

VIRGINIA ACTS OF ASSEMBLY -- 2013 SESSION

CHAPTER 165

An Act to amend and reenact §§ 19.2-389, 46.2-311, 46.2-324.1, 46.2-341.4, 46.2-341.7, 46.2-341.8, 46.2-341.9, 46.2-341.10, 46.2-341.12, 46.2-341.14, 46.2-341.15, 46.2-341.16, 46.2-341.20, 46.2-348, 46.2-1076, 46.2-2001.1, 46.2-2001.3, 46.2-2005, 46.2-2011.9, 46.2-2011.11, 46.2-2011.23, 46.2-2011.24, 46.2-2099.19, 46.2-2108.4, 46.2-2122, 46.2-2132, 46.2-2133, and 46.2-2176 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 46.2-341.14:1 through 46.2-341.14:10, 46.2-341.20:4, and 46.2-341.20:5, relating to motor carriers and commercial driver's licenses; penalties.

[S 1219]

Approved March 12, 2013

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-389, 46.2-311, 46.2-324.1, 46.2-341.4, 46.2-341.7, 46.2-341.8, 46.2-341.9, 46.2-341.10, 46.2-341.12, 46.2-341.14, 46.2-341.15, 46.2-341.16, 46.2-341.20, 46.2-348, 46.2-1076, 46.2-2001.1, 46.2-2001.3, 46.2-2005, 46.2-2011.9, 46.2-2011.11, 46.2-2011.23, 46.2-2011.24, 46.2-2099.19, 46.2-2108.4, 46.2-2122, 46.2-2132, 46.2-2133, and 46.2-2176 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 46.2-341.14:1 through 46.2-341.14:10, 46.2-341.20:4, and 46.2-341.20:5 as follows:

§ 19.2-389. Dissemination of criminal history record information.

A. Criminal history record information shall be disseminated, whether directly or through an intermediary, only to:

1. Authorized officers or employees of criminal justice agencies, as defined by § 9.1-101, for purposes of the administration of criminal justice and the screening of an employment application or review of employment by a criminal justice agency with respect to its own employees or applicants, and dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2, 3, and 5 of § 53.1-136 shall include collective dissemination by electronic means every 30 days;

2. Such other individuals and agencies that require criminal history record information to implement a state or federal statute or executive order of the President of the United States or Governor that expressly refers to criminal conduct and contains requirements or exclusions expressly based upon such conduct, except that information concerning the arrest of an individual may not be disseminated to a noncriminal justice agency or individual if an interval of one year has elapsed from the date of the arrest and no disposition of the charge has been recorded and no active prosecution of the charge is pending;

3. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement which shall specifically authorize access to data, limit the use of data to purposes for which given, and ensure the security and confidentiality of the data;

4. Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency that shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, and ensure the confidentiality and security of the data;

5. Agencies of state or federal government that are authorized by state or federal statute or executive order of the President of the United States or Governor to conduct investigations determining employment suitability or eligibility for security clearances allowing access to classified information;

6. Individuals and agencies where authorized by court order or court rule;

7. Agencies of any political subdivision of the Commonwealth, public transportation companies owned, operated or controlled by any political subdivision, and any public service corporation that operates a public transit system owned by a local government for the conduct of investigations of applicants for employment, permit, or license whenever, in the interest of public welfare or safety, it is necessary to determine under a duly enacted ordinance if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment, permit, or license under consideration;

7a. Commissions created pursuant to the Transportation District Act of 1964 (§ 15.2-4500 et seq.) and their contractors, for the conduct of investigations of individuals who have been offered a position of employment whenever, in the interest of public welfare or safety and as authorized in the Transportation District Act of 1964, it is necessary to determine if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment under consideration;

8. Public or private agencies when authorized or required by federal or state law or interstate

compact to investigate (i) applicants for foster or adoptive parenthood or (ii) any individual, and the adult members of that individual's household, with whom the agency is considering placing a child or from whom the agency is considering removing a child due to abuse or neglect, on an emergency, temporary, or permanent basis pursuant to §§ 63.2-901.1 and 63.2-1505, subject to the restriction that the data shall not be further disseminated to any party other than a federal or state authority or court as may be required to comply with an express requirement of law;

9. To the extent permitted by federal law or regulation, public service companies as defined in § 56-1, for the conduct of investigations of applicants for employment when such employment involves personal contact with the public or when past criminal conduct of an applicant would be incompatible with the nature of the employment under consideration;

10. The appropriate authority for purposes of granting citizenship and for purposes of international travel, including, but not limited to, issuing visas and passports;

11. A person requesting a copy of his own criminal history record information as defined in § 9.1-101 at his cost, except that criminal history record information shall be supplied at no charge to a person who has applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of America; (ii) a volunteer fire company or volunteer rescue squad; (iii) the Volunteer Emergency Families for Children; (iv) any affiliate of Prevent Child Abuse, Virginia; (v) any Virginia affiliate of Compeer; or (vi) any board member or any individual who has been offered membership on the board of a Crime Stoppers, Crime Solvers or Crime Line program as defined in § 15.2-1713.1;

12. Administrators and board presidents of and applicants for licensure or registration as a child welfare agency as defined in § 63.2-100 for dissemination to the Commissioner of Social Services' representative pursuant to § 63.2-1702 for the conduct of investigations with respect to employees of and volunteers at such facilities, caretakers, and other adults living in family day-care homes or homes approved by family day-care systems, and foster and adoptive parent applicants of private child-placing agencies, pursuant to §§ 63.2-1719, 63.2-1720, and 63.2-1721, subject to the restriction that the data shall not be further disseminated by the facility or agency to any party other than the data subject, the Commissioner of Social Services' representative or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination;

13. The school boards of the Commonwealth for the purpose of screening individuals who are offered or who accept public school employment and those current school board employees for whom a report of arrest has been made pursuant to § 19.2-83.1;

14. The State Lottery Department for the conduct of investigations as set forth in the State Lottery Law (§ 58.1-4000 et seq.), and the Department of Agriculture and Consumer Services for the conduct of investigations as set forth in Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2;

15. Licensed nursing homes, hospitals and home care organizations for the conduct of investigations of applicants for compensated employment in licensed nursing homes pursuant to § 32.1-126.01, hospital pharmacies pursuant to § 32.1-126.02, and home care organizations pursuant to § 32.1-162.9:1, subject to the limitations set out in subsection E;

16. Licensed homes for adults, licensed district homes for adults, and licensed adult day-care centers for the conduct of investigations of applicants for compensated employment in licensed homes for adults pursuant to § 63.2-1720, in licensed district homes for adults pursuant to § 63.1-189.1, and in licensed adult day-care centers pursuant to § 63.2-1720, subject to the limitations set out in subsection F;

17. The Alcoholic Beverage Control Board for the conduct of investigations as set forth in § 4.1-103.1;

18. The State Board of Elections and authorized officers and employees thereof in the course of conducting necessary investigations with respect to registered voters, limited to any record of felony convictions;

19. The Commissioner of Behavioral Health and Developmental Services for those individuals who are committed to the custody of the Commissioner pursuant to §§ 19.2-169.2, 19.2-169.6, 19.2-182.2, 19.2-182.3, 19.2-182.8, and 19.2-182.9 for the purpose of placement, evaluation, and treatment planning;

20. Any alcohol safety action program certified by the Commission on the Virginia Alcohol Safety Action Program for (i) assessments of habitual offenders under § 46.2-360, (ii) interventions with first offenders under § 18.2-251, or (iii) services to offenders under § 18.2-51.4, 18.2-266, or 18.2-266.1;

21. Residential facilities for juveniles regulated or operated by the Department of Social Services, the Department of Education, or the Department of Behavioral Health and Developmental Services for the purpose of determining applicants' fitness for employment or for providing volunteer or contractual services;

22. The Department of Behavioral Health and Developmental Services and facilities operated by the Department for the purpose of determining an individual's fitness for employment pursuant to departmental instructions;

23. Pursuant to § 22.1-296.3, the governing boards or administrators of private or religious elementary or secondary schools which are accredited by a statewide accrediting organization recognized, prior to January 1, 1996, by the State Board of Education or a private organization coordinating such records information on behalf of such governing boards or administrators pursuant to

a written agreement with the Department of State Police;

24. Public and nonprofit private colleges and universities for the purpose of screening individuals who are offered or accept employment;

25. Members of a threat assessment team established by a public institution of higher education pursuant to § 23-9.2:10 or by a private nonprofit institution of higher education, for the purpose of assessing or intervening with an individual whose behavior may present a threat to safety; however, no member of a threat assessment team shall redisclose any criminal history record information obtained pursuant to this section or otherwise use any record of an individual beyond the purpose that such disclosure was made to the threat assessment team;

26. Executive directors of community services boards or the personnel director serving the community services board for the purpose of determining an individual's fitness for employment pursuant to §§ 37.2-506 and 37.2-607;

27. Executive directors of behavioral health authorities as defined in § 37.2-600 for the purpose of determining an individual's fitness for employment pursuant to §§ 37.2-506 and 37.2-607;

28. The Commissioner of Social Services for the purpose of locating persons who owe child support or who are alleged in a pending paternity proceeding to be a putative father, provided that only the name, address, demographics and social security number of the data subject shall be released;

29. Authorized officers or directors of agencies licensed pursuant to Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2 by the Department of Behavioral Health and Developmental Services for the purpose of determining if any applicant who accepts employment in any direct care position has been convicted of a crime that affects his fitness to have responsibility for the safety and well-being of individuals with mental illness, intellectual disability, or substance abuse pursuant to §§ 37.2-416, 37.2-506, and 37.2-607;

30. The Commissioner of the Department of Motor Vehicles, for the purpose of evaluating applicants for *and holders of* a motor carrier certificate or license subject to the provisions of Chapters 20 (§ 46.2-2000 et seq.) and 21 (§ 46.2-2100 et seq.) of Title 46.2;

31. The chairmen of the Committees for Courts of Justice of the Senate or the House of Delegates for the purpose of determining if any person being considered for election to any judgeship has been convicted of a crime;

32. Heads of state agencies in which positions have been identified as sensitive for the purpose of determining an individual's fitness for employment in positions designated as sensitive under Department of Human Resource Management policies developed pursuant to § 2.2-1201.1. Dissemination of criminal history record information to the agencies shall be limited to those positions generally described as directly responsible for the health, safety and welfare of the general populace or protection of critical infrastructures;

33. The Office of the Attorney General, for all criminal justice activities otherwise permitted under subdivision A 1 and for purposes of performing duties required by the Civil Commitment of Sexually Violent Predators Act (§ 37.2-900 et seq.);

34. Shipyards, to the extent permitted by federal law or regulation, engaged in the design, construction, overhaul, or repair of nuclear vessels for the United States Navy, including their subsidiary companies, for the conduct of investigations of applications for employment or for access to facilities, by contractors, leased laborers, and other visitors;

35. Any employer of individuals whose employment requires that they enter the homes of others, for the purpose of screening individuals who apply for, are offered, or have accepted such employment;

36. Public agencies when and as required by federal or state law to investigate (i) applicants as providers of adult foster care and home-based services or (ii) any individual with whom the agency is considering placing an adult on an emergency, temporary, or permanent basis pursuant to § 63.2-1601.1, subject to the restriction that the data shall not be further disseminated by the agency to any party other than a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination, subject to limitations set out in subsection G;

37. The Department of Medical Assistance Services, or its designee, for the purpose of screening individuals who, through contracts, subcontracts, or direct employment, volunteer, apply for, are offered, or have accepted a position related to the provision of transportation services to enrollees in the Medicaid Program or the Family Access to Medical Insurance Security (FAMIS) Program, or any other program administered by the Department of Medical Assistance Services;

38. The State Corporation Commission for the purpose of investigating individuals who are current or proposed members, senior officers, directors, and principals of an applicant or person licensed under Chapter 16 (§ 6.2-1600 et seq.) of Title 6.2. Notwithstanding any other provision of law, if an application is denied based in whole or in part on information obtained from the Central Criminal Records Exchange pursuant to § 6.2-1605, the Commissioner of Financial Institutions or his designee may disclose such information to the applicant or its designee;

39. The Department of Professional and Occupational Regulation for the purpose of investigating individuals for initial licensure pursuant to § 54.1-2106.1;

40. The Department for Aging and Rehabilitative Services and the Department for the Blind and

Vision Impaired for the purpose of evaluating an individual's fitness for various types of employment and for the purpose of delivering comprehensive vocational rehabilitation services pursuant to Article 11 (§ 51.5-170 et seq.) of Chapter 14 of Title 51.5 that will assist the individual in obtaining employment;

41. Bail bondsmen, in accordance with the provisions of § 19.2-120;

42. The State Treasurer for the purpose of determining whether a person receiving compensation for wrongful incarceration meets the conditions for continued compensation under § 8.01-195.12; and

43. Other entities as otherwise provided by law.

Upon an ex parte motion of a defendant in a felony case and upon the showing that the records requested may be relevant to such case, the court shall enter an order requiring the Central Criminal Records Exchange to furnish the defendant, as soon as practicable, copies of any records of persons designated in the order on whom a report has been made under the provisions of this chapter.

