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**HOUSE BILL NO. 2497**

Offered January 21, 2011

A *BILL to amend and reenact §§ 2.2-4024 and 46.2-1217 of the Code of Virginia and to repeal Chapter 28 (§§ 46.2-2800 through 46.2-2828) of Title 46.2 of the Code of Virginia, relating to the Board of Towing and Recovery Operators.*

Patron—Barlow

Referred to Committee on General Laws

**Be it enacted by the General Assembly of Virginia:****1. That §§ 2.2-4024 and 46.2-1217 of the Code of Virginia are amended and reenacted 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

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

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

71 § 46.2-1217. Local governing body may regulate certain towing.

72 The governing body of any county, city, or town by ordinance may regulate services rendered  
73 pursuant to police towing requests by any business engaged in the towing or storage of unattended,  
74 abandoned, or immobile vehicles. The ordinance may include delineation of service areas for towing  
75 services, the limitation of the number of persons engaged in towing services in any area, including the  
76 creation of one or more exclusive service areas, and the specification of equipment to be used for  
77 providing towing service. The governing body of any county, city, or town may contract for services  
78 rendered pursuant to a police towing request with one or more businesses engaged in the towing or  
79 storage of unattended, abandoned, or immobile vehicles. The contract may specify the fees or charges to  
80 be paid by the owner or operator of a towed vehicle to the person undertaking its towing or storage and  
81 may prescribe the geographical area to be served by each person providing towing services. The county,  
82 city, or town may establish criteria for eligibility of persons to enter into towing services contracts and,  
83 in its discretion, may itself provide exclusive towing and storage service for police-requested towing of  
84 unattended, abandoned, or immobile vehicles. Such criteria shall, for drivers of tow trucks and towing  
85 and recovery operators, be no less restrictive than those established pursuant to Chapter 28 (§ 46.2-2800  
86 et seq.) of this title and regulations adopted pursuant thereto.

87 Prior to adopting an ordinance or entering into a contract pursuant to this section, the local governing  
88 body shall appoint an advisory board to advise the governing body with regard to the appropriate  
89 provisions of the ordinance or terms of the contract. The advisory board shall include representatives of  
90 local law-enforcement agencies, towing and recovery operators, and the general public.

91 "Police-requested towing" or "police towing request," as used in this section, includes all requests  
92 made by a law-enforcement officer of the county, city, or town or by a State Police officer within the  
93 county, city, or town pursuant to this article or Article 2 (§ 46.2-1209 et seq.) of this chapter and towing  
94 requests made by a law-enforcement officer at the request of the owner or operator of an unattended,  
95 abandoned, or immobile vehicle, when no specific service provider is requested by such owner or  
96 operator.

97 If an unattended, abandoned, or immobile vehicle is located so as to impede the free flow of traffic  
98 on a highway declared by resolution of the Commonwealth Transportation Board to be a portion of the  
99 interstate highway system and a law-enforcement officer determines, in his discretion, that the business  
100 or businesses authorized to undertake the towing or storage of the vehicle pursuant to an ordinance or  
101 contract adopted pursuant to this section cannot respond in a timely manner, the law-enforcement officer  
102 may request towing or storage service from a towing or storage business other than those authorized by  
103 such ordinance or contract.

104 If an unattended, abandoned, or immobile vehicle is towed as the result of a police-towing request,  
105 the owner or person having control of the business or property to which the vehicle is towed shall allow  
106 the owner of the vehicle or any other towing and recovery business, upon presentation of a written  
107 request therefor from the owner of the vehicle, to have access to the vehicle for the purpose of  
108 inspecting or towing the vehicle to another location for the purpose of repair, storage, or disposal. For  
109 the purpose of this section, "owner of the vehicle" means a person who (i) has vested ownership,  
110 dominion, or title to the vehicle; (ii) is the authorized agent of the owner as defined in clause (i); or (iii)  
111 is an employee, agent, or representative of an insurance company representing any party involved in a  
112 collision that resulted in a police-requested tow who represents in writing that the insurance company  
113 has obtained the oral or written consent of the title owner or his agent or the lessee of the vehicle to  
114 obtain possession of the vehicle. It shall be unlawful for any towing and recovery business to refuse to  
115 release a vehicle to the owner as defined in this section upon tender of full payment for all lawful  
116 charges by cash, insurance company check, certified check, money order, at least one of two commonly  
117 used, nationally recognized credit cards, or additional methods of payment approved by the  
118 Commonwealth Transportation Board. Thereafter, if a towing and recovery business refuses to release  
119 the vehicle, future charges related to storage or handling of the vehicle by such towing and recovery  
120 business shall be suspended and no longer payable.

121 The vehicle owner who has vested ownership, dominion, or title to the vehicle shall indemnify and  
122 hold harmless the towing and recovery operator from any and all liability for releasing the vehicle to  
123 any vehicle owner as defined in this section for inspecting or towing the vehicle to another location for  
124 the purpose of repair, storage, or disposal.  
125 2. That Chapter 28 (§§ 46.2-2800 through 46.2-2828) of Title 46.2 of the Code of Virginia is  
126 repealed.  
127 3. That the regulations of the Board of Towing and Recovery Operators promulgated pursuant to  
128 Chapter 28 of Title 46.2 of the Code of Virginia shall have no effect.