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SENATE BILL NO. 691

Offered January 15, 2008

A *BILL to amend and reenact §§ 46.2-705, 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.*

Patron—Watkins

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-705, 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:

§ 46.2-705. Definitions.

For the purposes of this article, the following terms shall have the meanings respectively ascribed to them in this section:

"Motor vehicle" means a vehicle capable of self-propulsion which is either (i) required to be titled and licensed and for which a license fee is required to be paid by its owner, or (ii) owned by or assigned to a motor vehicle manufacturer, distributor, or dealer licensed in the Commonwealth.

"Insured motor vehicle" means a motor vehicle as to which there is bodily injury liability insurance and property damage liability insurance, both in the amounts specified in § 46.2-472, *and insurance providing coverage for towing, recovery, and storage fees*, issued by an insurance carrier authorized to do business in the Commonwealth, or as to which a bond has been given or cash or securities delivered in lieu of the insurance; or as to which the owner has qualified as a self-insurer in accordance with the provisions of § 46.2-368.

"Uninsured motor vehicle" means a motor vehicle as to which there is no such bodily injury liability insurance and property damage liability insurance, *and insurance providing coverage for towing, recovery, and storage fees*, or no such bond has been given or cash or securities delivered in lieu thereof, or the owner of which has not so qualified as a self-insurer.

§ 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 *or in providing a public safety towing and recovery service as defined in § 46.2-2826*, (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

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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; *or* (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.

§ 46.2-2810. Additional training.

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

§ 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~~ No tow truck shall be operated in the Commonwealth by any person who does not have such tow truck driver authorization document *unless the driver of the tow truck (i) is towing a vehicle from an origin in another state and is passing through the Commonwealth to a destination outside the Commonwealth, or (ii) is towing a vehicle from an origin in another state to a destination in the Commonwealth, or (iii) is operating a tow truck that has not engaged a towed vehicle by a physical, mechanical means that causes the towed vehicle to be moved or lifted off the ground.* 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.

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

126 § 46.2-2814.1. *Prior convictions not to abridge rights.*

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

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

- 136 1. The nature and seriousness of the crime;
- 137 2. The relationship of the crime to towing and recovery of vehicles;
- 138 3. The extent to which towing and recovery of vehicles might offer an opportunity to engage in
139 further criminal activity of the same type as that in which the person had been involved;
- 140 4. The relationship of the crime to the ability, capacity, or fitness required to perform the duties and
141 discharge the responsibilities of towing and recovery vehicles;
- 142 5. The extent and nature of the person's past criminal activity;
- 143 6. The age of the person at the time of the commission of the crime;
- 144 7. The amount of time that has elapsed since the person's last involvement in the commission of a
145 crime;
- 146 8. The conduct and work activity of the person prior to and following the criminal activity; and
- 147 9. Evidence of the person's rehabilitation of rehabilitative effort while incarcerated or following
148 release.

149 C. The Board shall consider the criminal information as contained in the applicant's state or
150 national criminal history in lieu of the applicant providing certified copies of such court records in
151 determining whether a criminal conviction directly relates to an occupation or profession or if an
152 applicant is unfit or unsuited to engage in towing and recovery of vehicles. The Board may request
153 additional information from the applicant in making such determination.