Notwithstanding any other provision of this chapter to the contrary, upon a written request sworn to before an officer authorized to take acknowledgments, the Central Criminal Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish a copy of conviction data covering the person named in the request to the person making the request; however, such person on whom the data is being obtained shall consent in writing, under oath, to the making of such request. A person receiving a copy of his own conviction data may utilize or further disseminate that data as he deems appropriate. In the event no conviction data is maintained on the data subject, the person making the request shall be furnished at his cost a certification to that effect.

B. Use of criminal history record information disseminated to noncriminal justice agencies under this section shall be limited to the purposes for which it was given and may not be disseminated further.

C. No criminal justice agency or person shall confirm the existence or nonexistence of criminal history record information for employment or licensing inquiries except as provided by law.

D. Criminal justice agencies shall establish procedures to query the Central Criminal Records Exchange prior to dissemination of any criminal history record information on offenses required to be reported to the Central Criminal Records Exchange to ensure that the most up-to-date disposition data is being used. Inquiries of the Exchange shall be made prior to any dissemination except in those cases where time is of the essence and the normal response time of the Exchange would exceed the necessary time period. A criminal justice agency to whom a request has been made for the dissemination of criminal history record information that is required to be reported to the Central Criminal Records Exchange may direct the inquirer to the Central Criminal Records Exchange for such dissemination. Dissemination of information regarding offenses not required to be reported to the Exchange shall be made by the criminal justice agency maintaining the record as required by § 15.2-1722.

E. Criminal history information provided to licensed nursing homes, hospitals and to home care organizations pursuant to subdivision A 15 shall be limited to the convictions on file with the Exchange for any offense specified in §§ 32.1-126.01, 32.1-126.02, and 32.1-162.9:1.

F. Criminal history information provided to licensed assisted living facilities, licensed district homes for adults, and licensed adult day-care centers pursuant to subdivision A 16 shall be limited to the convictions on file with the Exchange for any offense specified in § 63.1-189.1 or 63.2-1720.

G. Criminal history information provided to public agencies pursuant to subdivision A 36 shall be limited to the convictions on file with the Exchange for any offense specified in § 63.2-1719.

H. Upon receipt of a written request from an employer or prospective employer, the Central Criminal Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish at the employer's cost a copy of conviction data covering the person named in the request to the employer or prospective employer making the request, provided that the person on whom the data is being obtained has consented in writing to the making of such request and has presented a photo-identification to the employer or prospective employer. In the event no conviction data is maintained on the person named in the request, the requesting employer or prospective employer shall be furnished at his cost a certification to that effect. The criminal history record search shall be conducted on forms provided by the Exchange.

§ 46.2-311. Persons having defective vision; minimum standards of visual acuity and field of vision; tests of vision.

A. The Department shall not issue a driver's license or learner's permit (i) to any person unless he demonstrates a visual acuity of at least 20/40 in one or both eyes with or without corrective lenses or (ii) to any such person unless he demonstrates at least a field of 100 degrees of horizontal vision in one or both eyes or a comparable measurement that demonstrates a visual field within this range. However, a license permitting the driving of motor vehicles during a period beginning one-half hour after sunrise and ending one-half hour before sunset, may be issued to a person who demonstrates a visual acuity of at least 20/70 in one or both eyes without or with corrective lenses provided he demonstrates at least a field of ~~seventy~~ 70 degrees of horizontal vision or a comparable measurement that demonstrates a visual field within this range, and further provided that if such person has vision in one eye only, he demonstrates at least a field of ~~forty~~ 40 degrees temporal and ~~thirty~~ 30 degrees nasal horizontal vision or a comparable measurement that demonstrates a visual field within this range.

B. The Department shall not issue a driver's license or learner's permit to any person authorizing the

driving of a commercial motor vehicle as defined in the Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.) unless he demonstrates a visual acuity of at least 20/40 in each eye and at least a field of 140 degrees of horizontal vision or a comparable measurement that demonstrates a visual field within this range.

C. Every person applying to renew a driver's license and required to be reexamined as a prerequisite to the renewal of the license, shall:

1. Appear before a license examiner of the Department to demonstrate his visual acuity and horizontal field of vision, or

2. Accompany his application with a report of such examination made within ~~ninety~~ 90 days prior thereto by an ophthalmologist or optometrist.

D. The test of horizontal visual fields made by license examiners of the Department shall be performed at thirty-three and one-third centimeters with a ~~ten~~ 10 millimeter round white test object or may, at the discretion of the Commissioner, be performed with electronic or other devices designed for the purpose of testing visual acuity and horizontal field of vision. The report of examination of visual acuity and horizontal field of vision made by an ophthalmologist or optometrist shall have precedence over an examination made by a license examiner of the Department in administrative determination as to the issuance of a license to drive. Any such report may, in the discretion of the Commissioner, be referred to a medical advisory board or to the State Health Commissioner for evaluation.

E. Notwithstanding the provisions of subsection B of this section, any person who is licensed to drive any motor vehicle may, on special application to the Department, be licensed to drive any vehicle, provided the operation of the vehicle would not unduly endanger the public safety, as determined by the Commissioner pursuant to regulations established by the Department.

The Commissioner may waive the vision requirements of subsection B for any commercial driver's license applicant who either (i) is subject to the Federal Motor Carrier Safety Regulations but is exempt from the vision standards of 49 C.F.R. Part 391 or (ii) is not required to meet the vision standards specified in 49 C.F.R. § 391.41 of the regulations.

In order to determine whether such a waiver would unduly endanger the public safety, the Commissioner shall require such commercial driver's license applicant to submit a special waiver application and to provide all medical information relating to his vision that may be requested by the Department. The Department may require such commercial driver's license applicant to take a road test administered by the Department before determining whether to grant a waiver. If a waiver is granted, the Department may subject the applicant's use of a commercial motor vehicle to reasonable restrictions, which shall be noted on the commercial driver's license. If a waiver is granted, the Department may also limit the validity period of the commercial driver's license, and the expiration date shall be noted on the commercial driver's license.

§ 46.2-324.1. Requirements for initial licensure of certain applicants.

A. No driver's license shall be issued to any applicant unless he either (i) provides written evidence of having satisfactorily completed a course of driver instruction at a driver training school licensed under Chapter 17 (§ 46.2-1700 et seq.) or a comparable course approved by the Department or Department of Education; ~~or (ii) has held an instructional permit issued by the Department for at least 30 days prior to his first behind-the-wheel examination by the Department when applying for a commercial driver's license; or (iii) has held a learner's permit issued by the Department for at least 60 days prior to his first behind-the-wheel examination by the Department when applying for a noncommercial driver's license.~~

The provisions of this section shall only apply to persons who are at least 19 years old and who either (a) have never held a driver's license issued by Virginia or any other state or territory of the United States or foreign country or (b) have never been licensed or held the license endorsement or classification required to operate the type of vehicle which they now propose to operate; ~~except that the provisions of this section shall apply to applicants for commercial driver's licenses who are.~~

B. No commercial driver's license shall be issued to any applicant unless he is 18 years old or older and has complied with the requirements of § 46.2-341.9. Applicants for a commercial driver's license who have never before held a commercial driver's license ~~or have never held the license endorsement or classification required to operate the type of commercial motor vehicle that they now propose to operate~~ shall apply for a commercial driver's instruction permit and either (i) provide written evidence of having satisfactorily completed a course of driver instruction at a driver training school licensed under Chapter 17 (§ 46.2-1700 et seq.) or a comparable course approved by the Department or Department of Education and hold the commercial driver's instruction permit for a minimum of 14 days prior to taking the behind-the-wheel examination for the commercial driver's license or (ii) hold the commercial driver's instruction permit for a minimum of 30 days before taking the behind-the-wheel examination for the commercial driver's license.

Holders of a commercial driver's license who have never held the license endorsement or classification required to operate the type of commercial motor vehicle which they now propose to operate must apply for a commercial driver's instruction permit if the upgrade requires a skills test and hold the permit for a minimum of 14 days prior to taking the behind-the-wheel examination for the commercial driver's license.

C. Nothing in this section shall be construed to prohibit the Department from requiring any person to complete the skills examination as prescribed in § 46.2-325 and the written or automated examinations as prescribed in § 46.2-335.

§ 46.2-341.4. Definitions.

The following definitions shall apply to this article, unless a different meaning is clearly required by the context:

"Air brake" means, for the purposes of the skills test and the restriction, any braking system operating fully or partially on the air brake principle.

"Automatic transmission" means, for the purposes of the skills test and the restriction, any transmission other than a manual transmission.

"CDLIS driver record" means the electronic record of the individual commercial driver's status and history stored by the State of Record as part of the Commercial Driver's License Information System (CDLIS).

"Commercial driver's instruction permit" means a permit issued to an individual in accordance with the provisions of this article, or if issued by another state, a permit issued in accordance with the standards contained in the Federal Motor Carrier Safety Regulations, which, when carried with a valid driver's license issued by the same state or jurisdiction, authorizes the individual to operate a class of commercial motor vehicle when accompanied by a holder of a valid commercial driver's license for purposes of behind-the-wheel training. When issued to a commercial driver's license holder, a commercial driver's instruction permit serves as authorization for accompanied behind-the-wheel training in a commercial motor vehicle for which the holder's current commercial driver's license is not valid. For purposes of this article "Commercial driver's instruction permit" shall have the same meaning as "Commercial learner's permit (CLP)" in 49 C.F.R. § 383.5 of the Federal Motor Carrier Safety regulations.

"Commercial driver's license" means any driver's license issued to a person in accordance with the provisions of this article, or if the license is issued by another state, any license issued to a person in accordance with the federal Commercial Motor Vehicle Safety Act, which authorizes such person to drive a commercial motor vehicle of the class and type and with the restrictions indicated on the license.

"Commercial driver's license information system" (CDLIS) means the CDLIS established by the Federal Motor Carrier Safety Administration pursuant to § 12007 of the Commercial Motor Vehicle Safety Act of 1986.

"Commercial motor vehicle" means, except for those vehicles specifically excluded in this definition, every motor vehicle, vehicle or combination of vehicles used to transport passengers or property which either: (i) has a gross vehicle weight rating of 26,001 or more pounds; or (ii) has a gross combination weight rating of 26,001 or more pounds inclusive of a towed vehicle with a gross vehicle weight rating of more than 10,000 pounds; or (iii) is designed to transport 16 or more passengers including the driver; or (iv) is of any size and is used in the transportation of hazardous materials as defined in this section. Every such motor vehicle or combination of vehicles shall be considered a commercial motor vehicle whether or not it is used in a commercial or profit-making activity.

