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SENATE BILL NO. 277

Offered January 12, 2022

Prefiled January 11, 2022

A *BILL to amend and reenact §§ 46.2-323, 46.2-342, 46.2-345, and 46.2-345.2 of the Code of Virginia and to amend the Code of Virginia by adding in Article 4 of Chapter 3 of Title 46.2 a section numbered 46.2-333.2, relating to Department of Motor Vehicles; Virginia Community Policing Act; race and ethnicity data.*

Patron—Ebbin

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-323, 46.2-342, 46.2-345, and 46.2-345.2 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 4 of Chapter 3 of Title 46.2 a section numbered 46.2-333.2 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, *race*, *ethnicity*, 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. Applicants shall be permitted to choose between "male," "female," or "non-binary" when designating the applicant's sex on the driver's license application form. *Race and ethnicity shall be selected from a list provided by the Department on the application form.* 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 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

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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, reregister, or verify his registration information
62 pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, the State Police shall promptly investigate and, if
63 there is probable cause to believe a violation has occurred, obtain a warrant or assist in obtaining an
64 indictment charging a violation of § 18.2-472.1 in the jurisdiction in which the person made application
65 of licensure.

66 **§ 46.2-333.2. Race and ethnicity data.**

67 *The Department shall require applicants for an original driver's license or special identification card*
68 *or a driver's license or special identification card renewal or reissue to provide the applicant's race and*
69 *ethnicity. No such data shall be displayed in a readable form on any credential issued by the*
70 *Department but shall be encoded in the barcode on the back of such license or card. Such data shall*
71 *not be included in the Virginia Criminal Information Network or used in any database accessed directly*
72 *by law-enforcement officers for law-enforcement purposes.*

73 *Notwithstanding any other provision of law, all information collected and maintained in the*
74 *Department's customer database regarding race or ethnicity shall be used exclusively for the Community*
75 *Policing Reporting Database created under § 52-30.3 and shall not (i) be open to the public; (ii) be*
76 *sold for sales, solicitation, or marketing purposes; (iii) be disclosed to any entity except the Virginia*
77 *State Police; or (iv) be subject to disclosure through a third-party request submitted pursuant to the*
78 *Virginia Freedom of Information Act (§ 2.2-3700 et seq.).*

79 **§ 46.2-342. What license to contain; organ donor information; Uniform Donor Document.**

80 A. Every license issued under this chapter shall bear:

- 81 1. For licenses issued or renewed on or after July 1, 2003, a license number which shall be assigned
82 by the Department to the licensee and shall not be the same as the licensee's social security number;
 - 83 2. A photograph of the licensee;
 - 84 3. The licensee's full name, year, month, and date of birth;
 - 85 4. The licensee's address, subject to the provisions of subsection B;
 - 86 5. A brief description of the licensee for the purpose of identification;
 - 87 6. A space for the signature of the licensee; and
 - 88 7. Any other information deemed necessary by the Commissioner for the administration of this title.
- 89 No abbreviated names or nicknames, *race*, or *ethnicity* shall be shown on any license.

90 B. At the option of the licensee, the address shown on the license may be either the post office box,
91 business, or residence address of the licensee, provided such address is located in Virginia. However,
92 regardless of which address is shown on the license, the licensee shall supply the Department with his
93 residence address, which shall be an address in Virginia. This residence address shall be maintained in
94 the Department's records. Whenever the licensee's address shown either on his license or in the
95 Department's records changes, he shall notify the Department of such change as required by § 46.2-324.

96 C. The Department may contract with the United States Postal Service or an authorized agent to use
97 the National Change of Address System for the purpose of obtaining current address information for a
98 person whose name appears in customer records maintained by the Department. If the Department
99 receives information from the National Change of Address System indicating that a person whose name
100 appears in a Department record has submitted a permanent change of address to the Postal Service, the
101 Department may then update its records with the mailing address obtained from the National Change of
102 Address System.

103 D. The license shall be made of a material and in a form to be determined by the Commissioner.

104 E. Licenses issued to persons less than 21 years old shall be immediately and readily distinguishable
105 from those issued to persons 21 years old or older. Distinguishing characteristics shall include unique
106 design elements of the document and descriptors within the photograph area to identify persons who are
107 at least 15 years old but less than 21 years old. These descriptors shall include the month, day, and year
108 when the person will become 21 years old.

109 F. The Department shall establish a method by which an applicant for a driver's license or an
110 identification card may indicate his consent to make an anatomical gift for transplantation, therapy,
111 research, and education pursuant to § 32.1-291.5, and shall cooperate with the Virginia Transplant
112 Council to ensure that such method is designed to encourage organ, tissue, and eye donation with a
113 minimum of effort on the part of the donor and the Department.

