

## CHAPTER 429

*An Act to amend and reenact §§ 46.2-341.4, 46.2-341.14, 46.2-341.14:1, 46.2-341.14:3, and 46.2-341.14:9 of the Code of Virginia, relating to third party testers for commercial driver's licenses.*

[H 938]

Approved March 11, 2016

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

**1. That §§ 46.2-341.4, 46.2-341.14, 46.2-341.14:1, 46.2-341.14:3, and 46.2-341.14:9 of the Code of Virginia are amended and reenacted as follows:**

**§ 46.2-341.4. Definitions.**

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

"Air brake" means any braking system operating fully or partially on the air brake principle.

"Applicant" means an individual who applies to obtain, transfer, upgrade, or renew a commercial driver's license or to obtain or renew a commercial learner's permit.

"Automatic transmission" means, for the purposes of the skills test and the restriction, any transmission other than a manual transmission.

"CDLIS driver record" means the electronic record of the individual commercial driver's status and history stored by the State of Record as part of the Commercial Driver's License Information System (CDLIS).

"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 driver's license information system" (CDLIS) means the CDLIS established by the Federal Motor Carrier Safety Administration pursuant to § 12007 of the Commercial Motor Vehicle Safety Act of 1986.

"Commercial learner's permit" means a permit issued to an individual in accordance with the provisions of this article or, if issued by another state, a permit issued in accordance with the standards contained in the Federal Motor Carrier Safety Regulations, which, when carried with a valid driver's license issued by the same state or jurisdiction, authorizes the individual to operate a class of commercial motor vehicle when accompanied by a holder of a valid commercial driver's license for purposes of behind-the-wheel training. When issued to a commercial driver's license holder, a commercial learner's permit serves as authorization for accompanied behind-the-wheel training in a commercial motor vehicle for which the holder's current commercial driver's license is not valid.

"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 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 provided in §§ 46.2-649.3 and 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 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 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.

"Employee" means a payroll employee or person employed under lease or contract, or a person who has applied for employment and whose employment is contingent upon obtaining a commercial driver's license.

"Employer" means a person who owns or leases commercial motor vehicles and assigns employees to drive such vehicles.

"Endorsement" means an authorization to an individual's commercial driver's license or commercial learner's permit required to permit the individual to operate certain types of commercial motor vehicles.

"FMCSA" means the Federal Motor Carrier Safety Administration.

"Full air brake" means any braking system operating fully on the air brake principle.

"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, for law-enforcement purposes, 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; however, the registered gross weight shall not be applicable for determining the classification of an articulated vehicle or combination of vehicles for purposes of skills testing pursuant to § 46.2-341.14 or 46.2-341.16.

"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, for law-enforcement purposes, the gross vehicle weight rating shall be the greater of (i) the actual gross weight of the vehicle, including any load thereon; or (ii) the gross weight at which the vehicle is registered in its state of registration; however, the registered gross weight of the vehicle shall not be applicable for determining the classification of a vehicle for purposes of skills testing pursuant to § 46.2-341.14 or 46.2-341.16.

"Hazardous materials" means materials designated to be hazardous in accordance with § 103 of the federal Hazardous Materials Transportation Act, 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.

"Manual transmission" (also known as a stick shift, stick, straight drive, or standard transmission) means a transmission utilizing a driver-operated clutch that is activated by a pedal or lever and a gear-shift mechanism operated by either hand or foot.

"Non-commercial driver's license" means any other type of motor vehicle license, such as an automobile driver's license, a chauffeur's license, or a motorcycle license.

"Nondomiciled commercial learner's permit" or "nondomiciled commercial driver's license" means a commercial learner's permit or commercial driver's license, respectively, issued to a person in accordance with the provisions of this article or, if issued by another state, under either of the following two conditions: (i) to an individual domiciled in a foreign jurisdiction that does not test drivers and issue commercial driver's licenses in accordance with, or under standards similar to, the standards contained in subparts F, G, and H of Part 383 of the Federal Motor Carrier Safety Regulations or (ii) to an individual domiciled in another state while that state is prohibited from issuing commercial driver's licenses in accordance with decertification requirements of 49 C.F.R. § 384.405.

"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 of the Commonwealth referenced herein.

"Person" means a natural person, firm, partnership, association, corporation, or a governmental entity including a school board.

"Restriction" means a prohibition on a commercial driver's license or commercial learner's permit that prohibits the holder from operating certain commercial motor vehicles.

