CHAPTER 891

An Act to amend and reenact §§ 43-32, 43-34, 46.2-100, 46.2-649.1, 46.2-1028, 46.2-1070, 46.2-1150, 46.2-1209, 46.2-1217, 46.2-1224, 46.2-1231, 46.2-1232, 46.2-1233.1, 46.2-1233.2, and 46.2-2100 of the Code of Virginia, and to amend the Code of Virginia by adding in Title 46.2 a chapter numbered 28, consisting of sections numbered 46.2-2800 through 46.2-2828, relating to tow trucks, wreckers, towing and recovery vehicles, and the Board for Towing and Recovery Operators; penalties.

[S 134]

Approved April 19, 2006

Whereas, a considerable portion of the work performed by vehicle towing and recovery businesses involves the towing and storage of vehicles at the request of persons other than the vehicles' owners; and

Whereas, the safety of travelers on the highways of the Commonwealth, generally, and of persons whose vehicles may be towed by towing and recovery businesses, with or without the consent of their owners, requires that towing and recovery businesses be subject to regulation by the Commonwealth and to such additional safeguards as may be provided by local ordinances in counties, cities, and towns whose local governing bodies deem such additional safeguards necessary or desirable; and

Whereas, sometimes apparently inconsistent or outdated state statutes and a patchwork of local ordinances have been ineffective in ensuring fairness to either those in the towing and recovery business or those owners whose vehicles such businesses tow without their consent; now, therefore,

Be it enacted by the General Assembly of Virginia:

1. That §§ 43-32, 43-34, 46.2-100, 46.2-649.1, 46.2-1028, 46.2-1070, 46.2-1150, 46.2-1209, 46.2-1217, 46.2-1224, 46.2-1231, 46.2-1232, 46.2-1233.1, 46.2-1233.2, and 46.2-2100 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Title 46.2 a chapter numbered 28, consisting of sections numbered 46.2-2800 through 46.2-2828, as follows:

§ 43-32. Lien of keeper of livery stable, garage, marina, etc.

A. Every keeper of a livery stable, hangar, tie-down, marina, or garage, and every person pasturing or keeping any horses or other animals, vehicles, boats, aircraft, or harness, shall have a lien upon such horses and other animals, vehicles, boats, aircraft, and harness, for the amount which may be due him for the *towing, storage, recovery,* keeping, supporting, and care thereof, until such amount is paid.

B. In the case of any boat, aircraft, or vehicle subject to a chattel mortgage, security agreement, deed of trust, or other instrument securing money, the keeper of the marina, hangar, tie-down, or garage shall have a lien thereon for his reasonable charges for storage under this section not to exceed $500 and for alteration and repair under § 43-33 not to exceed $800. However, in the case of a storage lien, to obtain the priority for an amount in excess of $300, the person asserting the lien shall make a reasonable attempt to notify any secured party of record at the Department of Motor Vehicles or the Department of Game and Inland Fisheries by telephonic means and shall give written notice by certified mail, return receipt requested, to any secured party of record at the Department of Motor Vehicles or the Department of Game and Inland Fisheries within ~~three~~ *seven* business days of taking possession of the boat, aircraft or vehicle. If the secured party does not, within ~~three~~ *seven* business days of receipt of the notice, take or refuse redelivery to it or its designee, the lienor shall be entitled to priority for the full ~~$500~~ *amount of storage charges, not to exceed $500*. Notwithstanding a redelivery, the vehicle or watercraft shall be subject to subsection D.

C. In addition, any person furnishing services involving the towing and recovery of a boat, aircraft or vehicle, shall have a lien for all normal costs incident thereto, if the person asserting the lien gives written notice within seven days of receipt of the boat, aircraft or vehicle by certified mail, return receipt requested, to all secured parties of record at the Department of Motor Vehicles or the Department of Game and Inland Fisheries.

D. In addition, any keeper shall be entitled to a lien against any proceeds remaining after the satisfaction of all prior security interests or liens, and may retain possession of such property until such charges are paid.

E. Any lien created under this section shall not extend to any personal property which is not attached to or considered to be necessary for the proper operation of any motor vehicle, and it shall be the duty of any keeper of such personal property to return it to the owner if the owner claims the items prior to auction.

F. For the purposes of this section, in the case of a truck or combination of vehicles, the owner or in the case of a rented or leased vehicle, the lessee of the truck or tractor truck shall be liable for the costs of the towing, recovery, and storage of the cargo and of any trailer or semitrailer in the combination. Nothing in this subsection, however, shall bar the owner of the truck or tractor truck from subsequently

seeking to recover from the owner of any trailer, semitrailer, or cargo all or any portion of these towing, recovery, and storage costs.

§ 43-34. Enforcement of liens acquired under §§ 43-31 through 43-33 and of liens of bailees.

Any person having a lien under §§ 43-31 through 43-33 and any bailee, except where otherwise provided, having a lien as such at common law on personal property in his possession which he has no power to sell for the satisfaction of the lien, if the debt for which the lien exists is not paid within 10 days after it is due and the value of the property affected by the lien does not exceed ~~$5,000~~ *$7,500*, may sell such property or so much thereof as may be necessary, by public auction, for cash. The proceeds shall be applied to the satisfaction of the debt and expenses of sale, and the surplus, if any, shall be paid within 30 days of the sale to any lienholder, and then to the owner of the property. A seller who fails to remit the surplus as provided shall be liable to the person entitled to the surplus in an amount equal to ~~$25~~ *$50* for each day beyond 30 days that the failure continues.

Before making the sale, the seller shall advertise the time, place, and terms thereof in a public place. In the case of property other than a motor vehicle required to be registered in Virginia having a value in excess of $600, 10 days' prior notice shall be given to any secured party who has filed a financing statement against the property, and written notice shall be given to the owner as hereinafter provided. If the property is a motor vehicle required by the motor vehicle laws of Virginia to be registered, the person having the lien shall ascertain from the Commissioner of the Department of Motor Vehicles whether the certificate of title of the motor vehicle shows a lien thereon. If the certificate of title shows a lien, the bailee proposing the sale of the motor vehicle shall notify the lienholder of record, by certified mail, at the address on the certificate of title of the time and place of the proposed sale 10 days prior thereto. If the name of the owner cannot be ascertained, the name of "John Doe" shall be substituted in any proceedings hereunder and no written notice as to him shall be required to be mailed.

If the value of the property is more than ~~$5,000~~ *$7,500* but does not exceed $15,000, the party having the lien, after giving notice as herein provided, may apply by petition to any general district court of the county or city wherein the property is, or, if the value of the property exceeds $15,000, to the circuit court of the county or city, for the sale of the property. If, on the hearing of the case on the petition, the defense, if any made thereto, and such evidence as may be adduced by the parties respectively, the court is satisfied that the debt and lien are established and the property should be sold to pay the debt, the court shall order the sale to be made by the sheriff of the county or city. The sheriff shall make the same and apply and dispose of the proceeds in the same manner as if the sale were made under a writ of fieri facias.

If the owner of the property is a resident of this Commonwealth, any notice required by this section may be served as provided in § 8.01-296 or, if the sale is to be made without resort to the courts, by personal delivery or by certified or registered mail delivered to the present owner of the property to be sold at his last known address at least 10 days prior to the date of sale. If he is a nonresident or if his address is unknown, notice may be served by posting a copy thereof in three public places in the county or city wherein the property is located. For purposes of this section, a public place means a premises owned by the Commonwealth, a political subdivision thereof or an agency of either which is open to the general public.

If the property is a motor vehicle (i) for which neither the owner nor any other lienholder or secured party can be determined by the Department of Motor Vehicles through a diligent search of its records, (ii) manufactured for a model year at least six years prior to the current model year, and (iii) having a value of no more than ~~$1,000~~ *$3,000* as determined by the provisions of § 8.01-419.1, a person having a lien on such vehicle may, after showing proof that the vehicle has been in his continuous custody for at least 30 days, apply for and receive from the Department of Motor Vehicles title or a nonrepairable certificate to such vehicle, free of all liens and claims of ownership of others, and proceed to sell or otherwise dispose of the vehicle.

Whenever a motor vehicle is sold hereunder, the Department of Motor Vehicles shall issue a certificate of title and registration or a nonrepairable certificate to the purchaser thereof upon his application containing the serial or motor number of the vehicle purchased together with an affidavit of the lienholder that he has complied with the provisions hereof, or by the sheriff conducting a sale that he has complied with said order.

Any garage keeper to whom a motor vehicle has been delivered pursuant to §§ 46.2-1209, 46.2-1213 or § 46.2-1215 may after 30 days from the date of delivery proceed under this section, provided that action has not been taken pursuant to such sections for the sale of such motor vehicle.

§ 46.2-100. Definitions.

The following words and phrases when used in this title shall, for the purpose of this title, have the meanings respectively ascribed to them in this section except in those instances where the context clearly indicates a different meaning:

"Antique motor vehicle" means every motor vehicle, as defined in this section, which was actually manufactured or designated by the manufacturer as a model manufactured in a calendar year not less than 25 years prior to January 1 of each calendar year and is owned solely as a collector's item.