The following shall be excluded from the definition of commercial motor vehicle: any vehicle when used by an individual solely for his own personal purposes, such as personal recreational activities; or any vehicle which (i) is controlled and operated by a farmer, whether or not it is owned by the farmer, and which is used exclusively for farm use, as defined in § 46.2-698, (ii) is used to transport either agricultural products, farm machinery or farm supplies to or from a farm, (iii) is not used in the operation of a common or contract motor carrier, and (iv) is used within 150 miles of the farmer's farm; or any vehicle operated for military purposes by (a) active duty military personnel, (b) members of the military reserves, (c) members of the national guard on active duty, including personnel on full-time national guard duty, personnel on part-time national guard training, and national guard military technicians (civilians who are required to wear military uniforms), but not U.S. Reserve technicians, and (d) active duty U.S. Coast Guard personnel; or emergency equipment operated by a member of a firefighting, rescue, or emergency entity in the performance of his official duties.

"Commercial Motor Vehicle Safety Act" means the federal Commercial Motor Vehicle Safety Act of 1986, Title XII of Public Law 99-570, as amended.

"Conviction" means an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction, an unvacated forfeiture of bond, bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, the payment of a fine or court costs in lieu of trial, a violation of a condition of release without bail, regardless of whether the penalty is rebated, suspended or probated, or, for the purposes of alcohol or drug-related offenses involving the operation of a motor vehicle, a civil or an administrative determination of a violation. For the purposes of this definition, an administrative determination shall include an unvacated certification or finding by an administrative or authorized law-enforcement official that a person has violated a provision of law.

"Disqualification" means a prohibition against driving, operating or being in physical control of a commercial motor vehicle for a specified period of time, imposed by a court or a magistrate, or by an

authorized administrative or law-enforcement official or body.

"Domicile" means a person's true, fixed and permanent home and principal residence, to which he intends to return whenever he is absent.

"Employee" means a payroll employee or person employed under lease or contract, or a person who has applied for employment and whose employment is contingent upon obtaining a commercial driver's license.

"Employer" means a person who owns or leases commercial motor vehicles and assigns employees to drive such vehicles.

"Endorsement" means an authorization to an individual's commercial driver's license or commercial driver's instruction permit required to permit the individual to operate certain types of commercial motor vehicles.

"FMCSA" means the Federal Motor Carrier Safety Administration.

"Full air brake restriction" means, for the purposes of the skills test and restriction, air over hydraulic brakes, including any braking system operating partially on the air brake and partially on the hydraulic brake.

"Gross combination weight rating" means the value specified by the manufacturers of an articulated vehicle or combination of vehicles as the maximum loaded weight of such vehicles. In the absence of such a value specified by the manufacturer, for law-enforcement purposes, the gross combination weight rating shall be the greater of (i) the gross vehicle weight rating of the power units of the combination vehicle plus the total weight of the towed units, including any loads thereon, or (ii) the gross weight at which the articulated vehicle or combination of vehicles is registered in its state of registration; however, the registered gross weight shall not be applicable for determining the classification of an articulated vehicle or combination of vehicles for purposes of skills testing pursuant to § 46.2-341.14 or 46.2-341.16.

"Gross vehicle weight rating" means the value specified by the manufacturer of the vehicle as the maximum loaded weight of a single vehicle. In the absence of such a value specified by the manufacturer, for law-enforcement purposes, the gross vehicle weight rating shall be the greater of (i) the actual gross weight of the vehicle, including any load thereon; or (ii) the gross weight at which the vehicle is registered in its state of registration; however, the registered gross weight of the vehicle shall not be applicable for determining the classification of a vehicle for purposes of skills testing pursuant to § 46.2-341.14 or 46.2-341.16.

"Hazardous materials" means materials designated to be hazardous in accordance with § 103 of the federal Hazardous Materials Transportation Act, as amended, (49 U.S.C. § 5101 et seq.) and which require placarding when transported by motor vehicle as provided in the federal Hazardous Materials Regulations (49 C.F.R. Part 172, Subpart F); it also includes any quantity of any material listed as a select agent or toxin in federal Public Health Service Regulations at 42 C.F.R. Part 73.

"Manual transmission" (also known as a stick shift, stick, straight drive, or standard transmission) means a transmission utilizing a driver-operated clutch that is activated by a pedal or lever and a gear-shift mechanism operated by either hand or foot.

"Non-commercial driver's license" means any other type of motor vehicle license, such as an automobile driver's license, a chauffeur's license, or a motorcycle license.

"Out-of-service order" or "out-of-service declaration" means an order by a judicial officer pursuant to § 46.2-341.26:2 or 46.2-341.26:3 or an order or declaration by an authorized law-enforcement officer under § 46.2-1001 or regulations promulgated pursuant to § 52-8.4 relating to Motor Carrier Safety, and including similar actions by authorized judicial officers or enforcement officers acting pursuant to similar laws of other states, the United States, the Canadian Provinces, Canada, Mexico, and localities within them, and also including actions by federal or other jurisdictions' officers pursuant to federal Motor Carrier Safety Regulations, that a driver, a commercial motor vehicle, or a motor carrier is out of service. Such order or declaration as to a driver means that the driver is prohibited from operating a commercial motor vehicle for the duration of the out-of-service period. Such order or declaration as to a vehicle means that such vehicle cannot be operated until the hazardous condition that resulted in the order or declaration has been removed and the vehicle has been cleared for further operation. Such order or declaration as to a motor carrier means that no vehicle may be operated for or on behalf of such carrier until the out-of-service order or declaration has been lifted. For purposes of this article, the provisions of the federal Motor Carrier Safety Regulations (49 C.F.R. Parts 390 through 397), including such regulations or any substantially similar regulations as may have been adopted by any state of the United States, the Provinces of Canada, Canada, Mexico, or any locality shall be considered laws similar to the Virginia laws referenced herein.

"Person" means a natural person, firm, partnership, association, corporation, or a governmental entity including a school board.

"Restriction" means a prohibition on a commercial driver's license or commercial driver's instruction permit that prohibits the holder from operating certain commercial motor vehicles.

"Seasonal restricted commercial driver's license" means a commercial driver's license issued, under the authority of the waiver promulgated by the federal Department of Transportation (49 C.F.R. § 383.3)

by Virginia or any other jurisdiction, to an individual who has not passed the knowledge or skills tests required of other commercial driver's license holders. This license authorizes operation of a commercial motor vehicle only on a seasonal basis, stated on the license, by a seasonal employee of a farm service business, within 150 miles of the place of business or the farm currently being served.

"State" means one of the 50 states of the United States or the District of Columbia.

"Tank vehicle" means any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank *or tanks having an individual rated capacity of more than 119 gallons and an aggregate rated capacity of 1,000 gallons or more* that is either permanently or temporarily attached to the vehicle or the chassis. Such vehicles include, but are not limited to, cargo tanks and portable tanks, as defined in 49 C.F.R. Part 171. However, this definition does not include portable tanks having a rated capacity under 1,000 gallons *as provided in 49 C.F.R. Part 383. A commercial motor vehicle transporting an empty storage container tank, not designed for transportation, with a rated capacity of 1,000 gallons or more that is temporarily attached to a flatbed trailer is not considered a tank vehicle.*

"Third party examiner" means an individual who is an employee of a third party tester and who is certified by the Department to administer the skills test required for a commercial driver's license.

"Third party tester" means a person (including, but not limited to, another state, a motor carrier, a private institution, or a department, agency, or instrumentality of a local government) certified by the Department to employ third party examiners to administer a skills test program for testing commercial driver's license applicants in accordance with this article.

"VAMCSR" means the Virginia Motor Carrier Safety Regulations (19 VAC 30-20-10 *et seq.*) adopted by the Department of State Police pursuant to § 52-8.4.

§ 46.2-341.7. Commercial driver's license required; penalty.

A. No person shall drive a commercial motor vehicle in the Commonwealth unless he has been issued a commercial driver's license *or commercial driver's instruction permit* and unless such license *or permit* authorizes the operation of the type and class of vehicle so driven, and unless such license *or permit* is valid.

B. Every driver of a commercial motor vehicle, while driving such vehicle in the Commonwealth, shall have in his immediate possession the commercial driver's license *or commercial driver's instruction permit* authorizing the operation of such vehicle and shall make it available to any law-enforcement officer upon request. Failure to comply with this subsection shall be punishable as provided in § 46.2-104.

C. No person shall drive a commercial vehicle in Virginia in violation of any of the restrictions or limitations stated on his commercial driver's license *or commercial driver's instruction permit*. A violation of the subsection shall constitute a Class 2 misdemeanor.

§ 46.2-341.8. Nonresidents and new residents.

Any person who is not domiciled in the Commonwealth, who has been duly issued a commercial driver's license *or commercial driver's instruction permit* by his state of domicile, who has such license *or permit* in his immediate possession, whose privilege or license to drive any motor vehicle is not suspended, revoked, or cancelled, and who has not been disqualified from driving a commercial motor vehicle, shall be permitted without further examination or licensure by the Commonwealth, to drive a commercial motor vehicle in the Commonwealth.

Within ~~thirty~~ 30 days after becoming domiciled in this Commonwealth, any person who has been issued a commercial driver's license *or commercial driver's instruction permit* by another state and who intends to drive a commercial motor vehicle shall apply to the Department for a Virginia commercial driver's license *or commercial driver's instruction permit*. *If the Commissioner determines that such applicant is otherwise eligible for a commercial driver's license or commercial driver's instruction permit, the Department will issue him a Virginia commercial driver's license or commercial driver's instruction permit with the same classification and endorsements as his commercial driver's license or commercial driver's instruction permit from another state, without requiring him to take the knowledge or skills test required for such commercial driver's license or commercial driver's instruction permit in accordance with § 46.2-330.* The Commissioner may establish, by regulation, the criteria by which the test requirements for a commercial driver's license may be waived for any such applicant.

§ 46.2-341.9. Eligibility for commercial driver's license or commercial driver's instruction permit.

A Virginia commercial driver's license *or commercial driver's instruction permit* shall be issued only to a person who drives or intends to drive a commercial motor vehicle and who is domiciled in the Commonwealth, provided that any person who is domiciled in a jurisdiction outside the United States, but has resided in the Commonwealth for a period of six weeks, shall be eligible for a commercial driver's license *or commercial driver's instruction permit* under such terms and conditions as the Department may require.

No person shall be eligible for a Virginia commercial driver's license *or commercial driver's instruction permit* until he has applied for such license *or permit* and has passed the applicable vision, knowledge and skills tests required by this article, and has satisfied all other applicable licensing

requirements imposed by the laws of the Commonwealth. *Such requirements shall include meeting the standards contained in subparts F, G, and H, of Part 383 of the FMCSA regulations.*

No person shall be eligible for a Virginia commercial driver's license *or commercial driver's instruction permit* during any period in which he is disqualified from driving a commercial motor vehicle, or his driver's license or privilege to drive is suspended, revoked or cancelled in any state, or during any period wherein the restoration of his license or privilege is contingent upon the furnishing of proof of financial responsibility.

No person shall be eligible for a Virginia commercial driver's license until he surrenders all other driver's licenses issued to him by any state.

No person shall be eligible for a Virginia commercial driver's instruction permit until he surrenders all other driver's licenses and permits issued to him by any other state. The applicant for a commercial driver's instruction permit is not required to surrender his Virginia noncommercial driver's license.

No person under the age of 21 years shall be eligible for a commercial driver's license, except that a person who is at least 18 years of age may be issued a commercial driver's license *or commercial driver's instruction permit*, provided that such person is exempt from or is not subject to the age requirements of the ~~federal~~ Federal Motor Carrier Safety Regulations contained in 49 C.F.R. Part 391, and is not prohibited from operating a commercial motor vehicle by the Virginia Motor Carrier Safety Regulations, and has so certified. No person under the age of 21 years shall be issued a hazardous materials endorsement.

No person shall be eligible for a Virginia commercial driver's license to drive a Type S vehicle, as defined in subsection B of § 46.2-341.16, during any period in which he is a person for whom registration with the Sex Offender and Crimes Against Minors Registry is required pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1.

In determining the eligibility of any applicant for a Virginia commercial driver's license, the Department shall consider, to the extent not inconsistent with federal law, the applicant's military training and experience.

