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HOUSE BILL NO. 301**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee on Transportation
on January 22, 2002)

(Patron Prior to Substitute—Delegate McDonnell)

A *BILL to amend and reenact §§ 46.2-2000, 46.2-2001, 46.2-2001.1, 46.2-2011.4, 46.2-2011.10, 46.2-2011.14, 46.2-2011.15, 46.2-2011.16, 46.2-2011.22, and 46.2-2099.30 of the Code of Virginia, and to repeal §§ 46.2-2099.20, 46.2-2099.22, 46.2-2099.23, 46.2-2099.24, 46.2-2099.26 through 46.2-2099.29, 46.2-2099.31 through 46.2-2099.35 and 46.2-2099.37 through 46.2-2099.40 of the Code of Virginia, relating to sight-seeing carriers by boat, special or charter party carriers by boat, and motor carriers by launch.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-2000, 46.2-2001, 46.2-2001.1, 46.2-2011.4, 46.2-2011.10, 46.2-2011.14, 46.2-2011.15, 46.2-2011.16, 46.2-2011.22, and 46.2-2099.30 of the Code of Virginia are amended and reenacted as follows:

§ 46.2-2000. (Effective July 1, 2002) Definitions.

Whenever used in this chapter unless expressly stated otherwise:

"Authorized insurer" means, in the case of an interstate motor carrier whose operations may or may not include intrastate activity, an insurer authorized to transact business in any one state, or, in the case of a solely intrastate motor carrier, an insurer authorized to transact business in the Commonwealth.

"Broker" means any person not included in the term "motor carrier" and not a bona fide employee or agent of any such carrier, who, as principal or agent, sells or offers for sale any transportation subject to this chapter, or negotiates for, or holds himself out by solicitation, advertisement, or otherwise as one who sells, provides, furnishes, contracts, or arranges for such transportation.

"Carrier by motor launch" means a common carrier or contract carrier authorized to transport passengers under the provisions of this chapter, which carrier uses one or more motor launches operating on the waters within the Commonwealth.

"Certificate" means a certificate of public convenience and necessity or a certificate of fitness.

"Certificate of fitness" means a certificate issued by the Department to a contract bus carrier.

"Certificate of public convenience and necessity" means a certificate issued by the Department of Motor Vehicles to common carriers, certain restricted common carriers, contract passenger carriers, ~~and sight-seeing carriers, sight-seeing carriers by boat, special or charter party carriers by boat, and motor carriers by launch~~ under this chapter authorizing the transportation of passengers over the public highways or waterways of the Commonwealth; but nothing contained in this chapter shall be construed to mean that the Department can issue any such certificate authorizing intracity transportation.

"Charter bus" means a motor vehicle manufactured with a minimum seating capacity of thirty-two passengers or more, excluding the driver.

"Common carrier" means any person who undertakes, whether directly or by a lease or any other arrangement, to transport passengers for the general public by motor vehicle for compensation over the highways of the Commonwealth, whether over regular or irregular routes, including such motor vehicle operations of carriers by rail or water under this chapter.

"Contract bus carrier" means a motor carrier that operates solely charter buses, as defined in this section, to transport groups of passengers under a single contract made with one person for an agreed charge for such transportation regardless of the number of passengers transported, and for which transportation no individual or separate fares are solicited, charged, collected, or received by the carrier.

"Contract carrier" means any person who, under special and individual contracts or agreements, and whether directly or by a lease or any other arrangement, transports passengers for compensation.

"Contract passenger carrier" means a motor carrier that transports groups of passengers under a single contract made with one person for an agreed charge for such transportation, regardless of the number of passengers transported, and for which transportation no individual or separate fares are solicited, charged, collected, or received by the carrier.

"Department" means the Department of Motor Vehicles.

"Employee hauler" means a motor carrier operating for compensation and exclusively transporting only bona fide employees directly to and from the factories, plants, office or other places of like nature where the employees are employed and accustomed to work.

"Excursion train" means any steam-powered train that carries passengers for which the primary purpose of the operation of such train is the passengers' experience and enjoyment of this means of transportation, and does not, in the course of operation, carry (i) freight other than the personal luggage of the passengers or crew or supplies and equipment necessary to serve the needs of the passengers and

60 crew, (ii) passengers who are commuting to work, or (iii) passengers who are traveling to their final
61 destination solely for business or commercial purposes.

62 "Financial responsibility" means the ability to respond in damages for liability thereafter incurred
63 arising out of the ownership, maintenance, use, or operation of a motor vehicle, in the amounts provided
64 for in this chapter.