"Antique trailer" means every trailer or semitrailer, as defined in this section, that was actually

manufactured or designated by the manufacturer as a model manufactured in a calendar year not less than 25 years prior to January 1 of each calendar year and is owned solely as a collector's item.

"Automobile or watercraft transporters" means any tractor truck, lowboy, vehicle, or combination, including vehicles or combinations that transport motor vehicles or watercraft on their power unit, designed and used exclusively for the transportation of motor vehicles or watercraft.

"Bicycle" means a device propelled solely by human power, upon which a person may ride either on or astride a regular seat attached thereto, having two or more wheels in tandem, including children's bicycles, except a toy vehicle intended for use by young children. For purposes of Chapter 8 (§ 46.2-800 et seq.) of this title, a bicycle shall be a vehicle while operated on the highway.

"Bicycle lane" means that portion of a roadway designated by signs and/or pavement markings for the preferential use of bicycles, electric power-assisted bicycles, and mopeds.

"Business district" means the territory contiguous to a highway where 75 percent or more of the property contiguous to a highway, on either side of the highway, for a distance of 300 feet or more along the highway, is occupied by land and buildings actually in use for business purposes.

"Camping trailer" means every vehicle that has collapsible sides and contains sleeping quarters but may or may not contain bathing and cooking facilities and is designed to be drawn by a motor vehicle.

"Cancel" or "cancellation" means that the document or privilege cancelled has been annulled or terminated because of some error, defect, or ineligibility, but the cancellation is without prejudice and reapplication may be made at any time after cancellation.

"Chauffeur" means every person employed for the principal purpose of driving a motor vehicle and every person who drives a motor vehicle while in use as a public or common carrier of persons or property.

"Commission" means the State Corporation Commission.

"Commissioner" means the Commissioner of the Department of Motor Vehicles of the Commonwealth.

"Crosswalk" means that part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or, in the absence of curbs, from the edges of the traversable roadway; or any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface.

"Decal" means a device to be attached to a license plate that validates the license plate for a predetermined registration period.

"Department" means the Department of Motor Vehicles of the Commonwealth.

"Disabled parking license plate" means a license plate that displays the international symbol of access in the same size as the numbers and letters on the plate and in a color that contrasts with the background.

"Disabled veteran" means a veteran who (i) has either lost, or lost the use of, a leg, arm, or hand; (ii) is blind; or (iii) is permanently and totally disabled as certified by the U.S. Veterans Administration. A veteran shall be considered blind if he has a permanent impairment of both eyes to the following extent: (i) central visual acuity of 20/200 or less in the better eye, with corrective lenses, or central visual acuity of more than 20/200, if there is a field defect in which the peripheral field has contracted to such an extent that the widest diameter of visual field subtends an angular distance no greater than 20 degrees in the better eye.

"Driver's license" means any license, including a commercial driver's license as defined in the Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.), issued under the laws of the Commonwealth authorizing the operation of a motor vehicle.

"Electric personal assistive mobility device" means a self-balancing two-nontandem-wheeled device that is designed to transport only one person and powered by an electric propulsion system that limits the device's maximum speed to 15 miles per hour or less. For purposes of Chapter 8 of this title, an electric personal assistive mobility device shall be a vehicle when operated on a highway.

"Electric power-assisted bicycle" means a bicycle equipped with an electric motor that reduces the pedal effort required of the rider, but does not eliminate the rider's need to pedal. For the purposes of Chapter 8 of this title, an electric power-assisted bicycle shall be a vehicle when operated on a highway.

"Essential parts" means all integral parts and body parts, the removal, alteration, or substitution of which will tend to conceal the identity of a vehicle.

"Farm tractor" means every motor vehicle designed and used as a farm, agricultural, or horticultural implement for drawing plows, mowing machines, and other farm, agricultural, or horticultural machinery and implements including self-propelled mowers designed and used for mowing lawns.

"Federal safety requirements" means applicable provisions of 49 U.S.C. § 30101 et seq. and all administrative regulations and policies adopted pursuant thereto.

"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 § 46.2-472.

"Foreign market vehicle" means any motor vehicle originally manufactured outside the United States,

which was not manufactured in accordance with 49 U.S.C. § 30101 et seq. and the policies and regulations adopted pursuant to that Act, and for which a Virginia title or registration is sought.

"Foreign vehicle" means every motor vehicle, trailer, or semitrailer that is brought into the Commonwealth otherwise than in the ordinary course of business by or through a manufacturer or dealer and that has not been registered in the Commonwealth.

"Golf cart" means a self-propelled vehicle that is designed to transport persons playing golf and their equipment on a golf course.

"Governing body" means the board of supervisors of a county, council of a city, or council of a town, as context may require.

"Gross weight" means the aggregate weight of a vehicle or combination of vehicles and the load thereon.

"Highway" means the entire width between the boundary lines of every way or place open to the use of the public for purposes of vehicular travel in the Commonwealth, including the streets and alleys, and, for law-enforcement purposes, the entire width between the boundary lines of all private roads or private streets that have been specifically designated "highways" by an ordinance adopted by the governing body of the county, city, or town in which such private roads or streets are located.

"Intersection" means (i) the area embraced within the prolongation or connection of the lateral curblines or, if none, then the lateral boundary lines of the roadways of two highways that join one another at, or approximately at, right angles, or the area within which vehicles traveling on different highways joining at any other angle may come in conflict; (ii) where a highway includes two roadways 30 feet or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection, in the event such intersecting highway also includes two roadways 30 feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection; or (iii) for purposes only of authorizing installation of traffic-control devices, every crossing of a highway or street at grade by a pedestrian crosswalk.

"Law-enforcement officer" means any officer authorized to direct or regulate traffic or to make arrests for violations of this title or local ordinances authorized by law. For the purposes of access to law-enforcement databases regarding motor vehicle registration and ownership only, this term shall also include city and county commissioners of the revenue and treasurers, together with their duly designated deputies and employees, when such officials are actually engaged in the enforcement of §§ 46.2-752, 46.2-753 and 46.2-754 and local ordinances enacted thereunder.

"License plate" means a device containing letters, numerals, or a combination of both, attached to a motor vehicle, trailer, or semitrailer to indicate that the vehicle is properly registered with the Department.

"Light" means a device for producing illumination or the illumination produced by the device.

"Low-speed vehicle" means any four-wheeled electrically-powered vehicle, except a motor vehicle or low-speed vehicle that is used exclusively for agricultural or horticultural purposes or a golf cart, whose maximum speed is greater than 20 miles per hour but not greater than 25 miles per hour and is manufactured to comply with safety standards contained in Title 49 of the Code of Federal Regulations, § 571.500.

"Manufactured home" means a structure subject to federal regulation, transportable in one or more sections, which in the traveling mode is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein.

"Moped" means a conveyance that is either (i) a bicycle-like device with pedals and a helper motor that is rated at no more than two brake horsepower and that produces speeds up to a maximum of 30 miles per hour or (ii) a motorcycle with an engine displacement of 50 cubic centimeters or less and a maximum speed of less than 30 miles per hour. For purposes of Chapter 8 (§ 46.2-800 et seq.) of this title, a moped shall be a vehicle while operated on a highway.

"Motor home" means every private motor vehicle with a normal seating capacity of not more than 10 persons, including the driver, designed primarily for use as living quarters for human beings.

"Motor vehicle" means every vehicle as defined in this section that is self-propelled or designed for self-propulsion except as otherwise provided in this title. Any structure designed, used, or maintained primarily to be loaded on or affixed to a motor vehicle to provide a mobile dwelling, sleeping place, office, or commercial space shall be considered a part of a motor vehicle. For the purposes of this title, any device herein defined as a bicycle, electric personal assistive mobility device, electric power-assisted bicycle, or moped shall be deemed not to be a motor vehicle.

"Motorcycle" means every motor vehicle designed to travel on not more than three wheels in contact with the ground, except any vehicle included within the term "farm tractor" or "moped" as defined in this section.

"Nonresident" means every person who is not domiciled in the Commonwealth, except: (i) any foreign corporation that is authorized to do business in the Commonwealth by the State Corporation

Commission shall be a resident of the Commonwealth for the purpose of this title; in the case of corporations incorporated in the Commonwealth but doing business outside the Commonwealth, only such principal place of business or branches located within the Commonwealth shall be dealt with as residents of the Commonwealth; (ii) a person who becomes engaged in a gainful occupation in the Commonwealth for a period exceeding 60 days shall be a resident for the purposes of this title except for the purposes of Chapter 3 (§ 46.2-300 et seq.) of this title; (iii) a person, other than a nonresident student as defined in this section, who has actually resided in the Commonwealth for a period of six months, whether employed or not, or who has registered a motor vehicle, listing an address in the Commonwealth in the application for registration shall be deemed a resident for the purposes of this title, except for the purposes of the Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.).

