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HOUSE BILL NO. 2169**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee on Transportation
on February 5, 2009)

(Patron Prior to Substitute—Delegate Abbitt)

A BILL to amend and reenact §§ 46.2-2800, 46.2-2801, 46.2-2802, 46.2-2805, 46.2-2806, 46.2-2809, 46.2-2812, 46.2-2814, 46.2-2816, 46.2-2817, 46.2-2819, 46.2-2820, 46.2-2821, 46.2-2822, 46.2-2823, 46.2-2825, 46.2-2826, and 46.2-2827 46.2-2920 of the Code of Virginia, 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.

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-2800, 46.2-2801, 46.2-2802, 46.2-2805, 46.2-2806, 46.2-2809, 46.2-2812, 46.2-2814, 46.2-2816, 46.2-2817, 46.2-2819, 46.2-2820, 46.2-2821, 46.2-2822, 46.2-2823, 46.2-2825, 46.2-2826, 46.2-2827, and 46.2-2920 of the Code of Virginia are amended and reenacted as follows:

§ 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 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 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 three~~ who shall be licensed as a Class B operator, *one of whom shall be an automobile club as defined in § 13.1-400.1;*

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 two~~ 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.

60 C. Every member shall be a citizen of the United States and a resident of Virginia. Any member
61 may be removed from the Board in the same manner as he was appointed. The members shall be
62 at-large members and, insofar as practical, should reflect fair and equitable statewide representation. No
63 member, other than the Commissioner of the Department of Motor Vehicles or his designee, the
64 Commissioner of Agriculture and Consumer Services or his designee, and the Superintendent of the
65 State Police or his designee, shall serve for more than two full successive terms. Vacancies shall be
66 filled by appointment in the same manner as the original appointment and shall be for the unexpired
67 term. Vacancies filled by appointment by the Governor shall be effective until 30 days after the next
68 meeting of the ensuing General Assembly, and, if confirmed, thereafter for the remainder of the term.
69 Any person appointed to fill a vacancy may serve two additional successive terms. The Commissioner of
70 the Department of Motor Vehicles or his designee, the Commissioner of Agriculture and Consumer
71 Services or his designee, and the Superintendent of the State Police or his designee shall be ex officio
72 voting members.

73 D. The Board shall meet at least quarterly each year. Annually, the members of the Board shall elect
74 from its membership a chairman and a vice-chairman, each to serve for a one-year term. In
75 even-numbered years, the chairman shall be a licensed Class A operator and the vice-chairman a
76 licensed Class B operator. In odd-numbered years, the chairman shall be a licensed Class B operator and
77 the vice-chairman a licensed Class A operator. Eight members shall constitute a quorum.

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

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

86 § 46.2-2802. Board to employ executive director.

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

95 § 46.2-2805. General powers and duties of Board.

96 The ~~powers and duties of the Board shall include~~ *advise the Superintendent and the Department of*
97 *State Police on matters relating to towing and recovery businesses and their operation*, but not be
98 limited to the following:

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

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

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

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

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

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

109 7. 6. To receive complaints concerning the conduct of persons and businesses licensed by the Board
110 and to take appropriate disciplinary action if warranted;

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

113 9. 7. To establish committees of the Board, appoint persons to such committees, and to promulgate
114 regulations establishing the responsibilities of these committees;

115 10. 8. To establish means and procedures by which members or employees of the Board may attempt
116 to mediate and resolve in an expedited manner, complaints filed against those licensed or otherwise
117 regulated by the Board; and

118 11. 9. To do all things necessary and convenient for carrying into effect provisions of this chapter or
119 regulations promulgated by the Board.

120 § 46.2-2806. Annual report.

121 The Board shall submit a ~~biennial~~ *an annual* report to the Governor ~~and, the General Assembly, and~~

the Superintendent of the Department of State Police 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 Superintendent~~ 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~~ 60 days prior to its effective date. No regulation of the ~~Board Superintendent~~ pertaining to public safety towing and recovery services, as provided in § 46.2-2826, shall become effective prior to July 1, 2010.

§ 46.2-2812. Licenses required.

On and after ~~January~~ July 1, 2009, 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 as provided in this chapter. Any violation of any provision of this section on or after ~~January~~ July 1, 2009, shall constitute a Class 1 misdemeanor.

§ 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 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 an 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.

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

A. All licenses issued under this chapter shall be issued for a period of ~~42 consecutive months~~ *three years* 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 ~~42th~~ *36th* 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

183 and required fees as set forth in this subsection are received by the Board or postmarked not more than
184 30 days after the expiration date of such license or certificate of registration. Whenever the renewal
185 application is received by the Board or postmarked no more than 30 days after the expiration date of
186 such license or certificate of registration, the license fees shall be 150% of the fees provided for in
187 regulations.

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

191 § 46.2-2819. License to be displayed.

192 On and after ~~January~~ July 1, 2009, every person engaged in towing and recovery services shall
193 display his license in a conspicuous place in the principal office in which he operates.

194 § 46.2-2820. Prohibited acts.

195 On and after ~~January~~ July 1, 2009, it shall be unlawful for any person:

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

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

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

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

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

206 § 46.2-2821. Report of conviction or injunction to Board; revocation or suspension of license or
207 registration.

208 It shall be the duty of ~~the clerk of every circuit court in which~~ any person *who* is convicted of any
209 violation of this chapter or enjoined from unlawfully engaging in towing and recovery services to report
210 the same to the Board *within 30 days*. The Board may thereupon suspend or revoke any license or
211 registration held by the person so convicted or enjoined.

212 § 46.2-2822. Examination.

213 The ~~Board~~ *Superintendent of the Department of State Police* shall set the necessary standards to be
214 attained in the examinations to entitle the candidate to receive a license as a Class A or Class B
215 operator.

216 Such examinations ~~shall~~ *may* be given at times and offered electronically so as to make such
217 examinations convenient and accessible to applicants, *as the Superintendent of the Department of State*
218 *Police shall, by regulation, provide.*

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

221 The ~~Board~~ *Superintendent of the Department of State Police* may accept appropriate national
222 examinations in lieu of, in whole or part, an examination prescribed by the ~~Board~~ *Superintendent*.

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

225 § 46.2-2823. Qualifications of applicants.

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

228 The Board shall set forth in regulations those requirements for application for a license as a Class A
229 and Class B operator. *Such requirements shall be limited to those incidental to performing towing*
230 *services or offering towing and recovery services.*

231 § 46.2-2825. Reprimand, revocation, and suspension.

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

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

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

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

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

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

243 6. Obtaining any fee by fraud or misrepresentation;

244 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, *except for those who have an annual gross income of less than \$10,000 derived from performance of towing and recovery services*, 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 § 46.2-1231, 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.

§ 46.2-2826. Public safety towing and recovery services; separate regulatory scheme not permitted.

The ~~Board~~ *Superintendent* 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.

The provisions of this section shall not apply to persons who owned and operated a towing and recovery business on January 1, 2006.

2. That the provisions of this act shall not affect the term of any member of the Board of Towing and Recovery Operators appointed prior to the effective date of this act.

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