A person for whom registration with the Sex Offender and Crimes Against Minors Registry is required pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1 may be issued a Virginia commercial driver's license to drive a Type P vehicle, as defined in subsection B of § 46.2-341.16, provided the commercial driver's license includes a restriction prohibiting the license holder from operating a commercial vehicle to transport children to or from activities sponsored by a school or by a child day care facility licensed, regulated, or approved by the Virginia Department of Social Services.

§ 46.2-341.10. Special provisions relating to commercial driver's instruction permit.

A. The Department, upon receiving an application on forms prescribed by the Commissioner and upon the applicant's satisfactory completion of the vision and knowledge tests required for the class and type of commercial motor vehicle to be driven by the applicant may, in its discretion, issue to such applicant a commercial driver's instruction permit. Such permit shall expire one year after issuance and shall entitle the applicant to drive a commercial motor vehicle of the class and type designated on the permit, but only when accompanied by a person licensed to drive the class and type of commercial motor vehicle driven by the applicant. The person accompanying the permit holder shall occupy the seat closest to the driver's seat for the purpose of giving instruction to the permit holder in driving the commercial motor vehicle.

B. No person shall be issued a commercial driver's instruction permit unless he possesses a valid Virginia driver's license or has satisfied all the requirements necessary to obtain such a license.

C. *A commercial driver's instruction permit holder with a passenger (P) endorsement (i) must have taken and passed the P endorsement knowledge test and (ii) is prohibited from operating a commercial motor vehicle carrying passengers, other than federal or state auditors and inspectors, test examiners, other trainees, and the commercial driver's license holder accompanying the commercial driver's instruction permit holder. The P endorsement must be class specific.*

D. *A commercial driver's instruction permit holder with a school bus (S) endorsement (i) must have taken and passed the S endorsement knowledge test and (ii) is prohibited from operating a school bus with passengers other than federal or state auditors and inspectors, test examiners, other trainees, and the commercial driver's license holder accompanying the commercial driver's instruction permit holder.* No person shall be issued a commercial driver's instruction permit to drive school buses or to drive any commercial vehicle to transport children to or from activities sponsored by a school or by a child day care facility licensed, regulated, or approved by the Virginia Department of Social Services during any period in which he is a person for whom registration with the Sex Offender and Crimes Against Minors Registry is required pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1.

E. *A commercial driver's instruction permit holder with a tank vehicle (N) endorsement (i) must have taken and passed the N endorsement knowledge test and (ii) may only operate an empty tank vehicle and is prohibited from operating any tank vehicle that previously contained hazardous materials that has not been purged of any residue.*

F. *The issuance of a commercial driver's instruction permit is a precondition to the initial issuance of a commercial driver's license and to the upgrade of a commercial driver's license if the upgrade*

requires a skills test. The commercial driver's instruction permit holder is not eligible to take the commercial driver's license skills test until he has held the permit for the required period of time specified in § 46.2-324.1.

G. Any instruction permit holder who operates a commercial motor vehicle without being accompanied by a licensed driver as provided in this section is guilty of a Class 2 misdemeanor.

H. The Department shall charge a fee of three dollars for each instruction permit issued under the provisions of this section.

§ 46.2-341.12. Application for commercial driver's license and commercial driver's instruction permit.

A. Every application to the Department for a commercial driver's license *or commercial driver's instruction permit* shall be made upon a form approved and furnished by the Department, and the applicant shall write his usual signature in ink in the space provided. The applicant shall provide the following information:

1. Full legal name;
2. Current mailing and residential addresses;
3. Physical description including sex, height, weight and eye and hair color;
4. Year, month and date of birth;
5. Social Security number; and
6. Any other information required on the application form.

The applicant's Social Security number shall be provided to the Commercial Driver's License Information System as required by 49 C.F.R. § 383.153.

B. Every applicant for a commercial driver's license *or commercial driver's instruction permit* shall also submit to the Department the following:

1. A consent to release driving record information;
2. Certifications that:
 - a. He either meets the federal qualification requirements of 49 C.F.R. Part 391, or he is exempt from or is not subject to such federal requirements;
 - b. He either meets the state qualification requirements established pursuant to § 52-8.4, or he is exempt from or is not subject to such requirements;
 - c. The motor vehicle in which the applicant takes the skills test is representative of the class and, if applicable, the type of motor vehicle for which the applicant seeks to be licensed;
 - d. He is not subject to any disqualification, suspension, revocation or cancellation of his driving privileges;
 - e. He does not have more than one driver's license;
3. Other certifications required by the Department;
4. Any evidence required by the Department to establish proof of identity, legal presence, residency, and social security number; and
5. A statement indicating whether (i) the applicant has previously been licensed to drive any type of motor vehicle during the previous 10 years and, if so, all states that licensed the applicant and the dates he was licensed, and (ii) whether or not he has ever been disqualified, or his license suspended, revoked or cancelled and, if so, the date of and reason therefor.

C. Every application for a commercial driver's license shall include a photograph of the applicant supplied under arrangements made therefor by the Department in accordance with § 46.2-323.

D. The Department shall disqualify any commercial driver for a period of one year when the records of the Department clearly show to the satisfaction of the Commissioner that such person has made a material false statement on any application or certification made for a commercial driver's license *or commercial driver's instruction permit*. The Department shall take such action within 30 days after discovering such falsification.

E. The Department shall review the driving record of any person who applies for a Virginia commercial driver's license *or commercial driver's instruction permit*, for the renewal or reinstatement of such license *or permit* or for an additional commercial classification or endorsement, including the driving record from all jurisdictions where, during the previous 10 years, the applicant was licensed to drive any type of motor vehicle. *Such review shall include checking the photograph on record whenever the applicant or holder appears in person to renew, upgrade, transfer, reinstate, or obtain a duplicate commercial driver's license or commercial driver's instruction permit.* If appropriate, the Department shall incorporate information from such other jurisdictions' records into the applicant's Virginia driving record, and shall make a notation on the applicant's driving record confirming that such review has been completed and the date it was completed. The Department's review shall include research through the Commercial Driver License Information System established pursuant to the Commercial Motor Vehicle Safety Act and the National Driver Register *Problem Driver Pointer System* in addition to the driver record maintained by the applicant's previous jurisdictions of licensure. This research shall be completed prior to the issuance, renewal, or reinstatement of a commercial driver's license or additional commercial classification or endorsement.

The Department shall verify the name, date of birth, and Social Security number provided by the

applicant with the information on file with the Social Security Administration for initial issuance of a commercial driver's instruction permit, transfer of a commercial driver's license from another state or for drivers renewing a commercial driver's license for the first time after July 8, 2011, who have not previously had their Social Security number information verified. The Department shall make a notation in the driver's record confirming that the necessary verification has been completed and noting the date it was done.

F. On and after January 30, 2012, every new applicant for a commercial driver's license *or commercial driver's instruction permit*, including any person applying for a commercial driver's license *or permit* after revocation of his driving privileges, who certifies that he will operate a commercial motor vehicle in non-excepted interstate or intrastate commerce shall provide the Department with an original or certified copy of a medical examiner's certificate prepared by a medical examiner as defined in 49 C.F.R. Part 390.5. Any new applicant for a commercial driver's license who fails to comply with the requirements of this subsection shall be denied the issuance of a commercial driver's license by the Department.

G. On and after January 30, 2012, but no later than January 30, 2014, every existing holder of a commercial driver's license *or commercial driver's instruction permit* who certifies that he will operate a commercial motor vehicle in non-excepted interstate or intrastate commerce shall provide the Department with an original or certified copy of a medical examiner's certificate prepared by a medical examiner as defined in 49 C.F.R. Part 390.5. If an existing holder of a commercial driver's license fails to provide the Department with a medical certificate as required by this subsection, the Department shall post a certification status of "noncertified" on the record of the driver on the Commercial Driver's License Information System and initiate a downgrade of his commercial driver's license as defined in 49 C.F.R. Part 383.5.

H. Any person who provides a medical certificate to the Department pursuant to the requirements of subsections F and G shall keep the medical certificate information current and shall notify the Department of any change in the status of the medical certificate. If the Department determines that the medical certificate is no longer valid, the Department shall initiate a downgrade of the driver's commercial driver's license as defined in 49 C.F.R. Part 383.5.

I. If the Department receives notice that the holder of a commercial driver's license has been issued a medical variance as defined in 49 C.F.R. Part 390.5, the Department shall indicate the existence of such medical variance on the commercial driver's license document of the driver and on the record of the driver on the Commercial Driver's License Information System using the restriction code "V."

J. Any holder of a commercial driver's license who has been issued a medical variance shall keep the medical variance information current and shall notify the Department of any change in the status of the medical variance. If the Department determines that the medical variance is no longer valid, the Department shall initiate a downgrade of the driver's commercial driver's license as defined in 49 C.F.R. Part 383.5.

K. *Any applicant applying for a hazardous materials endorsement must comply with Transportation Security Administration requirements in 49 C.F.R. Part 1572. A lawful permanent resident of the United States requesting a hazardous materials endorsement must additionally provide his U.S. Citizenship and Immigration Services (USCIS) alien registration number.*

§ 46.2-341.14. Testing requirements for commercial driver's license; behind-the-wheel and knowledge examinations.

A. The Department shall conduct an examination of every applicant for a commercial driver's license, which examination shall comply with the minimum federal standards established pursuant to the federal Commercial Motor Vehicle Safety Act. The examination shall be designed to test the vision, knowledge, and skills required for the safe operation of the class and type of commercial motor vehicle for which the applicant seeks a license.

B. An applicant's skills test shall be conducted in a vehicle that is representative of or meets the description of the class of vehicle for which the applicant seeks to be licensed. In addition, applicants who seek to be licensed to drive vehicles with air brakes, passenger-carrying vehicles, or school buses must take the skills test in a vehicle that is representative of such vehicle type. Such vehicle shall be furnished by the applicant and shall be properly licensed, inspected and insured.

C. Prior to April 1, 1992, the Commissioner may waive the skills test for applicants licensed at the time they apply for a commercial driver's license if:

1. The applicant has not, and certifies that he has not, at any time during the two years immediately preceding the date of application:

a. Had more than one driver's license, except during the ten-day period beginning on the date such person is issued a driver's license, or unless, prior to December 31, 1989, such applicant was required to have more than one license by a state law enacted before June 1, 1986;

b. Had any driver's license or driving privilege suspended, revoked or canceled;

c. Had any convictions involving any kind of motor vehicle for the offenses listed in § 46.2-341.18, 46.2-341.19, or 46.2-341.20; and

d. Been convicted of a violation of state or local laws relating to motor vehicle traffic control, other

than a parking violation, which violation arose in connection with any reportable traffic accident; and

2. The applicant certifies and provides evidence satisfactory to the Commissioner that he is regularly employed in a job requiring the operation of a commercial motor vehicle, and either:

a. Has previously taken and successfully completed a skills test which was administered by a state with a classified licensing and testing system and that test was behind the wheel in a vehicle representative of the class and, if applicable, the type of commercial motor vehicle for which the applicant seeks to be licensed; or

b. Has operated, for at least two years immediately preceding the application date, a vehicle representative of the class and, if applicable, the type of commercial motor vehicle for which the applicant seeks to be licensed.

D. The Commissioner may, in his discretion, designate such persons as he deems fit, including private or governmental entities, to administer the skills tests required of applicants for a commercial driver's license. Any person so designated shall comply with all *statutes and regulations promulgated by the Commissioner* with respect to the administration of such skills tests.

The Commissioner shall require all state knowledge and skills test examiners to successfully complete a formal commercial driver's license test examiner training course and examination before certifying them to administer commercial driver's license knowledge and skills tests. State test examiners shall complete a refresher training course and examination every four years to maintain their commercial driver's license test examiner certification. The refresher training course shall comply with 49 C.F.R. § 384.228. At least once every two years, the Department shall conduct covert and overt monitoring of examinations performed by state commercial driver's license skills test examiners.