"Nonresident student" means every nonresident person who is enrolled as a full-time student in an accredited institution of learning in the Commonwealth and who is not gainfully employed.

"Operation or use for rent or for hire, for the transportation of passengers, or as a property carrier for compensation," and "business of transporting persons or property" mean any owner or operator of any motor vehicle, trailer, or semitrailer operating over the highways in the Commonwealth who accepts or receives compensation for the service, directly or indirectly; but these terms do not mean a "truck lessor" as defined in this section and do not include persons or businesses that receive compensation for delivering a product that they themselves sell or produce, where a separate charge is made for delivery of the product or the cost of delivery is included in the sale price of the product, but where the person or business does not derive all or a substantial portion of its income from the transportation of persons or property except as part of a sales transaction.

"Operator" or "driver" means every person who either (i) drives or is in actual physical control of a motor vehicle on a highway or (ii) is exercising control over or steering a vehicle being towed by a motor vehicle.

"Owner" means a person who holds the legal title to a vehicle; however, if a vehicle is the subject of an agreement for its conditional sale or lease with the right of purchase on performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee or if a mortgagor of a vehicle is entitled to possession, then the conditional vendee or lessee or mortgagor shall be the owner for the purpose of this title. In all such instances when the rent paid by the lessee includes charges for services of any nature or when the lease does not provide that title shall pass to the lessee on payment of the rent stipulated, the lessor shall be regarded as the owner of the vehicle, and the vehicle shall be subject to such requirements of this title as are applicable to vehicles operated for compensation. A "truck lessor" as defined in this section shall be regarded as the owner, and his vehicles shall be subject to such requirements of this title as are applicable to vehicles of private carriers.

"Passenger car" means every motor vehicle other than a motorcycle designed and used primarily for the transportation of no more than 10 persons including the driver.

"Payment device" means any credit card as defined in 15 U.S.C. § 1602(k) or any "accepted card or other means of access" set forth in 15 U.S.C. § 1693a(1). For the purposes of this title, this definition shall also include a card that enables a person to pay for transactions through the use of value stored on the card itself.

"Pickup or panel truck" means every motor vehicle designed for the transportation of property and having a registered gross weight of 7,500 pounds or less.

"Private road or driveway" means every way in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

"Reconstructed vehicle" means every vehicle of a type required to be registered under this title materially altered from its original construction by the removal, addition, or substitution of new or used essential parts.

"Residence district" means the territory contiguous to a highway, not comprising a business district, where 75 percent or more of the property abutting such highway, on either side of the highway, for a distance of 300 feet or more along the highway consists of land improved for dwelling purposes, or is occupied by dwellings, or consists of land or buildings in use for business purposes, or consists of territory zoned residential or territory in residential subdivisions created under Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2.

"Revoke" or "revocation" means that the document or privilege revoked is not subject to renewal or restoration except through reapplication after the expiration of the period of revocation.

"Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the shoulder. A highway may include two or more roadways if divided by a physical barrier or barriers or an unpaved area.

"Safety zone" means the area officially set apart within a roadway for the exclusive use of pedestrians and that is protected or is so marked or indicated by plainly visible signs.

"School bus" means any motor vehicle, other than a station wagon, automobile, truck, or commercial bus, which is: (i) designed and used primarily for the transportation of pupils to and from public, private or religious schools, or used for the transportation of the mentally or physically handicapped to and

from a sheltered workshop; (ii) painted yellow and bears the words "School Bus" in black letters of a specified size on front and rear; and (iii) is equipped with warning devices prescribed in § 46.2-1090. A yellow school bus may have a white roof provided such vehicle is painted in accordance with regulations promulgated by the Department of Education.

"Semitrailer" means every vehicle of the trailer type so designed and used in conjunction with a motor vehicle that some part of its own weight and that of its own load rests on or is carried by another vehicle.

"Shared-use path" means a bikeway that is physically separated from motorized vehicular traffic by an open space or barrier and is located either within the highway right-of-way or within a separate right-of-way. Shared-use paths may also be used by pedestrians, skaters, users of wheel chairs or wheel chair conveyances, joggers, and other nonmotorized users.

"Shoulder" means that part of a highway between the portion regularly ~~travelled~~ *traveled* by vehicular traffic and the lateral curbline or ditch.

"Sidewalk" means the portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, intended for use by pedestrians.

"Snowmobile" means a self-propelled vehicle designed to travel on snow or ice, steered by skis or runners, and supported in whole or in part by one or more skis, belts, or cleats.

"Specially constructed vehicle" means any vehicle that was not originally constructed under a distinctive name, make, model, or type by a generally recognized manufacturer of vehicles and not a reconstructed vehicle as herein defined.

"Stinger-steered automobile or watercraft transporter" means an automobile or watercraft transporter configured as a semitrailer combination wherein the fifth wheel is located on a drop frame behind and below the rearmost axle of the power unit.

"Superintendent" means the Superintendent of the Department of State Police of the Commonwealth.

"Suspend" or "suspension" means that the document or privilege suspended has been temporarily withdrawn, but may be reinstated following the period of suspension unless it has expired prior to the end of the period of suspension.

"Tow truck" means a motor vehicle for hire (i) designed to lift, pull, or carry another vehicle by means of a hoist or other mechanical apparatus and (ii) having a manufacturer's gross vehicle weight rating of at least 10,000 pounds. "Tow truck" also includes vehicles designed with a ramp on wheels and a hydraulic lift with a capacity to haul or tow another vehicle, commonly referred to as "rollbacks." "Tow truck" does not include any "automobile or watercraft transporter," "stinger-steered automobile or watercraft transporter," or "tractor truck" as those terms are defined in this section.

"Towing and recovery operator" means a person engaged in the business of (i) removing disabled vehicles, parts of vehicles, their cargoes, and other objects to facilities for repair or safekeeping and (ii) restoring to the highway or other location where they either can be operated or removed to other locations for repair or safekeeping vehicles that have come to rest in places where they cannot be operated.

"Tractor truck" means every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the load and weight of the vehicle attached thereto.

"Traffic infraction" means a violation of law punishable as provided in § 46.2-113, which is neither a felony nor a misdemeanor.

"Traffic lane" or "lane" means that portion of a roadway designed or designated to accommodate the forward movement of a single line of vehicles.

"Trailer" means every vehicle without motive power designed for carrying property or passengers wholly on its own structure and for being drawn by a motor vehicle, including manufactured homes.

"Truck" means every motor vehicle designed to transport property on its own structure independent of any other vehicle and having a registered gross weight in excess of 7,500 pounds.

"Truck lessor" means a person who holds the legal title to any motor vehicle, trailer, or semitrailer that is the subject of a bona fide written lease for a term of one year or more to another person, provided that: (i) neither the lessor nor the lessee is a common carrier by motor vehicle or restricted common carrier by motor vehicle or contract carrier by motor vehicle as defined in § 46.2-2000; (ii) the leased motor vehicle, trailer, or semitrailer is used exclusively for the transportation of property of the lessee; (iii) the lessor is not employed in any capacity by the lessee; (iv) the operator of the leased motor vehicle is a bona fide employee of the lessee and is not employed in any capacity by the lessor; and (v) a true copy of the lease, verified by affidavit of the lessor, is filed with the Commissioner.

"Utility vehicle" means a motor vehicle that is (i) designed for off-road use, (ii) powered by an engine of no more than 25 horsepower, and (iii) used for general maintenance, security, agricultural, or horticultural purposes. "Utility vehicle" does not include all-terrain vehicles as defined in § 46.2-915.1, riding lawn mowers, or any other vehicle whose definition is included in this section.

"Vehicle" means every device in, on or by which any person or property is or may be transported or drawn on a highway, except devices moved by human power or used exclusively on stationary rails or tracks. For the purposes of Chapter 8 (§ 46.2-800 et seq.) of this title, bicycles, electric personal

assistive mobility devices, electric power-assisted bicycles, and mopeds shall be vehicles while operated on a highway.

"Wheel chair or wheel chair conveyance" means a chair or seat equipped with wheels, typically used to provide mobility for persons who, by reason of physical disability, are otherwise unable to move about as pedestrians. The term includes both three-wheeled and four-wheeled devices. So long as it is operated only as provided in § 46.2-677, a self-propelled wheel chair or self-propelled wheel chair conveyance shall not be considered a motor vehicle.

§ 46.2-649.1. Registration of tow trucks; fees.

A. ~~For the purposes of this section, "tow truck" means a motor vehicle for hire (i) designed to lift, pull, or carry another vehicle by means of a hoist or other mechanical apparatus and (ii) having a manufacturer's gross vehicle weight rating of at least 10,000 pounds. The term "tow truck" also includes vehicles designed with a ramp on wheels and a hydraulic lift with a capacity to haul or tow another vehicle, commonly referred to as "rollbacks." The term "tow truck" does not include any "automobile or watercraft transporter," "stinger-steered automobile or watercraft transporter," or "tractor truck" as those terms are defined in § 46.2-100.~~

~~B.~~ No tow truck registered under this section shall be subject to registration under the international registration plan or subject to any other state registration requirements under this chapter. Registration under this section shall not prohibit the use of "rollbacks" to transport storage sheds, similar structures, or other cargoes.

