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HOUSE BILL NO. 721**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee on Transportation
on February 9, 2012)

(Patron Prior to Substitute—Delegate Yancey)

A BILL to amend and reenact §§ 2.2-4024, 46.2-1206, and 46.2-1217 of the Code of Virginia, to amend the Code of Virginia by adding in Chapter 1 of Title 46.2 sections numbered 46.2-116 and 46.2-117, and to repeal Chapter 28 (§§ 46.2-2800 through 46.2-2828) of Title 46.2 of the Code of Virginia, relating to towing and recovery operators; penalty.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-4024, 46.2-1206, and 46.2-1217 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 1 of Title 46.2 sections numbered 46.2-117 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

60 (§ 58.1-2700 et seq.) of Title 58.1, *or* the Motor Vehicle Dealer Board under Chapter 15 (§ 46.2-1500 et
61 seq.) of Title 46.2; ~~or the Board of Towing and Recovery Operators under Chapter 28 (§ 46.2-2800 et~~
62 ~~seq.) of Title 46.2;~~ or (iii) any panel of a health regulatory board convened pursuant to § 54.1-2400,
63 including any panel having members of a relevant advisory board to the Board of Medicine. All
64 employees hired after July 1, 1986, pursuant to §§ 65.2-201 and 65.2-203 by the Virginia Workers'
65 Compensation Commission to conduct hearings pursuant to its basic laws shall meet the minimum
66 qualifications set forth in subsection A. Agency employees who are not licensed to practice law in the
67 Commonwealth, and are presiding as hearing officers in proceedings pursuant to clause (ii) shall
68 participate in periodic training courses.

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

73 § 46.2-116. *License from Department of Criminal Justice Services required for tow truck drivers;*
74 *penalty.*

75 *On and after January 1, 2013, no person shall drive any tow truck as defined in § 46.2-100 without*
76 *having obtained from the Department of Criminal Justice Services a tow truck driver's license, provided*
77 *that this requirement shall not apply to any holder of a tow truck driver authorization document issued*
78 *pursuant to former § 46.2-2814, until the expiration date of such document. Every applicant for an*
79 *initial and renewal license pursuant to this section shall submit his license application, fingerprints, and*
80 *personal descriptive information to the Department of Criminal Justice Services and a nonrefundable*
81 *application fee of \$100. The Department of Criminal Justice Services shall forward the personal*
82 *descriptive information along with the applicant's fingerprints through the Central Criminal Records*
83 *Exchange to the Federal Bureau of Investigation for the purpose of obtaining a national criminal*
84 *history record check regarding such applicant. The cost of the fingerprinting and criminal history*
85 *records check shall be paid by the applicant.*

86 *The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that*
87 *no record exists, shall make a report to the Department of Criminal Justice Services. If an applicant is*
88 *denied a tow truck driver's license because of the information appearing in his criminal history record,*
89 *the Department of Criminal Justice Services shall notify the applicant that information obtained from the*
90 *Central Criminal Records Exchange contributed to such denial. The information shall not be*
91 *disseminated except as provided in this section.*

92 *No such license shall be issued to any person who (i) is required to register as a sex offender as*
93 *provided in § 9.1-901 or in a substantially similar law of any other state, the United States, or any*
94 *foreign jurisdiction; (ii) has been convicted of a violent crime as defined in subsection C of § 17.1-805;*
95 *or (iii) has been convicted of any crime involving the driving of a tow truck, including drug or alcohol*
96 *offenses, but not traffic infraction convictions. Any person licensed pursuant to this section shall report*
97 *to the Department of Criminal Justice Services within 10 days of conviction any convictions for felonies*
98 *or misdemeanors that occur while he is licensed as provided in this section.*

99 *Driving of a tow truck by any person to whom no license shall have been issued as provided in this*
100 *section shall constitute a Class 3 misdemeanor. The driver of any tow truck to whom a license shall*
101 *have been issued by the Department of Criminal Justice Services as provided in this section shall have*
102 *such license in his possession whenever driving a tow truck on the highways.*

103 *Licenses issued by the Department of Criminal Justice Services pursuant to this section shall be valid*
104 *for a period not to exceed 24 months unless such license is revoked or suspended by the Department of*
105 *Criminal Justice Services. The Virginia Department of Consumer Services may collect all fees and costs*
106 *incurred in the conviction of anyone engaged in the towing and recovery business that has violated any*
107 *part of § 46.2-1231 or 46.2-1233.1.*