E. Every applicant for a commercial driver's license who is required by the Commissioner to take a vision test shall either (i) appear before a license examiner of the Department of Motor Vehicles to demonstrate his visual acuity and horizontal field of vision; or (ii) submit with his application a *copy of the vision examination report of which was used as the basis for such examination made within ninety* 90 days of the application date by an ophthalmologist or optometrist. The Commissioner may, by regulation, determine whether any other visual tests will satisfy the requirements of this title for commercial drivers.

F. No person who fails the behind-the-wheel examination for a commercial driver's license administered by the Department three times shall be permitted to take such examination a fourth time until he successfully completes, subsequent to the third examination failure, the in-vehicle component of driver instruction at a driver training school licensed under Chapter 17 (§ 46.2-1700 et seq.) or a comparable course approved by the Department or the Department of Education. In addition, no person who fails the general knowledge examination for a commercial driver's license administered by the Department three times shall be permitted to take such examination a fourth time until he successfully completes, subsequent to the third examination failure, the knowledge component of driver instruction at a driver training school licensed under Chapter 17 (§ 46.2-1700 et seq.) or a comparable course approved by the Department or the Department of Education.

The provisions of this subsection shall not apply to persons placed under medical control pursuant to § 46.2-322.

G. Knowledge tests may be administered in written form, verbally, or in automated format and can be administered in a foreign language, provided no interpreter is used in administering the test.

H. Interpreters are prohibited during the administration of the skills tests. Applicants must be able to understand and respond to verbal commands and instructions in English by a skills test examiner. Neither the applicant nor the examiner may communicate in a language other than English during the skills test.

§ 46.2-341.14:1. Requirements for third party testers.

A. Pursuant to § 46.2-341.14, third party testers will be authorized to issue skills test certificates, which will be accepted by the Department as evidence of satisfaction of the skills test component of the commercial driver's license examination. Authority to issue skills test certificates will be granted only to third party testers certified by the Department.

B. To qualify for certification, a third party tester shall:

1. Make application to and enter into an agreement with the Department as provided in § 46.2-341.14:3;

2. Maintain a place of business in Virginia;

3. Have at least one certified third party examiner in his employ;

4. Ensure that all third party examiners in his employ are certified and comply with the requirements of §§ 46.2-341.14:2 and 46.2-341.14:7;

5. Permit the Department and the FMCSA of the U.S. Department of Transportation to examine records that relate to the third party testing program and to audit his testing program;

6. Maintain at the principal place of business a copy of the state certificate authorizing the third party tester to administer a commercial driver's license skills testing program and current third party agreement;

7. Maintain at a Virginia location, for a minimum of two years after a skills test is conducted, a

record of each driver for whom the third party tester conducts a skills test, whether the driver passes or fails the test. Each such record shall include:

- a. The complete name of the driver;
- b. The driver's Social Security number or other driver's license number and the name of the state or jurisdiction that issued the license held by the driver at the time of the test;
- c. The date the driver took the skills test;
- d. The test score sheet or sheets showing the results of the skills test and a copy of the skills test certificate, if issued;
- e. The name and certification number of the third party examiner conducting the skills test; and
- f. Evidence of the driver's employment with the third party tester at the time the test was taken. If the third party tester is a school board that tests drivers who are trained but not employed by the school board, evidence that (i) the driver was employed by a school board at the time of the test and (ii) the third party tester trained the driver in accordance with the Virginia School Bus Driver Training Curriculum Guide;

8. Maintain at a Virginia location a record of each third party examiner in the employ of the third party tester. Each record shall include:

- a. Name and Social Security number;
- b. Evidence of the third party examiner's certification by the Department;
- c. A copy of the third party examiner's current driving record, which must be updated annually;
- d. Evidence that the third party examiner is an employee of the third party tester; and
- e. If the third party tester is a school board, a copy of the third party examiner's certification of instruction issued by the Virginia Department of Education;

9. Retain the records required in subdivision 8 for at least two years after the third party examiner leaves the employ of the third party tester;

10. Ensure that skills tests are conducted, and that skills test certificates are issued in accordance with the requirements of §§ 46.2-341.14:8 and 46.2-341.14:9 and the instructions provided by the Department; and

11. Maintain compliance with all applicable provisions of this article and the third party tester agreement executed pursuant to § 46.2-341.14:3.

C. In addition to the requirements listed in subsection B, all third party testers who are not governmental entities shall:

1. Be engaged in a business involving the use of commercial motor vehicles, which business has been in operation in Virginia for a minimum of one year;

2. Employ at least 75 Virginia-licensed drivers of commercial motor vehicles, during the 12-month period preceding the application, including part-time and seasonal drivers. This requirement may be waived by the Department pursuant to § 46.2-341.14:10;

3. If subject to the FMCSA regulations and rated by the U.S. Department of Transportation, maintain a rating of "satisfactory"; and

4. Comply with the Virginia Motor Carrier Safety Regulations.

§ 46.2-341.14:2. Requirements for third party examiners.

A. Third party examiners may be certified to conduct skills tests on behalf of only one third party tester at any given time. If a third party examiner leaves the employ of a third party tester he must be recertified in order to conduct skills tests on behalf of a new third party tester.

B. To qualify for certification as a third party examiner, an individual must:

1. Make application to the Department as provided in § 46.2-341.14:3;

2. Be an employee of the third party tester;

3. Possess a valid Virginia commercial driver's license with the classification and endorsements required for operation of the class and type of commercial motor vehicle used in skills tests conducted by the examiner;

4. Satisfactorily complete any third party examiner training course required by the Department;

5. Within three years prior to application have had no driver's license suspensions, revocations, or disqualifications;

6. At the time of application have no more than six demerit points on his driving record and not be on probation under the Virginia Driver Improvement Program;

7. Within three years prior to application, have had no conviction for any offense listed in § 46.2-341.18 or 46.2-341.19, whether or not such offense was committed in a commercial motor vehicle;

8. If the examiner is employed by a school board, be certified by the Virginia Department of Education as a school bus training instructor;

9. Conduct skills tests on behalf of the third party tester in accordance with this article and in accordance with current instructions provided by the Department; and

10. Successfully complete a training course and examination every four years to maintain the commercial driver's license test examiner certification.

§ 46.2-341.14:3. Application for certification by the Department.

A. Application for third party tester certification.

1. An applicant for certification shall provide the following information in a format prescribed by the Department:

- a. Name, address, and telephone number of principal office or headquarters;*
- b. Name, title, address, and telephone number of an individual in Virginia who has been designated to be the applicant's contact person with the Department;*
- c. Description of the vehicle fleet owned or leased by the applicant, including the number of commercial motor vehicles by class and type;*
- d. Classes and types of commercial motor vehicles for which the applicant seeks to be certified as a third party tester;*
- e. Total number of Virginia licensed drivers employed during the preceding 12 months to operate commercial motor vehicles and the number of such drivers who are full time, part time, and seasonal;*
- f. Name, driver's license number, and home address of each employee who is to be certified as a third party examiner. If any employee has previously been certified as an examiner by the Department, the examiner's certification number;*
- g. The address of each Virginia location where the third party tester intends to conduct skills tests and a map, drawing, or written description of each driving course that satisfies the Department's requirements for a skills test course;*
- h. If the applicant is not a governmental entity, it shall also provide: (i) a description of the applicant's business and length of time in business in Virginia; (ii) if subject to the FMCSA regulations, the applicant's Interstate Commerce Commission number or U.S. Department of Transportation number and rating; and (iii) the applicant's State Corporation Commission number; and*
- i. Any other relevant information required by the Department.*

2. An applicant for certification shall also execute an agreement in a format prescribed by the Department in which the applicant agrees, at a minimum, to comply with the regulations and instructions of the Department for third party testers, including audit procedures, and agrees to hold the Department harmless from liability resulting from the third party tester's administration of its commercial driver's license skills test program.

B. Application for third party examiner certification.

1. An applicant for certification shall provide the following information in a format prescribed by the Department:

- a. Name and home and business addresses and telephone numbers;*
- b. Driver's license number;*
- c. Name, address, and telephone number of the principal office or headquarters of the applicant's employer, who has applied for and received certification as a third party tester;*
- d. Job title and description of duties and responsibilities;*
- e. Length of time employed by present employer. If less than two years, list previous employer, address, and telephone number;*
- f. Present employer's recommendation of the applicant for certification;*
- g. A list of the classes and types of vehicles for which the applicant seeks certification to conduct skills tests; and*
- h. Any other relevant information required by the Department.*

C. Evaluation of applicant by the Department.

1. The Department will evaluate the materials submitted by the third party tester applicant, and, if the application materials are satisfactory, the Department will schedule an onsite inspection and audit of the applicant's third party testing program to complete the evaluation.

2. The Department will evaluate the materials submitted by the third party examiner applicant as well as the applicant's driving record. If the application materials and driving record are satisfactory, the Department will schedule the applicant for third party examiner training. Training may be waived if the applicant is seeking recertification only because he has changed employers.

3. No more than two applications will be accepted from any one third party tester or examiner applicant in any 12-month period, excluding applications for recertification because of a change in employers.

§ 46.2-341.14:4. Certification by the Department.

A. Upon successful application and evaluation, a third party tester will be issued a letter or certificate that will evidence his authority to administer a third party testing program and issue skills test certificates for the classes and types of vehicles listed.

B. Upon successful application, evaluation, and training, a third party examiner will be issued a letter or certificate that will evidence his authority to conduct skills tests for the classes and types of commercial motor vehicles listed.

C. Certification will remain valid until canceled by the Department or voluntarily relinquished by the third party tester or examiner.

§ 46.2-341.14:5. Terminating certification of third party tester or examiner.

A. Any third party tester or examiner may relinquish certification upon 30 days' notice to the

Department. Relinquishment of certification by a third party tester or examiner shall not release such tester or examiner from any responsibility or liability that arises from his activities as a third party tester or examiner.

B. The Department reserves the right to cancel the third party testing program established by this article, in its entirety.

C. The Department shall revoke the skills testing certification of any examiner:

1. Who does not conduct skills test examinations of at least 10 different applicants per calendar year. However, examiners who do not meet the 10-test minimum must either take a refresher commercial driver's license training that complies with 49 C.F.R. § 384.228 or have a Department examiner ride along to observe the third party examiner successfully administer at least one skills test; or

2. Who does not successfully complete the required refresher training every four years pursuant to 49 C.F.R. § 384.228.

D. The Department may cancel the certification of an individual third party tester or examiner upon the following grounds:

1. Failure to comply with or satisfy any of the provisions of this article, federal standards for the commercial driver's license testing program, the Department's instructions, or the third party tester agreement;

2. Falsification of any record or information relating to the third party testing program; or

3. Commission of any act that compromises the integrity of the third party testing program.

E. If the Department determines that grounds for cancellation exist for failure to comply with or satisfy any of the requirements of this chapter or the third party tester agreement, the Department may postpone cancellation and allow the third party tester or examiner 30 days to correct the deficiency.

§ 46.2-341.14:6. Onsite inspections and audits.

A. Each applicant for certification as a third party tester shall permit the Department to conduct random examinations and to inspect and audit its operations, facilities, and records as they relate to its third party testing program, for the purpose of determining whether the applicant is qualified for certification. Each person who has been certified as a third party tester shall permit the Department to periodically inspect and audit his third party testing program to determine whether it remains in compliance with certification requirements.

B. The Department will perform its random examinations, inspections, and audits of third party testers during regular business hours with or without prior notice to the third party tester.

C. Inspections and audits of third party testers will occur at a minimum once every two years and include, at a minimum, an examination of:

1. Records relating to the third party testing program;

2. Evidence of compliance with the FMCSA regulations and Virginia Motor Carrier Safety Regulations;

3. Skills testing procedures, practices, and operations;

4. Vehicles used for testing;

5. Qualifications of third party examiners;

6. Effectiveness of the skills test program by either (i) testing a sample of drivers who have been issued skills test certificates by the third party tester to compare pass/fail results, (ii) having Department employees covertly take the skills tests from a third party examiner, or (iii) having Department employees co-score along with the third party examiner during commercial driver's license applicant's skills tests to compare pass/fail results;

7. A comparison of the commercial driver's license skills test results of applicants who are issued commercial driver's licenses with the commercial driver's license scoring sheets that are maintained in the third party testers' files; and

8. Any other aspect of the third party tester's operation that the Department determines is necessary to verify that the third party tester meets or continues to meet the requirements for certification.

