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HOUSE BILL NO. 628

Offered January 12, 2022

Prefiled January 11, 2022

A BILL to amend and reenact §§ 46.2-341.14:1 and 46.2-341.14:9 of the Code of Virginia, relating to commercial driver's license examinations.

Patrons—Hudson, Bell and Runion

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-341.14:1 and 46.2-341.14:9 of the Code of Virginia are amended and reenacted as follows:

§ 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 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, 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 (a) the driver was employed by a school board at the time of the test and (b) the third party tester trained the driver in accordance with the Virginia School Bus Driver Training Curriculum Guide, or (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.

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 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

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59 Department;

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

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

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

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

68 2. For employers that are testing their own employees, employ at least 50 drivers of commercial
69 motor vehicles licensed in the Commonwealth during the 12-month period preceding the application,
70 including part-time and seasonal drivers. This requirement may be waived by the Department pursuant
71 to § 46.2-341.14:10;

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

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

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

78 D. (For effective date, see Acts 2019, c. 750, cl. 3, as amended by Acts 2020, c. 546) Certified third
79 party testers are authorized to provide entry-level driver training to *any individuals in their employ or*
80 *applicants for employment to whom the third party tester would be permitted to administer a skills test*
81 *pursuant to this article.* If a certified third party tester elects to provide entry-level driver training, the
82 third party tester shall (i) employ and utilize third party instructors, as defined in § 46.2-341.4, to
83 provide all training and instruction to entry-level driver trainees; (ii) develop an entry-level driver
84 training curriculum that complies with requirements prescribed by the Department and submit such
85 curriculum to the Department for approval; (iii) upon notification by the Department that curriculum
86 requirements have been updated, certify, in a format prescribed by the Department, that the third party
87 tester has added the new topics to the course curriculum; and (iv) comply with the requirements
88 provided in §§ 46.2-1708 through 46.2-1710. Notwithstanding the provisions of § 46.2-1708, no third
89 party tester or third party instructor shall be required to be licensed by the Department. A certified third
90 party tester may not provide entry-level driver training to driver trainees until such tester has been
91 issued a unique training provider number and appears on the federal Training Provider Registry.

92 **§ 46.2-341.14:9. The skills test certificate; validity of results.**

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

95 B. Skills test certificates may be issued only to drivers who are employees of the third party tester
96 ~~who~~ *that* issues the certificate, except as otherwise provided herein. In the case of school boards
97 certified as third party testers, certificates may be issued to employees and to other drivers who have
98 been trained ~~by the school board~~ in accordance with the Virginia School Bus Driver Training
99 Curriculum Guide. For comprehensive community colleges in the Virginia Community College System
100 that are certified as third party testers, certificates may be issued to students who are enrolled in a
101 commercial driver training course offered by such community college at the time of the test.

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

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

105 1. Issued by a third party tester certified by the Department in accordance with this article;

106 2. In a format prescribed by the Department, completed in its entirety, without alteration;

107 3. Submitted to the Department within 60 days of the date of the skills test; and

108 4. Signed by the third party examiner who conducted the skills test.