

25106005D

HOUSE BILL NO. 1836

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Transportation
on _____)

(Patron Prior to Substitute—Delegate Wiley)

A BILL to amend and reenact §§ 46.2-1700, 46.2-1701, 46.2-1701.3, 46.2-1702 through 46.2-1705, and 46.2-1707 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 46.2-1701.3:1, relating to driver training schools; operation and licensure.

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-1700, 46.2-1701, 46.2-1701.3, 46.2-1702 through 46.2-1705, and 46.2-1707 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 46.2-1701.3:1 as follows:

§ 46.2-1700. Definitions.

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

"Behind-the-wheel instructor" means an individual who meets the requirements for licensure under § 46.2-1708 and is employed by a training provider who provides behind-the-wheel training involving the actual operation of a commercial motor vehicle by an entry-level driver on a range or a public road.

"Behind-the-wheel training" means training provided by a licensed behind-the-wheel instructor when an entry-level driver has actual control of the power unit during a driving lesson conducted on a range or on a public road. "Behind-the-wheel training" does not include time an entry-level driver spends observing the operation of a commercial motor vehicle when he is not in control of the vehicle.

"Business records" means documents maintained by a driver training school, including all filed tax returns; Commission filings, if required by Title 13.1; beneficial ownership information filings, if required by 31 C.F.R. § 1010.380; vehicle registration and maintenance records; business licenses; insurance policies; and any documents required pursuant to § 46.2-1710.

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

"Class B licensee" means a 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.

"Computer-based driver education course" means the classroom portion of driver education offered by a computer-based driver education provider through the Internet or other electronic means approved by the Department whose content and quality is comparable to that of courses offered in the Commonwealth's public schools.

"Computer-based driver education provider" means a driver training school licensed by the Department in accordance with this chapter to conduct computer-based driver education courses.

"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. "Driver training school" or "school" does not mean any institution of higher education, 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 "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 driver training school subject to the requirements of this chapter.

"Driver training school owner" means (i) any person with an ownership interest in a driver training school and (ii) any person who contributed money or property to establish a driver training school and (a) is the spouse or child of or (b) cohabitates or has cohabited within the previous 12 months with a person with an ownership interest in a driver training school.

"Entry-level driver" means the same as defined in § 46.2-341.4.

"Entry-level driver training" means the same as defined in § 46.2-341.4.

"FMCSA" means the same as defined in § 46.2-341.4.

"Instructor" means any person, whether acting for himself as operator of a driver training school or for such school for compensation owner or as an employee of a driver training school, who teaches, conducts classes, gives demonstrations, or supervises persons learning to operate or drive a motor vehicle.

"Key information" means the training provider name, address, phone number, type or types of training offered, training provider status, and any change in state licensure, certification, or accreditation status.

HOUSE SUBSTITUTE

HB1836H1

60 "Ownership interest in a driver training school" means (i) the right to receive 10 percent or more of the
61 annual gross or net sales from such driver training school in a year; (ii) if such driver training school is a
62 partnership, a control or financial interest as a general or limited partner; (iii) if such driver training school
63 is a limited liability company, a control or financial interest as a member or manager; (iv) if such driver
64 training school is an association, membership; or (v) if such driver training school is a closely held
65 corporation, ownership of stock or serving as a director or officer.

66 "Range" means an area that is free of obstructions, enables the driver to maneuver safely and free from
67 interference from other vehicles and hazards, and has adequate sight lines.

68 "Theory instruction" means knowledge instruction on the operation of a commercial motor vehicle and
69 related matters provided by a licensed theory instructor through lectures, demonstrations, audio-visual
70 presentations, computer-based instruction, driving simulation devices, online training, or similar means.

71 "Theory instructor" means an individual who meets the requirements for licensure under § 46.2-1708 and
72 is employed by a training provider and who provides knowledge instruction on the operation of a commercial
73 motor vehicle.

74 "Training provider" means the same as defined in § 46.2-341.4.

75 **§ 46.2-1701. Licenses required for school and instructor; fees.**

76 No driver training school shall be established or continue operation unless the school obtains from the
77 Commissioner a license authorizing the school to operate within the Commonwealth. *The application for*
78 *such license shall identify all driver training school owners and separately identify each manager and*
79 *instructor employed by the driver training school. If such driver training school is an entity required to*
80 *register with the Commission under Title 13.1, such application shall include evidence of such registration.*

81 No instructor shall perform the actions enumerated in the definition of "instructor" in § 46.2-1700 unless
82 he obtains from the Commissioner a license authorizing him to act as driving instructor. Such license shall be
83 valid for a period of two years. A nonrefundable license fee of \$75 shall be paid to the Department by a
84 person applying for an instructor license. The first license issued to an instructor shall expire on the same date
85 the driver training school's license expires, and the first license fee may be prorated on a monthly basis.
86 Thereafter, the renewal period for the instructor shall match that of the school. *The Commissioner may*
87 *require instructor applicants to complete training on the administration of any behind-the-wheel examination*
88 *and may require such applicants to exhibit proficiency in the administration of such examinations.*

89 The Commissioner shall have authority to set and collect school and instructor licensing fees. All
90 licensing fees collected by the Commissioner under this chapter shall be paid into the state treasury and set
91 aside as a special fund to meet the expenses of the Department of Motor Vehicles.

