

VIRGINIA ACTS OF ASSEMBLY -- 2008 SESSION

CHAPTER 190

An Act to amend and reenact §§ 46.2-341.4, 46.2-341.15, 46.2-341.18, 46.2-341.20:2, 46.2-341.20:3, 46.2-341.21, and 46.2-505 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 46.2-341.18:01, relating to commercial driver's licenses.

[H 1198]

Approved March 3, 2008

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-341.4, 46.2-341.15, 46.2-341.18, 46.2-341.20:2, 46.2-341.20:3, 46.2-341.21, and 46.2-505 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 46.2-341.18:01 as follows:

§ 46.2-341.4. Definitions.

The following definitions shall apply to this article, unless a different meaning is clearly required by the context:

"Commercial driver's license" means any driver's license issued to a person in accordance with the provisions of this article, or if the license is issued by another state, any license issued to a person in accordance with the federal Commercial Motor Vehicle Safety Act, which authorizes such person to drive a commercial motor vehicle of the class and type and with the restrictions indicated on the license.

"Commercial motor vehicle" means, except for those vehicles specifically excluded in this definition, every motor vehicle, vehicle or combination of vehicles used to transport passengers or property which either: (i) has a gross vehicle weight rating of 26,001 or more pounds; or (ii) has a gross combination weight rating of 26,001 or more pounds inclusive of a towed vehicle with a gross vehicle weight rating of more than 10,000 pounds; or (iii) is designed to transport 16 or more passengers including the driver; or (iv) is of any size and is used in the transportation of hazardous materials as defined in this section. Every such motor vehicle or combination of vehicles shall be considered a commercial motor vehicle whether or not it is used in a commercial or profit-making activity.

The following shall be excluded from the definition of commercial motor vehicle: any vehicle when used by an individual solely for his own personal purposes, such as personal recreational activities; or any vehicle which (i) is controlled and operated by a farmer, whether or not it is owned by the farmer, and which is used exclusively for farm use, as defined in § 46.2-698, (ii) is used to transport either agricultural products, farm machinery or farm supplies to or from a farm, (iii) is not used in the operation of a common or contract motor carrier, and (iv) is used within 150 miles of the farmer's farm; or any vehicle operated for military purposes by (a) active duty military personnel, (b) members of the military reserves, (c) members of the national guard on active duty, including personnel on full-time national guard duty, personnel on part-time national guard training, and national guard military technicians (civilians who are required to wear military uniforms), but not U.S. Reserve technicians, and (d) active duty U.S. Coast Guard personnel; or emergency equipment operated by a member of a firefighting, rescue, or emergency entity in the performance of his official duties.

"Commercial Motor Vehicle Safety Act" means the federal Commercial Motor Vehicle Safety Act of 1986, Title XII of Public Law 99-570, as amended.

"Conviction" means an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction, an unvacated forfeiture of bond, bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, the payment of a fine or court costs in lieu of trial, a violation of a condition of release without bail, regardless of whether the penalty is rebated, suspended or probated, or, for the purposes of alcohol or drug-related offenses involving the operation of a motor vehicle, a civil or an administrative determination of a violation. For the purposes of this definition, an administrative determination shall include an unvacated certification or finding by an administrative or authorized law-enforcement official that a person has violated a provision of law.

"Disqualification" means a prohibition against driving, operating or being in physical control of a commercial motor vehicle for a specified period of time, imposed by a court or a magistrate, or by an authorized administrative or law-enforcement official or body.

"Domicile" means a person's true, fixed and permanent home and principal residence, to which he intends to return whenever he is absent.

