license or privilege to operate a motor vehicle suspended in accordance with this subdivision may petition the juvenile and domestic relations district court of his residence for a restricted

license to authorize such person to drive a motor vehicle in the Commonwealth to and from his home, his place of employment, or an institution of higher learning where he is enrolled, provided there is no other means of transportation by which such person may travel between his home and his place of employment or the institution of higher learning where he is enrolled. On such petition the court may, in its discretion, authorize the issuance of a restricted license for a period not to exceed the term of the suspension of the person's license or privilege to operate a motor vehicle in the Commonwealth. Such restricted license shall be valid solely for operation of a motor vehicle between such person's home and his place of employment or the institution of higher learning where he is enrolled.

3. If any person is convicted a third time of committing, when he was less than 18 years old, (i) an offense for which demerit points have been assessed or are assessable under Article 19 (§ 46.2-489 et seq.) or (ii) a violation of any provision of Article 12 (§ 46.2-1091 et seq.) or Article 13 (§ 46.2-1095 et seq.) of Chapter 10, the Commissioner shall revoke such person's driver's license or privilege to operate a motor vehicle for one year or until such person reaches the age of 18 years, whichever is longer. Such revocation shall be consecutive to, and not concurrent with, any other period of license suspension, revocation, or denial.

4. In no event shall any person subject to the provisions of this section be subject to the suspension or revocation provisions of subdivision 2 or 3 for multiple convictions arising out of the same transaction or occurrence.

B. The initial license issued to any person younger than 18 years of age shall be deemed a provisional driver's license. Until the holder is 18 years old, a provisional driver's license shall not authorize its holder to operate a motor vehicle with more than one passenger who is less than 21 years old; ~~unless the driver is accompanied by a parent or person acting in loco parentis provided that such person accompanying the driver is occupying the seat beside the driver and is lawfully permitted to operate a motor vehicle at the time.~~ After the first year the provisional license is issued, the holder may operate a motor vehicle with up to three passengers who are less than 21 years old ~~when~~ (i) ~~when~~ the holder is driving to or from a school-sponsored activity, ~~or~~ (ii) ~~when~~ a licensed driver who is at least 21 years old is occupying the seat beside the driver, or (iii) in cases of emergency. ~~This~~ *These* passenger ~~limitation~~ *limitations*, however, shall not apply to members of the driver's family or household. For the purposes of this subsection, "a member of the driver's family or household" means any of the following: (a) the driver's spouse, children, stepchildren, brothers, sisters, half-brothers, half-sisters, *first cousins*, and any individual who has a child in common with the driver, whether or not they reside in the same home with the driver; (b) the driver's brothers-in-law and sisters-in-law who reside in the same home with the driver; and (c) any individual who cohabits with the driver, and any children of such individual residing in the same home with the driver.

C. The holder of a provisional driver's license shall not operate a motor vehicle on the highways of the Commonwealth between the hours of midnight and 4:00 a.m. except when driving (i) to or from a place of business where he is employed; (ii) to or from an activity that is supervised by an adult and is sponsored by a school or by a civic, religious, or public organization; (iii) accompanied by a parent, a person acting in loco parentis, or by a spouse who is 18 years old or older, provided that such person accompanying the driver is actually occupying a seat beside the driver and is lawfully permitted to operate a motor vehicle at the time; or (iv) in cases of emergency, including response by volunteer firefighters and volunteer emergency medical services personnel to emergency calls.

C1. Except in a driver emergency or when the vehicle is lawfully parked or stopped, the holder of a provisional driver's license shall not operate a motor vehicle on the highways of the Commonwealth while using any cellular telephone or any other wireless telecommunications device, regardless of whether such device is or is not hand-held.

D. The provisional driver's license restrictions in subsections B, C, and C1 shall expire on the holder's eighteenth birthday. A violation of the provisional driver's license restrictions in ~~either~~ subsection B, C, or C1 shall constitute a traffic infraction. For a second or subsequent violation of the provisional driver's license restrictions in ~~either~~ subsection B, C, or C1, in addition to any other penalties that may be imposed pursuant to § 16.1-278.10, the court may suspend the juvenile's privilege to drive for a period not to exceed six months.

E. A violation of subsection B, C, or C1 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 motor vehicle, nor shall anything in this subsection change any existing law, rule, or procedure pertaining to any such civil action.

F. No citation for a violation of this section shall be issued unless the officer issuing such citation has cause to stop or arrest the driver of such motor vehicle for the violation of some other provision of this Code or local ordinance relating to the operation, ownership, or maintenance of a motor vehicle or any criminal statute.

§ 46.2-335. Learner's permits; fees; certification required.