~~C.~~ *B.* Vehicles registered under this section shall be subject to the following annual fees, based upon their manufacturer's gross vehicle weight ratings:

less than 15,000 pounds	$100
15,000 to 22,999 pounds	$200
23,000 to 29,499 pounds	$300
more than 29,499 pounds	$400

~~D.~~ *C.* ~~Motor vehicles having manufacturer's gross vehicle weight ratings of at least 7,000 but less than 10,000 pounds that otherwise would meet the definition of "tow truck" under subsection A of this section may, until January 1, 2000, be registered under this section as long as (i) the vehicle is continuously registered under this section and (ii) the title to the vehicle is not transferred to another owner prior to that time.~~

~~E.~~ No vehicle shall be registered under this section unless there is in force as to such vehicle at the time of its registration commercial liability insurance coverage for those classes of insurance defined in §§ 38.2-117 and 38.2-118 in the amount of at least $750,000.

§ 46.2-1028. Auxiliary lights on fire-fighting, Virginia Department of Transportation and other emergency vehicles.

Any fire-fighting vehicle, ambulance, rescue or life-saving vehicle, Virginia Department of Transportation vehicle or ~~wrecker~~ *tow truck* may be equipped with clear auxiliary lights which shall be used exclusively for lighting emergency scenes. Such lights shall be of a type approved by the Superintendent, and shall not be used in a manner which may blind or interfere with the vision of the drivers of approaching vehicles. In no event shall such lights be lighted while the vehicle is in motion.

§ 46.2-1070. Brakes on trailers.

Every semitrailer, trailer, or separate vehicle attached by a drawbar, chain, or coupling to a towing vehicle other than a farm tractor or a vehicle not required to obtain a registration certificate and having an actual gross weight of 3,000 pounds or more, shall be equipped with brakes controlled or operated by the driver of the towing vehicle, which shall conform to the specifications set forth in § 46.2-1067 and shall be of a type approved by the Superintendent. Farm trailers used exclusively for hauling raw agricultural produce from farm to farm or farm to packing shed or processing plant within the normal growing area of the packing shed or processing plant and trailers or semitrailers drawn by a properly licensed motor vehicle but exempt from registration, shall be exempt from the requirements of this section.

"Gross weight" for the purpose of this section includes weight of the vehicle and the load upon such semitrailer, trailer, or separate vehicle.

This section shall not apply to any vehicle being towed for repairs, repossession, in an emergency, or being moved by a ~~wrecker~~ *tow truck* when two wheels of the towed vehicle are off the ground.

§ 46.2-1150. Towing certain unlicensed or uninspected vehicles.

Nothing in this title shall prohibit towing an unlicensed motor vehicle or motor vehicle which has not been inspected pursuant to Article 21 (§ 46.2-1157 et seq.) or 22 (§ 46.2-1176 et seq.) of Chapter 10 of this title.

Nothing in this title shall prohibit the towing of an unlicensed trailer or semitrailer used on a construction site as an office or for storage or a trailer or semitrailer which has been used on a construction site as an office or for storage, but which has not been inspected pursuant to Article 21 of Chapter 10 of this title, provided that any such unlicensed or uninspected trailer or semitrailer (i) is towed by a tow truck~~, wrecker,~~ or other vehicle designed and equipped for the towing of inoperable or disabled vehicles; (ii) is operated only in intrastate commerce; (iii) has an actual gross weight, including

contents, of no more than 15,000 pounds; (iv) is secured to the towing vehicle by means of safety chains; and (v) is equipped with rear-mounted bar lights which function as tail lights, brake lights, and turn signals as provided in Article 3 (§ 46.2-1010 et seq.) of Chapter 10 of this title. However, nothing in this section shall authorize the towing or drawing of an unlicensed or uninspected trailer or semitrailer by means of a tractor truck except for the purpose of having such trailer or semitrailer inspected as provided in § 46.2-1157.

§ 46.2-1209. Unattended or immobile vehicles, generally.

No person shall leave any motor vehicle, trailer, semitrailer, or part or combination thereof *immobilized or* unattended on or adjacent to any roadway if it constitutes a hazard in the use of the highway. No person shall leave any *immobilized or* unattended motor vehicle, trailer, semitrailer, or part or combination thereof longer than twenty-four hours on or adjacent to any roadway outside the corporate limits of any city or town, or on an interstate highway or limited access highway, expressway, or parkway inside the corporate limits of any city or town. Any law-enforcement officer may remove it or have it removed to a storage area for safekeeping and shall report the removal to the Department and to the owner of the motor vehicle, trailer, semitrailer, or combination as promptly as possible. Before obtaining possession of the motor vehicle, trailer, semitrailer, or combination, its owner *or successor in interest to ownership* shall pay to the parties entitled thereto all costs incidental to its removal or storage. In any violation of this section the owner of such motor vehicle, trailer, semitrailer or part or combination of a motor vehicle, trailer, or semitrailer, shall be presumed to be the person committing the violation; however, this presumption shall be rebuttable by competent evidence. ~~Where it is shown to the satisfaction of the court that the~~

When a motor vehicle, trailer, semitrailer, or part or combination of a motor vehicle, trailer, or semitrailer was stolen or illegally used by a person other than the owner *of the vehicle at the time of the theft or used* without his authorization, express or implied, it shall be forthwith returned to its owner *or the owner's successor in interest,* ~~who shall be relieved of the payment of any costs~~ *other than an insurance company, who shall be relieved of the payment of any costs charged by the towing operator or storage facility for its daily storage, towing, and recovery fees, provided that the owner removes the vehicle within five business days following the owner's receipt of written notice by certified mail, return receipt requested. If the vehicle's owner fails to remove the vehicle within five days of receipt of such notice, the vehicle shall be released to the owner upon payment of the full costs of storage, towing and recovery fees, and the owner shall then be entitled to seek reimbursement from the state treasury from the appropriation for criminal charges. The owner shall produce a valid motor vehicle registration or other proof of ownership to the employees of the facility wherein the motor vehicle, trailer, semitrailer or part or combination thereof is being stored.* In any case in which the identity of the violator cannot be determined, or where it is found by a court that this section was not violated, the costs of ~~the removal and storage~~ *daily storage, towing, and recovery fees* of the vehicle shall be *reimbursed to* ~~paid out of the state treasury from the appropriation for criminal charges.~~ *the towing and recovery operator and paid out of the state treasury from the appropriation for criminal charges. Payment from the treasury shall be made no later than 45 days from the application for such payment. In all cases where an insurance company is the stolen vehicle owner's successor in interest, the motor vehicle, trailer, semitrailer, or part or combination thereof shall be released to the insurance company upon presentation of a valid motor vehicle registration and payment by the insurance company to the towing operator or storage facility for its daily storage, towing, and recovery fees. The insurance company shall be entitled to seek reimbursement for the costs of the daily storage, towing, and recovery fees through the state treasury from the appropriation for criminal charges.* If any person convicted of violating this section fails or refuses to pay these costs or if the identity or whereabouts of the owner is unknown and unascertainable after a diligent search has been made or after notice to the owner at his address as indicated by the records of the Department and to the holder of any lien of record with the Department, against the motor vehicle, trailer, semitrailer, or combination, the Commissioner may, after thirty days and after having the value of such motor vehicle, trailer, semitrailer, or combination determined by three disinterested dealers dispose of it by public or private sale. The proceeds from the sale shall be forthwith paid by him into the state treasury and shall be set aside as a special fund to be used to meet the expenses of the Department in carrying out the duties required by this section and to reimburse the owner of such motor vehicle, trailer, semitrailer, or combination as hereafter provided in this section.

If after the sale or other disposition of the motor vehicle, trailer, semitrailer, or combination the ownership of a motor vehicle, trailer, or semitrailer at the time of its removal is established satisfactorily to the Commissioner by the person claiming its ownership, the Commissioner shall pay him so much of the proceeds from the sale or other disposition of the motor vehicle, trailer, semitrailer, or combination as remains after paying the costs of ~~removal,~~ *daily* storage, *towing, and recovery fees,* investigation of ownership, appraisal, and sale.

§ 46.2-1217. Local governing body may regulate certain towing.

