

VIRGINIA ACTS OF ASSEMBLY -- 2009 RECONVENED SESSION

CHAPTER 806

An Act to amend and reenact §§ 2.2-4024, 46.2-2800, 46.2-2801, 46.2-2805, 46.2-2806, 46.2-2809, 46.2-2814, 46.2-2816, 46.2-2821, 46.2-2825, and 46.2-2827 of the Code of Virginia, to amend the Code of Virginia by adding sections numbered 46.2-2825.1 through 46.2-2825.4, and to repeal §§ 46.2-2810, 46.2-2818, and 46.2-2824 of the Code of Virginia, relating to the Board of Towing and Recovery Operators.

[H 2169]

Approved April 8, 2009

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-4024, 46.2-2800, 46.2-2801, 46.2-2805, 46.2-2806, 46.2-2809, 46.2-2814, 46.2-2816, 46.2-2821, 46.2-2825, and 46.2-2827 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 46.2-2825.1 through 46.2-2825.4 as follows:

§ 2.2-4024. Hearing officers.

A. In all formal hearings conducted in accordance with § 2.2-4020, the hearing shall be presided over by a hearing officer selected from a list prepared by the Executive Secretary of the Supreme Court and maintained in the Office of the Executive Secretary of the Supreme Court. Parties to informal fact-finding proceedings conducted pursuant to § 2.2-4019 may agree at the outset of the proceeding to have a hearing officer preside at the proceeding, such agreement to be revoked only by mutual consent. The Executive Secretary may promulgate rules necessary for the administration of the hearing officer system and shall have the authority to establish the number of hearing officers necessary to preside over administrative hearings in the Commonwealth.

Prior to being included on the list, all hearing officers shall meet the following minimum standards:

1. Active membership in good standing in the Virginia State Bar;
2. Active practice of law for at least five years; and
3. Completion of a course of training approved by the Executive Secretary of the Supreme Court. In order to comply with the demonstrated requirements of the agency requesting a hearing officer, the Executive Secretary may require additional training before a hearing officer shall be assigned to a proceeding before that agency.

B. On request from the head of an agency, the Executive Secretary shall name a hearing officer from the list, selected on a rotation system administered by the Executive Secretary. Lists reflecting geographic preference and specialized training or knowledge shall be maintained by the Executive Secretary if an agency demonstrates the need.

C. A hearing officer shall voluntarily disqualify himself and withdraw from any case in which he cannot accord a fair and impartial hearing or consideration, or when required by the applicable rules governing the practice of law in the Commonwealth. Any party may request the disqualification of a hearing officer by filing an affidavit, prior to the taking of evidence at a hearing, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded, or the applicable rule of practice requiring disqualification.

The issue shall be determined not less than ten days prior to the hearing by the Executive Secretary of the Supreme Court.

D. Any hearing officer empowered by the agency to provide a recommendation or conclusion in a case decision matter shall render that recommendation or conclusion within ninety days from the date of the case decision proceeding or from a later date agreed to by the named party and the agency. If the hearing officer does not render a decision within ninety days, then the named party to the case decision may provide written notice to the hearing officer and the Executive Secretary of the Supreme Court that a decision is due. If no decision is made within thirty days from receipt by the hearing officer of the notice, then the Executive Secretary of the Supreme Court shall remove the hearing officer from the hearing officer list and report the hearing officer to the Virginia State Bar for possible disciplinary action, unless good cause is shown for the delay.

E. The Executive Secretary shall remove hearing officers from the list, upon a showing of cause after written notice and an opportunity for a hearing. When there is a failure by a hearing officer to render a decision as required by subsection D, the burden shall be on the hearing officer to show good cause for the delay. Decisions to remove a hearing officer may be reviewed by a request to the Executive Secretary for reconsideration, followed by judicial review in accordance with this chapter.

