

VIRGINIA ACTS OF ASSEMBLY -- 1995 RECONVENED SESSION

CHAPTER 805

An Act to amend and reenact §§ 9-6.14:14.1, 46.2-731, and 46.2-1237 of the Code of Virginia, relating to hearing officers; parking spaces reserved for certain disabled persons and license plates and other indicia related thereto; revocations of plates and indicia.

[S 892]

Approved April 6, 1995

Be it enacted by the General Assembly of Virginia:

1. That §§ 9-6.14:14.1, 46.2-731, and 46.2-1237 of the Code of Virginia are amended and reenacted as follows:

§ 9-6.14:14.1. Hearing officers.

A. In all hearings conducted in accordance with § 9-6.14:12, the hearing shall be presided over by a hearing officer selected from a list prepared by the Executive Secretary of the Supreme Court and maintained in the Office of the Executive Secretary of the Supreme Court. Parties to proceedings conducted pursuant to § 9-6.14:11 may agree at the outset of the proceeding to have a hearing officer preside at the proceeding, such agreement to be revoked only by mutual consent. The Executive Secretary shall have the power to promulgate rules necessary for the administration of the hearing officer system.

All hearing officers shall meet the following minimum standards:

1. Active membership in good standing in the Virginia State Bar;
2. Active practice of law for at least five years; and
3. Completion of a course of training approved by the Executive Secretary of the Supreme Court. In order to comply with the demonstrated requirements of the agency requesting a hearing officer, the Executive Secretary may require additional training before a hearing officer will be assigned to a proceeding before that agency.

These requirements must be met prior to being included on the list of hearing officers. All attorneys on the list as of July 1, 1986, shall satisfy these requirements by January 1, 1987, to remain on the list.

B. On request from the head of an agency, the Executive Secretary will name a hearing officer from the list, selected on a rotation system administered by the Executive Secretary. Lists reflecting geographic preference and specialized training or knowledge shall be maintained by the Executive Secretary if an agency demonstrates the need.

C. A hearing officer shall voluntarily disqualify himself and withdraw from any case in which he cannot accord a fair and impartial hearing or consideration, or when required by the applicable rules governing the practice of law in the Commonwealth. Any party may request the disqualification of a hearing officer by filing an affidavit, prior to the taking of evidence at a hearing, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded, or the applicable rule of practice requiring disqualification.

The issue shall be determined not less than ten days prior to the hearing by the Executive Secretary of the Supreme Court.

D. Any hearing officer empowered by the agency to provide a recommendation or conclusion in a case decision matter shall render that recommendation or conclusion within ninety days from the date of the case decision proceeding or from a later date agreed to by the named party and the agency. If the hearing officer does not render a decision within ninety days, then the named party to the case decision may provide written notice to the hearing officer and the Executive Secretary of the Supreme Court that a decision is due. If no decision is made within thirty days from receipt by the hearing officer of the notice, then the Executive Secretary of the Supreme Court shall remove the hearing officer from the hearing officer list and report the hearing officer to the Virginia State Bar for possible disciplinary action, unless good cause is shown for the delay.

E. The Executive Secretary shall remove hearing officers from the list, upon a showing of cause after notice in writing and a hearing. When there is a failure by a hearing officer to render a decision as required by subsection D, the burden shall be on the hearing officer to show good cause for the delay. Decisions to remove a hearing officer may be reviewed by a request to the Executive Secretary for reconsideration, followed by judicial review in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.).

F. This section shall not apply to hearings conducted by (i) any commission or board where all of the members, or a quorum, are present; (ii) the Alcoholic Beverage Control Board, the Virginia Workers' Compensation Commission, the State Corporation Commission, the Virginia Employment Commission, the State Education Assistance Authority, or the Department of Motor Vehicles under §§ 46.2-368, 46.2-389 through 46.2-416, 46.2-506, 46.2-705 through 46.2-710, 46.2-731, 46.2-1237, 46.2-1501,

46.2-1514, 46.2-1542, 46.2-1543, 46.2-1563, 46.2-1572, 46.2-1573, 46.2-1576, 46.2-1601, 46.2-1704 through 46.2-1706, or 58.1-2409; or (iii) any panel of a health regulatory board convened pursuant to § 54.1-2400. All employees hired after July 1, 1986, pursuant to §§ 65.2-201 and 65.2-203 (formerly §§ 65.1-11 and 65.1-12) by the Virginia Workers' Compensation Commission to conduct hearings pursuant to its basic laws shall meet the minimum qualifications set forth in subsection A of this section. Agency employees who are not licensed to practice law in this Commonwealth, and are presiding as hearing officers in proceedings pursuant to (ii) above shall participate in periodic training courses.

G. Notwithstanding the exemptions of subsection A of § 9-6.14:4.1, this article shall apply to hearing officers conducting hearings of the kind described in § 9-6.14:12 for the Department of Game and Inland Fisheries, the Virginia Housing Development Authority, the Milk Commission and the Virginia Resources Authority pursuant to their basic laws.