The governing body of any county, city, or town by ordinance may regulate services rendered pursuant to police towing requests by any business engaged in the towing or storage of unattended,

abandoned, or immobile vehicles. The ordinance may include delineation of service areas for towing services, the limitation of the number of persons engaged in towing services in any area, including the creation of one or more exclusive service areas, and the specification of equipment to be used for providing towing service. The governing body of any county, city, or town may contract for services rendered pursuant to a police towing request with one or more businesses engaged in the towing or storage of unattended, abandoned, or immobile vehicles. The contract may specify the fees or charges to be paid by the owner or operator of a towed vehicle to the person undertaking its towing or storage and may prescribe the geographical area to be served by each person providing towing services. The county, city, or town may establish criteria for eligibility of persons to enter into towing services contracts and, in its discretion, may itself provide exclusive towing and storage service for police-requested towing of unattended, abandoned, or immobile vehicles. *Such criteria shall, for drivers of tow trucks and towing and recovery operators, be no less restrictive than those established pursuant to Chapter 28 (§ 46.2-2800 et seq.) of this title and regulations adopted pursuant thereto.*

Prior to adopting an ordinance or entering into a contract pursuant to this section, the local governing body shall appoint an advisory board to advise the governing body with regard to the appropriate provisions of the ordinance or terms of the contract. The advisory board shall include representatives of local law-enforcement agencies, towing and recovery operators, and the general public.

"Police-requested towing" or "police towing request," as used in this section, includes all requests made by a law-enforcement officer of the county, city, or town or by a State Police officer within the county, city, or town pursuant to this article or Article 2 (§ 46.2-1209 et seq.) of this chapter and towing requests made by a law-enforcement officer at the request of the owner or operator of an unattended, abandoned, or immobile vehicle, when no specific service provider is requested by such owner or operator.

If an unattended, abandoned, or immobile vehicle is located so as to impede the free flow of traffic on a highway declared by resolution of the Commonwealth Transportation Board to be a portion of the interstate highway system and a law-enforcement officer determines, in his discretion, that the business or businesses authorized to undertake the towing or storage of the vehicle pursuant to an ordinance or contract adopted pursuant to this section cannot respond in a timely manner, the law-enforcement officer may request towing or storage service from a towing or storage business other than those authorized by such ordinance or contract.

If an unattended, abandoned, or immobile vehicle is towed as the result of a police-towing request, the owner or person having control of the business or property to which the vehicle is towed shall allow the owner of the vehicle or any other towing and recovery business, upon presentation of a written request therefor from the owner of the vehicle, to have access to the vehicle for the purpose of inspecting or towing the vehicle to another location for the purpose of repair, storage, or disposal. For the purpose of this section, "owner of the vehicle" means a person who (i) has vested ownership, dominion, or title to the vehicle; (ii) is the authorized agent of the owner as defined in clause (i); (iii) is an employee, agent, or representative of an insurance company representing any party involved in a collision that resulted in a police-requested tow; or (iv) is a person subject to a security interest in another person, is entitled to the use and possession of the vehicle, including a lessee under a lease intended as security, but not including a lessee under a lease not intended as security. It shall be unlawful for any towing and recovery business to refuse to release a vehicle to the owner as defined in this section upon tender of full payment for all lawful charges by cash, insurance company check, certified check, money order, at least one of two commonly used, nationally recognized credit cards, or additional methods of payment approved by the Board.

The vehicle owner who has vested ownership, dominion, or title to the vehicle shall indemnify and hold harmless the towing and recovery operator from any and all liability for releasing the vehicle to any vehicle owner as defined in this section for inspecting or towing the vehicle to another location for the purpose of repair, storage, or disposal.

§ 46.2-1224. County ordinances prohibiting certain parking in streets and highways.

A. The governing body of any county may, by ordinance, prohibit any person from parking any motor vehicle, trailer, or semitrailer on or adjacent to the highways in the county when such person parks any such motor vehicle, trailer, or semitrailer for commercial purposes. The provisions of any such ordinance shall not apply to motor vehicle carriers when picking up or discharging passengers.

B. The governing bodies of (i) counties with populations greater than 500,000 and of towns located therein and (ii) counties with populations of at least 210,000 but less than 217,000 may, by ordinance, prohibit any person from parking any commercial vehicle, as defined in this section, on the highways within their respective jurisdiction in areas zoned for residential use. For the purposes of this section, the term "commercial vehicle" may include: (i) any solid waste collection vehicle, tractor truck or tractor truck/semitrailer or tractor truck/trailer combination, dump truck, concrete mixer truck, ~~towing and recovery vehicle~~ *tow truck* with a registered gross weight of 12,000 pounds or more, and any heavy construction equipment, whether located on the highway or on a truck, trailer, or semitrailer; (ii) any trailer, semitrailer, or other vehicle in which food or beverages are stored or sold; (iii) any trailer or semitrailer used for transporting landscaping or lawn-care equipment whether or not such trailer or

semitrailer is attached to another vehicle; and (iv) any vehicle licensed by the Commonwealth for use as a common or contract carrier or as a limousine. Such ordinance shall permit, however, one resident of each single-family dwelling unit zoned for residential use to park one vehicle licensed as a taxicab or limousine on such highways, provided other vehicles are permitted to park thereon. The provisions of any such ordinance shall not apply to a commercial vehicle when picking up or discharging passengers or when temporarily parked pursuant to the performance of work or service at a particular location.

C. The governing bodies of counties with populations greater than 500,000 and the governing bodies of towns within such counties' boundaries may by ordinance prohibit any person from parking any of the following vehicles on the highways within their respective jurisdictions in areas zoned for commercial or industrial use if such highways do not comply with the current geometric design standards of the Virginia Department of Transportation Road Design Manual or Subdivision Street Requirements that would apply had the highways been constructed at the time of adoption of such ordinance: (i) any solid waste collection vehicle, tractor truck, or tractor truck/semitrailer or tractor truck/trailer combination, dump truck, concrete mixer truck, ~~towing and recovery vehicle~~ *tow truck* with a registered gross weight of 12,000 pounds or more, and any heavy construction equipment, whether located on the highway or on a truck, trailer, or semitrailer; (ii) any trailer, semitrailer, or other vehicle in which food or beverages are stored or sold; or (iii) any trailer or semitrailer used for transporting landscaping or lawn care equipment whether or not such trailer or semitrailer is attached to another vehicle. The provisions of any such ordinance shall not apply to any commercial vehicle when picking up or discharging passengers or when temporarily parked pursuant to the delivery of goods or the performance of work or service at a particular location.

Any violation of the provisions of any such ordinance shall be a traffic infraction.

§ 46.2-1231. Ticketing, removal, or immobilization of trespassing vehicles by owner or operator of parking or other lot or building; charges.

The owner, operator, or lessee of any parking lot, parking area, or parking space in a parking lot or area or any part of a parking lot or area, or of any other lot or building, including any county, city, or town, or authorized agent of the person having control of such premises may have any vehicle occupying the lot, area, space, or building without the permission of its owner, operator, lessee, or authorized agent of the one having the control of the premises, removed by towing or otherwise to a licensed garage for storage until called for by the owner or his agent if there are posted at all entrances to the parking lot or area signs clearly and conspicuously disclosing that such vehicle, if parked without permission, will be removed, towed, or immobilized. *Such signs shall, at a minimum, include the nonemergency telephone number of the local law-enforcement agency or the telephone number of the responsible towing and recovery operator to contact for information related to the location of vehicles towed from that location.* The requirements of this section relating to the posting of signs by an owner, operator, or lessee of any parking lot, parking area or space shall not apply to localities in which the local governing body has adopted an ordinance pursuant to § 46.2-1232.

Whenever a trespassing vehicle is removed or towed as permitted by this section, notice of this action shall forthwith be given by the tow truck operator to the State Police or the local law-enforcement agency of the jurisdiction from which the vehicle was towed. It shall be unlawful to fail to report such tow as required by this section and violation of the reporting requirement of this section shall constitute a traffic infraction punishable by a fine of not more than $100. Such failure to report shall limit the amount which may be charged for the storage and safekeeping of the towed vehicle to an amount no greater than that charged for one day of storage and safekeeping. If the vehicle is removed and stored, the vehicle owner may be charged and the vehicle may be held for a reasonable fee for the removal and storage.

All businesses engaged in towing vehicles without the consent of their owners shall prominently display (i) at their main place of business and (ii) at any other location where towed vehicles may be reclaimed a comprehensive list of all their fees for towing, recovery, and storage services, or the basis of such charges. This requirement to display a list of fees may also be satisfied by providing, when the towed vehicle is reclaimed, a written list of such fees, either as part of a receipt or separately, to the person who reclaims the vehicle. Charges in excess of those posted shall not be collectable from any motor vehicle owner whose vehicle is towed, recovered, or stored without his consent.

Notwithstanding the foregoing provisions of this section, if the owner or representative or agent of the owner of the trespassing vehicle is present and removes the trespassing vehicle from the premises before it is actually towed, the trespassing vehicle shall not be towed, but the owner or representative or agent of the owner of the trespassing vehicle shall be liable for a reasonable fee, not to exceed $25 or such other limit as the governing body of the county, city, or town may set by ordinance, in lieu of towing.