"Gross combination weight rating" means the value specified by the manufacturers of an articulated vehicle or combination of vehicles as the maximum loaded weight of such vehicles. In the absence of such a value specified by the manufacturer, *for law-enforcement purposes*, the gross combination weight rating shall be the greater of (i) the gross vehicle weight rating of the power units of the combination vehicle plus the total weight of the towed units, including any loads thereon, or (ii) the gross weight at

which the articulated vehicle or combination of vehicles is registered in its state of registration; *however, the registered gross weight shall not be applicable for determining the classification of an articulated vehicle or combination of vehicles for purposes of skills testing pursuant to § 46.2-341.14 or 46.2-341.16.*

"Gross vehicle weight rating" means the value specified by the manufacturer of the vehicle as the maximum loaded weight of a single vehicle. In the absence of such a value specified by the manufacturer, *for law-enforcement purposes*, the gross vehicle weight rating shall be *the greater of (i) the actual gross weight of the vehicle, including any load thereon; or (ii) the gross weight at which the vehicle is registered in its state of registration; however, the registered gross weight of the vehicle shall not be applicable for determining the classification of a vehicle for purposes of skills testing pursuant to § 46.2-341.14 or 46.2-341.16.*

"Hazardous materials" means materials designated to be hazardous in accordance with § 103 of the federal Hazardous Materials Transportation Act, as amended, (49 U.S.C. § 5101 et seq.) and which require placarding when transported by motor vehicle as provided in the federal Hazardous Materials Regulations (49 C.F.R. Part 172, Subpart F); it also includes any quantity of any material listed as a select agent or toxin in federal Public Health Service Regulations at 42 C.F.R. Part 73.

"Out-of-service order" or "out-of-service declaration" means an order by a judicial officer pursuant to § 46.2-341.26:2 or 46.2-341.26:3 or an order or declaration by an authorized law-enforcement officer under § 46.2-1001 or regulations promulgated pursuant to § 52-8.4 relating to Motor Carrier Safety, and including similar actions by authorized judicial officers or enforcement officers acting pursuant to similar laws of other states, the United States, the Canadian Provinces, Canada, Mexico, and localities within them, and also including actions by federal or other jurisdictions' officers pursuant to federal Motor Carrier Safety Regulations, that a driver, a commercial motor vehicle, or a motor carrier is out of service. Such order or declaration as to a driver means that the driver is prohibited from operating a commercial motor vehicle for the duration of the out-of-service period. Such order or declaration as to a vehicle means that such vehicle cannot be operated until the hazardous condition that resulted in the order or declaration has been removed and the vehicle has been cleared for further operation. Such order or declaration as to a motor carrier means that no vehicle may be operated for or on behalf of such carrier until the out-of-service order or declaration has been lifted. For purposes of this article, the provisions of the federal Motor Carrier Safety Regulations (49 C.F.R. Parts 390 through 397), including such regulations or any substantially similar regulations as may have been adopted by any state of the United States, the Provinces of Canada, Canada, Mexico, or any locality shall be considered laws similar to the Virginia laws referenced herein.

"Seasonal restricted commercial driver's license" means a commercial driver's license issued, under the authority of the waiver promulgated by the federal Department of Transportation (49 C.F.R. § 383.3) by Virginia or any other jurisdiction, to an individual who has not passed the knowledge or skills tests required of other commercial driver's license holders. This license authorizes operation of a commercial motor vehicle only on a seasonal basis, stated on the license, by a seasonal employee of a farm service business, within 150 miles of the place of business or the farm currently being served.

"State" means one of the 50 states of the United States or the District of Columbia.

"Tank vehicle" means any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank that is either permanently or temporarily attached to the vehicle or the chassis. Such vehicles include, but are not limited to, cargo tanks and portable tanks, as defined in 49 C.F.R. Part 171. However, this definition does not include portable tanks having a rated capacity under 1,000 gallons.

§ 46.2-341.15. Commercial driver's license document.

A. The commercial driver's license issued by the Department shall be identified as a Virginia commercial driver's license and shall include at least the following:

1. Full name, a Virginia address, and signature of the licensee;
2. A color photograph of the licensee;
3. A physical description of the licensee, including sex and height;
4. The licensee's date of birth and ~~Social Security~~ license number *that shall be assigned by the Department to the licensee and shall not be the same as the licensee's Social Security number;*
5. A designation of the class and type of commercial motor vehicle or vehicles which the licensee is authorized to drive, together with any restrictions; and
6. The date of license issuance and expiration.

