

VIRGINIA ACTS OF ASSEMBLY -- 2002 RECONVENED SESSION

CHAPTER 861

An Act to amend and reenact §§ 46.2-2000, 46.2-2001, 46.2-2001.1, 46.2-2011.4, 46.2-2011.10, 46.2-2011.14, 46.2-2011.15, 46.2-2011.16, 46.2-2011.22, and 46.2-2099.30 of the Code of Virginia and to repeal §§ 46.2-2099.20, 46.2-2099.22 through 46.2-2099.29 and 46.2-2099.31 through 46.2-2099.40 of the Code of Virginia, relating to sight-seeing carriers by boat, special or charter party carriers by boat, and motor carriers by launch.

[H 301]

Approved April 17, 2002

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-2000, 46.2-2001, 46.2-2001.1, 46.2-2011.4, 46.2-2011.10, 46.2-2011.14, 46.2-2011.15, 46.2-2011.16, 46.2-2011.22, and 46.2-2099.30 of the Code of Virginia are amended and reenacted as follows:

§ 46.2-2000. Definitions.

Whenever used in this chapter unless expressly stated otherwise:

"Authorized insurer" means, in the case of an interstate motor carrier whose operations may or may not include intrastate activity, an insurer authorized to transact business in any one state, or, in the case of a solely intrastate motor carrier, an insurer authorized to transact business in the Commonwealth.

"Broker" means any person not included in the term "motor carrier" and not a bona fide employee or agent of any such carrier, who, as principal or agent, sells or offers for sale any transportation subject to this chapter, or negotiates for, or holds himself out by solicitation, advertisement, or otherwise as one who sells, provides, furnishes, contracts, or arranges for such transportation.

"Carrier by motor launch" means a common carrier or contract carrier ~~authorized to transport passengers under the provisions of this chapter~~, which carrier uses one or more motor launches operating on the waters within the Commonwealth ~~to transport passengers~~.

"Certificate" means a certificate of public convenience and necessity or a certificate of fitness.

"Certificate of fitness" means a certificate issued by the Department to a contract bus carrier.

"Certificate of public convenience and necessity" means a certificate issued by the Department of Motor Vehicles to common carriers, certain restricted common carriers, contract passenger carriers, ~~and sight-seeing carriers, sight-seeing carriers by boat, special or charter party carriers by boat, and motor carriers by launch~~ under this chapter authorizing the transportation of passengers over the public highways or waterways of the Commonwealth; but nothing contained in this chapter shall be construed to mean that the Department can issue any such certificate authorizing intracity transportation.

"Charter bus" means a motor vehicle manufactured with a minimum seating capacity of thirty-two passengers or more, excluding the driver.

"Common carrier " means any person who undertakes, whether directly or by a lease or any other arrangement, to transport passengers for the general public by motor vehicle for compensation over the highways of the Commonwealth, whether over regular or irregular routes, including such motor vehicle operations of carriers by rail or water under this chapter.

"Contract bus carrier" means a motor carrier that operates solely charter buses, as defined in this section, to transport groups of passengers under a single contract made with one person for an agreed charge for such transportation regardless of the number of passengers transported, and for which transportation no individual or separate fares are solicited, charged, collected, or received by the carrier.

"Contract carrier" means any person who, under special and individual contracts or agreements, and whether directly or by a lease or any other arrangement, transports passengers for compensation.

"Contract passenger carrier" means a motor carrier that transports groups of passengers under a single contract made with one person for an agreed charge for such transportation, regardless of the number of passengers transported, and for which transportation no individual or separate fares are solicited, charged, collected, or received by the carrier.

"Department" means the Department of Motor Vehicles.

"Employee hauler" means a motor carrier operating for compensation and exclusively transporting only bona fide employees directly to and from the factories, plants, office or other places of like nature where the employees are employed and accustomed to work.

"Excursion train" means any steam-powered train that carries passengers for which the primary purpose of the operation of such train is the passengers' experience and enjoyment of this means of transportation, and does not, in the course of operation, carry (i) freight other than the personal luggage of the passengers or crew or supplies and equipment necessary to serve the needs of the passengers and crew, (ii) passengers who are commuting to work, or (iii) passengers who are traveling to their final destination solely for business or commercial purposes.

"Financial responsibility" means the ability to respond in damages for liability thereafter incurred arising out of the ownership, maintenance, use, or operation of a motor vehicle, in the amounts provided for in this chapter.

