

# VIRGINIA ACTS OF ASSEMBLY -- 2019 SESSION

## CHAPTER 78

*An Act to amend and reenact §§ 46.2-341.14:1, 46.2-341.14:10, and 46.2-1702 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 46.2-326.1, relating to commercial vehicle training and testing.*

[S 1347]

Approved February 21, 2019

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 46.2-341.14:1, 46.2-341.14:10, and 46.2-1702 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 46.2-326.1 as follows:**

**§ 46.2-326.1. Designation of commercial driver's license skills testing examiners.**

*A. Notwithstanding the provisions of § 46.2-1702 and unless the Commissioner identifies grounds that would be cause for cancellation of a certification pursuant to subsection D of § 46.2-341.14:5 during the application process, the Department shall certify a licensed Class A driver training school as a third party tester, as defined in § 46.2-341.4, to conduct skills tests if, in addition to the requirements listed in subsections B and C of § 46.2-341.14:1, the school (i) has a program length of 160 hours or more and (ii) maintains a bond in the amount of \$100,000 to pay for retesting drivers in the event that the third party tester or one or more of its third party examiners, as defined in § 46.2-341.4, are involved in fraudulent activities related to conducting knowledge or skills testing for applicants.*

*The bond required by this subsection shall be in lieu of the bond required in subdivision C 5 of § 46.2-341.14:1 but in addition to the bond required for a licensed Class A driver training school.*

*B. Licensed Class A driver training schools meeting the requirements of subsection A may apply to the Department for certification as a third party tester. Such application shall include the information required in the application in § 46.2-341.14:3 and shall include (i) evidence of the requirements listed in subsection A; (ii) an application for an employee who will act as a third party examiner; (iii) evidence that the licensed Class A driver training school has maintained a place of business in the Commonwealth for at least three years and has maintained its licensure in good standing or that the third party examiner has been licensed as an instructor, as defined in § 46.2-1700, at a licensed Class A driver training school for a minimum of two years and has maintained such licensure in good standing; and (iv) a \$100 application fee. Such application must be renewed annually.*

*For the purposes of this subsection, "good standing" means that the instructor has not had sanctions levied against him by the Department for actions related to his role as an instructor or that the driver training school has not had sanctions levied by the Department for actions related to participation in the Class A driver training school program.*

*C. If the Department fails to certify a licensed Class A driver training school applicant, the Department shall communicate to the applicant its decision and the reason for denial in writing within 60 days of submission of the application.*

*D. Licensed Class A driver training schools operating as third party testers shall:*

*1. Remit \$50 per skills test to the Department in accordance with § 46.2-341.13;*

*2. Submit to the Department the results of each skills test administered in a form prescribed by the Department;*

*3. Test only individuals receiving instruction and training from that school; and*

*4. Not require their students to be tested at their driver training school.*

*E. Individuals intending to act as third party examiners for a licensed Class A driver training school that is operating as a third party tester shall meet the requirements in § 46.2-341.14:2 and submit to the Department an application that includes (i) the information in the application required by § 46.2-341.14:3, (ii) evidence of their employment by a licensed Class A driver training school that is operating as a third party tester, and (iii) a \$50 application fee. Such application must be renewed annually.*

*F. The Department shall have the authority to revoke or cancel the third party tester certification of a licensed Class A driver training school permitted to administer skills tests pursuant to the provisions of this section or any third party examiner employed by such Class A driver training school, effective immediately, for any reason enumerated in § 46.2-341.14:5. A licensed Class A driver training school permitted to administer skills tests pursuant to the provisions of this section or any third party examiner employed by such Class A driver training school shall not administer skills tests if its authority to provide training has been revoked, canceled, or suspended by the Department pursuant to § 46.2-1705 or any other provision of law.*

**§ 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 the Commonwealth;

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 conduct random examinations, inspections, and audits of its records, facilities, and operations that relate to the third party testing program without prior notice;

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 testing program and current third party agreement;

7. Maintain at a location in the Commonwealth, 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~~ *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 (i) the driver's employment with the third party tester at the time the test was taken; ~~If, or 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)~~ (a) the driver was employed by a school board at the time of the test and ~~(ii)~~ (b) the third party tester trained the driver in accordance with the Virginia School Bus Driver Training Curriculum Guide; ~~and, or~~

~~g. Notwithstanding the provisions of subdivision f, evidence of (ii) the student's enrollment in a commercial driver training course offered by a community college or Class A driver training school at the time the test was taken if the third party tester is a comprehensive community college in the Virginia Community College System.~~

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

a. Name and ~~Social Security~~ *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 training and 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 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;

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

12. Maintain a copy of the third party tester's road test route or routes approved by the Department.

C. In addition to the requirements listed in subsection B, all third party testers who are not governmental entities, including a comprehensive community college in the Virginia Community College System, shall:

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

2. ~~Employ~~ *For employers that are testing their own employees, employ* at least ~~75~~ 50 drivers of commercial motor vehicles licensed in the Commonwealth; 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 *as a motor carrier* and rated by the U.S. Department of Transportation, maintain a rating of "satisfactory";

4. Comply with the Virginia Motor Carrier Safety Regulations; and

5. Initiate and maintain a bond in the amount of \$5,000 to pay for retesting drivers in the event that the ~~third party~~ *third party* tester or one or more of its examiners are involved in fraudulent activities related to conducting knowledge or skills testing for applicants.

