

093639400

HOUSE BILL NO. 2169**FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by Delegate Abbitt
on February 9, 2009)

(Patron Prior to Substitute—Delegate Abbitt)

A BILL to amend and reenact §§ 46.2-2800, 46.2-2801, 46.2-2805, 46.2-2806, 46.2-2812, 46.2-2814, 46.2-2816, 46.2-2819, 46.2-2820, 46.2-2821, 46.2-2823, 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.

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-2800, 46.2-2801, 46.2-2805, 46.2-2806, 46.2-2812, 46.2-2814, 46.2-2816, 46.2-2819, 46.2-2820, 46.2-2821, 46.2-2823, 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:

§ 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 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, one who is licensed as either a Class A or Class B operator, with annual rotation between the two Classes, and one of who shall be a representative of the Virginia Sheriff's Association;*

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 who shall be licensed as a Class B operator *a representative of the Virginia Trucking Association;*

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, *except for that member appointed by the Speaker of the House of Delegates, that alternates between Class A and Class B operators, who shall be appointed to a one-year term.* Of those members initially appointed by the

60 Speaker of the House of Delegates, one shall be appointed for a four-year term, one for a three-year
61 term, one for a two-year term, and one for a one-year term. Of those members initially appointed by the
62 Senate Committee on Rules, one shall be appointed for a one-year term, one for a two-year term, and
63 one for a three-year term.

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

77 D. The Board shall meet at least quarterly each year. ~~Annually, the members of the Board shall elect~~
78 ~~from its membership a chairman and a vice-chairman, each to serve for a one-year term. In~~
79 ~~even-numbered years, the chairman shall be a licensed Class A operator and the vice-chairman a~~
80 ~~licensed Class B operator. In odd-numbered years, the chairman shall be a licensed Class B operator and~~
81 ~~the vice-chairman a licensed Class A operator. The Superintendent of State Police or his designee shall~~
82 ~~be the chairman of the Board.~~ Eight members shall constitute a quorum.

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

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

91 § 46.2-2805. General powers and duties of Board.

92 The powers and duties of the Board shall include, but not be limited to the following:

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

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

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

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

100 5. To levy on licensees special assessments necessary to cover expenses of the Board *with prior*
101 *approval of the Secretary of Transportation*;

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

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

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

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

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

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

115 § 46.2-2806. Annual report.

116 The Board shall submit a ~~biennial~~ *an annual* report to the Governor ~~and, the General Assembly, and~~
117 ~~the Superintendent of the Department of State Police~~ on or before November 1 of each ~~even-numbered~~
118 year. The ~~biennial~~ report shall contain, at a minimum, the following information: (i) a summary of the
119 Board's fiscal affairs, (ii) a description of the Board's activities, (iii) statistical information regarding the
120 administrative hearings and decisions of the Board, and (iv) a general summary of all complaints
121 received against licensees and the procedures used to resolve the complaints. ~~However, through 2008 the~~

Board shall issue such reports annually.

§ 46.2-2812. Licenses required.

On and after January 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 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 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.

§ 46.2-2819. License to be displayed.

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

§ 46.2-2820. Prohibited acts.

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

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

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

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

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

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

§ 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.

183 § 46.2-2823. Qualifications of applicants.

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

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

189 § 46.2-2825. Reprimand, revocation, and suspension.

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

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

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

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

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

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

201 6. Obtaining any fee by fraud or misrepresentation;

202 7. Advertising that directly or indirectly deceives, misleads, or defrauds the public;

203 8. Advertising or offering services under a name other than one's own name as set forth on the
204 operator's license;

205 9. Failure of the licensed operator to accept for payment cash, insurance company check, certified
206 check, money order, at least one of two commonly used, nationally recognized credit cards, or additional
207 methods of payment approved by the Board, *except that those licensed operators who have an annual*
208 *gross income of less than \$10,000 derived from the performance of towing and recovery services shall*
209 *not be required to accept credit cards;*

210 10. Failure to display at the licensed operator's principal office in a conspicuous place a listing of all
211 towing, recovery, and processing fees for vehicles ~~of 26,000 pounds gross vehicle weight or less;~~

212 11. Failure to have readily available, at the customer's request, the maximum fees normally charged
213 by the licensed operator for basic services for towing and initial hookup of vehicles ~~of 26,000 pounds~~
214 ~~gross vehicle weight or less;~~

215 12. Failure to provide at the consumer's request the phone number for which consumer complaints
216 may be filed with the Board;

217 13. Knowingly charging excessive fees for towing, storage, or administrative services or charging
218 fees for services not rendered;

219 14. Failure to maintain all towing records, which shall include itemized fees, for a period of one year
220 from the date of service;

221 15. Willfully invoicing for payment any services not stipulated or otherwise incorporated in a
222 contract for services rendered between the licensed operator and any locality or political subdivision of
223 the Commonwealth ~~that has established a local Towing Advisory Board pursuant to § 46.2-1233.2;~~

224 16. To employ any driver required to register as a sex offender as provided in § 9.1-901;

225 17. Removing or towing a trespassing vehicle, as provided in § 46.2-1231, or a vehicle towed or
226 removed at the request of a law-enforcement officer to any location outside the Commonwealth;

227 18. To refuse at the operator's place of business to make change, up to \$100, for the owner of the
228 vehicle towed without the owner's consent if the owner pays in cash for charges for towing and storage
229 of the vehicle;

230 19. Violating other standards of conduct as may be adopted by the Board through regulations;

231 20. Violating, assisting, inducing, or cooperating with others in violating any provisions of law
232 related to the offering or delivery of towing and recovery services, including the provisions of this
233 chapter, or of any regulations of the Board; or

234 21. Failure to provide the owner of a stolen vehicle written notice of his right under law to be
235 reimbursed for towing and storage of his vehicle out of the state treasury from the appropriation for
236 criminal charges as required in § 46.2-1209.

237 § 46.2-2825.1. *Suspension, revocation, and refusal to renew licenses or driver authorization*
238 *documents; notice and hearing.*

239 *No license or driver authorization document issued under this chapter shall be suspended or revoked,*
240 *or renewal thereof refused, until a written copy of the complaint made has been furnished to the*
241 *licensee or driver authorization document holder against whom the complaint is directed and a public*
242 *hearing thereon has been held before a hearing officer designated by the Board. At least ten days'*
243 *written notice of the time and place of the hearing shall be given to the licensee or driver authorization*
244 *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 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.