

## VIRGINIA ACTS OF ASSEMBLY — CHAPTER

*An Act to amend and reenact §§ 46.2-324.1, 46.2-341.4, 46.2-341.12, 46.2-341.18, 46.2-341.18:1, 46.2-341.20, 46.2-341.20:2, 46.2-341.21, and 46.2-433 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 46.2-341.20:3, relating to commercial driver's licenses; penalties.*

[S 1198]

Approved

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

**1. That §§ 46.2-324.1, 46.2-341.4, 46.2-341.12, 46.2-341.18, 46.2-341.18:1, 46.2-341.20, 46.2-341.20:2, 46.2-341.21, and 46.2-433 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 46.2-341.20:3 as follows:**

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

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.) of this title or a comparable course approved by the Department or Department of Education or (ii) has held a learner's permit issued by the Department for at least ~~thirty~~ 30 days prior to his first behind-the-wheel examination by the Department.

The provisions of this section shall only apply to persons who are at least 19 years old and who either (i) have never held a driver's license issued by Virginia or any other state or territory of the United States or foreign country with which the Commissioner has established reciprocal driver's licensing privileges or (ii) 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 18 years old or older and 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.*

**§ 46.2-341.4. Definitions.**

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

"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 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 ~~sixteen~~ 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 military vehicle when operated by active duty military personnel, or members of the military reserves or national guard when on active duty, in the pursuit of military purposes 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

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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.

"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, 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.

"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, the gross vehicle weight rating shall be the gross weight at which the vehicle is registered in its state of registration.

"Hazardous materials" means materials ~~determined~~ *designated* to be hazardous in accordance with § 103 of the federal Hazardous Materials Transportation Act (~~49 U.S.C. § 1801 et seq.~~), 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.*

"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.

"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 (57 Federal Register 13650) 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 ~~fifty~~ 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 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.

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

A. Every application to the Department for a commercial driver's license 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.

B. Every applicant for a commercial driver's license 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, including but not limited to a birth certificate; and

5. A statement indicating whether (i) the applicant has ~~ever~~ previously been licensed as a driver to drive any type of motor vehicle during the previous 10 years and, if so, ~~when and by what state 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 color 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. The Department shall take such action within ~~thirty~~ 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, for the renewal or reinstatement of such license 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. 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, ~~and in addition to the driver record maintained by the applicant's state 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.~~

§ 46.2-341.18. Disqualification for certain offenses.

A. Except as otherwise provided in this section, the Commissioner shall disqualify for a period of one year any person whose record, as maintained by the Department of Motor Vehicles, shows that he has been convicted of any of the following offenses, if such offense was committed while operating a commercial motor vehicle:

1. A violation of any provision of § 46.2-341.21 or a violation of any federal law or the law of another jurisdiction substantially similar to § 46.2-341.21;
2. A violation of any provision of § 46.2-341.24 or a violation of any federal law or the law of another state substantially similar to § 46.2-341.24;
3. A violation of any provision of § 18.2-51.4 or § 18.2-266 or a violation of a local ordinance paralleling or substantially similar to § 18.2-51.4 or § 18.2-266, or a violation of any federal, state or local law or ordinance substantially similar to § 18.2-51.4 or § 18.2-266;

3. 4. Refusal to submit to a chemical test to determine the alcohol or drug content of the person's blood or breath in accordance with §§ 18.2-268.1 through 18.2-268.12 or this article, or the comparable laws of any other state or jurisdiction;

4. 5. Failure of the driver whose vehicle is involved in an accident ~~which results in the death of or injury to another person~~, to stop and disclose his identity at the scene of the accident; or

5. 6. Commission of any crime punishable as a felony in the commission of which a motor vehicle is used, other than a felony described in § 46.2-341.19.

B. The Commissioner shall disqualify any such person for a period of three years if any offense listed in subsection A of this section was committed while driving a commercial motor vehicle used in the transportation of hazardous materials required to be placarded under federal Hazardous Materials Regulations (49 C.F.R. Part 172, Subpart F).