D. The Department will prepare a written report of the results of each inspection and audit of third party testers. A copy of the report will be provided to the third party tester.

§ 46.2-341.14:7. Notification requirements.

A. Every third party tester shall:

1. Notify the Department in a format prescribed by the Department within 10 days of any change in:

a. The third party tester's name or address; or

b. The third party examiners who are employed by the third party tester.

2. Notify the Department in a format prescribed by the Department within 10 days of any of the following occurrences:

a. The third party tester ceases business operations in Virginia;

b. The third party tester fails to comply with any of the requirements set forth in this article; or

c. Any third party examiner fails to comply with any of the requirements set forth in this article.

3. Notify the Department of any proposed change in the skills test route at least 30 days before the third party tester plans to change the route.

B. Every third party examiner shall notify the Department, within 10 days after leaving the employ of

the third party tester, of his change in employment.

§ 46.2-341.14:8. Test administration.

A. Skills tests shall be conducted strictly in accordance with the provisions of this article and with current test instructions provided from time to time by the Department. Such instructions will include test forms and directions for completing such forms.

B. Skills tests shall be conducted:

1. On test routes that are located at least in part in Virginia and have been approved by the Department;

2. In a vehicle that is representative of the class and type of vehicle for which the commercial driver's license applicant seeks to be licensed and for which the third party tester and third party examiner are certified to test; and

3. In vehicles that are inspected, licensed, and insured, as required by law.

C. All third party testers shall submit a skills test schedule of commercial driver's license skills testing appointments to the Department no later than two business days prior to each test.

D. All third party testers shall notify the Department through secure electronic means when a driver applicant passes skills tests.

§ 46.2-341.14:9. The skills test certificate.

A. The Department will accept a skills test certificate issued in accordance with this section as satisfaction of the skills test component of the commercial driver's license examination.

B. Skills test certificates may be issued only to drivers who are employees of the third party tester who issues the certificate, except as otherwise provided herein. In the case of school boards certified as third party testers, certificates may be issued to employees and to other drivers who have been trained by the school board in accordance with the Virginia School Bus Driver Training Curriculum Guide.

C. Skills test certificates may be issued only to drivers who have passed the skills test conducted in accordance with this chapter and the instructions issued by the Department.

D. A skills test certificate will be accepted by the Department only if it is:

1. Issued by a third party tester certified by the Department in accordance with this article;
2. In a format prescribed by the Department, completed in its entirety, without alteration;
3. Submitted to the Department within 60 days of the date of the skills test; and
4. Signed by the third party examiner who conducted the skills test.

§ 46.2-341.14:10. Waiver of requirement that third party tester applicant employ 75 drivers.

A. Any applicant for certification as third party tester may submit with his application a request for a waiver of the requirement that the third party tester employ at least 75 drivers within the 12-month period preceding the application.

Such request shall include the following:

1. A statement of need. This statement should explain why the applicant should be certified as a third party tester. The statement should also include reasons why the testing facilities or programs offered by the Department will not meet the applicant's business requirements.

2. An estimate of the number of employees per year who will require commercial driver's license skills testing after April 1, 1992. If the waiver request is filed prior to April 1, 1992, the request should also include an estimate of the number of employees who will require skills testing prior to that date.

B. The Department will review the applicant's waiver request and will evaluate the Department's testing and third party monitoring resources. The Department will decide whether to grant the waiver request after balancing the stated needs of the applicant and the available resources of the Department. The Department will notify the applicant in writing of its decision.

§ 46.2-341.15. Commercial driver's license and commercial driver's instruction permit document.

A. The commercial driver's license issued by the Department shall be identified as a Virginia commercial driver's license and shall include at least the following:

1. Full name, a Virginia address, and signature of the licensee;
2. A photograph of the licensee;
3. A physical description of the licensee, including sex and height;
4. The licensee's date of birth and license number that shall be assigned by the Department to the licensee and shall not be the same as the licensee's Social Security number;
5. A designation of the class and type of commercial motor vehicle or vehicles which the licensee is authorized to drive, together with any restrictions; and
6. The date of license issuance and expiration.

B. The commercial driver's instruction permit shall be identified as such but shall in all other respects conform to subsection A of this section. A commercial driver's instruction permit shall also contain a statement that the permit is invalid unless accompanied by the underlying driver's license.

§ 46.2-341.16. Vehicle classifications, restrictions, and endorsements.

A. A commercial driver's license or commercial driver's instruction permit shall authorize the licensee or permit holder to operate only the classes and types of commercial motor vehicles designated thereon. The classes of commercial motor vehicles for which such license may be issued are:

1. Class A-Combination heavy vehicle. - Any combination of vehicles with a gross combination weight rating of 26,001 or more pounds, provided the gross vehicle weight rating of the vehicles being towed is in excess of 10,000 pounds;

2. Class B-Heavy straight vehicle or other combination. - Any single motor vehicle with a gross vehicle weight rating of 26,001 or more pounds, or any such vehicle towing a vehicle with a gross vehicle weight rating that is not in excess of 10,000 pounds; and

3. Class C-Small vehicle. - Any vehicle that does not fit the definition of a Class A or Class B vehicle and is either (i) designed to transport ~~sixteen~~ 16 or more passengers including the driver or (ii) is used in the transportation of hazardous materials.

B. Commercial driver's licenses shall be issued with endorsements ~~and restrictions~~ authorizing the driver to operate ~~or restricting the driver to~~ the types of vehicles identified as follows:

1. Type T-Vehicles with double or triple trailers;
2. Type P-Vehicles carrying passengers;
3. Type N-Vehicles with cargo tanks;
4. Type H-Vehicles required to be placarded for hazardous materials;
5. ~~Type K-Vehicles not equipped with air brakes; and~~
6. Type S-School buses carrying 16 or more passengers, including the driver;
6. *Type X-combination of tank vehicle and hazardous materials endorsements for commercial driver's licenses issued on or after July 1, 2014; and*
7. *At the discretion of the Department, any additional codes for groupings of endorsements with an explanation of such code appearing on the front or back of the license.*

C. Commercial driver's licenses shall be issued with restrictions limiting the driver to the types of vehicles identified as follows:

1. *L for no air brake equipped commercial motor vehicles for licenses issued on or after July 1, 2014;*
2. *Z for no full air brake equipped commercial motor vehicles;*
3. *E for no manual transmission equipped commercial motor vehicles for commercial driver's licenses issued on or after July 1, 2014;*
4. *O for no tractor-trailer commercial motor vehicles;*
5. *M for no class A passenger vehicles;*
6. *N for no class A and B passenger vehicles;*
7. *K for vehicles not equipped with air brakes for commercial driver's licenses issued before July 1, 2014;*
8. *K for intrastate only for commercial driver's licenses issued on or after July 1, 2014;*
9. *V for medical variance; and*
10. *At the discretion of the Department, any additional codes for groupings of restrictions with an explanation of such code appearing on the front or back of the license.*

D. Commercial driver's instruction permits shall be issued with endorsements authorizing the driver to operate the types of vehicles identified as follows:

1. Type P-Vehicles carrying passengers as provided in § 46.2-341.10;
2. Type N-Vehicles with cargo tanks as provided in § 46.2-341.10; and
3. Type S-School buses carrying 16 or more passengers, including the driver as provided in § 46.2-341.10.

E. Commercial driver's instruction permits shall be issued with restrictions limiting the driver to the types of vehicles identified as follows:

1. *P for no passengers in commercial motor vehicles bus;*
2. *X for no cargo in commercial motor vehicles tank vehicle;*
3. *L for no air brake equipped commercial motor vehicles for commercial driver's instruction permits issued on or after July 1, 2014;*
4. *M for no class A passenger vehicles;*
5. *N for no class A and B passenger vehicles;*
6. *K for vehicles not equipped with air brakes for commercial driver's instruction permits issued before July 1, 2014;*
7. *K for intrastate only for commercial driver's instruction permits issued on or after July 1, 2014;*
8. *V for medical variance; and*
9. *Any additional jurisdictional restrictions that apply to the commercial driver's instruction permit.*

~~C.~~ F. Persons authorized to drive Class A vehicles are also authorized to drive Classes B and C vehicles, provided such persons possess the requisite endorsements for the type of vehicle driven.

~~D.~~ G. Persons authorized to drive Class B vehicles are also authorized to drive Class C vehicles, provided such persons possess the requisite endorsements for the type of vehicle driven.

~~E.~~ H. Any licensee who seeks to add a classification or endorsement to his commercial driver's license must submit the application forms, certifications and other updated information required by the Department and shall take and successfully complete the tests required for such classification or endorsement.

F. I. If any endorsement to a commercial driver's license is canceled by the Department and the licensee does not appear in person at the Department to have such endorsement removed from the license, then the Department may cancel the commercial driver's license of the licensee.

§ 46.2-341.20. Disqualification for multiple serious traffic violations.

A. For the purposes of this section, the following offenses, if committed in a commercial motor vehicle, are serious traffic violations:

1. Driving at a speed 15 or more miles per hour in excess of the posted speed limits;
2. Reckless driving;
3. A violation of a state law or local ordinance relating to motor vehicle traffic control arising in connection with a fatal traffic accident;
4. Improper or erratic traffic lane change;
5. Following the vehicle ahead too closely;
6. Driving a commercial motor vehicle without obtaining a commercial driver's license;
7. Driving a commercial motor vehicle without a commercial driver's license in the driver's immediate possession;
8. Driving a commercial motor vehicle without the proper class of commercial driver's license and/or endorsements for the specific vehicle group being operated or for the passengers or type of cargo being transported; and
9. A violation of ~~§ 46.2-1078.1 or a substantially similar law of any other jurisdiction~~ *a state law, including §§ 46.2-341.20:5 and 46.2-919.1 or a local ordinance relating to motor vehicle traffic control prohibiting texting while driving.*

For the purposes of this section, parking, vehicle weight, and vehicle defect violations shall not be considered traffic violations.

B. Beginning September 30, 2005, the following offenses shall be treated as serious traffic violations if committed while operating a noncommercial motor vehicle, but only if (i) the person convicted of the offense was, at the time of the offense, the holder of a commercial driver's license; (ii) the offense was committed on or after September 30, 2005; and (iii) the conviction, by itself or in conjunction with other convictions that satisfy the requirements of this section, resulted in the revocation, cancellation, or suspension of such person's driver's license or privilege to drive.

1. Driving at a speed 15 or more miles per hour in excess of the posted speed limits;
2. Reckless driving;
3. A violation of a state law or local ordinance relating to motor vehicle traffic control arising in connection with a fatal traffic accident;
4. Improper or erratic traffic lane change; or
5. Following the vehicle ahead too closely.

C. The Department shall disqualify for the following periods of time, any person whose record as maintained by the Department shows that he has committed, within any three-year period, the requisite number of serious traffic violations:

1. A 60-day disqualification period for any person convicted of two serious traffic violations; or
2. A 120-day disqualification period for any person convicted of three serious traffic violations.

D. Any disqualification period imposed pursuant to this section shall run consecutively, and not concurrently, with any other disqualification period imposed hereunder.

§ 46.2-341.20:4. Disqualification of driver convicted of fraud related to the testing and issuance of a commercial driver's instruction permit or commercial driver's license.

A person who has been convicted of fraud pursuant to § 46.2-348 related to the issuance of a commercial driver's instruction permit or commercial driver's license shall be disqualified for a period of one year. The application of a person so convicted who seeks to renew, transfer, or upgrade the fraudulently obtained commercial driver's instruction permit or commercial driver's license must also, at a minimum, be disqualified. Any disqualification must be recorded in the person's driving record. The person may not reapply for a new commercial driver's license for at least one year.

