

99-045

**MOTOR VEHICLES: LICENSURE OF DRIVERS.**

**CRIMES AND OFFENSES GENERALLY: CRIMES INVOLVING HEALTH AND SAFETY – DRIVING MOTOR VEHICLE, ETC., WHILE INTOXICATED.**

**One-year suspension of driver's license of Virginia resident convicted in federal court for refusing to consent to blood or breath test upon being arrested for driving under influence of drugs or alcohol. Assignment of demerit points for convictions of federal offenses pertaining to operator or operation of motor vehicle.**

Mr. Richard D. Holcomb  
Commissioner, Department of Motor Vehicles  
November 24, 1999

You inquire regarding the authority of the Department of Motor Vehicles (the "Department") to impose license sanctions or to assess demerit points on a Virginia resident and licensee upon receiving notice of the licensee's conviction by a federal court of violating a federal traffic law.<sup>1</sup>

You ask first whether § 46.2-434 of the *Code of Virginia* requires the Department to suspend a Virginia resident's license upon notice that the person has been convicted by a federal court of refusing to consent to a blood or breath test in violation of a federal statute or regulation.<sup>2</sup> Section 46.2-434 imposes the following duty on the Commissioner of the Department:

The Commissioner shall suspend or revoke the license and registration certificate and plates of any resident of the Commonwealth upon receiving notice of his conviction, in a court of competent jurisdiction of the Commonwealth, any other state of the United States, the United States, Canada or its provinces or any territorial subdivision of such state or country, of an offense therein which, if committed in the Commonwealth, would be grounds for the suspension or revocation of the license granted to him ....

Sections 18.2-268.2 through 18.2-268.4 control the offense of refusing to consent to have blood and breath tests taken in Virginia. The statutes provide that, if a person is arrested for violating the laws prohibiting driving while under the influence of drugs or alcohol,<sup>3</sup> the person is deemed to have consented to have blood and breath samples taken.<sup>4</sup> The unreasonable refusal of the person to consent to the tests constitutes a separate offense under Virginia law, and, upon conviction, the court is required to suspend the person's driving privileges for one year.<sup>5</sup>

You state that, in the past, the Department has suspended a Virginia resident's license under § 46.2-434 only if the person is convicted of an offense that would require the Department to suspend the person's license under § 46.2-389 or § 46.2-391. Because §§ 18.2-268.2 through 18.2-268.4 are not included in either § 46.2-389 or § 46.2-391, it has been the Department's practice not to suspend the license of a Virginia resident upon receiving notice from a federal court of the resident's refusal to consent to a blood or alcohol test under federal law. You question the correctness of this position.

In my opinion, § 46.2-434 is not confined to the specific offenses set out in §§ 46.2-389 and 46.2-391. While § 46.2-434 applies only to Virginia residents, Virginia residents also are encompassed within §§ 46.2-389 and 46.2-391. Section 46.2-389 applies to "any resident or nonresident,"<sup>6</sup> and § 46.2-391 applies to "any person."<sup>7</sup> Moreover, both §§ 46.2-389 and 46.2-391 extend to

violations of similar laws of other states and the United States. Thus, if a Virginia resident is convicted of violating a federal law similar to any law specified in §§ 46.2-389 and 46.2-391, those sections would require the Department to suspend the person's license. If § 46.2-434 were intended to encompass only the same offenses, § 46.2-434 would be unnecessary.

To conclude that an act of the legislature is unnecessary is contrary to the presumption that, in enacting and amending legislation, the General Assembly does not intend to do a vain or useless thing.<sup>8</sup> It also violates the rule of statutory construction directing that laws relating to the same subject are to be interpreted so as to give effect to each provision to the extent possible.<sup>9</sup> In addition, there is no language in § 46.2-434 indicating an intent that the statute be confined to those offenses specified in §§ 46.2-389 and 46.2-391. The language requires only the "conviction" of a Virginia resident by a court of another state or the United States "of an offense therein which, if committed in the Commonwealth, would be grounds for the suspension ... of the license granted to him."<sup>10</sup> Accordingly, it is my opinion that § 46.2-434 encompasses a situation in which a Virginia resident is convicted in a federal court of violating a federal statute or regulation that makes it an offense to refuse to consent to a blood or breath test upon being arrested for driving under the influence of drugs or alcohol. Upon receiving notice of such a conviction, the Department is to suspend the person's license for a period of one year.<sup>11</sup>

Your second question is whether § 46.2-492(B) requires the Commissioner to assign demerit points for convictions of federal statutes or regulations. Section 46.2-492(B) requires the Commissioner to assign point values to convictions received from the United States of an offense which, if committed in the Commonwealth, would be reported to the Department under § 46.2-383.<sup>12</sup> Section 46.2-383(A) requires the courts to report to the Department an abstract of the record in convictions for the charges described in § 46.2-382(1) or (2) or § 46.2-382.1. These charges include a violation of any state law or local ordinance "pertaining to the operator or operation of any motor vehicles"<sup>13</sup> and offenses "pertaining to the operator or operation of ... a commercial motor vehicle" under the Virginia Commercial Driver's License Act or "a commercial motor vehicle carrying hazardous materials."<sup>14</sup>