C. *Beginning September 30, 2005, the Commissioner shall disqualify for a period of one year any person whose record, as maintained by the Department, shows that he has been convicted of any of the following offenses committed while operating a noncommercial motor vehicle, provided that the person was, at the time of the offense, the holder of a commercial driver's license, and provided further that the offense was committed on or after September 30, 2005:*

1. *A violation of any provision of § 18.2-51.4, 18.2-266, or a violation of a local ordinance paralleling or substantially similar to § 18.2-51.4 or 18.2-266, or a violation of any federal, state, or local law or ordinance, or law of any other jurisdiction, substantially similar to § 18.2-51.4 or 18.2-266;*

2. *Refusal to submit to a chemical test to determine the alcohol or drug content of the person's blood or breath in accordance with §§ 18.2-268.1 through 18.2-268.12, or the comparable laws of any other state or jurisdiction;*

3. *Failure of the driver whose vehicle is involved in an accident to stop and disclose his identity at the scene of the accident; or*

4. *Commission of any crime punishable as a felony in the commission of which a motor vehicle is used.*

D. The Commissioner shall disqualify for life any person whose record, as maintained by the Department, shows that he has been convicted of two or more violations of any of the offenses listed in subsection A *or C* of this section, if each offense arose from a separate incident *committed within a period of 10 years, except that if all of the offenses are for violation of an out-of-service order, the disqualification shall be for five years.* If two or more such disqualification offenses arise from the same incident, the disqualification periods imposed pursuant to subsection A ~~or~~ B, *or C* of this section shall run consecutively and not concurrently.

~~D.~~ E. The Department may issue, if permitted by federal law, regulations establishing guidelines, including conditions, under which a disqualification for life under subsection ~~E~~ D may be reduced to a period of not less than ~~ten~~ 10 years.

~~E. Only offenses committed on or after January 1, 1990, shall be subject to provisions of this section.~~

§ 46.2-341.18:1. Disqualification for certain alcohol-related offenses committed in other jurisdictions whose laws provide for disqualification for such offenses without a conviction.

A. Notwithstanding the provisions of § 46.2-341.18 that require the Commissioner act to disqualify only on the basis of conviction records for certain offenses committed while operating a commercial motor vehicle, the Commissioner shall also act to disqualify, as provided in § 46.2-341.18, where he has received a record from another jurisdiction indicating that a Virginia licensee has been disqualified in that jurisdiction, solely as a result of his violation in that jurisdiction, of either of the two offenses listed in subdivisions 1 and 2, committed while operating a commercial motor vehicle, even though the disqualification was imposed as the result of an administrative or civil action and there was no court proceeding that could result in a conviction for such offense. The two offenses for which such action shall be taken are:

1. Operation of a commercial motor vehicle with a blood alcohol content of 0.04 percent or more, or

2. Refusal to submit to a chemical test to determine the alcohol or drug content of blood or breath of the operator of a commercial motor vehicle under the implied consent laws of that jurisdiction.

B. The Commissioner shall treat such a record of disqualification as though it were a conviction record from that jurisdiction under a law substantially similar to subsection B of § 46.2-341.24 or § 46.2-341.26:4, respectively, for purposes of implementing the disqualification provisions of § 46.2-341.18; ~~but such record shall not be considered a conviction for any other purpose and shall not be recorded as a conviction on the driving record of the individual. Moreover, such~~ *Such* treatment as a conviction for purposes of § 46.2-341.18 shall be applicable only if the disqualification action is final and unappealable or has been appealed and the appeal dismissed or the action affirmed and no further appeals are possible under the laws of the jurisdiction wherein the offense was committed, and only if

the disqualification period imposed by that jurisdiction is at least as long as the periods set out in § 46.2-341.18 for such an offense. *If the Commissioner receives notice from a jurisdiction that a Virginia licensee has been subject to an administrative action or civil judgment resulting from a violation of subdivision A 1 or A 2, committed while operating a commercial motor vehicle, the Commissioner shall treat such notice as a conviction for the purposes of this article.*

C. In no case shall the Commissioner act more than once to disqualify a Virginia licensee for any single violation committed in another jurisdiction, even though such violation may be reported by that jurisdiction as both an administrative or civil disqualification action and as a conviction from a court in that jurisdiction. Moreover, the Commissioner shall rescind a disqualification imposed pursuant to this section if the disqualification has been vacated or rescinded by the other jurisdiction as a result of the licensee's acquittal in the court proceedings, or the dismissal of those proceedings, in that jurisdiction.

