

083541548

HOUSE BILL NO. 1012**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee on Transportation
on January 31, 2008)

(Patrons Prior to Substitute—Delegates Hugo and Marsden [HB 581])

A BILL to amend and reenact §§ 46.2-808.1, 46.2-1217, 46.2-2810, and 46.2-2814 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 46.2-2814.1, relating to tow trucks, towing and recovery business operators, and tow truck driver authorization documents.

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-808.1, 46.2-1217, 46.2-2810, and 46.2-2814 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 46.2-2814.1 as follows:

§ 46.2-808.1. Use of crossovers on controlled access highways; penalty.

It shall be unlawful for the driver of any vehicle other than an authorized vehicle to use or attempt to use any crossover posted for authorized vehicles only on any controlled access highway.

For the purposes of this section, "authorized vehicle" means (i) Department of Transportation vehicles, (ii) law-enforcement vehicles, (iii) emergency vehicles as defined in § 46.2-920, (iv) towing and recovery vehicles operating under the direction of ~~law-enforcement officers~~ *a law-enforcement agency*, (v) vehicles for which permits authorizing use of such crossovers have been issued by the Department of Transportation, and (vi) other vehicles operating in medical emergency situations.

Violation of any provision of this section shall constitute a traffic infraction punishable by a fine of no more than \$250.

§ 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

60 inspecting or towing the vehicle to another location for the purpose of repair, storage, or disposal. For
61 the purpose of this section, "owner of the vehicle" means a person who (i) has vested ownership,
62 dominion, or title to the vehicle; *or* (ii) is the authorized agent of the owner as defined in clause (i); *or*
63 (iii) is an employee, agent, or representative of an insurance company representing any party involved in
64 a collision that resulted in a police-requested tow; ~~or (iv) is a person subject to a security interest in~~
65 ~~another person, is entitled to the use and possession of the vehicle, including a lessee under a lease~~
66 ~~intended as security, but not including a lessee under a lease not intended as security who represents in~~
67 ~~writing that the insurance company has obtained the oral or written consent of the title owner or his~~
68 ~~agent or the lessee of the vehicle to obtain possession of the vehicle. Thereafter, if a towing and~~
69 ~~recovery business refuses to release the vehicle, future charges related to storage or handling of the~~
70 ~~vehicle by such towing and recovery business shall be suspended and no longer payable. It shall be~~
71 ~~unlawful for any towing and recovery business to refuse to release a vehicle to the owner as defined in~~
72 ~~this section upon tender of full payment for all lawful charges by cash, insurance company check,~~
73 ~~certified check, money order, at least one of two commonly used, nationally recognized credit cards, or~~
74 ~~additional methods of payment approved by the Board.~~

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

79 § 46.2-2810. Additional training.

80 The Board may promulgate regulations specifying additional training or conditions for individuals
81 seeking licensure or renewal of licenses *and for individuals seeking tow truck authorization documents.*

82 § 46.2-2814. Drivers to have tow truck driver authorization document.

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

88 ~~On and after July 1, 2008, no~~ No tow truck shall be operated in the Commonwealth by any person
89 who does not have such tow truck driver authorization document *unless the driver of the tow truck (i) is*
90 *towing a vehicle from an origin in another state and is passing through the Commonwealth to a*
91 *destination outside the Commonwealth, or (ii) is towing a vehicle from an origin in another state to a*
92 *destination in the Commonwealth, or (iii) is operating a tow truck that has not engaged a towed vehicle*
93 *by a physical, mechanical means that causes the towed vehicle to be moved or lifted off the ground.*
94 Such document shall be in addition to whatever driver's license or commercial driver's license is
95 required for operation of the vehicle under Chapter 3 (§ 46.2-300 et seq.) of this title. No driver shall be
96 deemed by the Board to be qualified to drive a tow truck unless he provides to the Board a written
97 statement that he is employed by or engaged to be employed by the licensed operator and is not
98 required to register as a sex offender as provided in § 9.1-901 or in a substantially similar law of any
99 other state, the United States, or any foreign jurisdiction. The Board may charge a reasonable fee for the
100 issuance of such document in an amount calculated to cover its actual and necessary expenses.

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

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

111 § 46.2-2814.1. Prior convictions not to abridge rights.

112 A. A person shall not be refused a license or a tow truck driver authorization document solely
113 because of a prior criminal conviction, unless the criminal conviction directly relates to the towing and
114 recovery of vehicles and safety of the users of the services offered by such license or holder of a tow
115 truck authorization document. However, the Board shall have the authority to refuse to issue a license
116 or tow truck driver authorization document if, based upon all the information available, including the
117 applicant's record of prior convictions, it finds that the applicant is unfit or unsuited to engage in
118 towing and recovery of vehicles.

119 B. In determining whether a criminal conviction directly relates to the towing and recovery of
120 vehicles, the Board shall consider the following criteria:

121 1. The nature and seriousness of the crime;

- 122 2. *The relationship of the crime to towing and recovery of vehicles;*
- 123 3. *The extent to which towing and recovery of vehicles might offer an opportunity to engage in*
- 124 *further criminal activity of the same type as that in which the person had been involved;*
- 125 4. *The relationship of the crime to the ability, capacity, or fitness required to perform the duties and*
- 126 *discharge the responsibilities of towing and recovery of vehicles;*
- 127 5. *The extent and nature of the person's past criminal activity;*
- 128 6. *The age of the person at the time of the commission of the crime;*
- 129 7. *The amount of time that has elapsed since the person's last involvement in the commission of a*
- 130 *crime;*
- 131 8. *The conduct and work activity of the person prior to and following the criminal activity; and*
- 132 9. *Evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following*
- 133 *release.*
- 134 C. *The Board shall consider the criminal information as contained in the applicant's state or*
- 135 *national criminal history in lieu of the applicant providing certified copies of such court records in*
- 136 *determining whether a criminal conviction directly relates to an occupation or profession or if an*
- 137 *applicant is unfit or unsuited to engage in towing and recovery of vehicles. The Board may request*
- 138 *additional information from the applicant in making such determination.*