65 "Highway" means every public highway or place of whatever nature open to the use of the public for
66 purposes of vehicular travel in the Commonwealth, including the streets and alleys in towns and cities.

67 "Identification marker" means a decal or other visible identification issued by the Department to
68 show (i) that the operator of the vehicle has registered with the Department for the payment of the road
69 tax imposed under Chapter 27 (§ 58.1-2700 et seq.) of Title 58.1, (ii) proof of the possession of a
70 certificate or permit issued pursuant to Chapter 20 (§ 46.2-2000 et seq.) of this title, and/or (iii) proof of
71 compliance with the insurance requirements of this chapter.

72 "Interstate" means transportation of passengers between states.

73 "Intrastate" means transportation of passengers solely within a state.

74 "License" means a license issued by the Department to a broker.

75 "Minibus" means any motor vehicle having a seating capacity of not less than seven nor more than
76 sixteen passengers, including the driver, and used in the transportation of passengers.

77 "Motor carrier" means any person who undertakes, whether directly or by lease, to transport
78 passengers for compensation over the highways of the Commonwealth.

79 "Motor launch" means a motor vessel that meets the requirements of the U.S. Coast Guard for the
80 carriage of passengers for compensation, with a capacity of six or more passengers, but not in excess of
81 fifty passengers. Motor launch, as defined herein, shall not include sight-seeing vessels, special or
82 charter party vessels within the provisions of this chapter. A carrier by motor launch shall not be
83 regarded as a steamship company.

84 "Nonprofit/tax-exempt passenger carrier" means a bona fide nonprofit corporation organized or
85 existing under Chapter 10 (§ 13.1-801 et seq.) of Title 13.1, or a tax-exempt organization as defined in
86 §§ 501 (c) (3) and 501 (c) (4) of the United States Internal Revenue Code, as from time to time
87 amended, who undertakes, whether directly or by lease, to control and operate minibuses exclusively in
88 the transportation, for compensation, of members of such organization if it is a membership corporation,
89 or of elderly, disabled, or economically disadvantaged members of the community if it is not a
90 membership corporation.

91 "Operation" or "operations" includes the operation of all motor vehicles, whether loaded or empty,
92 whether for compensation or not, and whether owned by or leased to the motor carrier who operates
93 them or causes them to be operated.

94 "Operator" means the employer or person actually driving a motor vehicle or combination of
95 vehicles.

96 "Permit" means a permit issued by the Department to carriers operating as employee haulers or
97 nonprofit/tax-exempt passenger carriers or to operators of taxicabs or other vehicles performing taxicab
98 service under this chapter.

99 "Person" means any individual, firm, copartnership, corporation, company, association or joint-stock
100 association, and includes any trustee, receiver, assignee, or personal representative thereof.

101 "Restricted common carrier" means any person who undertakes, whether directly or by a lease or
102 other arrangement, to transport passengers for compensation, whereby such transportation service has
103 been restricted.

104 "Route," when used in connection with or with respect to a certificate of public convenience and
105 necessity, means the road or highway, or segment thereof, operated over by the holder of a certificate of
106 public convenience and necessity or proposed to be operated over by an applicant therefore, whether
107 such road or highway is designated by one or more highway numbers.

108 "Services" and "transportation" include the service of, and all transportation by, all vehicles operated
109 by, for, or in the interest of any motor carrier irrespective of ownership or contract, expressed or
110 implied, together with all facilities and property operated or controlled by any such carrier or carriers
111 and used in the transportation of passengers or the performance of any service in connection therewith.

112 "Sight-seeing carrier" means a restricted common carrier authorized to transport passengers under the
113 provisions of this chapter, whereby the primary purpose of the operation is the passengers' experience
114 and enjoyment and/or the promotion of tourism.

115 "Sight-seeing carrier by boat" means a restricted common carrier authorized to transport passengers
116 under the provisions of this chapter, which restricted common carrier uses a boat or boats operating on
117 waters within the Commonwealth, and whereby the primary purpose of the operation is the passengers'
118 experience and enjoyment and/or the promotion of tourism. Sight-seeing carriers by boat shall not be
119 regarded as steamship companies.

120 "Single state insurance receipt" means any receipt issued pursuant to 49 C.F.R. Part 367 evidencing
121 that the carrier has the required insurance and paid the requisite fees to the Commonwealth and other

qualified jurisdictions.

"Special or charter party carrier by boat" for purposes of this chapter shall mean a restricted common carrier authorized to transport groups of persons under a single contract made with one person for an agreed charge for such movement regardless of the number of persons transported. Special or charter party carriers by boat shall not be regarded as steamship companies.

