

SENATE BILL NO. 455
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Transportation
on _____)
(Patron Prior to Substitute—Senator DeSteph)

A BILL to amend and reenact §§ 46.2-116 and 46.2-118 of the Code of Virginia, relating to tow truck drivers; registration.

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-116 and 46.2-118 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 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. The Department may offer a temporary registration or driver authorization document that is effective upon the submission of an application and that expires upon the issuance or denial of a permanent registration. 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. 1. No registration shall be issued to any person who (i) is required to register with the Sex Offender and Crimes Against Minors Registry pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1 or in a substantially similar law of any other state, the United States, or any foreign jurisdiction; (ii) has been convicted within the 15 years prior to the date of the application of a violent crime as defined in subsection C of § 17.1-805 unless such person held a valid tow truck driver authorization document on January 1, 2013, issued by the Board of Towing and Recovery Operators pursuant to former Chapter 28 (§ 46.2-2800 et seq.), and has not been convicted of a violent crime as defined in subsection C of § 17.1-805 subsequent to the abolition of the Board; or (iii) has been convicted within the 15 years prior to the date of the application of any crime involving the driving of a tow truck, including drug or alcohol offenses, but not traffic infraction convictions.

2. The Department may deny a registration to any person who (i) has been convicted more than 15 years prior to the date of the application of a violent crime as defined in subsection C of § 17.1-805 or (ii) has been convicted more than 15 years prior to the date of the application of any crime involving the driving of a tow truck, including drug or alcohol offenses. The Department shall deny a registration to a person described in clause (i) or (ii) if the person has not completed all terms of probation or parole related to such conviction.

3. 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 *for hire* 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.

§ 46.2-118. Prohibited acts by tow truck drivers and towing and recovery operators.

A. No tow truck driver shall:

1. Use fraud or deceit in the offering or delivering of towing and recovery services;

2. Conduct his business or offer services in such a manner as to endanger the health and welfare of the public;

3. Use alcohol or drugs to the extent such use renders him unsafe to provide towing and recovery services;

4. Obtain any fee by fraud or misrepresentation;

5. Remove or tow a trespassing vehicle, as provided in § 46.2-1231, or a vehicle towed or removed at the request of a law-enforcement officer to any location outside the Commonwealth;

6. Violate, or assist, induce, or cooperate with others to violate, any provision of law related to the offering or delivery of towing and recovery services; or

7. Drive by the scene of a wrecked or disabled vehicle for which a law-enforcement tow has been initiated by a law-enforcement agency, initiate contact with the owner or operator of such vehicle by soliciting or offering towing services, and tow such vehicle.

B. No towing and recovery operator shall:

1. Use fraud or deceit in the offering or delivering of towing and recovery services;

2. Conduct his business or offer services in such a manner as to endanger the health and welfare of the public;

3. Use alcohol or drugs to the extent such use renders him unsafe to provide towing and recovery services;

4. Neglect to maintain on record at the towing and recovery operator's principal office a list of all drivers employed by the towing and recovery operator;

5. Obtain any fee by fraud or misrepresentation;

6. Advertise services in any manner that deceives, misleads, or defrauds the public;

7. Advertise or offer services under a name other than one's own name;

8. Fail to accept for payment cash, insurance company check, certified check, money order, or at least one of two commonly used, nationally recognized credit cards, except those towing and recovery operators who have an annual gross income of less than \$10,000 derived from the performance of towing and recovery services shall not be required to accept credit cards, other than when providing police-requested towing as defined in § 46.2-1217, but shall be required to accept personal checks;

- 93 9. Fail to display at the towing and recovery operator's principal office in a conspicuous place a listing of
94 all towing, recovery, and processing fees for vehicles;
- 95 10. Fail to have readily available at the towing and recovery operator's principal office, at the customer's
96 request, the maximum fees normally charged by the towing and recovery operator for basic services for
97 towing and initial hookup of vehicles;
- 98 11. Knowingly charge excessive fees for towing, storage, or administrative services or charge fees for
99 services not rendered;
- 100 12. Fail to maintain all towing records, which shall include itemized fees, for a period of one year from
101 the date of service;
- 102 13. Willfully invoice payment for any services not stipulated or otherwise incorporated in a contract for
103 services rendered between the towing and recovery operator and any locality or political subdivision of the
104 Commonwealth;
- 105 14. Employ a driver required to register with the Sex Offender and Crimes Against Minors Registry
106 pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1;
- 107 15. Remove or tow a trespassing vehicle, as provided in § 46.2-1231, or a vehicle towed or removed at the
108 request of a law-enforcement officer to any location outside the Commonwealth;
- 109 16. Refuse, at the towing and recovery operator's place of business, to make change, up to \$100, for the
110 owner of the vehicle towed without the owner's consent if the owner pays in cash for charges for towing and
111 storage of the vehicle;
- 112 17. Violate, or assist, induce, or cooperate with others to violate, any provision of law related to the
113 offering or delivery of towing and recovery services;
- 114 18. Fail to provide the owner of a stolen vehicle written notice of his right under law to be reimbursed for
115 towing and storage of his vehicle out of the state treasury from the appropriation for criminal charges as
116 required in § 46.2-1209;
- 117 19. Refuse to allow, consistent with the protections detailed in the provisions of subsection E of
118 § 46.2-644.01, the owner of the vehicle towed, upon proof of ownership of the vehicle, to access and recover
119 any personal items without retrieving the vehicle and without paying any fee; ~~or~~
- 120 20. Require an individual who appears to retrieve a vehicle towed to provide to the towing and recovery
121 operator, in addition to payment of fees, any document not otherwise required by law before releasing the
122 vehicle to the individual; *or*

123 21. *Employ a tow truck driver who is not registered with the Department of Criminal Justice Services as*
124 *required in § 46.2-116.*

125 C. No tow truck driver as defined in § 46.2-116 or towing and recovery operator as defined in § 46.2-100
126 shall knowingly permit another person to occupy a motor vehicle as defined in § 46.2-100 while such motor
127 vehicle is being towed.

128 D. No tow truck driver or towing and recovery operator as defined in § 46.2-116 shall cause any other
129 person to solicit or offer towing services in any manner, directly or indirectly, at the scene of any wrecked or
130 disabled motor vehicle upon a highway, as defined in § 46.2-100, when such wrecked or disabled motor
131 vehicle reasonably necessitates removal by a tow truck. In addition to any penalty authorized pursuant to this
132 title, any tow truck driver or towing and recovery operator violating the provisions of this subsection shall be
133 guilty of a Class 3 misdemeanor for the first offense and of a Class 2 misdemeanor for any subsequent
134 offense.