108 § 46.2-117. *Reprimand, revocation, and suspension.*

109 *The Department of Criminal Justice Services may revoke or suspend a tow truck driver's license or*
110 *reprimand the holder of such a license for any of the following causes:*

- 111 1. *Fraud or deceit in the offering or delivering of towing and recovery services;*
- 112 2. *Conducting his business or offering services in such a manner as to endanger the health and*
113 *welfare of the public;*
- 114 3. *Use of alcohol or drugs to the extent such use renders him unsafe to provide towing and recovery*
115 *services;*
- 116 4. *Neglecting to maintain on record at the operator's principal office a list of all drivers in the*
117 *employ of the operator;*
- 118 5. *Obtaining any fee by fraud or misrepresentation;*
- 119 6. *Advertising that directly or indirectly deceives, misleads, or defrauds the public;*
- 120 7. *Advertising or offering services under a name other than one's own name as set forth on the*
121 *operator's license;*

8. Failure of the 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 Department of Criminal Justice Services, 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;

9. Failure to display at the operator's principal office in a conspicuous place a listing of all towing, recovery, and processing fees for vehicles;

10. Failure to have readily available, at the customer's request, the maximum fees normally charged by the operator for basic services for towing and initial hookup of vehicles;

11. Failure to provide at the consumer's request the phone number for which consumer complaints may be filed with the Department of Criminal Justice Services;

12. Knowingly charging excessive fees for towing, storage, or administrative services or charging fees for services not rendered;

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

14. 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;

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

16. 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;

17. 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;

18. 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

19. 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.

§ 46.2-1206. Surrender of certificate of title, etc., where motor vehicle acquired for demolition; records to be kept by demolisher or scrap metal processor.

No demolisher or scrap metal processor who purchases or otherwise acquires a motor vehicle for wrecking, dismantling, or demolition shall be required to obtain a certificate of title for the motor vehicle in his own name. After the motor vehicle has been demolished, processed, or changed so that it physically is no longer a motor vehicle, the demolisher or scrap metal processor shall surrender to the Department for cancellation the certificate of title, Vehicle Removal Certificate, properly executed vehicle disposition history, or sales receipt from a foreign jurisdiction for the vehicle. The Department shall issue the appropriate forms for the surrender of sales receipts, certificates of title, vehicle disposition histories, and vehicle removal certificates.

Demolishers and scrap metal processors shall keep accurate and complete records, in accordance with § 46.2-1608, of all motor vehicles purchased or received by them in the course of their business. Demolishers and scrap metal processors shall also collect and verify:

1. The towing company's name and, if applicable, the license number issued to the towing company by the Virginia Board for Towing and Recovery Operators,;

2. One of the ownership or possession documents set out in this section following verification of its accuracy; and

3. The driver's license of the person delivering the motor vehicle; and

If the delivering vehicle does not possess a license number issued by the Virginia Board for Towing and Recovery Operators, the

4. The license plate number of the vehicle that delivered the motor vehicle or scrap shall also be collected and maintained.

In addition, a photocopy or electronic copy of the appropriate ownership document or a Vehicle Removal Certificate presented by the customer shall be maintained. Ownership documents shall consist of either a motor vehicle title or a sales receipt from a foreign jurisdiction or a vehicle disposition history. These records shall be maintained in a permanent ledger in a manner acceptable to the Department at the place of business or at another readily accessible and secure location within the Commonwealth for at least five years. The personal identifying information contained within these records shall be protected from unauthorized disclosure through the ultimate destruction of the information. Disclosure of personal identifying information by anyone other than the Department is

183 subject to the Driver's Privacy Protection Act (18 U.S.C. § 2721 et seq.).

184 If requested by a law-enforcement officer, a licensee shall make available, during regular business
185 hours, a report of all the purchases of motor vehicles. Each report shall include the information set out
186 in this chapter and be available electronically or in an agreed-upon format. Any person who violates any
187 provision of this chapter or who falsifies any of the information required to be maintained by this article
188 shall be guilty of a Class 3 misdemeanor for the first offense. Any licensee or scrap metal processor
189 who is found guilty of second or subsequent violations shall be guilty of a Class 1 misdemeanor. The
190 Department shall also assess a civil penalty not to exceed \$500 for the first offense and \$1,000 for the
191 second and subsequent offenses. Those penalties shall be paid into the state treasury and set aside as a
192 special fund to be used to meet the expenses of the Department.