"Taxicab or other motor vehicle performing a taxicab service" means any motor vehicle having a seating capacity of not more than six passengers, excluding the driver, not operating on a regular route or between fixed terminals used in the transportation of passengers for hire or for compensation, and not a common carrier or restricted common carrier as defined in this chapter.

§ 46.2-2001. (Effective July 1, 2002) Regulation by Department; reports; prevention of discrimination; regulation of leasing of motor vehicles.

The Department shall supervise, regulate and control all motor carriers, carriers by water or rail, and brokers not exempted under this chapter doing business in the Commonwealth, and all matters relating to the performance of their public duties and their charges therefor as provided by this chapter, and shall correct abuses therein by such carriers; and to that end the Department may prescribe reasonable rules, regulations, forms and reports for such carriers and brokers in furtherance of the administration and operation of this chapter; and the Department shall have the right at all times to require from such motor carriers, carriers by water or rail, and brokers special reports and statements, under oath, concerning their business.

The Department shall make and enforce such requirements, rules and regulations as may be necessary to prevent unjust or unreasonable discriminations by any carrier or broker in favor of, or against, any person, locality, community or connecting carrier in the matter of service, schedule, efficiency of transportation or otherwise, in connection with the public duties of such carrier or broker. The Department shall administer and enforce all provisions of this chapter, and may prescribe reasonable rules, regulations and procedure looking to that end.

The Department may prescribe and enforce such reasonable requirements, rules and regulations in the matter of leasing of motor vehicles as are necessary to prevent evasion of the Department's regulatory powers.

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

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; ~~sight-seeing carrier by boat, special or charter party carrier by boat, or a carrier by motor launch~~ without first obtaining a license, permit, or certificate, unless otherwise exempted, as provided in this chapter.

§ 46.2-2011.4. Conversion of old licenses, permits, and certificates.

A. All holders of a license, permit, or certificate issued prior to July 1, 2002, shall be issued a replacement license, permit, or certificate that shall reflect the same or new classification for and contain the same requirements and restrictions as the original license, permit, or certificate. The holder of such license, permit, or certificate shall apply for a replacement license, permit, or certificate prior to October 1, 2002. If such application is not received by the Department or received in an envelope bearing a postmark showing it was mailed prior to midnight, September 30, 2002, then the license, permit, or certificate shall expire.

B. If a broker, motor carrier, ~~or water~~ or rail passenger carrier does not request a replacement license, permit, or certificate prior to October 1, 2002, and allows the original to expire, any application received thereafter shall be treated as an original application.

C. Replacement certificates issued for limousine, executive sedan, and special or charter party certificates shall be reclassified as contract passenger certificates.

§ 46.2-2011.10. Advertisements.

A. No person shall advertise or permit to be advertised by any means a transportation service unless such person first obtains a license, permit, or certificate as provided in this chapter. Whenever any licensee, permittee, or certificate holder places an advertisement in any newspaper or publication advertising a transportation service, there shall appear within such advertisement the license, permit, or certificate number. If multiple licenses, permits, or certificates are held, only one number must appear.

B. It shall be unlawful for any licensee, permittee, or certificate holder to knowingly advertise 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, permit, or certificate is held.

C. The requirement of subsection A of this section to include a license, permit, or certificate number in advertisements shall not apply to excursion train operators; ~~sight-seeing carriers by boat, special or charter party carriers by boat, and carriers by motor launch.~~

§ 46.2-2011.14. Notice of abandonment of service.

Every motor carrier, broker, ~~or excursion train operator; sight-seeing carrier by boat, special or~~

183 ~~charter party carrier by boat, or carrier by motor launch~~ who ceases operation or abandons his rights
184 under a license, certificate, or permit issued shall notify the Department within thirty days of such
185 cessation or abandonment.

186 § 46.2-2011.15. Department may seek judgment for refunds due public and collect and distribute
187 same.

188 If any motor carrier, ~~or broker, sight-seeing carrier by boat, or carrier by motor launch~~, upon the
189 final decision of an appeal from the action of the Department prescribing rates, charges, tariffs, or
190 classification of traffic, confirming or modifying the action of the Department, fails to refund in the
191 manner and within the time prescribed in the notice of the Department all amounts that the appealing
192 carrier or broker may have collected, pending the appeal, in excess of that authorized by such final
193 decision, upon notice to such carrier or broker by the Department of such final decision, then the
194 Department, after thirty days' notice to any such carrier or broker, may, unless the amount required by
195 such final decision is paid to the Department, seek judgment in the name of the Commonwealth, for the
196 use of the persons, firms and corporations entitled to the same, against any such carrier or broker for the
197 aggregate amount of such collections and for costs, and may enforce the amount of such judgment and
198 costs by process of execution, as provided by law. The Department shall, upon the collection of such
199 judgment, forthwith distribute the amount thereof among the parties entitled thereto, respectively, in such
200 manner as it may by its rules or regulations prescribe, and shall, upon the payment or collection of any
201 such judgment, mark the same satisfied upon its records, and have the same entered satisfied on the
202 judgment lien docket of the court where the same may have been docketed; the satisfaction of any such
203 judgment shall be a bar to any further action or recovery against any such carrier or broker to the extent
204 of such recovery.