It is my opinion that § 46.2-492(B) clearly requires the Commissioner to assign demerit points for convictions in the United States courts of violations of federal statutes or regulations to the extent the particular offense fits within the language of § 46.2-382(1) or (2) or § 46.2-382.1. The offense must be one that pertains "to the operator or operation of a motor vehicle"<sup>15</sup> rather than offenses "relating to registration, insurance, or equipment."<sup>16</sup> Whether an offense relates to the operator or operation of a vehicle will depend on the particular federal statute or regulation. Driving while disqualified and failing to stop at a railroad crossing in violation of federal regulations clearly would constitute offenses related to the operator or operation of a vehicle. In instances in which it is unclear whether an offense relates to the operator or operation of a motor vehicle, it is my opinion that § 46.2-492 grants the Commissioner of the Department the discretion to make that determination in accordance with the guidelines set out in the statute. In addition, § 46.2-489 authorizes the Commissioner to promulgate regulations to carry out the Uniform Demerit Point System.

<sup>1</sup>The regulation of traffic on federal military installations or on federal park lands is within the control of the federal government, with the federal courts or federal officials having jurisdiction over violations of the applicable traffic regulations.

<sup>2</sup>One such example is a federal regulation which requires the operator of a vehicle on federal park lands, such as the George Washington Parkway, Yorktown Parkway or Blue Ridge Parkway, to submit to tests for drug and alcohol content if the officer has probable cause to believe that the operator is under the influence of alcohol or drugs. 36 C.F.R. § 4.23 (1998).

<sup>3</sup>See § 18.2-266 (driving while intoxicated); § 18.2-266.1 (person under 21 operating motor vehicle after illegally consuming alcohol).

<sup>4</sup>Section 18.2-268.2.

<sup>5</sup>Section 18.2-268.4. The purpose of a license suspension for such offenses is not to punish the driver but "to protect the public from intoxicated drivers and to reduce alcohol-related accidents." *Tench v. Com.*, 21 Va. App. 200, 205, 462 S.E.2d 922, 924 (1995); see also *Ingram v. Com.*, 29 Va. App. 759, 514 S.E.2d 792 (1999).

<sup>6</sup>Section 46.2-389(A) requires the Department to suspend the license of "any resident or nonresident" upon receiving a record of the person's conviction for certain vehicle-related crimes committed in violation of state law or local ordinance or in violation of the laws of the United States or another state that substantially parallel like state laws.

<sup>7</sup>Section 46.2-391(A)-(B) requires the Department to suspend the license of "any person" upon receiving a record of the person's conviction under Virginia's second and third offender laws or a violation of federal law or other state law or local ordinance similar to the Virginia laws.

<sup>8</sup>See *Williams v. Commonwealth*, 190 Va. 280, 293, 56 S.E.2d 537, 543 (1949); *Op. Va. Att'y Gen.*: 1993 at 191, 192 n.2; 1986-1987 at 55, 56.

<sup>9</sup>See *Prillaman v. Commonwealth*, 199 Va. 401, 405-06, 100 S.E.2d 4, 7 (1957); *Commonwealth v. Jones*, 194 Va. 727, 731, 74 S.E.2d 817, 820 (1953).

<sup>10</sup>Section 46.2-434.

<sup>11</sup>See § 18.2-268.4. Section 46.2-434 provides that the suspension is not to continue for a period longer than it would if the offense had been committed in the Commonwealth.

<sup>12</sup>Unless otherwise provided, convictions for offenses relating to "registration, insurance, or equipment" are excluded. Section 46.2-492(A). Also excluded are convictions resulting from a driver parking a vehicle on the shoulder of a highway "in order for the driver to sleep or rest." Section 46.2-492(C).

<sup>13</sup>Section 46.2-382(1). Also included in § 46.2-382(1) are the theft or unauthorized use of a motor vehicle and violations of the statutes relating to the reckless or intoxicated operation of watercraft. Section 46.2-382(2) covers convictions for manslaughter or other felonies involving the use of a motor vehicle.

<sup>14</sup>Section 46.2-382.1. You indicate that your primary concern is with commercial motor vehicle violations under federal regulations, including driving while disqualified, not stopping at a railroad crossing, and having inoperative brakes.

<sup>15</sup>Sections 46.2-382(1), 46.2-382.1.

<sup>16</sup>Section 46.2-492(A) (expressly excluding such offenses from Uniform Demerit Point System, except as otherwise provided in Title 46.2).