

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 46.2-341.4 of the Code of Virginia, relating to commercial motor vehicles;*
 3 *definition.*

4 [H 1290]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That § 46.2-341.4 of the Code of Virginia is amended and reenacted as follows:**8 **§ 46.2-341.4. Definitions.**

9 As used in this article, unless the context requires a different meaning:

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

11 "Applicant" means an individual who applies to obtain, transfer, upgrade, or renew a commercial driver's
12 license or to obtain or renew a commercial learner's permit.13 "Automatic transmission" means, for the purposes of the skills test and the restriction, any transmission
14 other than a manual transmission.15 "CDLIS driver record" means the electronic record of the individual commercial driver's status and
16 history stored by the State of Record as part of the Commercial Driver's License Information System
17 (CDLIS).18 "Commercial driver's license" means any driver's license issued to a person in accordance with the
19 provisions of this article, or if the license is issued by another state, any license issued to a person in
20 accordance with the federal Commercial Motor Vehicle Safety Act, which authorizes such person to drive a
21 commercial motor vehicle of the class and type and with the restrictions indicated on the license.22 "Commercial driver's license information system" or "CDLIS" means the commercial driver's license
23 information system established by the Federal Motor Carrier Safety Administration pursuant to § 12007 of
24 the Commercial Motor Vehicle Safety Act of 1986.25 "Commercial learner's permit" means a permit issued to an individual in accordance with the provisions of
26 this article or, if issued by another state, a permit issued in accordance with the standards contained in the
27 Federal Motor Carrier Safety Regulations, which, when carried with a valid driver's license issued by the
28 same state or jurisdiction, authorizes the individual to operate a class of commercial motor vehicle when
29 accompanied by a holder of a valid commercial driver's license for purposes of behind-the-wheel training.
30 When issued to a commercial driver's license holder, a commercial learner's permit serves as authorization for
31 accompanied behind-the-wheel training in a commercial motor vehicle for which the holder's current
32 commercial driver's license is not valid.33 "Commercial motor vehicle" means, except for those vehicles specifically excluded in this definition,
34 every motor vehicle, vehicle or combination of vehicles used to transport passengers or property which
35 ~~either~~: (i) has a gross vehicle weight or a gross vehicle weight rating of 26,001 or more pounds, whichever is
36 greater; (ii) has a gross combination weight or a gross combination weight rating of 26,001 or more pounds,
37 whichever is greater, inclusive of a towed vehicle with a *gross vehicle weight or a gross vehicle weight* rating
38 of more than 10,000 pounds, *whichever is greater*; (iii) is designed to transport 16 or more passengers
39 including the driver; or (iv) is of any size and is used in the transportation of hazardous materials as defined
40 in this section. Every such motor vehicle or combination of vehicles shall be considered a commercial motor
41 vehicle whether or not it is used in a commercial or profit-making activity.

42 The following are excluded from the definition of commercial motor vehicle:

43 1. Any vehicle when used by an individual solely for his own personal purposes, such as personal
44 recreational activities;45 2. Any vehicle that (i) is controlled and operated by a farmer, whether or not it is owned by the farmer,
46 and that is used exclusively for farm use, as provided in §§ 46.2-649.3 and 46.2-698; (ii) is used to transport
47 either agricultural products, farm machinery, or farm supplies to or from a farm; (iii) is not used in the
48 operation of a common or contract motor carrier; and (iv) is used within 150 miles of the farmer's farm;49 3. Any vehicle operated for military purposes by (i) active duty military personnel; (ii) members of the
50 military reserves; (iii) members of the national guard on active duty, including personnel on full-time national
51 guard duty, personnel on part-time national guard training, and national guard military technicians (civilians
52 who are required to wear military uniforms), but not U.S. Reserve technicians; and (iv) active duty U.S.
53 Coast Guard personnel; or54 4. Emergency equipment operated by a member of a firefighting, rescue, or emergency entity in the
55 performance of his official duties.

56 "Commercial Motor Vehicle Safety Act" means the federal Commercial Motor Vehicle Safety Act of

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57 1986, Title XII of P.L. 99-570, as amended.