"Highway" means every public highway or place of whatever nature open to the use of the public for purposes of vehicular travel in the Commonwealth, including the streets and alleys in towns and cities.

"Identification marker" means a decal or other visible identification issued by the Department to show (i) that the operator of the vehicle has registered with the Department for the payment of the road tax imposed under Chapter 27 (§ 58.1-2700 et seq.) of Title 58.1, (ii) proof of the possession of a certificate or permit issued pursuant to Chapter 20 (§ 46.2-2000 et seq.) of this title, and/or (iii) proof of compliance with the insurance requirements of this chapter.

"Interstate" means transportation of passengers between states.

"Intrastate" means transportation of passengers solely within a state.

"License" means a license issued by the Department to a broker.

"Minibus" means any motor vehicle having a seating capacity of not less than seven nor more than sixteen passengers, including the driver, and used in the transportation of passengers.

"Motor carrier" means any person who undertakes, whether directly or by lease, to transport passengers for compensation over the highways of the Commonwealth.

"Motor launch" means a motor vessel that meets the requirements of the U.S. Coast Guard for the carriage of passengers for compensation, with a capacity of six or more passengers, but not in excess of fifty passengers. Motor launch, as defined herein, shall not include sight-seeing vessels, special or charter party vessels within the provisions of this chapter. A carrier by motor launch shall not be regarded as a steamship company.

"Nonprofit/tax-exempt passenger carrier" means a bona fide nonprofit corporation organized or existing under Chapter 10 (§ 13.1-801 et seq.) of Title 13.1, or a tax-exempt organization as defined in §§ 501 (c) (3) and 501 (c) (4) of the United States Internal Revenue Code, as from time to time amended, who undertakes, whether directly or by lease, to control and operate minibuses exclusively in the transportation, for compensation, of members of such organization if it is a membership corporation, or of elderly, disabled, or economically disadvantaged members of the community if it is not a membership corporation.

"Operation" or "operations" includes the operation of all motor vehicles, whether loaded or empty, whether for compensation or not, and whether owned by or leased to the motor carrier who operates them or causes them to be operated.

"Operator" means the employer or person actually driving a motor vehicle or combination of vehicles.

"Permit" means a permit issued by the Department to carriers operating as employee haulers or nonprofit/tax-exempt passenger carriers or to operators of taxicabs or other vehicles performing taxicab service under this chapter.

"Person" means any individual, firm, copartnership, corporation, company, association or joint-stock association, and includes any trustee, receiver, assignee, or personal representative thereof.

"Restricted common carrier" means any person who undertakes, whether directly or by a lease or other arrangement, to transport passengers for compensation, whereby such transportation service has been restricted.

"Route," when used in connection with or with respect to a certificate of public convenience and necessity, means the road or highway, or segment thereof, operated over by the holder of a certificate of public convenience and necessity or proposed to be operated over by an applicant therefor, whether such road or highway is designated by one or more highway numbers.

"Services" and "transportation" include the service of, and all transportation by, all vehicles operated by, for, or in the interest of any motor carrier irrespective of ownership or contract, expressed or implied, together with all facilities and property operated or controlled by any such carrier or carriers and used in the transportation of passengers or the performance of any service in connection therewith.

"Sight-seeing carrier" means a restricted common carrier authorized to transport passengers under the provisions of this chapter, whereby the primary purpose of the operation is the passengers' experience and enjoyment and/or the promotion of tourism.

"Sight-seeing carrier by boat" means a restricted common carrier ~~authorized to transport passengers under the provisions of this chapter~~, which restricted common carrier uses a boat or boats operating on waters within the Commonwealth *to transport passengers*, and whereby the primary purpose of the operation is the passengers' experience and enjoyment and/or the promotion of tourism. Sight-seeing carriers by boat shall not be regarded as steamship companies.

"Single state insurance receipt" means any receipt issued pursuant to 49 C.F.R. Part 367 evidencing that the carrier has the required insurance and paid the requisite fees to the Commonwealth and other qualified jurisdictions.

"Special or charter party carrier by boat" for purposes of this chapter shall mean a restricted common carrier ~~authorized to transport~~ *which transports* groups of persons under a single contract made with one person for an agreed charge for such movement regardless of the number of persons transported. Special

or charter party carriers by boat shall not be regarded as steamship companies.