If a Department receives credible information that a commercial driver's instruction permit holder or commercial driver's license holder is suspected, but has not been convicted, of fraud related to the issuance of his commercial driver's instruction permit or commercial driver's license, the Department shall require the driver to retake the skills test or knowledge test, or both. Within 30 days of receiving notification from the Department that re-testing is necessary, the affected commercial driver's instruction permit holder or commercial driver's license holder must make an appointment or otherwise schedule to take the next available test. If the commercial driver's instruction permit holder or commercial driver's license holder fails to make an appointment within 30 days, the Department shall disqualify his commercial driver's instruction permit or commercial driver's license. If the driver fails either the knowledge or skills test or does not take the test, the Department shall disqualify his commercial driver's instruction permit or commercial driver's license. Once a commercial driver's instruction permit holder's or commercial driver's license holder's commercial driver's instruction permit or commercial driver's license has been disqualified, he must reapply for a commercial driver's instruction permit or commercial driver's license under Department procedures applicable to all commercial driver's

instruction permit and commercial driver's license applicants.

§ 46.2-341.20:5. Prohibition on texting; penalties.

A. No person driving a commercial motor vehicle shall text while driving such vehicle. A driver who violates this section is subject to a civil penalty not to exceed \$2,750. Civil penalties collected under this section shall be deposited into the Transportation Trust Fund.

B. Notwithstanding the definition of commercial motor vehicle in § 46.2-341.4, this section shall apply to any driver who drives a vehicle designed or used to transport between nine and 15 passengers, including the driver, not for direct compensation.

C. The provisions of this section shall not apply to drivers who are texting when necessary to communicate with law-enforcement officials or other emergency services.

D. The following words and phrases when used in this section only shall have the meanings respectively ascribed to them in this section except in those instances where the context clearly indicates a different meaning:

"Driving" means operating a commercial motor vehicle on a highway, including while temporarily stationary because of traffic, a traffic control device, or other momentary delays. Driving does not include operating a commercial motor vehicle when the driver has moved the vehicle to the side of or off a highway and has halted in a location where the vehicle can safely remain stationary.

"Texting" means manually entering alphanumeric text into, or reading text from, an electronic device. This action includes, but is not limited to, short message service, emailing, instant messaging, a command or request to access a website, pressing more than a single button to initiate or terminate a voice communication using a mobile telephone, or engaging in any other form of electronic text retrieval or entry for present or future communication. "Texting" does not include inputting, selecting, or reading information on a global positioning system or navigation system; pressing a single button to initiate or terminate a voice communication using a telephone; or using a device capable of performing multiple functions for a purpose that is not otherwise prohibited in this section.

§ 46.2-348. Fraud or false statements in applications for license; penalties.

Any person who uses a false or fictitious name or gives a false or fictitious address in any application for a driver's license, or any renewal or duplicate thereof, or knowingly makes a false statement or conceals a material fact or otherwise commits a fraud ~~in~~ during the driver's license examination or in his application shall be guilty of a Class 2 misdemeanor. However, where the license is used, or the fact concealed, or fraud is done, with the intent to purchase a firearm or use as proof of residency under § 9.1-903, a violation of this section shall be punishable as a Class 4 felony.

§ 46.2-1076. Lettering on certain vehicles.

A. No person shall drive, cause to be driven, or permit the driving of a "for hire" motor vehicle on the highways in the Commonwealth unless the legal name or trade name ~~and address~~ of the owner of motor carrier as defined in Chapter 20 (§ 46.2-2000 et seq.) or Chapter 21 (§ 46.2-2100 et seq.) operating the vehicle is plainly displayed on both sides of the vehicle. The letters and numerals in the display shall be of such size, shape, and color as to be readily legible during daylight hours from a distance of fifty feet while the vehicle is not in motion. The display shall be kept legible and may take the form of a removable device which meets the identification and legibility requirements of this section.

B. This section shall not apply to any motor vehicle:

1. Having a registered gross weight of less than 10,000 pounds;
2. Which is used exclusively for wedding, ambulance, or funeral services; or
3. Which is rented without chauffeur and operated under a valid lease which gives the lessee exclusive control of the vehicle.

C. Notwithstanding the exemptions contained in subsection B of this section, the requirements of subsection A of this section shall also apply to all motor vehicles leased to common or contract carriers of persons or property which are required to operate under certificates or permits issued by the State Corporation Commission or the Interstate Commerce Commission.

~~D.~~ Subsection A of this section shall also apply to tow trucks used in providing service to the public for hire. For the purposes of this section, "tow truck" means any motor vehicle which is constructed and used primarily for towing, lifting, or otherwise moving disabled vehicles.

~~E.~~ D. No person shall drive on the highways in the Commonwealth a pickup or panel truck, tractor truck, trailer, or semitrailer bearing any name other than that of the vehicle's owner or lessee. However, the provisions of this subsection shall not apply to advertising material for another, displayed pursuant to a valid contract.

§ 46.2-2001.1. License, permit, or certificate required.

A. It shall be unlawful for any person to operate, offer, advertise, provide, procure, furnish, or arrange by contract, agreement, or arrangement to transport passengers for compensation as a broker, motor carrier or excursion train operator without first obtaining a license, permit, or certificate, unless otherwise exempted, as provided in this chapter.

B. Beginning July 1, 2014, any person making application for a license, permit, or certificate pursuant to this chapter who has violated § 46.2-2001.1, either as a result of a conviction or as a result of an imposition of a civil penalty, shall be denied such license, permit, or certificate for a period of 12

months from the date the final disposition of the conviction or imposition of the civil penalty has been rendered.

The Department of Motor Vehicles shall require applicants for a license, permit, or certificate to report any conviction or imposition of civil penalties for violations of § 46.2-2001.1.

§ 46.2-2001.3. Application; notice requirements.

A. Applications for a license, permit, certificate, or identification marker *or renewal of a license, permit, certificate, or identification marker* under this chapter shall be made to the Department and contain such information and exhibits as the Department shall require. Such information shall include, in the application or otherwise, the matters set forth in § 46.2-2011.24 as grounds for denying licenses, permits, and certificates, and other pertinent matters requisite for the safeguarding of the public interest.

B. An applicant for any original certificate of public convenience and necessity issued under this chapter, or any request for a transfer of such certificate, unless otherwise provided, shall cause a notice of such application, on the form and in the manner prescribed by the Department, on every motor carrier holding the same type of certificate issued by the Department and operating or providing service within the area proposed to be served by the applicant.

C. For any application for original certificate or license issued under this chapter, or any request for a transfer of such certificate or license, the Department shall publish a notice of such application on the Department's public website in the form and in the manner prescribed by the Department.

D. An applicant for any original certificate of public convenience and necessity issued under this chapter, or any request for a transfer of such certificate of public convenience and necessity, shall cause a publication of a summary of the application to be made in a newspaper having a general circulation in the proposed area to be served or area where the primary business office is located within such time as the Department may prescribe.

§ 46.2-2005. Action on applications; hearings on denials and protests.

A. The Department may act upon any application required under this chapter for a certificate of public convenience and necessity without a hearing, unless such application is protested by any aggrieved party, except that no protest shall be heard in such cases whereby the applicant has received a notice of intent to award a contract under the Virginia Public Procurement Act (§ 2.2-4300 et seq.) for irregular route common carrier service to or from a public-use airport located in the City of Norfolk or the County of Henrico. Aggrieved parties may protest an application by submitting written grounds to the Department setting forth (i) a precise statement of the party's interest and how the party could be aggrieved if the application were granted; (ii) a full and clear statement of the facts that the person is prepared to provide by competent evidence; (iii) a statement of the specific relief sought; (iv) the case number assigned to the application; and (v) a certification that a copy of the protest was sent to the applicant.

B. The Department may act upon any application required under this chapter for a license or certificate of fitness without a hearing, unless such application is protested by any party based upon fitness allegations. Parties may protest an application by submitting written grounds to the Department setting forth (i) a precise statement of the party's objections to the application being granted; (ii) a full and clear statement of the facts that the person is prepared to provide by competent evidence; (iii) the case number assigned to the application; and (iv) a certification that a copy of the protest was sent to the applicant. The Department shall have full discretion as to whether a hearing is warranted based on the merits of any protest filed.

C. Any applicant denied without a hearing an original license, *permit*, or certificate under subsection A or B *of this section or subsection B of § 46.2-2001.1*, or any request for a transfer of such a license or certificate, shall be given a hearing at a time and place determined by the Commissioner or his designee upon the applicant's written request for such hearing made within 30 days of denial.

§ 46.2-2011.9. Bond and letter of credit requirements.

A. Every applicant for an original, ~~second-year renewal, and third-year renewal~~ of a certificate under this chapter shall obtain and file with the Department, *along with the application*, a surety bond or an irrevocable letter of credit, in addition to any other bond or letter of credit required by law, in the amount of \$25,000, *which shall remain in effect for the first three years of licensure*. The bond or letter of credit shall be in a form and content acceptable to the Department. The bond or letter of credit shall be conditioned on a statement by the applicant that the applicant will not practice fraud, make any fraudulent representation, or violate any provision of this chapter in the conduct of the applicant's business. The Department may, without holding a hearing, suspend the certificate during the period that the certificate holder does not have a sufficient bond or letter of credit on file.

B. Every applicant for an original ~~and subsequent renewal~~ license pursuant to this chapter shall obtain and file with the Department, *along with the application*, a surety bond or an irrevocable letter of credit, in addition to any other bond or letter of credit required by law, in the amount of \$25,000. The bond or letter of credit shall be in a form and content acceptable to the Department. The bond or letter of credit shall be conditioned on a statement by the applicant that the applicant will not practice fraud, make any fraudulent representation, or violate any provision of this chapter in the conduct of the applicant's business. The Department may, without holding a hearing, suspend the license during the

period that the licensee does not have a sufficient bond or letter of credit on file.

C. If a person suffers any of the following: (i) loss or damage in connection with the transportation service by reason of fraud practiced on him or fraudulent representation made to him by a licensee or certificate holder or his agent or employee acting within the scope of employment; (ii) loss or damage by reason of a violation by a licensee or certificate holder or his agent or employee of any provision of this chapter in connection with the transportation service; or (iii) loss or damage resulting from a breach of a contract entered into on or after the effective date of this act, that person shall have a claim against the licensee or certificate holder's bond or letter of credit, and may recover from such bond or letter of credit the amount awarded to such person by final judgment of a court of competent jurisdiction against the licensee or certificate holder as a result of such loss or damage up to, but not exceeding, the amount of the bond or letter of credit.

D. The licensee or certificate holder's surety shall notify the Department when a claim is made against a licensee or certificate holder's bond, when a claim is paid and when the bond is canceled. Such notification shall include the amount of a claim and the circumstances surrounding the claim. Notification of cancellation shall include the effective date and reason for cancellation.

E. The surety on any bond filed by a licensee or certificate holder shall be released and discharged from all liability accruing on such bond after the expiration of ~~sixty~~ 60 days from the date on which the surety files with the Department a written request to be released and discharged. Such request shall not operate to relieve, release or discharge the surety from any liability already accrued or which shall accrue before the expiration of the ~~sixty-day~~ 60-day period.

§ 46.2-2011.11. Established place of business.

A. No license or certificate shall be issued to any applicant that does not have an established place of business, owned or leased by the applicant, where a substantial portion of the activity of the motor carrier or broker business will be routinely conducted and that:

1. Satisfies all applicable local zoning regulations;
2. Houses all records that the motor carrier or broker is required to maintain by this chapter or by regulations promulgated pursuant to this chapter; and
3. Is equipped with a working telephone listed or advertised in the name of the motor carrier or broker.

B. Every licensee and certificate holder shall maintain an established place of business in accordance with subsection A of this section and keep on file a physical address with the Department. Every licensee and certificate holder shall inform the Department *by certified letter or other manner prescribed by the Department* of any changes to the motor carrier or broker's mailing address, physical location, telephone number, and legal status, legal name of company, or trade name of company within 30 days of such change.