58 "Conviction" means an unvacated adjudication of guilt, or a determination that a person has violated or
59 failed to comply with the law in a court of original jurisdiction, an unvacated forfeiture of bond, bail, or
60 collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by
61 the court, the payment of a fine or court costs in lieu of trial, a violation of a condition of release without bail,
62 regardless of whether the penalty is rebated, suspended, or probated, or, for the purposes of alcohol or drug-
63 related offenses involving the operation of a motor vehicle, a civil or an administrative determination of a
64 violation. For the purposes of this definition, an administrative determination includes an unvacated
65 certification or finding by an administrative or authorized law-enforcement official that a person has violated
66 a provision of law.

67 "Disqualification" means a prohibition against driving, operating, or being in physical control of a
68 commercial motor vehicle for a specified period of time, imposed by a court or a magistrate, or by an
69 authorized administrative or law-enforcement official or body.

70 "Domicile" means a person's true, fixed, and permanent home and principal residence, to which he intends
71 to return whenever he is absent.

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

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

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

78 "Entry-level driver" means an individual who (i) must complete the commercial driver's license skills test
79 requirements under FMCSA regulations prior to receiving a commercial driver's license for the first time, (ii)
80 is upgrading to a Class A or Class B commercial driver's license for the first time, or (iii) is obtaining a
81 hazardous materials, passenger, or school bus endorsement for the first time. This definition does not include
82 individuals exempt from such requirements under 49 C.F.R. § 380.603.

83 "Entry-level driver training" means training an entry-level driver receives from an entity listed on the
84 FMCSA's Training Provider Registry, as provided for in 49 C.F.R. § 380.700 et seq., prior to taking the (i)
85 commercial driver's license skills test required to (a) receive a commercial driver's license for the first time,
86 (b) receive the Class A or Class B commercial driver's license for the first time, (c) upgrade to a Class A or B
87 commercial driver's license for the first time, or (d) obtain a passenger or school bus endorsement for the first
88 time or (ii) commercial driver's license knowledge test required to obtain a hazardous materials endorsement
89 for the first time.

90 "FMCSA" means the Federal Motor Carrier Safety Administration of the U.S. Department of
91 Transportation.

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

93 "Gross combination weight rating" means the value specified by the manufacturers of an articulated
94 vehicle or combination of vehicles as the maximum loaded weight of such vehicles. In the absence of such a
95 value specified by the manufacturer, for law-enforcement purposes, the gross combination weight rating shall
96 be the greater of (i) the gross vehicle weight rating of the power units of the combination vehicle plus the
97 total weight of the towed units, including any loads thereon, or (ii) the gross weight at which the articulated
98 vehicle or combination of vehicles is registered in its state of registration; however, the registered gross
99 weight shall not be applicable for determining the classification of an articulated vehicle or combination of
100 vehicles for purposes of skills testing pursuant to § 46.2-341.14 or 46.2-341.16.

101 "Gross vehicle weight rating" means the value specified by the manufacturer of the vehicle as the
102 maximum loaded weight of a single vehicle. In the absence of such a value specified by the manufacturer, for
103 law-enforcement purposes, the gross vehicle weight rating shall be the greater of (i) the actual gross weight of
104 the vehicle, including any load thereon, or (ii) the gross weight at which the vehicle is registered in its state of
105 registration; however, the registered gross weight of the vehicle shall not be applicable for determining the
106 classification of a vehicle for purposes of skills testing pursuant to § 46.2-341.14 or 46.2-341.16.

107 "Hazardous materials" means materials designated to be hazardous in accordance with § 103 of the federal
108 Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq., as amended, and which require placarding
109 when transported by motor vehicle as provided in the federal Hazardous Materials Regulations, 49 C.F.R.
110 Part 172, Subpart F; it also includes any quantity of any material listed as a select agent or toxin in federal
111 Public Health Service Regulations at 42 C.F.R. Part 73.

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

115 "Noncommercial driver's license" means any other type of motor vehicle license, such as an automobile
116 driver's license, a chauffeur's license, or a motorcycle license.