114 G. If an applicant indicates his consent to be a donor pursuant to subsection F, the Department may
115 make a notation of this designation on his license or card and shall make a notation of this designation
116 in his driver record. The notation shall remain on the individual's license or card until he revokes his
117 consent to make an anatomical gift by requesting removal of the notation from his license or card or
118 otherwise in accordance with § 32.1-291.6. Inclusion of a notation indicating consent to making an organ
119 donation on an applicant's license or card pursuant to this subsection shall be sufficient legal authority
120 for removal, following death, of the subject's organs or tissues without additional authority from the

donor or his family or estate, in accordance with the provisions of § 32.1-291.8.

H. A minor may make a donor designation pursuant to subsection F without the consent of a parent or legal guardian as authorized by the Revised Uniform Anatomical Gift Act (§ 32.1-291.1 et seq.).

I. The Department shall provide a method by which an applicant conducting a Department of Motor Vehicles transaction using electronic means may make a voluntary contribution to the Virginia Donor Registry and Public Awareness Fund (Fund) established pursuant to § 32.1-297.1. The Department shall inform the applicant of the existence of the Fund and also that contributing to the Fund is voluntary.

J. The Department shall collect all moneys contributed pursuant to subsection I and transmit the moneys on a regular basis to the Virginia Transplant Council, which shall credit the contributions to the Fund.

K. When requested by the applicant, and upon presentation of a signed statement by a licensed physician confirming the applicant's condition, the Department shall indicate on the applicant's driver's license that the applicant (i) is an insulin-dependent diabetic, (ii) is deaf or hard of hearing or speech impaired, (iii) has a traumatic brain injury, or (iv) has an intellectual disability, as defined in § 37.2-100, or autism spectrum disorder, as defined in § 38.2-3418.17. Any request for a traumatic brain injury indicator on an applicant's driver's license shall be accompanied by a form prescribed by the Commissioner and completed by a licensed physician.

L. In the absence of gross negligence or willful misconduct, the Department and its employees shall be immune from any civil or criminal liability in connection with the making of or failure to make a notation of donor designation on any license or card or in any person's driver record.

M. The Department shall, in coordination with the Virginia Transplant Council, prepare an organ donor information brochure describing the organ donor program and providing instructions for completion of the uniform donor document information describing the bone marrow donation program and instructions for registration in the National Bone Marrow Registry. The Department shall include a copy of such brochure with every driver's license renewal notice or application mailed to licensed drivers in Virginia.

§ 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, the parent of any such person who is under the age of 18, or the legal guardian of any such person, the Department shall issue a special identification card to the person, provided that:

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; sex; *race*; *ethnicity*; and residence address. Applicants shall be permitted to choose between "male," "female," or "non-binary" when designating the applicant's sex on the application form. *Race and ethnicity shall be selected from a list provided by the Department on the application form*;

2. The applicant presents, when required by the Department, proof of identity, legal presence, residency, and 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, motorcycle learner's permit, or special identification card without a photograph.

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, duplicate, reissue, or renewal special identification card is \$2 per year, with a \$10 minimum fee. 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 applicant's birthday at the end of the period of years for which a special identification card has been issued. At no time shall any special identification card be issued for less than three nor more than eight 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. Notwithstanding these limitations, the Commissioner may extend the validity period of an expiring card if (i) the Department is unable to process an application for renewal due to circumstances beyond its control, (ii) the extension has been authorized under a directive from the Governor, and (iii) the card was not issued as a temporary special identification card under the provisions of subsection B of § 46.2-328.1. However, in no event shall the validity period be extended more than 90 days per occurrence of such conditions. Any special identification card issued to a person required to register pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1 shall expire on the applicant's birthday in years which the applicant attains an age equally divisible by five. 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

182 subsection C of § 46.2-323.

183 D. A special identification card issued under this section may be similar in size, shape, and design to
184 a driver's license, and include a photograph of its holder, but the card shall be readily distinguishable
185 from a driver's license and shall clearly state that it does not authorize the person to whom it is issued
186 to drive a motor vehicle. Every applicant for a special identification card shall appear in person before
187 the Department to apply for a renewal, duplicate or reissue unless specifically permitted by the
188 Department to apply in another manner.

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

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

198 G. Unless otherwise prohibited by law, a valid Virginia driver's license shall be surrendered upon
199 application for a special identification card without the applicant's having to present proof of legal
200 presence as required by § 46.2-328.1 if the Virginia driver's license is unexpired and it has not been
201 revoked, suspended, or cancelled. The special identification card shall be considered a reissue and the
202 expiration date shall be the last day of the month of the surrendered driver's license's month of
203 expiration.

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

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

217 J. The Department shall utilize the various communications media throughout the Commonwealth to
218 inform Virginia residents of the provisions of this section and to promote and encourage the public to
219 take advantage of its provisions.

