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SENATE BILL NO. 1468

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Transportation
on January 25, 2017)

(Patron Prior to Substitute—Senator Marsden)

A BILL to amend and reenact §§ 46.2-1231, 46.2-1232, and 46.2-1233.2 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 46.2-1233.3, relating to tow truck drivers and towing and recovery operators; requirements; civil penalties.

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-1231, 46.2-1232, and 46.2-1233.2 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 46.2-1233.3 as follows:

§ 46.2-1231. Ticketing, removal, or immobilization of trespassing vehicles by owner or operator of parking or other lot or building; charges.

The owner, operator, or lessee of any parking lot, parking area, or parking space in a parking lot or area or any part of a parking lot or area, or of any other lot or building, including any county, city, or town, or authorized agent of the person having control of such premises may have any vehicle occupying the lot, area, space, or building without the permission of its owner, operator, lessee, or authorized agent of the one having the control of the premises, removed by towing or otherwise to a licensed garage for storage until called for by the owner or his agent if there are posted at all entrances to the parking lot or area signs clearly and conspicuously disclosing that such vehicle, if parked without permission, will be removed, towed, or immobilized. Such signs shall, at a minimum, include the nonemergency telephone number of the local law-enforcement agency or the telephone number of the responsible towing and recovery operator to contact for information related to the location of vehicles towed from that location. The requirements of this section relating to the posting of signs by an owner, operator, or lessee of any parking lot, parking area or space shall not apply to localities in which the local governing body has adopted an ordinance pursuant to § 46.2-1232.

Whenever a trespassing vehicle is removed or towed as permitted by this section, notice of this action shall forthwith be given by the tow truck operator to the State Police or the local law-enforcement agency of the jurisdiction from which the vehicle was towed. It shall be unlawful to fail to report such tow as required by this section and violation of the reporting requirement of this section shall constitute a traffic infraction punishable by a fine of not more than \$100. Such failure to report shall limit the amount which may be charged for the storage and safekeeping of the towed vehicle to an amount no greater than that charged for one day of storage and safekeeping. If the vehicle is removed and stored, the vehicle owner may be charged and the vehicle may be held for a reasonable fee for the removal and storage.

All businesses engaged in towing vehicles without the consent of their owners shall prominently display (i) at their main place of business and (ii) at any other location where towed vehicles may be reclaimed a comprehensive list of all their fees for towing, recovery, and storage services, or the basis of such charges. This requirement to display a list of fees may also be satisfied by providing, when the towed vehicle is reclaimed, a written list of such fees, either as part of a receipt or separately, to the person who reclaims the vehicle. Charges in excess of those posted shall not be collectable from any motor vehicle owner whose vehicle is towed, recovered, or stored without his consent. *At the time a vehicle owner or agent reclaims a towed vehicle, such towing and recovery operator, if located in Planning District 8, shall provide a written receipt that provides a telephone number or website available for customer complaints.*

Notwithstanding the foregoing provisions of this section, if the owner or representative or agent of the owner of the trespassing vehicle is present and removes the trespassing vehicle from the premises before it is actually towed, the trespassing vehicle shall not be towed, but the owner or representative or agent of the owner of the trespassing vehicle shall be liable for a reasonable fee, not to exceed \$25 or such other limit as the governing body of the county, city, or town may set by ordinance, in lieu of towing.

In lieu of having a trespassing vehicle removed by towing or otherwise, the owner, operator, lessee or authorized agent of the premises on which the trespassing vehicle is parked may cause the vehicle to be immobilized by a boot or other device that prevents a vehicle from being moved by preventing a wheel from turning, provided that the boot or other device does not damage the vehicle or wheel. The charge for the removal of any boot or device shall not exceed \$25 or such other limit as the governing body of the county, city, or town may set by ordinance. In lieu of having the vehicle removed by towing or otherwise, or in lieu of causing the vehicle to be immobilized, the owner, operator, lessee or

60 authorized agent of the premises on which the trespassing vehicle is parked may cause to have an
61 authorized local government official or law-enforcement officer issue, on the premises, a notice of the
62 violation of a parking ordinance or regulation created pursuant to § 46.2-1220 or § 46.2-1221 to the
63 registered owner of the vehicle.

64 This section shall not apply to police, fire, or public health vehicles or where a vehicle, because of a
65 wreck or other emergency, is parked or left temporarily on the property of another. The governing body
66 of every county, city, and town may by ordinance set limits on fees and charges provided for in this
67 section.

68 **§ 46.2-1232. Localities may regulate removal or immobilization of trespassing vehicles.**

69 A. The governing body of any county, city, or town may by ordinance regulate the removal of
70 trespassing vehicles from property by or at the direction of the owner, operator, lessee, or authorized
71 agent in charge of the property. In the event that a vehicle is towed from one locality and stored in or
72 released from a location in another locality, the local ordinance, if any, of the locality from which the
73 vehicle was towed shall apply.