B. The commercial driver's instruction permit shall be identified as such but shall in all other respects conform to subsection A of this section.

§ 46.2-341.18. Disqualification for certain offenses.

A. Except as otherwise provided in this section *and in § 46.2-341.18:01*, the Commissioner shall disqualify for a period of one year any person whose record, as maintained by the Department of Motor Vehicles, shows that he has been convicted of any of the following offenses, if such offense was committed while operating a commercial motor vehicle:

1. A violation of any provision of § 46.2-341.21 or a violation of any federal law or the law of

another jurisdiction substantially similar to § 46.2-341.21;

2. A violation of any provision of § 46.2-341.24 or a violation of any federal law or the law of another state substantially similar to § 46.2-341.24;

3. A violation of any provision of § 18.2-51.4 or 18.2-266 or a violation of a local ordinance paralleling or substantially similar to § 18.2-51.4 or 18.2-266, or a violation of any federal, state or local law or ordinance substantially similar to § 18.2-51.4 or 18.2-266;

4. Refusal to submit to a chemical test to determine the alcohol or drug content of the person's blood or breath in accordance with §§ 18.2-268.1 through 18.2-268.12 or this article, or the comparable laws of any other state or jurisdiction;

5. Failure of the driver whose vehicle is involved in an accident to stop and disclose his identity at the scene of the accident; or

6. Commission of any crime punishable as a felony in the commission of which a motor vehicle is used, other than a felony described in § 46.2-341.19.

B. The Commissioner shall disqualify any such person for a period of three years if any offense listed in subsection A of this section was committed while driving a commercial motor vehicle used in the transportation of hazardous materials required to be placarded under federal Hazardous Materials Regulations (49 C.F.R. Part 172, Subpart F).

C. Beginning September 30, 2005, the Commissioner shall disqualify for a period of one year any person whose record, as maintained by the Department, shows that he has been convicted of any of the following offenses committed while operating a noncommercial motor vehicle, provided that the person was, at the time of the offense, the holder of a commercial driver's license, and provided further that the offense was committed on or after September 30, 2005:

1. A violation of any provision of § 18.2-51.4, 18.2-266, or a violation of a local ordinance paralleling or substantially similar to § 18.2-51.4 or 18.2-266, or a violation of any federal, state, or local law or ordinance, or law of any other jurisdiction, substantially similar to § 18.2-51.4 or 18.2-266;

2. Refusal to submit to a chemical test to determine the alcohol or drug content of the person's blood or breath in accordance with §§ 18.2-268.1 through 18.2-268.12, or the comparable laws of any other state or jurisdiction;

3. Failure of the driver whose vehicle is involved in an accident to stop and disclose his identity at the scene of the accident; or

4. Commission of any crime punishable as a felony in the commission of which a motor vehicle is used.

D. The Commissioner shall disqualify for life any person whose record, as maintained by the Department, shows that he has been convicted of two or more violations of any of the offenses listed in subsection A or C of this section, if each offense arose from a separate incident ~~committed within a period of 10 years~~, except that if all of the offenses are for violation of an out-of-service order, the disqualification shall be for five years. If two or more such disqualification offenses arise from the same incident, the disqualification periods imposed pursuant to subsection A, B, or C of this section shall run consecutively and not concurrently.

E. The Department may issue, if permitted by federal law, regulations establishing guidelines, including conditions, under which a disqualification for life under subsection D may be reduced to a period of not less than 10 years.

§ 46.2-341.18:01. Disqualification for violation of out-of-service order; commercial motor vehicle designed to transport 16 or more passengers.

The Commissioner shall disqualify any person convicted of violating an out-of-service order while operating a commercial motor vehicle designed to transport 16 or more passengers, including the driver, for a period of two years. If the person is convicted of two or more violations of this section, and each offense arose from a separate incident committed within a period of 10 years, the disqualification shall be for five years.