193 If the vehicle identification number has been altered, is missing, or appears to have been otherwise
194 tampered with, the demolisher or scrap metal processor shall take no further action with regard to the
195 vehicle except to safeguard it in its then-existing condition and shall promptly notify the Department.
196 The Department shall, after an investigation has been made, notify the demolisher or scrap metal
197 processor whether the motor vehicle can be freed from this limitation. In no event shall the motor
198 vehicle be disassembled, demolished, processed, or otherwise modified or removed prior to authorization
199 by the Department. If the vehicle is a motorcycle, the demolisher or scrap metal processor shall cause to
200 be noted on the title or salvage certificate, certifying on the face of the document, in addition to the
201 above requirements, the frame number of the motorcycle and motor number, if available.

202 § 46.2-1217. Local governing body may regulate certain towing.

203 The governing body of any county, city, or town by ordinance may regulate services rendered
204 pursuant to police towing requests by any business engaged in the towing or storage of unattended,
205 abandoned, or immobile vehicles. The ordinance may include delineation of service areas for towing
206 services, the limitation of the number of persons engaged in towing services in any area, including the
207 creation of one or more exclusive service areas, and the specification of equipment to be used for
208 providing towing service. The governing body of any county, city, or town may contract for services
209 rendered pursuant to a police towing request with one or more businesses engaged in the towing or
210 storage of unattended, abandoned, or immobile vehicles. The contract may specify the fees or charges to
211 be paid by the owner or operator of a towed vehicle to the person undertaking its towing or storage and
212 may prescribe the geographical area to be served by each person providing towing services. The county,
213 city, or town may establish criteria for eligibility of persons to enter into towing services contracts and,
214 in its discretion, may itself provide exclusive towing and storage service for police-requested towing of
215 unattended, abandoned, or immobile vehicles. ~~Such criteria shall, for drivers of tow trucks and towing~~
216 ~~and recovery operators, be no less restrictive than those established pursuant to Chapter 28 (§ 46.2-2800~~
217 ~~et seq.) of this title and regulations adopted pursuant thereto.~~

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

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

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

235 If an unattended, abandoned, or immobile vehicle is towed as the result of a police-towing request,
236 the owner or person having control of the business or property to which the vehicle is towed shall allow
237 the owner of the vehicle or any other towing and recovery business, upon presentation of a written
238 request therefor from the owner of the vehicle, to have access to the vehicle for the purpose of
239 inspecting or towing the vehicle to another location for the purpose of repair, storage, or disposal. For
240 the purpose of this section, "owner of the vehicle" means a person who (i) has vested ownership,
241 dominion, or title to the vehicle; (ii) is the authorized agent of the owner as defined in clause (i); or (iii)
242 is an employee, agent, or representative of an insurance company representing any party involved in a
243 collision that resulted in a police-requested tow who represents in writing that the insurance company
244 has obtained the oral or written consent of the title owner or his agent or the lessee of the vehicle to

245 obtain possession of the vehicle. It shall be unlawful for any towing and recovery business to refuse to
246 release a vehicle to the owner as defined in this section upon tender of full payment for all lawful
247 charges by cash, insurance company check, certified check, money order, at least one of two commonly
248 used, nationally recognized credit cards, or additional methods of payment approved by the
249 *Commonwealth Transportation* Board. Thereafter, if a towing and recovery business refuses to release
250 the vehicle, future charges related to storage or handling of the vehicle by such towing and recovery
251 business shall be suspended and no longer payable.

252 The vehicle owner who has vested ownership, dominion, or title to the vehicle shall indemnify and
253 hold harmless the towing and recovery operator from any and all liability for releasing the vehicle to
254 any vehicle owner as defined in this section for inspecting or towing the vehicle to another location for
255 the purpose of repair, storage, or disposal.

256 2. That Chapter 28 (§§ 46.2-2800 through 46.2-2828) of Title 46.2 of the Code of Virginia is
257 repealed.

258 3. That any regulations adopted by the Board of Towing and Recovery Operators being abolished
259 by this act that are in effect before July 1, 2012, are hereby repealed as of that date. The
260 Registrar of Regulations shall take appropriate administrative action to effect the repeal of the
261 regulations in the Virginia Administrative Code.

262 4. That the Board of Towing and Recovery Operators shall pay off its treasury notes and pay off
263 or satisfy all of its other financial obligations prior to July 1, 2012.