C. *Any licensee or certificate holder that relocates his established place of business shall confirm to the Department that the new established place of business conforms to the requirements of subsection A.*

§ 46.2-2011.23. Violations; civil penalties.

The Department may impose a civil penalty not exceeding \$1,000 if any person has:

1. Made any misrepresentation of a material fact to obtain proper operating credentials as required by this chapter or other requirements in this Code regulating the operation of motor vehicles;
2. Failed to make any report required in this chapter;
3. Failed to pay any fee or tax properly assessed against him; or
4. Failed to comply with any provision of this chapter or lawful order, rule or regulation of the Department or any term or condition of any certificate, permit, or license.

Any such penalty shall be imposed by order; however, no order issued pursuant to this section shall become effective until the Department has offered the person an opportunity for an administrative hearing to show cause why the order should not be enforced. Instead of or in addition to imposing such penalty, the Department may suspend, revoke, or cancel any license, permit, certificate, registration card or identification marker issued pursuant to this title. If, in any such case, it appears that the defendant owes any fee or tax to the Commonwealth, the Department shall enter order therefor.

For the purposes of this section, each separate violation shall be subject to the civil penalty.

§ 46.2-2011.24. Grounds for denying, suspending, or revoking licenses, permits, or certificates.

A license, permit, or certificate issued pursuant to this chapter may be denied, suspended, or revoked on any one or more of the following grounds, where applicable:

1. Material misstatement or omission in application for license, certificate, permit, identification marker, or vehicle registration;
2. Failure to comply subsequent to receipt of a written warning from the Department or any willful failure to comply with a lawful order, any provision of this chapter or any regulation promulgated by the Department under this chapter, or any term, condition, or restriction of a license, permit, or certificate;
3. Failure to comply with zoning or other land use regulations, ordinances, or statutes;
4. Use of deceptive business acts or practices;
5. Knowingly advertising by any means any assertion, representation, or statement of fact that is

untrue, misleading, or deceptive relating to the conduct of the business for which a license, certificate, permit, identification marker, or vehicle registration is held or sought;

6. Having been found, through a judicial or administrative hearing, to have committed fraudulent or deceptive acts in connection with the business for which a license, permit, or certificate is held or sought or any consumer-related fraud;

7. Having been convicted of any criminal act involving the business for which a license, permit, or certificate is held or sought;

8. Failure to comply with § 46.2-2056 or any regulation promulgated pursuant thereto;

9. Improper leasing, renting, lending, or otherwise allowing the improper use of a license, certificate, permit, identification marker, or vehicle registration;

10. Having been convicted of a felony;

11. Having been convicted of any misdemeanor involving lying, cheating, stealing, or moral turpitude;

12. Failure to submit to the Department any tax, fees, dues, fines, or penalties owed to the Department;

13. Failure to furnish the Department information, documentation, or records required or requested pursuant to statute or regulation;

14. Knowingly and willfully filing any false report, account, record, or memorandum;

15. Failure to meet *or maintain* application certifications or requirements of public convenience and necessity, character, fitness, and financial responsibility pursuant to this chapter;

16. Willfully altering or changing the appearance or wording of any license, permit, certificate, identification marker, license plate, or vehicle registration;

17. Failure to provide services in accordance with license, permit, or certificate terms, limitations, conditions, or requirements;

18. Failure to maintain and keep on file with the Department motor carrier liability insurance, issued by a company licensed to do business in the Commonwealth, or a bond, certificate of insurance, certificate of self-insurance, or unconditional letter of credit in accordance with this chapter, with respect to each motor vehicle operated in the Commonwealth;

19. Failure to comply with the Workers' Compensation Act of Title 65.2;

20. Failure to properly register a motor vehicle under this title;

21. Failure to comply with any federal motor carrier statute, rule, or regulation;

22. Failure to comply with the requirements of the Americans with Disabilities Act; or

23. Inactivity of a motor carrier as may be evidenced by the absence of a motor vehicle registered to operate under such certificate or permit for a period of greater than three months.

§ 46.2-2099.19. Broker's license not substitute for other certificates or permits required.

No person who holds a broker's license under this article shall engage in transportation subject to this chapter unless he holds a certificate or permit as provided in this chapter. In the execution of any contract, agreement, or arrangement to sell, provide, procure, furnish, or arrange for such transportation, it shall be unlawful for such person to employ any carrier by motor vehicle who is not the lawful holder of an effective certificate or permit issued as provided in this chapter *or when such certificate or permit does not authorize the carrier to perform the service being acquired.*

A person holding a broker's license shall obtain and maintain a copy of the certificate of public convenience and necessity issued to those carriers through which the broker arranges transportation services.

§ 46.2-2108.4. Application; notice requirements.

A. Applications for a license, permit, or certificate of fitness *or renewal of a license, permit, or certificate of fitness* under this chapter shall be made to the Department and contain such information as the Department shall require. Such information shall include, in the application or otherwise, the matters set forth in §§ 46.2-2133 and 46.2-2134 as grounds for denying licenses, permits, and certificates.

B. The applicant for a certificate of fitness issued under this chapter shall cause a notice of such application, on the form and in the manner prescribed by the Department, to be served on every affected person who has requested notification.

§ 46.2-2122. Bond and letter of credit requirements of applicants for license and certificate.

A. Every applicant for an original, ~~second-year renewal, third-year renewal, fourth-year renewal, and fifth-year renewal~~ of a certificate of fitness under this chapter shall obtain and file with the Department, *along with the application*, a surety bond or an irrevocable letter of credit, in addition to any other bond or letter of credit required by law, in the amount of \$50,000, *which shall remain in effect for the first five years of licensure.* The bond or letter of credit shall be in a form and content acceptable to the Department. The bond or letter of credit shall be conditioned on a statement by the applicant that the applicant will not practice fraud, make any fraudulent representation, or violate any provision of this chapter in the conduct of the applicant's business. The Department may, without holding a hearing, suspend the certificate of fitness during the period that the certificate holder does not have a sufficient bond or letter of credit on file.

B. Every applicant for an original ~~and subsequent renewal~~ license pursuant to Article 5 ~~of this~~

~~chapter~~ (§ 46.2-2174 *et seq.*) shall obtain and file with the Department, *along with the application*, a surety bond or an irrevocable letter of credit, in addition to any other bond or letter of credit required by law, in the amount of \$25,000. The bond or letter of credit shall be in a form and content acceptable to the Department. The bond or letter of credit shall be conditioned on a statement by the applicant that the applicant will not practice fraud, make any fraudulent representation, or violate any provision of this chapter in the conduct of the applicant's business. The Department may, without holding a hearing, suspend the license during the period that the licensee does not have a sufficient bond or letter of credit on file.

C. If a person suffers any of the following: (i) loss or damage in connection with the transportation service by reason of fraud practiced on him or fraudulent representation made to him by a licensee or certificate holder or his agent or employee acting within the scope of employment; (ii) loss or damage by reason of a violation by a licensee or certificate holder or his agent or employee of any provision of this chapter in connection with the transportation service; or (iii) loss or damage resulting from a breach of a contract entered into on or after the effective date of this act, that person shall have a claim against the licensee or certificate holder's bond or letter of credit, and may recover from such bond or letter of credit the amount awarded to such person by final judgment of a court of competent jurisdiction against the licensee or certificate holder as a result of such loss or damage up to, but not exceeding, the amount of the bond or letter of credit.

D. The licensee or certificate holder's surety shall notify the Department when a claim is made against a licensee or certificate holder's bond, when a claim is paid and/or when the bond is canceled. Such notification shall include the amount of a claim and the circumstances surrounding the claim. Notification of cancellation shall include the effective date and reason for cancellation.

E. The surety on any bond filed by a licensee or certificate holder shall be released and discharged from all liability accruing on such bond after the expiration of ~~sixty~~ 60 days from the date on which the surety files with the Department a written request to be released and discharged. Such request shall not operate to relieve, release, or discharge the surety from any liability already accrued or that shall accrue before the expiration of the ~~sixty-day~~ 60-day period.

§ 46.2-2132. Violations; civil penalties.

The Department may impose a civil penalty not exceeding \$1,000 if any person has:

1. Made any misrepresentation of a material fact to obtain proper operating credentials as required by this chapter or other requirements in this title regulating the operation of motor vehicles;
2. Failed to make any report required in this chapter;
3. Failed to pay any fee or tax properly assessed against him; or
4. Failed to comply with any provision of this chapter or lawful order, rule or regulation of the Department or any term or condition of any certificate, permit, or license.

Any such penalty shall be imposed by order; however, no order issued pursuant to this section shall become effective until the Department has offered the person an opportunity for an administrative hearing to show cause why the order should not be enforced. Instead of or in addition to imposing such penalty, the Department may suspend, revoke, or cancel any license, permit, certificate of fitness, registration card or identification marker issued pursuant to this title. If, in any such case, it appears that the defendant owes any fee or tax to the Commonwealth, the Department shall enter order therefor.

For the purposes of this section, each separate violation shall be subject to the civil penalty.

§ 46.2-2133. Grounds for denying, suspending, or revoking licenses or certificates.

A license or certificate of fitness issued under this chapter may be denied, suspended, or revoked on any one or more of the following grounds, where applicable:

1. Material misstatement or omission in application for license or certificate of public convenience and necessity, identification marker, or vehicle registration;
2. Failure to comply subsequent to receipt of a written warning from the Department or any willful failure to comply with a lawful order, any provision of this chapter or any regulation promulgated by the Department under this chapter, or any term or condition of any license or certificate of fitness;
3. Use of deceptive business acts or practices;
4. Knowingly advertising by any means any assertion, representation, or statement of fact that is untrue, misleading, or deceptive relating to the conduct of the business for which a license, certificate of fitness, identification marker, or vehicle registration is held or sought;
5. Having been found, through a judicial or administrative hearing, to have committed fraudulent or deceptive acts in connection with the business for which a license or certificate of fitness is held or sought or any consumer-related fraud;
6. Having been convicted of any criminal act involving the business for which a license or certificate of fitness is held or sought;
7. Improper leasing, renting, lending, or otherwise allowing the improper use of a license, certificate of fitness, identification marker, or vehicle registration;
8. Having been convicted of a felony;
9. Having been convicted of any misdemeanor involving lying, cheating, stealing, or moral turpitude;
10. Failure to submit to the Department any tax, fees, dues, fines, or penalties owed to the

Department;

11. Failure to furnish the Department information, documentation, or records required or requested pursuant to statute or regulation;

12. Knowingly and willfully filing any false report, account, record, or memorandum;

13. Failure to meet *or maintain* application certifications or requirements of character, fitness, and financial responsibility pursuant to this chapter;

14. Willfully altering or changing the appearance or wording of any license, certificate, identification marker, license plate, or vehicle registration;

15. Failure to provide services in accordance with license or certificate of fitness terms, limitations, conditions, or requirements;

16. Failure to maintain and keep on file with the Department motor carrier liability insurance or cargo insurance, issued by a company licensed to do business in the Commonwealth, or a bond, certificate of insurance, certificate of self-insurance, or unconditional letter of credit in accordance with this chapter, with respect to each motor vehicle operated in the Commonwealth;

17. Failure to comply with the Workers' Compensation Act of Title 65.2;

18. Failure to properly register a motor vehicle under this title;

19. Failure to comply with any federal motor carrier statute, rule, or regulation; or

20. Inactivity of a motor carrier as may be evidenced by the absence of a motor vehicle registered to operate under such certificate or permit for a period of greater than three months.

§ 46.2-2176. Broker's license not substitute for other certificates or permits.

No person who holds a broker's license under this article shall engage in transportation subject to this chapter unless he holds a certificate or permit as provided in this chapter. In the execution of any contract, agreement, or arrangement to sell, provide, procure, furnish, or arrange for such transportation, it shall be unlawful for such person to employ any carrier by motor vehicle who is not the lawful holder of an effective certificate or permit issued as provided in this chapter *or when such certificate or permit does not authorize the carrier to perform the service being acquired.*