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HOUSE BILL NO. 1948

Offered January 9, 2013

Prefiled January 9, 2013

A *BILL to amend and reenact §§ 46.2-116 and 46.2-1231 of the Code of Virginia, relating to definition of "tow" in connection with regulation of tow truck drivers by the Department of Criminal Justice Services and ticketing, removal, or immobilization of trespassing vehicles.*

Patron—Wilt

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-116 and 46.2-1231 of the Code of Virginia are amended and reenacted as follows:

§ 46.2-116. Registration with Department of Criminal Justice Services required for tow truck drivers; penalty.

A. As used in this section and §§ 46.2-117, 46.2-118, and 46.2-119:

"Consumer" means a person who (i) has vested ownership, dominion, or title to the vehicle; (ii) is the authorized agent of the owner as defined in clause (i); or (iii) is an employee, agent, or representative of an insurance company representing any party involved in a collision that resulted in a police-requested tow who represents in writing that the insurance company had obtained the oral or written consent of the title owner or his agent or the lessee of the vehicle to obtain possession of the vehicle.

"Department" means the Department of Criminal Justice Services.

"Tow" means that the tow truck has engaged the towed vehicle by a physical, mechanical means that causes the towed vehicle to be lifted off the ground or moved for any distance whatsoever.

"Tow truck driver" means an individual who drives a tow truck as defined in § 46.2-100.

"Towing and recovery operator" means any person engaging in the business of providing or offering to provide services involving the use of a tow truck and services incidental to use of a tow truck. "Towing and recovery operator" shall not include a franchised motor vehicle dealer as defined in § 46.2-1500 using a tow truck owned by a dealer when transporting a vehicle to or from a repair facility owned by the dealer when the dealer does not receive compensation from the vehicle owner for towing of the vehicle or when transporting a vehicle in which the dealer has an ownership or security interest.

B. On and after January 1, 2013, no tow truck driver shall drive any tow truck without being registered with the Department, except that this requirement shall not apply to any holder of a tow truck driver authorization document issued pursuant to former § 46.2-2814 until the expiration date of such document. Every applicant for an initial registration or renewal of registration pursuant to this section shall submit his registration application, fingerprints, and personal descriptive information to the Department and a nonrefundable application fee of \$100. The Department shall forward the personal descriptive information along with the applicant's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining a national criminal history record check regarding such applicant. The cost of the fingerprinting and criminal history record check shall be paid by the applicant.

The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no record exists, shall make a report to the Department. If an applicant is denied registration as a tow truck driver because of the information appearing in his criminal history record, the Department shall notify the applicant that information obtained from the Central Criminal Records Exchange contributed to such denial. The information shall not be disseminated except as provided in this section.

C. No registration shall be issued to any person who (i) is required to register as a sex offender as provided in § 9.1-901 or in a substantially similar law of any other state, the United States, or any foreign jurisdiction; (ii) has been convicted of a violent crime as defined in subsection C of § 17.1-805; or (iii) has been convicted of any crime involving the driving of a tow truck, including drug or alcohol offenses, but not traffic infraction convictions. Any person registered pursuant to this section shall report to the Department within 10 days of conviction any convictions for felonies or misdemeanors that occur while he is registered with the Department.

D. Any tow truck driver failing to register with the Department as required by this section is guilty of a Class 3 misdemeanor. A tow truck driver registered with the Department shall have such registration in his possession whenever driving a tow truck on the highways.

E. Registrations issued by the Department pursuant to this section shall be valid for a period not to exceed 24 months, unless revoked or suspended by the Department in accordance with § 46.2-117.

INTRODUCED

HB1948

59 § 46.2-1231. Ticketing, removal, or immobilization of trespassing vehicles by owner or operator
60 of parking or other lot or building; charges.

61 *As used in this section, "tow" means that the tow truck has engaged the towed vehicle by a physical,*
62 *mechanical means that causes the towed vehicle to be lifted off the ground or moved for any distance*
63 *whatsoever.*

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

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

86 All businesses engaged in towing vehicles without the consent of their owners shall prominently
87 display (i) at their main place of business and (ii) at any other location where towed vehicles may be
88 reclaimed a comprehensive list of all their fees for towing, recovery, and storage services, or the basis
89 of such charges. This requirement to display a list of fees may also be satisfied by providing, when the
90 towed vehicle is reclaimed, a written list of such fees, either as part of a receipt or separately, to the
91 person who reclaims the vehicle. Charges in excess of those posted shall not be collectable from any
92 motor vehicle owner whose vehicle is towed, recovered, or stored without his consent.

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

99 In lieu of having a trespassing vehicle removed by towing or otherwise, the owner, operator, lessee
100 or authorized agent of the premises on which the trespassing vehicle is parked may cause the vehicle to
101 be immobilized by a boot or other device that prevents a vehicle from being moved by preventing a
102 wheel from turning, provided that the boot or other device does not damage the vehicle or wheel. The
103 charge for the removal of any boot or device shall not exceed \$25 or such other limit as the governing
104 body of the county, city, or town may set by ordinance. In lieu of having the vehicle removed by
105 towing or otherwise, or in lieu of causing the vehicle to be immobilized, the owner, operator, lessee or
106 authorized agent of the premises on which the trespassing vehicle is parked may cause to have an
107 authorized local government official or law-enforcement officer issue, on the premises, a notice of the
108 violation of a parking ordinance or regulation created pursuant to § 46.2-1220 or § 46.2-1221 to the
109 registered owner of the vehicle.

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