220 K. The Department shall electronically transmit application information to the Department of State
221 Police, in a format approved by the State Police, for comparison with information contained in the
222 Virginia Criminal Information Network and National Crime Information Center Convicted Sexual
223 Offender Registry Files, at the time of issuance of a special identification card. Whenever it appears
224 from the records of the State Police that a person has failed to comply with the duty to register,
225 reregister, or verify his registration information pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, the
226 State Police shall promptly investigate and, if there is probable cause to believe a violation has occurred,
227 obtain a warrant or assist in obtaining an indictment charging a violation of § 18.2-472.1 in the
228 jurisdiction in which the person made application for the special identification card.

229 L. When requested by the applicant, the applicant's parent if the applicant is a minor, or the
230 applicant's guardian, and upon presentation of a signed statement by a licensed physician confirming the
231 applicant's condition, the Department shall indicate on the applicant's special identification card that the
232 applicant has any condition listed in subsection K of § 46.2-342 or that the applicant is blind or vision
233 impaired.

234 **§ 46.2-345.2. Issuance of special identification cards without photographs; fee; confidentiality;**
235 **penalties.**

236 A. On the application of any person with a sincerely held religious belief prohibiting the taking of a
237 photograph who is a resident of the Commonwealth and who is at least 15 years of age, the Department
238 shall issue a special identification card without a photograph to the person, provided that:

239 1. Application is made on a form prescribed by the Department and includes the applicant's full legal
240 name; year, month, and date of birth; social security number; sex; *race*; *ethnicity*; and residence address.
241 Applicants shall be permitted to choose between "male," "female," or "non-binary" when designating the
242 applicant's sex on the application form. *Race and ethnicity shall be selected from a list provided by the*
243 *Department on the application form;*

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

3. The applicant presents an approved and signed U.S. Department of the Treasury Internal Revenue Service (IRS) Form 4029 or if such applicant is a minor, the applicant's parent or legal guardian presents an approved and signed IRS Form 4029; and

4. The applicant does not hold a driver's license, commercial driver's license, temporary driver's permit, learner's permit, motorcycle learner's permit, or special identification card.

B. The fee for the issuance of an original, duplicate, or reissue special identification card without a photograph is \$10 per year, with a \$20 minimum fee.

C. Every special identification card without a photograph shall expire on the applicant's birthday at the end of the period of years for which a special identification card without a photograph has been issued. At no time shall any special identification card without a photograph be issued for more than eight years. Notwithstanding these limitations, the Commissioner may extend the validity period of an expiring card if (i) the Department is unable to process an application for re-issue due to circumstances beyond its control or (ii) the extension has been authorized under a directive from the Governor. However, in no event shall the validity period be extended more than 90 days per occurrence of such conditions.

D. A special identification card without a photograph issued under this section may be similar in size, shape, and design to a driver's license and shall not include a photograph of its holder. The card shall be readily distinguishable from a driver's license and shall clearly state that federal limits apply, that the card is not valid identification to vote, and that the card does not authorize the person to whom it is issued to drive a motor vehicle. Every applicant for a special identification card without a photograph shall appear in person before the Department to apply for a duplicate or reissue unless specifically permitted by the Department to apply in another manner.

E. Unless otherwise prohibited by law, a valid Virginia driver's license or special identification card shall be surrendered for a special identification card without a photograph without the applicant's having to present proof of legal presence as required by § 46.2-328.1 if the Virginia driver's license or special identification card is unexpired and has not been revoked, suspended, or canceled. The special identification card without a photograph shall be considered a reissue, and the expiration date shall be the last day of the month of the surrendered driver's license's or special identification card's month of expiration.

F. Any personal information, as identified in § 2.2-3801, that is retained by the Department from an application for the issuance of a special identification card without a photograph is confidential and shall not be divulged to any person, association, corporation, or organization, public or private, except to the legal guardian or the attorney of the applicant or to a person, association, corporation, or organization nominated in writing by the applicant, his legal guardian, or his attorney. This subsection shall not prevent the Department from furnishing the application or any information thereon to any law-enforcement agency.

G. Any person who uses a false or fictitious name or gives a false or fictitious address in any application for a special identification card without a photograph or knowingly makes a false statement or conceals a material fact or otherwise commits a fraud in any such application is guilty of a Class 2 misdemeanor. However, where the special identification card without a photograph is obtained for the purpose of committing any offense punishable as a felony, a violation of this section shall constitute a Class 4 felony.

H. When requested by the applicant, the applicant's parent if the applicant is a minor, or the applicant's guardian, and upon presentation of a signed statement by a licensed physician confirming the applicant's condition, the Department shall indicate on the applicant's special identification card without a photograph that the applicant has any condition listed in subsection K of § 46.2-342.

I. Unless the Code specifies that a photograph is required, a special identification card without a photograph shall be treated as a special identification card.