74 B. No local ordinance adopted under authority of this section shall require that any towing and
75 recovery business also operate as or provide services as a vehicle repair facility or body shop, filling
76 station, or any business other than a towing and recovery business.

77 C. Any such local ordinance may also require towing and recovery operators to (i) obtain and retain
78 photographs or other documentary evidence substantiating the reason for the removal; (ii) post signs at
79 their main place of business and at any other location where towed vehicles may be reclaimed
80 conspicuously indicating (a) the maximum charges allowed by local ordinance, if any, for all their fees
81 for towing, recovery, and storage services and (b) the name and business telephone number of the local
82 official, if any, responsible for handling consumer complaints; (iii) obtain at the time the vehicle is
83 towed, verbal approval of an agent designated in the local ordinance who is available at all times; and
84 (iv) obtain, at the time the vehicle is towed, if such towing is performed during the normal business
85 hours of the owner of the property from which the vehicle is being towed, the written authorization of
86 the owner of the property from which the vehicle is towed, or his agent. Such written authorization, if
87 required, shall be in addition to any written contract between the towing and recovery operator and the
88 owner of the property or his agent, *except for vehicles being towed from a locality within Planning*
89 *District 8, which shall not require written authorization if such written contract is in place. Any such*
90 *written contract governing a property located within Planning District 8 shall clearly state the terms on*
91 *which towing and recovery operators may monitor private lots on behalf of property owners.* For the
92 purposes of this subsection, "agent" shall not include any person who either (a) is related by blood or
93 marriage to the towing and recovery operator or (b) has a financial interest in the towing and recovery
94 operator's business.

95 D. Any such ordinance adopted by a locality within Planning District 8 may require towing
96 companies that tow vehicles from the county, city, or town adopting the ordinance to other localities,
97 provided that the stored or released location is within the Commonwealth of Virginia and within 10
98 miles of the point of origin of the actual towing, (i) to obtain from the locality from which such
99 vehicles are towed a permit to do so and (ii) to submit to an inspection of such towing company's
100 facilities to ensure that the company meets all the locality's requirements, regardless of whether such
101 facilities are located within the locality or elsewhere. The locality may impose and collect reasonable
102 fees for the issuance and administration of permits as provided for in this subsection. Such ordinance
103 may also provide grounds for revocation, suspension, or modification of any permit issued under this
104 subsection, subject to notice to the permittee of the revocation, suspension, or modification and an
105 opportunity for the permittee to have a hearing before the governing body of the locality or its
106 designated agent to challenge the revocation, suspension, or modification. *Any tow truck driver who*
107 *removes or tows a vehicle, pursuant to any such ordinance, that is occupied by an unattended*
108 *companion animal as defined in § 3.2-6500 shall, upon such removal, immediately notify the animal*
109 *control office of the locality in which the vehicle is being removed or towed.* Nothing in this subsection
110 shall be applicable to public safety towing.

111 **§ 46.2-1233.2. Advisory board.**

112 Prior to adopting or amending any ordinance pursuant to § 46.2-1232 or § 46.2-1233, the local
113 governing body shall appoint an advisory board to advise the governing body with regard to the
114 appropriate provisions of the ordinance. ~~Voting members~~ *Members* of the advisory board shall *only*
115 consist of an equal number of representatives of local law-enforcement agencies and representatives of
116 licensed towing and recovery operators, and one member of the general public. Any such advisory board
117 shall meet at least once per year at the call of the chairman of the advisory board, who shall be elected
118 annually from among the ~~voting~~ members of the advisory board by a majority vote. *The chairmanship*
119 *of any such advisory board for any locality within Planning District 8 shall be for a term of one year*
120 *and shall rotate annually between a representative of a local law-enforcement agency, a representative*
121 *of a licensed towing and recovery operator, and one member of the general public.*

§ 46.2-1233.3. Improper towing; penalty.

Any tow truck driver who violates subsection A of § 46.2-118 or § 46.2-1217, 46.2-1231, or 46.2-1233.1, or any ordinance adopted therefrom, or any ordinance adopted pursuant to § 46.2-1233, or any towing or recovery operator who violates subsection B of § 46.2-118 or § 46.2-1217, 46.2-1231, or 46.2-1233.1, or any ordinance adopted therefrom, or any ordinance adopted pursuant to § 46.2-1233, is subject to a civil penalty of \$150. Such penalty shall be collected by the appropriate circuit court, and the proceeds shall be deposited into the Literary Fund.

This section shall only apply to tow truck drivers and towing and recovery operators removing a vehicle without the consent of its owner from a location in Planning District 8 or to a location in Planning District 8.