§ 46.2-731. Disabled parking license plates; organizational removable windshield placards; permanent removable windshield placards; temporary removable windshield placards for persons with disabilities that limit or impair their ability to walk and owners of vehicles specially equipped and used to transport persons with disabilities; fees.

On receipt of an application, the Commissioner shall issue appropriately designed disabled parking license plates to persons with physical disabilities that limit or impair their ability to walk. The Commissioner shall request that the application be accompanied by a certification of a licensed physician that the applicant meets the definition of "person with a disability that limits or impairs his ability to walk" contained in § 46.2-100. The issuance of a disabled parking license plate shall not preclude the issuance of a permanent removable windshield placard.

On application of an organization, the Commissioner shall issue disabled parking license plates for vehicles registered in the applicant's name if the vehicles are primarily used to transport persons with disabilities. The application shall include a certification by the applicant, under criteria determined by the Commissioner, that the vehicle is primarily used to transport persons with disabilities that limit or impair their ability to walk, as defined in § 46.2-100.

The fee for the issuance of a disabled parking license plate under this section may not exceed the fee charged for a similar license plate for the same class vehicle.

Upon application of a person with a disability that limits or impairs his ability to walk, the Commissioner shall issue a permanent removable windshield placard for use on a passenger car or pickup or panel truck. The Commissioner shall request that the application be accompanied by a certification from a licensed physician on forms prescribed by the Commissioner that the applicant meets the definition of "person with a disability that limits or impairs his ability to walk" contained in § 46.2-100. The Commissioner shall provide for the renewal of such placards every five years as well as a reasonable fee to be charged for each placard, but no fee shall be charged any person exempted from fees in § 46.2-739. The placards shall be of a design approved by the Commissioner pursuant to the specifications and definitions contained in § 46.2-100.

Upon the application of a person with a disability that limits or impairs his ability to walk and whose disability is temporary in nature, the Commissioner shall issue a temporary removable windshield placard. The application for a temporary removable windshield placard shall be accompanied by a certification from a licensed physician on forms prescribed by the Commissioner that the applicant meets the definition of "person with a condition that limits or impairs his ability to walk" contained in § 46.2-100 and shall also include the period of time that the physician determines the applicant will have the disability, not to exceed six months. The temporary removable windshield placard shall be valid for the period of time for which the physician has determined that the applicant will have the disability, not to exceed six months from the date of issuance. The Commissioner shall provide for a reasonable fee to be charged for the placard.

On application, the Commissioner shall issue to hospitals, hospices, nursing homes, and other institutions and organizations meeting criteria determined by the Commissioner removable organizational windshield placards, as provided for in the foregoing provisions of this section, for use by volunteers when transporting disabled persons in passenger vehicles and pickup or panel trucks owned by such volunteers. The provisions of this section relating to other windshield placards issued under this section shall also apply, mutatis mutandis, to windshield placards issued to these institutions and organizations, except that windshield placards issued to institutions and agencies, in addition to their expiration date, shall bear the name of the institution or organization whose volunteers will be using the windshield placards rather than the name, age, and sex of the person to whom issued organizational removable windshield placards.

The disabled person, vehicle owner, or volunteer for an institution or organization to which disabled parking license plates, organizational removable windshield placards, permanent windshield placards, or temporary removable windshield placards are issued or any person to whom disabled parking license plates have been issued under § 46.2-739 shall be allowed to park the vehicle on which such license plates or placards are displayed for up to four hours in parking zones restricted as to length of parking time permitted and shall be exempted from paying parking meter fees of any county, city, or town. The

provisions of this subsection shall take precedence over any county, city, or town ordinance; however, this subsection shall not apply to any local ordinance which creates zones where stopping, standing, or parking is prohibited, or which creates parking zones for special types of vehicles, nor shall it apply to any local ordinance which prohibits parking during heavy traffic periods, during specified rush hours, or where parking would clearly present a traffic hazard.

No person shall use or display an organizational removable windshield placard, permanent removable windshield placard or temporary removable windshield placard beyond its expiration date. It shall be unlawful for any person to willfully and falsely represent himself as having the qualifications to obtain the special license plates or windshield placards or utilize the parking privilege accorded by this section when not entitled thereto.

Pursuant to § 46.2-1237, the Commissioner may revoke any disabled parking license plate or disabled parking placard of individuals or organizations found guilty of misusing the privilege pertaining to vehicles displaying such license plate or placard.

§ 46.2-1237. Parking in spaces reserved for persons with disabilities; issuance of summons by law-enforcement personnel, other uniformed personnel and certain security guards; reciprocity; removal of vehicle not displaying disabled parking license plates or placards.