"Taxicab or other motor vehicle performing a taxicab service" means any motor vehicle having a seating capacity of not more than six passengers, excluding the driver, not operating on a regular route or between fixed terminals used in the transportation of passengers for hire or for compensation, and not a common carrier or restricted common carrier as defined in this chapter.

§ 46.2-2001. Regulation by Department; reports; prevention of discrimination; regulation of leasing of motor vehicles.

The Department shall supervise, regulate and control all motor carriers, carriers by ~~water or~~ rail, and brokers not exempted under this chapter doing business in the Commonwealth, and all matters relating to the performance of their public duties and their charges therefor as provided by this chapter, and shall correct abuses therein by such carriers; and to that end the Department may prescribe reasonable rules, regulations, forms and reports for such carriers and brokers in furtherance of the administration and operation of this chapter; and the Department shall have the right at all times to require from such motor carriers, carriers by ~~water or~~ rail, and brokers special reports and statements, under oath, concerning their business.

The Department shall make and enforce such requirements, rules and regulations as may be necessary to prevent unjust or unreasonable discriminations by any carrier or broker in favor of, or against, any person, locality, community or connecting carrier in the matter of service, schedule, efficiency of transportation or otherwise, in connection with the public duties of such carrier or broker. The Department shall administer and enforce all provisions of this chapter, and may prescribe reasonable rules, regulations and procedure looking to that end.

The Department may prescribe and enforce such reasonable requirements, rules and regulations in the matter of leasing of motor vehicles as are necessary to prevent evasion of the Department's regulatory powers.

§ 46.2-2001.1. License, permit, or certificate required.

It shall be unlawful for any person to operate, offer, advertise, provide, procure, furnish, or arrange by contract, agreement, or arrangement to transport passengers for compensation as a broker, motor carrier, ~~or excursion train operator; sight-seeing carrier by boat, special or charter party carrier by boat, or a carrier by motor launch~~ without first obtaining a license, permit, or certificate, unless otherwise exempted, as provided in this chapter.

§ 46.2-2011.4. Conversion of old licenses, permits, and certificates.

A. All holders of a license, permit, or certificate issued prior to July 1, 2002, shall be issued a replacement license, permit, or certificate that shall reflect the same or new classification for and contain the same requirements and restrictions as the original license, permit, or certificate. The holder of such license, permit, or certificate shall apply for a replacement license, permit, or certificate prior to October 1, 2002. If such application is not received by the Department or received in an envelope bearing a postmark showing it was mailed prior to midnight, September 30, 2002, then the license, permit, or certificate shall expire.

B. If a broker, motor carrier, ~~or water or~~ rail passenger carrier does not request a replacement license, permit, or certificate prior to October 1, 2002, and allows the original to expire, any application received thereafter shall be treated as an original application.

C. Replacement certificates issued for limousine, executive sedan, and special or charter party certificates shall be reclassified as contract passenger certificates.

§ 46.2-2011.10. Advertisements.

A. No person shall advertise or permit to be advertised by any means a transportation service unless such person first obtains a license, permit, or certificate as provided in this chapter. Whenever any licensee, permittee, or certificate holder places an advertisement in any newspaper or publication advertising a transportation service, there shall appear within such advertisement the license, permit, or certificate number. If multiple licenses, permits, or certificates are held, only one number must appear.

B. It shall be unlawful for any licensee, permittee, or certificate holder to knowingly advertise by any means any assertion, representation, or statement of fact that is untrue, misleading, or deceptive relating to the conduct of the business for which a license, permit, or certificate is held.

C. The requirement of subsection A of this section to include a license, permit, or certificate number in advertisements shall not apply to excursion train operators; ~~sight-seeing carriers by boat, special or charter party carriers by boat, and carriers by motor launch.~~

§ 46.2-2011.14. Notice of abandonment of service.

Every motor carrier, broker; ~~or excursion train operator; sight-seeing carrier by boat, special or charter party carrier by boat, or carrier by motor launch~~ who ceases operation or abandons his rights under a license, certificate, or permit issued shall notify the Department within thirty days of such cessation or abandonment.

§ 46.2-2011.15. Department may seek judgment for refunds due public and collect and distribute same.