In lieu of having a trespassing vehicle removed by towing or otherwise, the owner, operator, lessee or authorized agent of the premises on which the trespassing vehicle is parked may cause the vehicle to be immobilized by a boot or other device that prevents a vehicle from being moved by preventing a wheel from turning, provided that the boot or other device does not damage the vehicle or wheel. The charge for the removal of any boot or device shall not exceed $25 or such other limit as the governing

body of the county, city, or town may set by ordinance. In lieu of having the vehicle removed by towing or otherwise, or in lieu of causing the vehicle to be immobilized, the owner, operator, lessee or authorized agent of the premises on which the trespassing vehicle is parked may cause to have an authorized local government official or law-enforcement officer issue, on the premises, a notice of the violation of a parking ordinance or regulation created pursuant to § 46.2-1220 or § 46.2-1221 to the registered owner of the vehicle.

This section shall not apply to police, fire, or public health vehicles or where a vehicle, because of a wreck or other emergency, is parked or left temporarily on the property of another. The governing body of every county, city, and town may by ordinance set limits on fees and charges provided for in this section.

§ 46.2-1232. Localities may regulate removal or immobilization of trespassing vehicles.

A. The governing body of any county, city, or town may by ordinance regulate the removal of trespassing vehicles from property by or at the direction of the owner, operator, lessee, or authorized agent in charge of the property. *In the event that a vehicle is towed from one locality and stored in or released from a location in another locality, the local ordinance, if any, of the locality from which the vehicle was towed shall apply.*

B. No local ordinance adopted under authority of this section shall require that any towing and recovery business also operate as or provide services as a vehicle repair facility or body shop, filling station, or any business other than a towing and recovery business.

C. Any such local ordinance may also require towing and recovery operators to (i) obtain and retain photographs or other documentary evidence substantiating the reason for the removal; (ii) post signs at their main place of business and at any other location where towed vehicles may be reclaimed conspicuously indicating (a) the maximum charges allowed by local ordinance, if any, for all their fees for towing, recovery, and storage services and (b) the name and business telephone number of the local official, if any, responsible for handling consumer complaints; and (iii) obtain, at the time the vehicle is towed, the written authorization of the owner of the property from which the vehicle is towed, or his agent. Such written authorization, if required, shall be in addition to any written contract between the towing and recovery operator and the owner of the property or his agent. For the purposes of this subsection, "agent" shall not include any person who either (a) is related by blood or marriage to the towing and recovery operator or (b) has a financial interest in the towing and recovery operator's business.

§ 46.2-1233.1. Limitation on charges for towing and storage of certain vehicles.

A. Unless different limits are established by ordinance of the local governing body pursuant to § 46.2-1233, as to vehicles towed or removed from private property, no charges imposed for the towing, storage, and safekeeping of any passenger car removed, towed, or stored without the consent of its owner shall be in excess of the maximum charges provided for in this section. No hookup and initial towing fee shall exceed ~~eighty-five~~ ~~dollars~~ *$125*. For towing a vehicle between seven o'clock p.m. and eight o'clock a.m. or on any Saturday, Sunday, or holiday, an additional fee of ~~ten~~ ~~dollars~~ *no more than $25 per instance* may be charged~~.~~*; however, in no event shall more than two such fees be charged for towing any such vehicle.* No charge shall be made for storage and safekeeping for a period of twenty-four hours or less. Except for fees or charges imposed by this section or a local ordinance adopted pursuant to § 46.2-1233, no other fees or charges shall be imposed during the first twenty-four-hour period.

B. The governing body of any county, city, or town may by ordinance, with the advice of an advisory board established pursuant to § 46.2-1233.2, (i) provide that no towing and recovery business having custody of a vehicle towed without the consent of its owner impose storage charges for that vehicle for any period during which the owner of the vehicle was prevented from recovering the vehicle because the towing and recovery business was closed and (ii) place limits on the amount of fees charged by towing and recovery operators. Any such ordinance limiting fees shall also provide for periodic review of and timely adjustment of such limitations.

§ 46.2-1233.2. Advisory board.

Prior to adopting *or amending* any ordinance pursuant to § 46.2-1232 or § 46.2-1233, the local governing body shall appoint an advisory board to advise the governing body with regard to the appropriate provisions of the ordinance. ~~The~~ *Voting members of the* advisory board shall ~~include~~ *consist of an equal number of* representatives of local law-enforcement agencies *and representatives of licensed* towing and recovery operators, and *one member of* the general public. *Any such advisory board shall meet at least once per year at the call of the chairman of the advisory board, who shall be elected annually from among the voting members of the advisory board by a majority vote.*

§ 46.2-2100. 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.

"Bulk commodity" means any non-liquid, non-gaseous commodity shipped loose or in mass/aggregate and which in the loading and unloading thereof is ordinarily shoveled, scooped, forked, or mechanically conveyed or which is not in containers or in units of such size to permit piece by piece loading and unloading.

"Bulk property carrier" means any person, not herein exempted, who undertakes either directly or by lease, to transport exclusively bulk commodities, as defined, for compensation including for purposes of this section ~~for hire wrecker~~ *for-hire tow truck* operations.

"Certificate of public convenience and necessity" means a certificate issued by the Department to certain "household goods carriers" under this chapter.

"Constructive weight" means a measurement of seven pounds per cubic foot of properly loaded van space.

"Courier service" means a motor carrier that engages, directly or by lease, exclusively in the transportation of letters, envelopes, negotiable or nonnegotiable instruments, or other documents or papers for compensation.

"Department" means the Department of Motor Vehicles.

"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.

"Gross weight" means the weight of a truck after a shipment has been loaded.

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

"Household goods" means personal effects and property used or to be used in a dwelling, when a part of the equipment or supplies of such dwelling, and similar property if the transportation of such effects or property is (i) arranged and paid for by the householder, including transportation of the property from a factory or store when the property is purchased by the householder with intent to use it in his dwelling or (ii) arranged and paid for by another party.

"Household goods carrier" means a restricted common carrier who undertakes, whether directly or by a lease or other arrangement, to transport "household goods," as herein defined, by motor vehicle for compensation, on any highway in this Commonwealth, between two or more points in this Commonwealth, whether over regular or irregular routes.

"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 21 (§ 46.2-2100 et seq.) of this title, and/or (iii) proof of compliance with the insurance requirements of this chapter.

"Interstate" means the transportation of property between states.

"Intrastate" means the transportation of property solely within a state.

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

"Motor carrier" means any person who undertakes whether directly or by a lease, to transport property, including household goods, as defined by this chapter, for compensation over the highways of the Commonwealth.

"Motor vehicle" means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of property, but does not include any vehicle, locomotive or car operated exclusively on a rail or rails.

"Net weight" means the tare weight subtracted from the gross weight.

"Permit" means a permit issued by the Department authorizing the transportation of property, excluding household goods transported for a distance greater than 30 road miles.

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

"Property carrier" means any person, not herein exempted, who undertakes either directly or by a lease, to transport property for compensation.

"Restricted common carrier" means any person who undertakes, whether directly or by a lease or other arrangement, to transport household goods by motor vehicle for compensation whether over regular or irregular routes.

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

"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.

"Tare weight" means the weight of a truck before being loaded at a shipper's residence or place of business, including the pads, dollies, hand-trucks, ramps and other equipment normally used in the transportation of household goods shipments.

CHAPTER 28.

BOARD FOR TOWING AND RECOVERY OPERATORS.

§ 46.2-2800. Definitions.

Whenever used in this chapter, unless the context clearly indicates otherwise:

"Board" means the Board for Towing and Recovery Operators.

"Class A operator" means a towing and recovery business towing vehicles of an unlimited gross vehicle weight.

"Class B operator" means a towing and recovery business towing vehicles of a gross vehicle weight of 26,000 pounds or less.

"Operator" means a person licensed by the Board as a Class A or Class B operator.

"Towing and Recovery of Vehicles" means services offered by a towing and recovery operator.

"Towing and Recovery Operator" means any person offering services involving the use of a tow truck and services incidental to use of a tow truck.

§ 46.2-2801. The Board of Towing and Recovery Operators.

A. The Board of Towing and Recovery Operators is hereby created. The Board shall consist of 15 members as follows:

1. Two members appointed by the Governor, subject to confirmation by the General Assembly, one who shall be licensed as a Class A operator and one who shall be licensed as a Class B operator;

2. Four members appointed by the Speaker of the House of Delegates, one who shall be licensed as a Class A operator, two of whom shall be licensed as Class A or Class B operators, and one who shall be licensed as a Class B operator;

3. Three members appointed by the Senate Committee on Rules, one who shall be licensed as a Class A operator, one who shall be licensed as Class A or Class B operator, and one who shall be licensed as a Class B operator;

4. Three citizens of the Commonwealth appointed at-large, one appointed by the Governor, one appointed by the Speaker of the House of Delegates, and one appointed by the Senate Committee on Rules, all of whom shall have no direct or indirect interest, other than as consumers, in or relating to the towing and recovery industry;

5. The Commissioner of the Department of Motor Vehicles or his designee;

6. The Commissioner of Agriculture and Consumer Services or his designee; and

7. The Superintendent of the State Police or his designee.

All members shall be voting members.