No vehicles other than those displaying disabled parking license plates, organizational removable windshield placards, permanent removable windshield placards, or temporary removable windshield placards issued under § 46.2-731 or DV disabled parking license plates issued under subsection B of § 46.2-739 shall park in any parking spaces reserved for persons with disabilities. *No person without a disability that limits or impairs his ability to walk shall park a vehicle with disabled parking license plates, organizational removable windshield placards, permanent removable windshield placards, or temporary removable windshield placards in a parking space reserved for persons with disabilities that limit or impair their ability to walk except when transporting such a disabled person in the vehicle.* A summons or parking ticket for the offense may be issued by law-enforcement officers or uniformed law-enforcement department employees without the necessity of a warrant's being obtained by the owner of any private parking area.

Organizational removable windshield placards, permanent removable windshield placards and temporary removable windshield placards shall be displayed in such a manner that they may be viewed from the front and rear of the vehicle and be hanging from the rearview mirror of a vehicle utilizing a parking space reserved for persons with disabilities that limit or impair their ability to walk. When there is no rearview mirror, the placard shall be displayed on the vehicle's dashboard. No placard shall be displayed from the rearview mirror while a vehicle is in motion.

The governing body of any county, city, or town may by ordinance provide that it shall be unlawful for a vehicle not displaying disabled parking license plates, an organizational removable windshield placard, a permanent removable windshield placard, or a temporary removable windshield placard issued under § 46.2-731 or DV disabled parking license plates issued under subsection B of § 46.2-739 to be parked in a parking space reserved for persons with disabilities that limit or impair their ability to walk *or for a person who is not limited or impaired in his ability to walk to park a vehicle in a parking space so designated except when transporting a person with such a disability in the vehicle.* Any local governing body by ordinance may ~~provide~~ *assess and retain* a penalty for its violation not to exceed that prescribed for a Class 4 misdemeanor, notwithstanding any other provision of law. The ordinance may further provide that a summons or parking ticket for the offense may be issued by law-enforcement officers and other uniformed personnel employed by the county, city, or town to enforce parking regulations without the necessity of a warrant's being obtained by the owner of the private parking area.

The local governing bodies of Franklin County and the Cities of Danville and Martinsville may by ordinance provide that, in privately owned parking areas open to the public, a summons for violation of the ordinance promulgated under this section may be issued by private security guards licensed under the provisions of Chapter 19 (§ 54.1-1900 et seq.) of Title 54.1 and deputized to issue a summons for the offense by the chief law-enforcement officer of the county or city in which the private parking area is located.

Parking spaces reserved for persons with disabilities that limit or impair their ability to walk shall be identified in accordance with the provisions of § 36-99.11.

Disabled parking license plates, permanent removable windshield placards, temporary removable windshield placards, and DV disabled parking license plates issued by other states and countries for the purpose of identifying vehicles permitted to use parking spaces reserved for persons with disabilities that limit or impair their ability to walk shall be accorded all rights and privileges accorded vehicles displaying such devices in Virginia.

The owner or duly authorized agent of the owner of a parking space properly designated and clearly marked as reserved for use by persons with disabilities that limit or impair their ability to walk may have any vehicle not displaying disabled parking license plates, organizational removable windshield placards, permanent removable windshield placards, temporary removable windshield placards, or DV disabled parking license plates removed from the parking space and stored. The owner of a vehicle which has been removed and stored may regain possession of his vehicle on payment to the person or

persons who removed and stored the vehicle all reasonable costs incidental to the removal and storage. The owner of the vehicle, on notice to the owner or duly authorized agent of the owner of the parking space, may also petition the general district court having jurisdiction over the location where the parking occurred for an immediate determination as to whether the removal of the vehicle was lawful. If the court finds that the removal was unlawful, the court shall direct the owner of the parking space to pay the costs incidental to the removal and storage of the vehicle and return the vehicle to its owner.

In any prosecution charging a violation of an ordinance adopted pursuant to this section, proof that the vehicle described in the complaint, summons, parking ticket, citation, or warrant was parked in violation of the ordinance, together with proof that the defendant was at the time the registered owner of the vehicle, as required by Chapter 6 (§ 46.2-600 et seq.) of this title, shall constitute in evidence a prima facie presumption that the registered owner of the vehicle was the person who committed the violation.

Upon the entry of a conviction under this section, or under any ordinance adopted pursuant to this section, involving the misuse of the privilege pertaining to vehicles displaying a license plate or placard issued pursuant to § 46.2-731, the court shall send notice of the conviction and of the number of the license plate or placard involved to the Commissioner, who may revoke the license plate or placard if he finds, after a hearing if requested by the person to whom the license plate or placard is issued, that such person (i) is not a person with a disability that limits or impairs his ability to walk and is not otherwise eligible to be issued a license plate or a placard pursuant to § 46.2-731, or (ii) is authorized to have such license plate or placard but has allowed the abuse or misuse of the privilege granted thereby so that revocation appears appropriate to remedy the abuse or misuse.