If any motor carrier; ~~or broker, sight-seeing carrier by boat, or carrier by motor launch,~~ upon the final decision of an appeal from the action of the Department prescribing rates, charges, tariffs, or

classification of traffic, confirming or modifying the action of the Department, fails to refund in the manner and within the time prescribed in the notice of the Department all amounts that the appealing carrier or broker may have collected, pending the appeal, in excess of that authorized by such final decision, upon notice to such carrier or broker by the Department of such final decision, then the Department, after thirty days' notice to any such carrier or broker, may, unless the amount required by such final decision is paid to the Department, seek judgment in the name of the Commonwealth, for the use of the persons, firms and corporations entitled to the same, against any such carrier or broker for the aggregate amount of such collections and for costs, and may enforce the amount of such judgment and costs by process of execution, as provided by law. The Department shall, upon the collection of such judgment, forthwith distribute the amount thereof among the parties entitled thereto, respectively, in such manner as it may by its rules or regulations prescribe, and shall, upon the payment or collection of any such judgment, mark the same satisfied upon its records, and have the same entered satisfied on the judgment lien docket of the court where the same may have been docketed; the satisfaction of any such judgment shall be a bar to any further action or recovery against any such carrier or broker to the extent of such recovery.

§ 46.2-2011.16. Reports, records, etc.

A. The Department is hereby authorized to require annual, periodical, or special reports from motor carriers, except such as are exempt from the operation of the provisions of this chapter; to prescribe the manner and form in which such reports shall be made; and to require from such carriers specific answers to all questions upon which the Department may deem information to be necessary. Such reports shall be under oath whenever the Department so requires. The Department may also require any motor carrier to file with it a true copy of each or any contract, agreement, or arrangement between such carrier and any other carrier or person in relation to the provisions of this chapter.

B. The Department may, in its discretion, prescribe (i) the forms of any and all accounts, records, and memoranda to be kept by motor carriers and (ii) the length of time such accounts, records, and memoranda shall be preserved, as well as of the receipts and expenditures of money. The Department or its employees shall at all times have access to all lands, buildings, or equipment of motor carriers used in connection with their operations and also all accounts, records, and memoranda, including all documents, papers, and correspondence now or hereafter existing, and kept, or required to be kept, by motor carriers. The Department and its employees shall have authority to inspect and examine any and all such lands, buildings, equipment, accounts, records, and memoranda, including all documents, papers, and correspondence now or hereafter existing and kept or required to be kept by such carriers. These provisions shall apply to receivers of carriers and to operating trustees and, to the extent deemed necessary by the Department, to persons having control, direct or indirect, over or affiliated with any motor carrier.

C. As used in this section the term "motor carriers" includes brokers; *and* excursion train operators; ~~sight-seeing carriers by boat, special or charter party carriers by boat, and carriers by motor launch.~~

§ 46.2-2011.22. Violation; criminal penalties.

A. Any person knowingly and willfully violating any provision of this chapter, or any rule or regulation thereunder, or any term or condition of any certificate, permit, or license, for which a penalty is not otherwise herein provided, shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than \$2,500 for the first offense and not more than \$5,000 for any subsequent offense. Each day of such violation shall constitute a separate offense.

B. Any person, whether carrier, broker, or any officer, employee, agent, or representative thereof, who shall knowingly and willfully by any such means or otherwise fraudulently seek to evade or defeat regulation as in this chapter, shall be deemed guilty of a misdemeanor and, upon conviction thereof, be fined not more than \$500 for the first offense and not more than \$2,000 for any subsequent offense.

C. Any motor carrier, broker, *or* excursion train operator; ~~sight-seeing carrier by boat, special or charter party carrier by boat, or carrier by motor launch~~ or any officer, agent, employee, or representative thereof who willfully fails or refuses to make a report to the Department as required by this chapter or to keep accounts, records, and memoranda in the form and manner approved or prescribed by the Department, or knowingly and willfully falsifies, destroys, mutilates, or alters any such report, account, record or memorandum, or knowingly and willfully files any false report, account, record or memorandum, shall be guilty of a misdemeanor and, upon conviction, be subject for each offense to a fine of not less than \$100 and not more than \$5,000.

§ 46.2-2099.30. Insurance to be kept in force.

~~Each holder of a certificate issued by the Department pursuant to this article~~ *Sight-seeing carriers by boat, special or charter party carriers by boat and motor carriers by launch* shall keep in force at all times marine protection and indemnity insurance in an amount not less than \$500,000 for bodily injury and property damage.

2. That §§ 46.2-2099.20, 46.2-2099.22 through 46.2-2099.29 and 46.2-2099.31 through 46.2-2099.40 of the Code of Virginia are repealed.