"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 (49 C.F.R. § 383.3) by Virginia the Commonwealth 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 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 or tanks having an individual rated capacity of more than 119 gallons and an aggregate rated capacity of 1,000 gallons or more 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 as provided in 49 C.F.R. Part 383. A commercial motor vehicle transporting an empty storage container tank, not designed for transportation, with a rated capacity of 1,000 gallons or more that is temporarily attached to a flatbed trailer is not considered a tank vehicle.

"Third party examiner" means an individual who is an employee of a third party tester and who is certified by the Department to administer tests required for a commercial driver's license.

"Third party tester" means a person (including, but not limited to, another state, a motor carrier, a private institution, the military, a government entity, including each comprehensive community college in the Virginia Community College System established by the State Board for Community Colleges pursuant to Chapter 16 (§ 23-192 et seq.) of Title 23, or a department, agency, or instrumentality of a local government) certified by the Department to employ third party examiners to administer a test program for testing commercial driver's license applicants in accordance with this article.

"VAMCSR" means the Virginia Motor Carrier Safety Regulations (19VAC30-20) adopted by the Department of State Police pursuant to § 52-8.4.

**§ 46.2-341.14. Testing requirements for commercial driver's license; behind-the-wheel and knowledge examinations.**

A. The Department shall conduct an examination of every applicant for a commercial driver's license, which examination shall comply with the minimum federal standards established pursuant to the federal Commercial Motor Vehicle Safety Act. The examination shall be designed to test the vision, knowledge, and skills required for the safe operation of the class and type of commercial motor vehicle for which the applicant seeks a license.

B. An applicant's skills test shall be conducted in a vehicle that is representative of or meets the description of the class of vehicle for which the applicant seeks to be licensed. In addition, applicants who seek to be licensed to drive vehicles with air brakes, passenger-carrying vehicles, or school buses must take the skills test in a vehicle that is representative of such vehicle type. Such vehicle shall be furnished by the applicant and shall be properly licensed, inspected and insured.

C. The Commissioner may, in his discretion, designate such persons as he deems fit, including private or governmental entities, including comprehensive community colleges in the Virginia Community College System, to administer the knowledge and skills tests required of applicants for a commercial driver's license. Any person so designated shall comply with all statutes and regulations with respect to the administration of such tests.

The Commissioner shall require all state and third party test examiners to successfully complete a formal commercial driver's license test examiner training course and examination before certifying them to administer commercial driver's license knowledge and skills tests. All state and third party test examiners shall complete a refresher training course and examination every four years to maintain their commercial driver's license test examiner certification. The refresher training course shall comply with 49 C.F.R. § 384.228. At least once every two years, the Department shall conduct covert and overt monitoring of examinations performed by state and third party commercial driver's license test examiners.

The Commissioner shall require a nationwide criminal background check of all test examiners at the time of hiring or prior to certifying them to administer commercial driver's license testing. The Commissioner shall complete a nationwide criminal background check for any state or third party test examiners who are current examiners and who have not had a nationwide criminal background check.

The Commissioner shall revoke the certification to administer commercial driver's license tests for any test examiner who (i) does not successfully complete the required refresher training every four years or (ii) does not pass the required nationwide criminal background check. Criteria for not passing the criminal background check include but are not limited to having a felony conviction within the past 10 years or any conviction involving fraudulent activities.

D. Every applicant for a commercial driver's license who is required by the Commissioner to take a vision test shall either (i) appear before a license examiner of the Department of Motor Vehicles to demonstrate his visual acuity and horizontal field of vision; or (ii) submit with his application a copy of the vision examination report which was used as the basis for such examination made within 90 days of the application date by an ophthalmologist or optometrist. The Commissioner may, by regulation, determine whether any other visual tests will satisfy the requirements of this title for commercial drivers.

E. No person who fails the behind-the-wheel examination for a commercial driver's license administered by the Department three times shall be permitted to take such examination a fourth time until he successfully completes, subsequent to the third examination failure, the in-vehicle component of driver instruction at a driver training school licensed under Chapter 17 (§ 46.2-1700 et seq.) or a comparable course approved by the Department or the Department of Education. In addition, no person who fails the general knowledge examination for a commercial driver's license administered by the Department three times shall be permitted to take such examination a fourth time until he successfully completes, subsequent to the third examination failure, the knowledge component of driver instruction at a driver training school licensed under Chapter 17 (§ 46.2-1700 et seq.) or a comparable course approved by the Department or the Department of Education.

The provisions of this subsection shall not apply to persons placed under medical control pursuant to § 46.2-322.

F. Knowledge tests may be administered in written form, verbally, or in automated format and can be administered in a foreign language, provided no interpreter is used in administering the test.

G. Interpreters are prohibited during the administration of the skills tests. Applicants must be able to understand and respond to verbal commands and instructions in English by a skills test examiner. Neither the applicant nor the examiner may communicate in a language other than English during the skills test.