F. This section shall not apply to hearings conducted by (i) any commission or board where all of the members, or a quorum, are present; (ii) the Alcoholic Beverage Control Board, the Virginia Workers' Compensation Commission, the State Corporation Commission, the Virginia Employment Commission,

the Department of Motor Vehicles under Title 46.2 (§ 46.2-100 et seq.), § 58.1-2409, or Chapter 27 (§ 58.1-2700 et seq.) of Title 58.1, ~~or the Motor Vehicle Dealer Board under Chapter 15 (§ 46.2-1500 et seq.) of Title 46.2,~~ *or the Board of Towing and Recovery Operators under Chapter 28 (§ 46.2-2800 et seq.) of Title 46.2*; or (iii) any panel of a health regulatory board convened pursuant to § 54.1-2400, including any panel having members of a relevant advisory board to the Board of Medicine. All employees hired after July 1, 1986, pursuant to §§ 65.2-201 and 65.2-203 by the Virginia Workers' Compensation Commission to conduct hearings pursuant to its basic laws shall meet the minimum qualifications set forth in subsection A. Agency employees who are not licensed to practice law in the Commonwealth, and are presiding as hearing officers in proceedings pursuant to clause (ii) shall participate in periodic training courses.

G. Notwithstanding the exemptions of subsection A of § 2.2-4002, this article shall apply to hearing officers conducting hearings of the kind described in § 2.2-4020 for the Department of Game and Inland Fisheries, the Virginia Housing Development Authority, the Milk Commission and the Virginia Resources Authority pursuant to their basic laws.

§ 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" includes any person or business that in any way advertises as a towing and recovery operator or business or in any way conveys the impression that he or the business is engaged in services of providing towing and recovery of vehicles; such person or business shall be deemed to be engaged in towing and recovery services.

"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; this term does not include a franchised motor vehicle dealer as defined in § 46.2-1500 using a tow truck owned by a dealer when transporting a vehicle to or from a repair facility owned by the dealer when the dealer does not receive compensation from the vehicle owner for towing of the vehicle or when transporting a vehicle in which the dealer has an ownership or security interest.

§ 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~~ 17 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 *and shall be a representative of an automobile club as defined in § 13.1-400.1 which provides towing and recovery services*;

2. ~~Four~~ Five 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~~ two who shall be licensed as a Class B operator ~~operators~~, *one who shall be a representative of the Virginia Sheriff's Association and one who shall be a representative of local government*;

3. ~~Three~~ Four members appointed by the Senate Committee on Rules, one who shall be licensed as a Class A operator, ~~one~~ two who shall be licensed as Class A ~~or Class B operator operators~~, and one who shall be ~~licensed as a Class B operator~~ *a representative of the Virginia Trucking Association who has no direct or indirect interest, other than as a consumer, in or relating to the towing and recovery industry*;

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. 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 and a vice-chairman, each to serve for a one-year term. In even-numbered years, the chairman shall be a licensed Class A operator and the vice-chairman a licensed Class B operator. In odd-numbered years, the chairman shall be a licensed Class B operator and the vice-chairman a licensed Class A operator. The Superintendent of State Police or his designee shall be the chairman of the Board.~~ Eight Nine 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.

§ 46.2-2805. 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 *with prior approval of the Secretary of Public Safety*;
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. Annual report.

The Board shall submit a ~~biennial~~ *an annual* report to the Governor and ~~the~~ 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.~~

§ 46.2-2809. 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 *or delivered electronically to an address provided by each licensee* 30 days prior to its effective date. ~~No regulation of the Board pertaining to public safety towing and recovery services, as provided in § 46.2-2826, shall become effective prior to July 1, 2010.~~

§ 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 ~~January~~ July 1, 2009, 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 towing a vehicle from an origin in the Commonwealth to a destination in another state,* or (iv) 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.

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.

§ 46.2-2816. 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, *but shall not exceed 10 percent more than the amount sufficient to generate revenues adequate to cover the Board's costs of operation for the year.* 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.