A. The Department, on receiving from any Virginia resident over the age of 15 years and six months an application for a learner's permit or motorcycle learner's permit, may, subject to the applicant's

satisfactory documentation of meeting the requirements of this chapter and successful completion of the written or automated knowledge and vision examinations and, in the case of a motorcycle learner's permit applicant, the automated motorcycle test, issue a permit entitling the applicant, while having the permit in his immediate possession, to drive a motor vehicle or, if the application is made for a motorcycle learner's permit, a motorcycle, on the highways, when accompanied by any licensed driver 21 years of age or older or by his parent or legal guardian, or by a brother, sister, half-brother, half-sister, step-brother, or step-sister 18 years of age or older. The accompanying person shall be (i) alert, able to assist the driver, and actually occupying a seat beside the driver or, for motorcycle instruction, providing immediate supervision from a separate accompanying motor vehicle and (ii) lawfully permitted to operate the motor vehicle or accompanying motorcycle at that time.

The Department shall not, however, issue a learner's permit or motorcycle learner's permit to any minor applicant required to provide evidence of compliance with the compulsory school attendance law set forth in Article 1 (§ 22.1-254 et seq.) of Chapter 14 of Title 22.1, unless such applicant 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 learner's permit or motorcycle learner's permit, 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. 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 certification of good academic standing or any written authorization from his parent or guardian to obtain a learner's permit or motorcycle learner's permit.

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

Any person 25 years of age or older who is eligible to receive an operator's license in Virginia, but who is required, pursuant to § 46.2-324.1, to be issued a learner's permit for 60 days prior to his first behind-the-wheel exam, may be issued such learner's permit even though restrictions on his driving privilege have been ordered by a court. Any such learner's permit shall be subject to the restrictions ordered by the court.

B. No driver's license shall be issued to any such person who is less than 18 years old unless, while holding a learner's permit, he has driven a motor vehicle for at least 45 hours, at least 15 of which were after sunset, as certified by his parent, foster parent, or legal guardian unless the person is married or otherwise emancipated. Such certification shall be on a form provided by the Commissioner and shall contain the following statement:

"It is illegal for anyone to give false information in connection with obtaining a driver's license. This certification is considered part of the driver's license application, and anyone who certifies to a false statement may be prosecuted. I certify that the statements made and the information submitted by me regarding this certification are true and correct."

Such form shall also include the driver's license or Department of Motor Vehicles-issued identification card number of the person making the certification.

C. No learner's permit shall authorize its holder to operate a motor vehicle with more than one passenger who is less than 21 years old, except when participating in a driver education program approved by the Department of Education or a course offered by a driver training school licensed by the Department. This passenger limitation, however, shall not apply to the *members of the* driver's family or household as defined in subsection B of § 46.2-334.01.

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

E. Except in a driver emergency or when the vehicle is lawfully parked or stopped, no holder of a learner's permit shall operate a motor vehicle on the highways of the Commonwealth while using any cellular telephone or any other wireless telecommunications device, regardless of whether or not such device is handheld. No citation for a violation of this subsection shall be issued unless the officer issuing such citation has cause to stop or arrest the driver of such motor vehicle for the violation of some other provision of this Code or local ordinance relating to the operation, ownership, or maintenance of a motor vehicle or any criminal statute.

~~E.~~ F. A violation of subsection C ~~or~~ D, *or E* 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 motor vehicle, nor shall anything in this subsection change any existing law, rule, or procedure pertaining to any such civil action.

F. G. The provisions of §§ 46.2-323 and 46.2-334 relating to evidence and certification of Virginia 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.~~ *H.* For persons qualifying for a driver's license through driver education courses approved by the Department of Education or courses offered by 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.~~ *I.* 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.~~ *J.* 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.~~ *K.* 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.~~ *L.* Any violation of this section shall be punishable as a Class 2 misdemeanor.

§ 46.2-335.2. Learner's permits; required before driver's license; minimum holding period.

A. No person under the age of ~~nineteen~~ 18 years shall be eligible to receive a driver's license pursuant to § 46.2-334 unless the Department has previously issued such person a learner's permit pursuant to § 46.2-335 and such person has satisfied the minimum holding period requirements set forth in subsection B, or unless such person is the holder of a valid driver's license from another state and qualifies for a temporary license under subsection E of § 46.2-334 ~~or subsection C of this section.~~

B. ~~Effective July 1, 2002, any~~ Any person under the age of ~~nineteen~~ 18 years issued a learner's permit pursuant to § 46.2-335 shall hold such permit for a minimum period of nine months or until he reaches the age of ~~nineteen~~ 18 years, whichever occurs first.

~~C.~~ Notwithstanding the provisions of subsection ~~D~~ of § 46.2-323, requiring the successful completion of a driver education course approved by the State Department of Education, the Commissioner, on application therefor by a person who is at least eighteen years old but less than nineteen years old, shall issue to the applicant a temporary driver's license valid for six months if he (i) certifies by signing 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 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 a second or subsequent temporary license under this subsection be issued to the same applicant.