B. Members shall serve for terms of four years, except that of those members initially appointed by the Governor, one shall be appointed for a one-year term and one for a two-year term. Of those members initially appointed by the Speaker of the House of Delegates, one shall be appointed for a four-year term, one for a three-year term, one for a two-year term, and one for a one-year term. Of those members initially appointed by the Senate Committee on Rules, one shall be appointed for a one-year term, one for a two-year term, and one for a three-year term.

C. Every member shall be a citizen of the United States and a resident of Virginia. Nominations may be made for each operator vacancy from a list of at least three names submitted to the Governor, the Speaker of the House of Delegates, and the Senate Committee on Rules by the Virginia Association of Towing and Recovery Operators and the Major Incident Heavy Recovery Operators Association. The Governor, the Speaker of the House of Delegates, and the Senate Committee on Rules may notify the associations promptly of any operator vacancy other than by expiration and like nominations may be made for the filling of the vacancy. In no case shall the Governor, the Speaker of the House of Delegates, or the Senate Committee on Rules be bound to make any appointment from among the nominations of the associations. Any member may be removed from the Board in the same manner as he was appointed. The members shall be at-large members and, insofar as practical, should reflect fair and equitable statewide representation. No member, other than the Commissioner of the Department of Motor Vehicles or his designee, the Commissioner of Agriculture and Consumer Services or his designee, and the Superintendent of the State Police or his designee, shall serve for more than two full successive terms. Vacancies shall be filled by appointment in the same manner as the original appointment and shall be for the unexpired term. Vacancies filled by appointment by the Governor shall be effective until 30 days after the next meeting of the ensuing General Assembly, and, if confirmed, thereafter for the remainder of the term. Any person appointed to fill a vacancy may serve two additional successive terms. The Commissioner of the Department of Motor Vehicles or his designee, the Commissioner of Agriculture and Consumer Services or his designee, and the Superintendent of the State Police or his designee shall be ex officio voting members.

D. The Board shall meet at least quarterly each year. Annually, the members of the Board shall elect from its membership a chairman who shall be a licensed Class A operator and a vice-chairman, each to serve for a one-year term. Eight members shall constitute a quorum.

E. The Board shall adopt a seal with the words "Board of Towing and Recovery Operators, Commonwealth of Virginia." The executive director of the Board shall have charge, care, and custody of the seal, and shall keep a record of all proceedings of the Board that shall be open to the public for inspection.

F. Members of the Board shall be reimbursed their actual and necessary expenses incurred in carrying out their duties, such reimbursement to be paid from the Towing and Recovery Operators Board Fund established pursuant to § 46.2-2804, subject to review and approval by the executive director and chairman of the Board.

§ 46.2-2802. Board to employ executive director.

The Board shall employ an executive director who shall serve at the pleasure of and report to the Board. He shall direct the affairs of the Board and keep records of all proceedings, transactions, communications, and official acts of the Board. He shall be custodian of all records of the Board and perform such duties as the Board may require. The executive director shall call a meeting of the Board at the direction of the chairman or upon written request of three or more Board members. The executive director, with approval of the Board, may employ such additional staff as needed. The annual salary of the executive director shall be no greater than Level II of the Executive Compensation Plan contained in the general appropriations act.

§ 46.2-2803. State Personnel and Public Procurement Acts not applicable.

A. The executive director and all staff employed by the Board shall be exempt from the Virginia Personnel Act (§ 2.2-2900 et seq.). Personnel actions under this exemption shall be taken without regard to race, sex, color, national origin, religion, age, handicap or political affiliation.

B. The Board and the Executive Director shall be exempt from the Virginia Public Procurement Act (§ 2.2-4300 et seq.).

§ 46.2-2804. Towing and Recovery Operators Board Fund; receipts; disbursements.

The Board of Towing and Recovery Operators Fund (the Fund) is established as a special fund in the state treasury. Except as otherwise provided in this chapter, all fees collected as provided in this chapter and by regulations promulgated by the Board, shall be paid into the state treasury immediately upon collection and credited to the Fund. Any interest income shall accrue to the Fund. All disbursements from the Fund shall be made by the State Treasurer upon warrants of the Comptroller issued upon vouchers signed by an authorized officer of the Board or the executive director as authorized by the Board.

§ 46.2-2805. General powers and duties of Board.

The powers and duties of the Board shall include, but not be limited to the following:

1. To establish the qualifications of applicants for licensure, provided that all qualifications shall be necessary to ensure competence and integrity;

2. To examine, or cause to be examined, the qualifications of each applicant for licensure, including the preparation, administration, and grading of examinations;

3. To license qualified applicants as Class A or Class B Operators;

4. To levy and collect fees for licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Board;

5. To levy on licensees special assessments necessary to cover expenses of the Board;

6. To revoke, suspend, or fail to renew a license for violation of this chapter or enumerated in regulations promulgated by the Board;

7. To receive complaints concerning the conduct of persons and businesses licensed by the Board and to take appropriate disciplinary action if warranted;

8. To enter into contracts necessary or convenient for carrying out the provisions of this chapter or the functions of the Board;

9. To establish committees of the Board, appoint persons to such committees, and to promulgate regulations establishing the responsibilities of these committees;

10. To establish means and procedures by which members or employees of the Board may attempt to mediate and resolve in an expedited manner, complaints filed against those licensed or otherwise regulated by the Board; and

11. To do all things necessary and convenient for carrying into effect provisions of this chapter or regulations promulgated by the Board.

§ 46.2-2806. Biennial report.

The Board shall submit a biennial report to the Governor and General Assembly on or before November 1 of each even-numbered year. The biennial report shall contain, at a minimum, the following information: (i) a summary of the Board's fiscal affairs, (ii) a description of the Board's activities, (iii) statistical information regarding the administrative hearings and decisions of the Board, and (iv) a general summary of all complaints received against licensees and the procedures used to resolve the complaints. However, through 2008 the Board shall issue such reports annually.

§ 46.2-2807. Powers with respect to hearings under this chapter.

The Board may, in hearings arising under this chapter, determine the place in the Commonwealth where they shall be held; subpoena witnesses; take depositions of witnesses residing outside the

Commonwealth in the manner provided for in civil actions in courts of record; pay these witnesses the fees and mileage for their attendance as is provided for witnesses in civil actions in courts of record; and administer oaths.

§ 46.2-2808. Suit to enjoin violations.

The Board, whenever it believes from evidence submitted to the Board that any person has been violating, is violating, or is about to violate any provision of this chapter, in addition to any other remedy, may bring an action in the name of the Commonwealth to enjoin any violation of this chapter.

§ 46.2-2809. Regulations.

The Board may promulgate regulations requiring persons licensed under this chapter to keep and maintain records reasonably required for the enforcement of provisions of this chapter, and any other regulations, not inconsistent with the provisions of this chapter, as it shall consider necessary for the effective administration and enforcement of this chapter. A copy of any regulation promulgated under this section shall be mailed to each licensee 30 days prior to its effective date.

§ 46.2-2810. Additional training.

The Board may promulgate regulations specifying additional training or conditions for individuals seeking licensure or renewal of licenses.

§ 46.2-2811. Penalties.

Except as otherwise provided in this chapter, any person violating any of the provisions of this chapter may be assessed a civil penalty by the Board. No such civil penalty shall exceed $1,000 for any single violation. Civil penalties collected under this chapter shall be deposited in the Transportation Trust Fund.

§ 46.2-2812. Licenses required.

On and after July 1, 2008, it shall be unlawful for any person to engage in business in the Commonwealth as a towing and recovery operator without first obtaining a license as a Class A or Class B operator provided in this chapter. Violation of any provision of this section shall constitute a Class 1 misdemeanor.

§ 46.2-2813. Application for license.

Application for license as a Class A or Class B operator under this chapter shall be made to the Board and contain such information as the Board shall require. The application shall be accompanied by the fee as required by the Board.

The Board shall require, in the application or otherwise, information relating to the grounds for refusing licenses, and to other pertinent matters requisite for the safeguarding of the public interest. All of these matters shall be considered by the Board in determining the fitness of the applicant to engage in the business for which he seeks a license.

§ 46.2-2814. Drivers to have tow truck driver authorization document.

The Board shall issue to tow truck drivers who meet such qualifications as the Board shall have established a document authorizing the holder to drive a tow truck. Such documents shall be valid for such period of time as the Board shall provide by regulation. The Board may also provide by regulation for the issuance of temporary tow truck driver authorization documents, valid for less than five years, to non-Virginia residents.

On and after July 1, 2008, no tow truck shall be operated in the Commonwealth by any person who does not have such tow truck driver authorization document. Such document shall be in addition to whatever driver's license or commercial driver's license is required for operation of the vehicle under Chapter 3 (§ 46.2-300 et seq.) of this title. No driver shall be deemed by the Board to be qualified to drive a tow truck unless he provides to the Board a written statement that he is employed by or engaged to be employed by the licensed operator and is not required to register as a sex offender as provided in § 9.1-901 or in a substantially similar law of any other state, the United States, or any foreign jurisdiction. The Board may charge a reasonable fee for the issuance of such document in an amount calculated to cover its actual and necessary expenses.