§ 46.2-2821. 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 *who* 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 *within 30 days*. The Board may thereupon suspend or revoke any license or registration held by the person so convicted or enjoined. *Any person who fails to report such conviction to the Board within 30 days shall be subject to a fine assessed by the Board not to exceed \$1,000.*

§ 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 operates;
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 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, *except that those licensed operators who have an annual gross income of less than \$10,000 derived from the performance of towing and recovery services shall not be required to accept credit cards, other than when providing police-requested towing as defined in*

§ 46.2-1217, but shall be required to accept personal checks;

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 § 46.2-1231, 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.

§ 46.2-2825.1. *Suspension, revocation, and refusal to renew licenses or driver authorization documents; notice and hearing.*

No license or driver authorization document issued under this chapter shall be suspended or revoked, or renewal thereof refused, until a written copy of the complaint made has been furnished to the licensee or driver authorization document holder against whom the complaint is directed and a public hearing thereon has been held before a hearing officer designated by the Board. At least 10 days' written notice of the time and place of the hearing shall be given to the licensee or driver authorization document holder by registered mail addressed to his last known post office address or as shown on his license or driver authorization document or other record of information in possession of the Board. At the hearing, the licensee or driver authorization document holder shall have the right to be heard personally or by counsel. The hearing officer shall provide recommendations to the Board within 90 days of the conclusion of the hearing. After receiving the recommendations from the hearing officer, the Board may suspend, revoke, or refuse to renew the license or document in question. A Board member shall disqualify himself and withdraw from any case in which he cannot accord fair and impartial consideration. Any party may request the disqualification of any Board member by stating with particularity the grounds upon which it is claimed that fair and impartial consideration cannot be accorded. The remaining members of the Board shall determine whether the individual should be disqualified. Immediate notice of any suspension, revocation, or refusal shall be given to the licensee or driver authorization document holder by registered mail addressed to his last known post office address or as shown on his license or driver authorization document or other record of information in possession of the Board.

§ 46.2-2825.2. *Appeals from action of the Board.*

Any person aggrieved by the action of the Board in refusing to grant or renew a license or driver authorization document issued under this chapter, or by any other action of the Board that is alleged to be improper, unreasonable, or unlawful under the provisions of this chapter, shall be entitled to judicial review in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

§ 46.2-2825.3. *Appeals to Court of Appeals; bond.*

Either party may appeal from the decision of the court under § 46.2-2825.2 to the Court of Appeals. These appeals shall be taken and prosecuted in the same manner and with like effect as is provided by law in other cases appealed as a matter of right to the Court of Appeals.

§ 46.2-2825.4. *Equitable remedies not impaired.*

The remedy at law provided by §§ 46.2-2825.2 and 46.2-2825.3 shall not in any manner impair the right to applicable equitable relief. That right to equitable relief is hereby preserved, notwithstanding the provisions of §§ 46.2-2825.2 and 46.2-2825.3.

§ 46.2-2827. *Continuing education.*

As a prerequisite to renewal of a license or registration, or reinstatement of a license or registration,

~~the~~ The Board may establish *incentives for participating in continuing education requirements courses offered by the Board. Such continuing education courses shall be voluntary and at no cost to any participant issued a license or driver authorization document offered by the Board.* Should such continuing education requirements be established, the Board may waive individual requirements in cases of certified illness or undue hardship.

2. Those positions on the Board not affected by this Act shall remain valid for the term of their appointment. The Class B operator position appointed by the Governor whose term expires on June 30, 2011, shall be terminated upon the effective date of this Act and be replaced by a Class B operator who is representative of an automobile club defined in § 13.1-400.1, which provides towing and recovery services. The Class A or B operator position appointed by the Speaker whose term expires on June 30, 2009, shall be terminated upon the effective date of this Act. The Class A or B operator position appointed by the Senate Committee on Rules whose term expires on June 30, 2012, shall be terminated upon the effective date of this Act and be replaced by a Class B operator.

3. That §§ 46.2-2810, 46.2-2818, and 46.2-2824 of the Code of Virginia are repealed.