**§ 46.2-341.14:10. Waiver of requirement that third party tester applicant employ 50 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~~ *50* 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.

**§ 46.2-1702. Certification of driver education courses by Commissioner.**

Notwithstanding any other provision of law, the Commissioner shall have the authority to approve as a driver education course satisfying the requirements of § 46.2-334 any course which is offered by any driver training school licensed under the provisions of this chapter if he finds that the course is of comparable content and quality to that offered in the Commonwealth's public schools. In making such finding, the Commissioner shall not require that the instructors of any driver training school meet the certification requirements of teachers in the Commonwealth's public schools.

Any comprehensive community college within the Virginia Community College System shall have the authority to offer the courses required by the Virginia Board of Education to become a certified driver education instructor in Virginia on a not-for-credit basis so long as the courses include the same content and curriculum required by the Department of Education, enabling individuals who complete those courses to then teach driver's education in Virginia driver education training schools upon official certification by the Department of Motor Vehicles. The Virginia Department of Education shall provide the curriculum, content, and other information regarding the courses required to become certified driver education instructors in Virginia to any comprehensive community college within the Virginia Community College System. The content of each course must be accurate and rigorous and must meet the requirements for the Department of Education's Curriculum and Administrative Guide for Driver's Education, which includes the Board of Education's standards of learning.

Except for schools in the Commonwealth's public school system and providers of correspondence courses approved by the Board of Education pursuant to subsection F of § 22.1-205, only those driver training schools that are licensed as computer-based driver education providers shall be authorized to administer computer-based driver education courses, including the parent/student driver education component of the driver education curriculum as established in § 22.1-205. The content and quality of such computer-based driver education courses shall be comparable to that of courses offered in the Commonwealth's public schools. The Commissioner may establish minimum standards for testing students who have enrolled in computer-based driver education courses. Such standards may include (i) requirements for the test site; (ii) verification that the person taking the test is the person enrolled in the course; (iii) verification of the identity of the student using photo identification approved by the Commissioner; and (iv) maintenance of a log containing the name and title of the licensed instructor monitoring the test, the test date, the name of the student taking the test, and the student's time-in and time-out of the test site. Computer-based driver education providers shall not issue a certificate of completion to a student prior to receiving proof of completion of the additional minimum 90-minute parent/student driver education component pursuant to § 22.1-205.

Any driver training school licensed under the provisions of this chapter shall be authorized to provide the 90-minute parent/student driver education component of the driver education curriculum pursuant to § 22.1-205. Only public schools and those driver training schools that are licensed as computer-based driver education providers shall be authorized to administer the parent/student driver education component of the driver education curriculum through a virtual, computer-based program. Completion of such education component shall satisfy the requirement for the additional 90-minute parent/student driver education component so long as there is participation of the student's parent or guardian and the content provided is comparable to that which is offered in the Commonwealth's public schools and emphasizes (a) parental responsibilities regarding juvenile driver behavior, (b) juvenile driving restrictions pursuant to this Code, and (c) the dangers of driving while intoxicated and underage consumption of alcohol.

The Commissioner shall have authority to approve any driver education course offered by any Class A licensee if he finds the course meets the requirements for such courses as set forth in this chapter and as otherwise established by the Department. Class A licensees shall not be permitted to administer

knowledge or behind-the-wheel examinations *unless authorized pursuant to § 46.2-326.1*. Driver education courses offered by any Class B licensee shall be based on the driver education curriculum currently approved by the Department of Education and the Department.

The Commissioner may accept, in lieu of requirements established by the Department of Education for instructor qualification, (1) 20 years' service with the Virginia Department of State Police by a law-enforcement officer who retired or resigned while in good standing from such Department or (2)(i) 20 years' service as a traffic enforcement officer with patrol experience with any local police department by a law-enforcement officer who has been certified by the Virginia Department of Criminal Justice Services pursuant to § 15.2-1706, (ii) who retired or resigned while in good standing from such department, and (iii) who has been certified to teach driver training by the Virginia Department of Criminal Justice Services.

**2. That the provisions of this act shall become effective on October 1, 2019.**

**3. That the Commissioner of the Department of Motor Vehicles shall report to the Chairmen of the House and Senate Committees on Transportation by December 1, 2021, (i) regarding the wait times for commercial driver's licenses and the growth of third party testing in the Commonwealth and (ii) on infractions incurred by holders of a Virginia commercial driver's license while driving a commercial motor vehicle, aggregated by the type of tester, beginning after the implementation of this act.**