H. Skills tests may be administered to an applicant who has taken training in *Virginia the Commonwealth* and is to be licensed in another state. Such test results shall be electronically transmitted directly from *Virginia the Commonwealth* to the licensing state in an efficient and secure manner. The Department may charge a fee of not more than \$85 to any such applicant.

I. The Department shall accept the results of skills tests administered to applicants by any other state in fulfillment of the applicant's testing requirements for commercial licensure in the Commonwealth.

**§ 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 *Virginia 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 *Virginia* 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 the driver's employment with the third party tester at the time the test was taken. 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) the driver was employed by a school board at the time of the test and (ii) the third party tester trained the driver in accordance with the Virginia School Bus Driver Training Curriculum Guide; *and*

g. *Notwithstanding the provisions of subdivision f, evidence of the student's enrollment in a commercial driver training course offered by a community college 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 ~~Virginia~~ 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 ~~Virginia~~ 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 ~~Virginia~~ *the Commonwealth* for a minimum of one year;

2. Employ at least 75 ~~Virginia-licensed~~ 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 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 tester or one or more of its examiners are involved in fraudulent activities related to conducting knowledge or skills testing for applicants.

**§ 46.2-341.14:3. Application for certification by the Department.**

A. Application for third party tester certification.

1. An applicant for certification shall provide the following information in a format prescribed by the Department:

a. Name, address, and telephone number of principal office or headquarters;  
 b. Name, title, address, and telephone number of an individual in ~~Virginia~~ *the Commonwealth* who has been designated to be the applicant's contact person with the Department;  
 c. Description of the vehicle fleet owned or leased by the applicant, including the number of commercial motor vehicles by class and type;  
 d. Classes and types of commercial motor vehicles for which the applicant seeks to be certified as a third party tester;

e. Total number of ~~Virginia licensed~~ drivers *licensed in the Commonwealth* employed during the preceding 12 months to operate commercial motor vehicles and the number of such drivers who are full time, part time, and seasonal. *However, this provision shall not apply to a comprehensive community college in the Virginia Community College System certified as a third party tester for the purposes of administering tests to students enrolled in a commercial driver training course offered by such community college;*

f. Name, driver's license number, and home address of each employee who is to be certified as a third party examiner. If any employee has previously been certified as an examiner by the Department, the examiner's certification number;

g. The address of each ~~Virginia~~ location *in the Commonwealth* where the third party tester intends to conduct skills tests and a map, drawing, or written description of each driving course that satisfies the Department's requirements for a skills test course;

h. If the applicant is not a governmental entity, *including a comprehensive community college in the Virginia Community College System*, it shall also provide: (i) a description of the applicant's business and length of time in business in ~~Virginia~~ *the Commonwealth*; (ii) if subject to the FMCSA regulations, the applicant's Interstate Commerce Commission number or U.S. Department of Transportation number and rating; and (iii) the applicant's State Corporation Commission number; and

i. Any other relevant information required by the Department.

2. An applicant for certification shall also execute an agreement in a format prescribed by the Department in which the applicant agrees, at a minimum, to comply with the regulations and instructions of the Department for third party testers, including audit procedures, and agrees to hold the Department harmless from liability resulting from the third party tester's administration of its commercial driver's license skills test program.

B. Application for third party examiner certification.

1. An applicant for certification shall provide the following information in a format prescribed by the Department:

a. Name, home, and business addresses and telephone numbers;

b. Driver's license number;

c. Name, address, and telephone number of the principal office or headquarters of the applicant's employer, who has applied for and received certification as a third party tester;

d. Job title and description of duties and responsibilities;

e. Length of time employed by present employer. If less than two years, list previous employer, address, and telephone number;

f. Present employer's recommendation of the applicant for certification;

g. A list of the classes and types of vehicles for which the applicant seeks certification to conduct skills tests; and

h. Any other relevant information required by the Department.

C. Evaluation of applicant by the Department.

1. The Department will evaluate the materials submitted by the third party tester applicant, and, if the application materials are satisfactory, the Department will schedule an onsite inspection and audit of the applicant's third party testing program to complete the evaluation.

2. The Department will evaluate the materials submitted by the third party examiner applicant as well as the applicant's driving record. If the application materials and driving record are satisfactory, the Department will schedule the applicant for third party examiner training. Training may be waived if the applicant is seeking recertification only because he has changed employers.

3. No more than two applications will be accepted from any one third party tester or examiner applicant in any 12-month period, excluding applications for recertification because of a change in employers.

**§ 46.2-341.14:9. The skills test certificate.**

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

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

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

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

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

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

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

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