§ 46.2-341.20:2. Employer penalty; railroad/highway grade crossing violations; out-of-service order violation.

Any employer who knowingly allows, permits, authorizes, or requires an employee to operate a commercial motor vehicle in violation of any law or regulation pertaining to railroad/highway grade crossings, or in violation of an out-of-service order, shall be subject to a civil penalty of not *less than* \$3,000 *nor* more than \$15,000 for each violation, which shall be imposed by the Commissioner upon receipt of notification from federal or state motor carrier officials that an employer may have violated this provision, and upon notice to the employer of the charge and a hearing conducted as provided under the Administrative Process Act (§ 2.2-4000 et seq.), to determine whether such employer has violated this provision. Civil penalties collected under this section shall be deposited into the Transportation Trust Fund.

§ 46.2-341.20:3. Disqualification for determination of imminent hazard.

If the Department receives notification from the Federal Motor Carrier Safety Administration that a driver determined to constitute an imminent hazard has been disqualified from operating a commercial motor vehicle pursuant to 49 C.F.R. Part 383.52, the Department shall make a notation of such

disqualification on the driver record maintained by the Department *and any disqualification imposed by the Department on the driver shall run concurrently with the period of disqualification imposed pursuant to 49 CFR 383.52.*

§ 46.2-341.21. Driving while disqualified; penalties.

No person whose privilege to drive a commercial motor vehicle has been suspended or revoked or who has been disqualified from operating a commercial motor vehicle or who has been ordered out of service, and who has been given notice of, or reasonably should know of the suspension, revocation, disqualification, or out-of-service order shall operate a commercial motor vehicle anywhere in the Commonwealth until the period of such suspension, revocation, disqualification, or out-of-service order has terminated, nor shall any person operate on any highway any vehicle that has been declared out of service until such time as the out-of-service declaration has been lifted.

Any person who violates this section shall, for the first offense, be guilty of a Class 2 misdemeanor, and for the second or any subsequent offense, be guilty of a Class 1 misdemeanor; however, if the offense is the violation of an out-of-service order, the minimum *mandatory* fine shall be ~~\$1,500~~ \$2,500 for any person so convicted; ~~and the maximum fine shall be \$5,000 of a first offense and \$5,000 for a person convicted of a second or subsequent offense.~~ Upon receipt of a record of a violation of this section, the Commissioner shall impose an additional disqualification in accordance with the provisions of §§ 46.2-341.18 *and 46.2-341.18:01.*

§ 46.2-505. Court may direct defendant to attend driver improvement clinic.

A. Any circuit or general district court or juvenile court of the Commonwealth, or any federal court, charged with the duty of hearing traffic cases for offenses committed in violation of any law of the Commonwealth, or any valid local ordinance, or any federal law regulating the movement or operation of a motor vehicle, may require any person found guilty, or in the case of a juvenile found not innocent, of a violation of any state law, local ordinance, or federal law, to attend a driver improvement clinic. The attendance requirement may be in lieu of or in addition to the penalties prescribed by § 46.2-113, the ordinance, or federal law. The court shall determine if a person is to receive safe driving points upon satisfactory completion of a driver improvement clinic conducted by the Department or by any business, organization, governmental entity or individual certified by the Department to provide driver improvement clinic instruction. In the absence of such notification, no safe driving points shall be awarded by the Department.

B. Notwithstanding the provisions of subsection A, no court shall, as a result of a person's attendance at a driver improvement clinic, reduce, dismiss, or defer the conviction of a person charged with any offense committed while operating a commercial motor vehicle as defined in the Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.) *or any holder of a commercial driver's license charged with any offense committed while operating a noncommercial motor vehicle.*

C. Persons required by the court to attend a driver improvement clinic shall notify the court if the driver improvement clinic has or has not been attended and satisfactorily completed, in compliance with the court order. Failure of the person to attend and satisfactorily complete a driver improvement clinic, in compliance with the court order, may be punished as contempt of such court.