The Board shall require every applicant for a tow truck driver authorization document to submit to fingerprinting and provide personal descriptive information to be forwarded along with the applicant's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining a national criminal history record check regarding such applicant. The cost of the fingerprinting and criminal history records check shall be paid by the applicant.

The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no record exists, shall make a report to the Board. If an applicant is denied a tow truck driver authorization document because of the information appearing in his criminal history record, the Board shall notify the applicant that information obtained from the Central Criminal Records Exchange contributed to such denial. The information shall not be disseminated except as provided in this section.

§ 46.2-2815. Action on applications; hearing on denial.

The Board shall act on all applications for a Class A or Class B operator's license under this chapter within 60 days after receipt by either granting or refusing the application. Any applicant denied a license shall, on his written request filed within 30 days, be given a hearing at a time and place determined by the Board or a person designated by the Board. All hearings under this section shall be

public and shall be held promptly. The applicant may be represented by counsel.

§ 46.2-2816. License fees required by law; collection of license fees; payments from Fund.

The fee for each license year or part thereof shall be determined by the Board. All application and licensing fees provided for in this chapter shall be established and collected by the Board and paid into the state treasury and set aside as a special fund to meet the expenses of the Board.

§ 46.2-2817. Issuance, expiration, and renewal of licenses.

A. All licenses issued under this chapter shall be issued for a period of 12 consecutive months except, at the discretion of the Board; the periods may be adjusted as is necessary to distribute the licenses as equally as practicable on a monthly basis. The expiration date shall be the last day of the 12th month of validity or the last day of the designated month. Every license shall be renewed annually on application by the licensee and by payment of fees required by law, the renewal to take effect on the first day of the succeeding month.

B. Licenses issued under this chapter shall be deemed not to have expired if the renewal application and required fees as set forth in this subsection are received by the Board or postmarked not more than 30 days after the expiration date of such license or certificate of registration. Whenever the renewal application is received by the Board or postmarked no more than 30 days after the expiration date of such license or certificate of registration, the license fees shall be 150% of the fees provided for in regulations.

C. The Board may offer an optional multiyear license. When such option is offered and chosen by the licensee, all annual and 12-month fees due at the time of licensing shall be multiplied by the number of years or fraction thereof for which the license will be issued.

§ 46.2-2818. What constitutes towing and recovery.

Any person who in any way advertises himself as a towing and recovery operator or in any way conveys the impression that he is engaged in services of providing towing and recovery of vehicles shall be deemed to be engaged in towing and recovery services.

§ 46.2-2819. License to be displayed.

On and after July 1, 2008, every person engaged in towing and recovery services shall display his license in a conspicuous place in the principal office in which he operates.

§ 46.2-2820. Prohibited acts.

On and after July 1, 2008, it shall be unlawful for any person:

1. To engage in the towing and recovery of vehicles without holding a license as an operator issued by the Board;

2. To impersonate a licensed operator of a like or different name;

3. To do any act for which, if he were a licensed operator, could be revoked as provided by this chapter or regulations of the Board;

4. To publish or cause to be published in any manner an advertisement that is false, deceptive, or misleading, or violates regulations of the Board governing advertising by towing and recovery operators; or

5. To provide any towing and recovery services for vehicles of a gross vehicle weight over 26,000 pounds unless licensed as a Class A Operator.

§ 46.2-2821. Report of conviction or injunction to Board; revocation or suspension of license or registration.

It shall be the duty of the clerk of every circuit court in which any person is convicted of any violation of this chapter or enjoined from unlawfully engaging in towing and recovery services to report the same to the Board. The Board may thereupon suspend or revoke any license or registration held by the person so convicted or enjoined.

§ 46.2-2822. Examination.

The Board shall set the necessary standards to be attained in the examinations to entitle the candidate to receive a license as a Class A or Class B Operator.

Such examinations shall be given at times and offered electronically so as to make such examinations convenient and accessible to applicants.

The examination shall include laws and regulations governing the towing and recovery of vehicles and the proper and safe means by which such may be offered to the public.

The Board may accept appropriate national examinations in lieu of, in whole or part, an examination prescribed by the Board.

Those persons who own and operate a towing and recovery business on January 1, 2006, shall not be required to successfully complete an examination as a prerequisite for obtaining a license as an operator.

§ 46.2-2823. Qualifications of applicants.

An application for license as an Operator shall be in a form to be determined and approved by the Board.

The Board shall set forth in regulations those requirements for application for license as a Class A and Class B Operator.

§ 46.2-2824. License required.

On and after July 1, 2008, no person shall offer to engage in or engage in the towing and recovery of vehicles without a valid license from the Board.

§ 46.2-2825. Reprimand, revocation, and suspension.

The Board may revoke or suspend a license or reprimand the licensee for any of the following causes:

1. Fraud or deceit in the offering or delivering of towing and recovery services;

2. Conducting his business or offering services in such a manner as to endanger the health and welfare of the public;

3. Use of alcohol or drugs to the extent such use renders him unsafe to provide towing and recovery services;

4. Neglecting or refusing to display his license as an operator in a conspicuous place in the principal office in which he operated;

5. Neglecting to maintain on record at the licensed operator's principal office a list of all drivers in the employ of the operator;

6. Obtaining of any fee by fraud or misrepresentation;

7. Advertising that directly or indirectly deceives, misleads, or defrauds the public;

8. Advertising or offering services under a name other than one's own name as set forth on the operator's license;

9. Failure of the licensed operator to accept for payment cash, insurance company check, certified check, money order, at least one of two commonly used, nationally recognized credit cards, or additional methods of payment approved by the Board;

10. Failure to display at the licensed operator's principal office in a conspicuous place a listing of all towing, recovery, and processing fees for vehicles of 26,000 pounds gross vehicle weight or less;

11. Failure to have readily available, at the customer's request, the maximum fees normally charged by the licensed operator for basic services for towing and initial hookup of vehicles of 26,000 pounds gross vehicle weight or less;

12. Failure to provide at the consumer's request the phone number for which consumer complaints may be filed with the Board;

13. Knowingly charging excessive fees for towing, storage, or administrative services or charging fees for services not rendered;

14. Failure to maintain all towing records, which shall include itemized fees, for a period of one year from the date of service;

15. Willfully invoicing for payment any services not stipulated or otherwise incorporated in a contract for services rendered between the licensed operator and any locality or political subdivision of the Commonwealth that has established a local Towing Advisory Board pursuant to § 46.2-1233.2;

16. To employ any driver required to register as a sex offender as provided in § 9.1-901;

17. Removing or towing a trespassing vehicle, as provided in § 46.2-12341, or a vehicle towed or removed at the request of a law-enforcement officer to any location outside the Commonwealth;

18. To refuse at the operator's place of business to make change, up to $100, for the owner of the vehicle towed without the owner's consent if the owner pays in cash for charges for towing and storage of the vehicle;

19. Violating other standards of conduct as may be adopted by the Board through regulations;

20. Violating, assisting, inducing, or cooperating with others in violating any provisions of law related to the offering or delivery of towing and recovery services, including the provisions of this chapter, or of any regulations of the Board; or

21. Failure to provide the owner of a stolen vehicle written notice of his right under law to be reimbursed for towing and storage of his vehicle out of the state treasury from the appropriation for criminal charges as required in § 46.2-1209.

§ 46.2-2826. Public safety towing and recovery services.

The Board shall establish regulations required of Class A and Class B operators to provide public safety towing and recovery services. For the purposes of this section, "public safety towing and recovery services" shall be those towing and recovery and related services requested by a state or local law-enforcement agency. Such regulations shall establish minimum requirements, including qualifications, standards, necessary equipment, and public safety concerns necessary and appropriate to permit a Class A or Class B operator to provide public safety towing and recovery services. No operator shall provide public safety towing and recovery services unless they meet such criteria established by Board regulation applicable to public safety towing and recovery services. Upon submitting evidence to the Board of meeting such criteria, the Board shall maintain, on a timely basis, a list to be readily available to state and local law-enforcement agencies of Class A and Class B operators who meet the Board's criteria for providing public safety towing and recovery services.

§ 46.2-2827. Continuing education.

As a prerequisite to renewal of a license or registration, or reinstatement of a license or registration, the Board may establish continuing education requirements. Should such continuing education requirements be established, the Board may waive individual requirements in cases of certified illness or

undue hardship.

§ 46.2-2828. Conflicts with local ordinances.

In the event of a conflict between an action of the Board and any ordinance adopted by the governing body of any county, city, or town, specifically authorized by law for the purpose of regulating towing within such county, city, or town, the provisions of such local ordinance shall be controlling provided such provisions are no less stringent than requirements imposed by action of the Board.

The Virginia Department of Treasury shall authorize loans to the Board of Towing and Recovery Operators for all necessary costs for the implementation of this act for at least two full years and until the Board becomes self-funding.