§ 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 ~~fifteen~~ 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; ~~and~~
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; and*
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.*

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 ~~sixty~~ 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.

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

~~D. Only offenses committed on or after January 1, 1990, shall be subject to the provisions of this section.~~

§ 46.2-341.20:2. Employer penalty; railroad/highway grade crossing violations; out-of-service order violation.

Any employer who knowingly allows, permits, authorizes, or requires an employee to operate a commercial motor vehicle in violation of any law or regulation pertaining to railroad/highway grade crossings, *or in violation of an out-of-service order*, shall be subject to a civil penalty of not more than ~~\$10,000~~ \$15,000 for each violation, which shall be imposed by the Commissioner upon receipt of notification from federal or state motor carrier officials that an employer may have violated this provision, and upon notice to the employer of the charge and a hearing conducted as provided under the Administrative Process Act (§ 2.2-4000 et seq.), to determine whether such employer has violated this provision. Civil penalties collected under this section shall be deposited into the Transportation Trust Fund.

§ 46.2-341.20:3. Disqualification for determination of imminent hazard.

*If the Department receives notification from the Federal Motor Carrier Safety Administration that a driver determined to constitute an imminent hazard has been disqualified from operating a commercial motor vehicle pursuant to 49 C.F.R. Part 383.52, the Department shall make a notation of such disqualification on the driver record maintained by the Department.*

§ 46.2-341.21. Driving while disqualified; penalties.

No person whose privilege to drive a commercial motor vehicle has been suspended or revoked or who has been disqualified from operating a commercial motor vehicle or who has been ordered out of service, and who has been given notice of, or reasonably should know of the suspension, revocation, disqualification, or out-of-service order shall operate a commercial motor vehicle anywhere in the Commonwealth until the period of such suspension, revocation, disqualification, or out-of-service order has terminated, *nor shall any person operate on any highway any vehicle that has been declared out of service until such time as the out-of-service declaration has been lifted.*

Any person who violates this section shall, for the first offense, be guilty of a Class 2 misdemeanor, and for the second or any subsequent offense, be guilty of a Class 1 misdemeanor; however, if the offense is the violation of an out-of-service order, the minimum fine shall be \$1,000 \$1,500 for any driver person so convicted and \$2,500 for any motor carrier so convicted, and the maximum fine shall be \$2,500 for any driver so convicted and \$10,000 for any motor carrier so convicted \$5,000. Upon receipt of a record of a violation of this section, the Commissioner shall impose an additional suspension, revocation, or disqualification period equal to the period for which the driver's privilege to operate a motor vehicle was suspended or revoked or for which the driver was disqualified when he violated this section; however, if the offense was the violation of an out-of-service order, the Commissioner shall impose a disqualification period of 180 days, unless the records of the Department show that the driver has been previously convicted of violating an out-of-service order for an offense committed within ten 10 years of the current offense, in which case the Commissioner shall impose a disqualification period of three years in accordance with the provisions of § 46.2-341.18.

Notice of disqualification or of revocation or suspension of the license or privilege to operate a commercial motor vehicle is sufficient if served in accordance with the provisions of § 46.2-416.

§ 46.2-433. Notification of officers in nonresident's home state.

On conviction of a nonresident or in case any unsatisfied judgment results in suspension of a nonresident's driving privileges in the Commonwealth and the prohibition of driving within the Commonwealth of any motor vehicle, or on suspension of a nonresident's driving privileges in the Commonwealth pursuant to any other provision of this chapter, the Commissioner shall transmit a certified copy of the record of the conviction or the unsatisfied judgment, or any other action pursuant to this chapter resulting in suspension of a nonresident's driving privileges of any motor vehicle owned by such nonresident, to the motor vehicle commissioner or officer performing the functions of a commissioner in the state of the United States, or possession under the exclusive control of the United States, Mexico or its states, or Canada or its provinces in which the nonresident resides.