205 § 46.2-2011.16. Reports, records, etc.

206 A. The Department is hereby authorized to require annual, periodical, or special reports from motor
207 carriers, except such as are exempt from the operation of the provisions of this chapter; to prescribe the
208 manner and form in which such reports shall be made; and to require from such carriers specific
209 answers to all questions upon which the Department may deem information to be necessary. Such
210 reports shall be under oath whenever the Department so requires. The Department may also require any
211 motor carrier to file with it a true copy of each or any contract, agreement, or arrangement between
212 such carrier and any other carrier or person in relation to the provisions of this chapter.

213 B. The Department may, in its discretion, prescribe (i) the forms of any and all accounts, records,
214 and memoranda to be kept by motor carriers and (ii) the length of time such accounts, records, and
215 memoranda shall be preserved, as well as of the receipts and expenditures of money. The Department or
216 its employees shall at all times have access to all lands, buildings, or equipment of motor carriers used
217 in connection with their operations and also all accounts, records, and memoranda, including all
218 documents, papers, and correspondence now or hereafter existing, and kept, or required to be kept, by
219 motor carriers. The Department and its employees shall have authority to inspect and examine any and
220 all such lands, buildings, equipment, accounts, records, and memoranda, including all documents, papers,
221 and correspondence now or hereafter existing and kept or required to be kept by such carriers. These
222 provisions shall apply to receivers of carriers and to operating trustees and, to the extent deemed
223 necessary by the Department, to persons having control, direct or indirect, over or affiliated with any
224 motor carrier.

225 C. As used in this section the term "motor carriers" includes brokers, ~~and excursion train operators,~~
226 ~~sight-seeing carriers by boat, special or charter party carriers by boat, and carriers by motor launch.~~

227 § 46.2-2011.22. Violation; criminal penalties.

228 A. Any person knowingly and willfully violating any provision of this chapter, or any rule or
229 regulation thereunder, or any term or condition of any certificate, permit, or license, for which a penalty
230 is not otherwise herein provided, shall be guilty of a misdemeanor and, upon conviction, shall be fined
231 not more than \$2,500 for the first offense and not more than \$5,000 for any subsequent offense. Each
232 day of such violation shall constitute a separate offense.

233 B. Any person, whether carrier, broker, or any officer, employee, agent, or representative thereof,
234 who shall knowingly and willfully by any such means or otherwise fraudulently seek to evade or defeat
235 regulation as in this chapter, shall be deemed guilty of a misdemeanor and, upon conviction thereof, be
236 fined not more than \$500 for the first offense and not more than \$2,000 for any subsequent offense.

237 C. Any motor carrier, broker, ~~or excursion train operator, sight-seeing carrier by boat, special or~~
238 ~~charter party carrier by boat, or carrier by motor launch~~ or any officer, agent, employee, or
239 representative thereof who willfully fails or refuses to make a report to the Department as required by
240 this chapter or to keep accounts, records, and memoranda in the form and manner approved or
241 prescribed by the Department, or knowingly and willfully falsifies, destroys, mutilates, or alters any such
242 report, account, record or memorandum, or knowingly and willfully files any false report, account,
243 record or memorandum, shall be guilty of a misdemeanor and, upon conviction, be subject for each
244 offense to a fine of not less than \$100 and not more than \$5,000.

245 § 46.2-2099.30. Insurance to be kept in force.
246 Each holder of a certificate issued by the Department pursuant to this article *Sight-seeing carriers by*
247 *boat, special or charter party carriers by boat* shall keep in force at all times marine protection and
248 indemnity insurance in an amount not less than \$500,000 for bodily injury and property damage.
249 2. That §§ 46.2-2099.20, 46.2-2099.22, 46.2-2099.23, 46.2-2099.24, 46.2-2099.26 through
250 46.2-2099.29, 46.2-2099.31 through 46.2-2099.35 and 46.2-2099.37 through 46.2-2099.40 of the Code
251 of Virginia are repealed.