117 "Nondomiciled commercial learner's permit" or "nondomiciled commercial driver's license" means a
118 commercial learner's permit or commercial driver's license, respectively, issued to a person in accordance

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

125 "Out-of-service order" or "out-of-service declaration" means an order by a judicial officer pursuant to
126 § 46.2-341.26:2 or 46.2-341.26:3 or an order or declaration by an authorized law-enforcement officer under
127 § 46.2-1001 or regulations promulgated pursuant to § 52-8.4 relating to Motor Carrier Safety, and including
128 similar actions by authorized judicial officers or enforcement officers acting pursuant to similar laws of other
129 states, the United States, the Canadian Provinces, Canada, Mexico, and localities within them, and also
130 including actions by federal or other jurisdictions' officers pursuant to Federal Motor Carrier Safety
131 Regulations, that a driver, a commercial motor vehicle, or a motor carrier is out of service. Such order or
132 declaration as to a driver means that the driver is prohibited from operating a commercial motor vehicle for
133 the duration of the out-of-service period. Such order or declaration as to a vehicle means that such vehicle
134 cannot be operated until the hazardous condition that resulted in the order or declaration has been removed
135 and the vehicle has been cleared for further operation. Such order or declaration as to a motor carrier means
136 that no vehicle may be operated for or on behalf of such carrier until the out-of-service order or declaration
137 has been lifted. For purposes of this article, the provisions of the Federal Motor Carrier Safety Regulations,
138 49 C.F.R. Parts 390 through 397, including such regulations or any substantially similar regulations as may
139 have been adopted by any state of the United States, the Provinces of Canada, Canada, Mexico, or any
140 locality shall be considered laws similar to the laws of the Commonwealth referenced herein.

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

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

145 "Seasonal restricted commercial driver's license" means a commercial driver's license issued under the
146 authority of the waiver promulgated by the federal Department of Transportation (49 C.F.R. § 383.3) by the
147 Commonwealth or any other jurisdiction to an individual who has not passed the knowledge or skills tests
148 required of other commercial driver's license holders. This license authorizes operation of a commercial
149 motor vehicle only on a seasonal basis, stated on the license, by a seasonal employee of a farm service
150 business, within 150 miles of the place of business or the farm currently being served.

151 "State" means one of the 50 states of the United States or the District of Columbia.

152 "Tank vehicle" means any commercial motor vehicle that is designed to transport any liquid or gaseous
153 materials within a tank or tanks having an individual rated capacity of more than 119 gallons and an
154 aggregate rated capacity of 1,000 gallons or more that is either permanently or temporarily attached to the
155 vehicle or the chassis. Such vehicles include, but are not limited to, cargo tanks and portable tanks, as defined
156 in 49 C.F.R. Part 171. However, this definition does not include portable tanks having a rated capacity under
157 1,000 gallons as provided in 49 C.F.R. Part 383. A commercial motor vehicle transporting an empty storage
158 container tank, not designed for transportation, with a rated capacity of 1,000 gallons or more that is
159 temporarily attached to a flatbed trailer is not considered a tank vehicle.

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

162 "Third party instructor" means an individual who is an employee of a third party tester or a training
163 provider and who (i) is authorized by the Department to provide entry-level driver training required for a
164 commercial driver's license and (ii) meets the requirements for either a theory or behind-the-wheel instructor
165 as defined in § 46.2-1700.

166 "Third party tester" means a person (including another state, a motor carrier, a private institution, the
167 military, a government entity, including each comprehensive community college in the Virginia Community
168 College System established by the State Board for Community Colleges pursuant to Chapter 29 (§ 23.1-2900
169 et seq.) of Title 23.1, or a department, agency, or instrumentality of a local government) certified by the
170 Department to employ third party examiners to administer a test program for testing commercial driver's
171 license applicants in accordance with this article.

172 "Training provider" means a person that provides entry-level driver training and that is (i) a Virginia
173 licensed Class A driver training school or a Virginia certified third party tester and is listed on the federal
174 Training Provider Registry or (ii) an entity that is otherwise licensed, certified, registered, or authorized to
175 provide training in accordance with the laws of the Commonwealth or the applicable laws of another state
176 and is listed on the federal Training Provider Registry.

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