92 Upon application of a driver training school licensed in accordance with this chapter, the Commissioner
93 may license such driver training school using criteria established by the Commissioner pursuant to §
94 46.2-1702 to provide computer-based driver education courses using curricula approved by the
95 Commissioner.

96 The Commissioner may issue a two-year license to driver training schools, including computer-based
97 driver education providers. A nonrefundable license fee of \$150 shall be required with each such application.
98 Such licensing fee shall be in addition to fees permitted under this chapter.

99 **§ 46.2-1701.3. Records to be maintained; certification of classes.**

100 ~~All A.~~ A driver training school shall maintain all student records, business records, and other records, as
101 required by the Department, ~~shall be maintained on the premises of the licensed location at its established~~
102 ~~place of business.~~ The Commissioner may, on written request from a driver training school, permit records to
103 be maintained at a location other than the ~~premises of the licensed location~~ *established place of business* for
104 good cause shown. All records shall be preserved in original form or in film, magnetic, electronic, or optical
105 media, including ~~but not limited to~~ microfilm or microfiche, for a period of three years in a manner that
106 permits systematic retrieval. All records required to be maintained by the provisions of this section or by
107 regulation shall be available to the Commissioner or his agents during regular business hours or at any other
108 reasonable time, as determined by the Commissioner. *A driver training school shall ensure that all student*
109 *records are stored securely so that only employees of such school can access the records, except as otherwise*
110 *provided in this section.*

111 B. *The failure of a driver training school to maintain or produce contemporary records that a person*
112 *completed a course shall create a rebuttable presumption that such person did not complete such course. The*
113 *Commissioner may require a school to use certificate forms provided by the Department to show completion*
114 *of a course. The Commissioner may limit the number of certificate forms provided to a driver training school*
115 *based upon criteria established by the Department, including the number of licensed instructors, the number*
116 *of vehicles used by the school, and the types of courses taught by the school. The Commissioner may also*
117 *require that a driver training school submit course completion information electronically in a manner*
118 *prescribed by the Commissioner.*

119 **§ 46.2-1701.3:1. Behind-the-wheel examinations.**

120 *The Commissioner may require driver training schools to notify the Department, in a manner prescribed*

by the Commissioner, of a scheduled behind-the-wheel examination no less than 48 hours prior to administering such examination.

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

Notwithstanding any other provision of law, the Commissioner shall have the authority to approve as a driver education course satisfying the requirements of § 46.2-334 any course ~~which~~ *that* is offered by any 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 instructors of any driver training school meet the certification requirements of teachers in the Commonwealth's public schools.

Any comprehensive community college within the Virginia Community College System shall have the authority to offer the courses required by the Virginia Board of Education to become a certified driver education instructor in Virginia on a not-for-credit basis so long as the courses include the same content and curriculum required by the Department of Education, enabling individuals who complete those courses to then teach driver's education in Virginia driver education training schools upon official certification by the Department of Motor Vehicles. The Virginia Department of Education shall provide the curriculum, content, and other information regarding the courses required to become certified driver education instructors in Virginia to any comprehensive community college within the Virginia Community College System. The content of each course must be accurate and rigorous and must meet the requirements for the Department of Education's Curriculum and Administrative Guide for Driver's Education, which includes the Board of Education's standards of learning.

Except for schools in the Commonwealth's public school system and providers of correspondence courses approved by the Board of Education pursuant to subsection F of § 22.1-205, only those driver training schools that are licensed as computer-based driver education providers shall be authorized to administer computer-based driver education courses, including the parent/student driver education component of the driver education curriculum as established in § 22.1-205. The content and quality of such computer-based driver education courses shall be comparable to that of courses offered in the Commonwealth's public schools. The Commissioner may establish minimum standards for testing students who have enrolled in computer-based driver education courses. Such standards may include (i) requirements for the test site; (ii) verification that the person taking the test is the person enrolled in the course; (iii) verification of the identity of the student using photo identification approved by the Commissioner; and (iv) maintenance of a log containing the name and title of the licensed instructor monitoring the test, the test date, the name of the student taking the test, and the student's time-in and time-out of the test site. Computer-based driver education providers shall not issue a certificate of completion to a student prior to receiving proof of completion of the additional minimum 90-minute parent/student driver education component pursuant to § 22.1-205.

Any driver training school licensed under the provisions of this chapter shall be authorized to provide the 90-minute parent/student driver education component of the driver education curriculum pursuant to § 22.1-205. Only public schools and those driver training schools that are licensed as computer-based driver education providers shall be authorized to administer the parent/student driver education component of the driver education curriculum through a virtual, computer-based program. Completion of such education component shall satisfy the requirement for the additional 90-minute parent/student driver education component so long as there is participation of the student's parent or guardian and the content provided is comparable to that which is offered in the Commonwealth's public schools and emphasizes (a) parental responsibilities regarding juvenile driver behavior, (b) juvenile driving restrictions pursuant to this Code, (c) the dangers of driving while intoxicated and underage consumption of alcohol, and (d) the dangers of distracted driving.

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. Class A licensees shall not be permitted to administer behind-the-wheel examinations unless authorized pursuant to § 46.2-326.1. 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.

In addition to programs authorized pursuant to this chapter, the Commissioner may authorize driver training schools to administer programs pursuant to § 46.2-324.1 and subsection B of § 46.2-325.

The Commissioner may accept, in lieu of requirements established by the Department of Education for instructor qualification, (1) 20 years' service with the Virginia Department of State Police by a law-enforcement officer who retired or resigned while in good standing from such Department or ~~(2)(i)~~ (2) (i) 20 years' service as a traffic enforcement officer with patrol experience with any local police department by a law-enforcement officer who has been certified by the Virginia Department of Criminal Justice Services pursuant to § 15.2-1706, (ii) who retired or resigned while in good standing from such department, and (iii) who has been certified to teach driver training by the Virginia Department of Criminal Justice Services.

§ 46.2-1703. Authority to promulgate regulations.

183 The Commissioner may promulgate regulations necessary to (i) enforce the provisions of this chapter, (ii)
184 provide adequate training for students, (iii) protect student and public safety, and (iv) carry out the other
185 provisions of this chapter. These regulations ~~shall may include but need not be limited to~~ curriculum
186 requirements, contractual arrangements with students, obligations to students, facilities and equipment,
187 qualifications and other requirements for instructors, ~~driver training school ownership owner or manager~~
188 requirements, surety bond requirements, and financial stability of schools.

189 **§ 46.2-1704. Action on applications; hearing on denial.**

190 The Commissioner shall act on any application for a license under this chapter within ~~thirty~~ 30 days after
191 receipt by either granting or denying the application. *The Commissioner shall deny an application when it*
192 *does not satisfy the requirements of this chapter and any regulations promulgated pursuant to § 46.2-1703,*
193 *or when the applicant has committed an act prohibited pursuant to subsection A of § 46.2-1707. The*
194 *Commissioner may deny an application when the applicant was previously granted a license pursuant to §*
195 *46.2-1701 and such license was revoked or suspended. Any applicant denied a license shall, on his written*
196 *request made within thirty 30 days of the denial, be given a hearing at a time and place determined by the*
197 *Commissioner or his designee. All hearings under this section shall be public and shall be held promptly. The*
198 *applicant may be represented by counsel. Any applicant denied a license may not apply again for a license for*
199 *thirty 60 days from the date of denial of the application. The Commissioner or his designee may, for good*
200 *cause shown, grant an applicant whose license has expired one or more 30-day extensions.*

201 **§ 46.2-1705. Suspension, revocation, cancellation, or refusal to renew license; limitations on**
202 **operations; imposition of monetary penalties.**

203 A. Except as otherwise provided in this section, (i) no license issued under this chapter shall be
204 suspended, revoked, or cancelled or renewal thereof denied; (ii) no limitation on operations shall be imposed
205 pursuant to subsection F ~~of this section~~; and (iii) no monetary penalty shall be imposed pursuant to §
206 46.2-1706, unless the licensee has been furnished a written copy of the complaint against him ~~and~~ with the
207 grounds upon which the action is taken and has been offered an opportunity for an administrative hearing to
208 show cause why such action should not be taken.

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

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

219 D. ~~No~~ A licensee whose license has been revoked ~~or cancelled or may reapply for a license after a period~~
220 ~~to be determined by the Commissioner, not to exceed five years, considering (i) the number and severity of~~
221 ~~current violations, (ii) the number and severity of past violations, (iii) any past revocations or suspensions,~~
222 ~~(iv) highway safety concerns, and (v) public safety concerns. No licensee who has been denied renewal shall~~
223 ~~apply for a new license within 180 days of such action.~~

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

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

237 F. If the Commissioner makes a finding that the conduct of a licensee is in violation of this chapter or
238 regulations adopted pursuant to this chapter, he may suspend, revoke, cancel, or refuse to renew the license of
239 such licensee or may order the licensee, in accordance with subsections A, B, and C ~~of this section~~, to limit
240 the types of driver education training provided, restrict the use of the licensee's training vehicles, or both.
241 Whenever the Commissioner takes action limiting operations under this subsection, the Commissioner shall
242 require the licensee to post conspicuous notice of the Commissioner's action under this subsection at the same
243 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.

No investigation of a licensee, driver training school owner, or employee of a driver training school shall terminate or abate upon the surrender of a license required pursuant to § 46.2-1701, nor shall any such surrender impair the Commissioner's ability to impose any sanction or remedy authorized pursuant to this chapter.

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 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.

H. The Commissioner may suspend, revoke, or refuse to renew any license issued pursuant to this chapter for any conduct prohibited pursuant to § 46.2-1707.

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

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

1. Practicing as a driver training school or as an 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;

3. Performing any act or function ~~which~~ that is restricted by statute or regulation to persons holding a driver training school or instructor license or certification; without being duly certified or licensed;

4. Materially misrepresenting facts in an application for licensure, certification, or registration, *including applications pursuant to § 46.2-1701*;

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

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

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

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