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HOUSE BILL NO. 844

Offered January 10, 2024

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A *BILL to amend and reenact §§ 46.2-341.4, 46.2-341.12, 46.2-1700, and 46.2-1708 of the Code of Virginia, relating to commercial driver's licenses and commercial learner's permits; definitions; commercial driver training; drug and alcohol violations.*

Patron—Austin

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-341.4, 46.2-341.12, 46.2-1700, and 46.2-1708 of the Code of Virginia are amended and reenacted as follows:

§ 46.2-341.4. Definitions.

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

"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" or "CDLIS" means the commercial driver's license information system 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 or a gross vehicle weight rating of 26,001 or more pounds, whichever is greater; (ii) has a gross combination weight or a gross combination weight rating of 26,001 or more pounds, whichever is greater, inclusive of a towed vehicle with a gross vehicle weight rating of more than 10,000 pounds; (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 are excluded from the definition of commercial motor vehicle:

1. Any vehicle when used by an individual solely for his own personal purposes, such as personal recreational activities;

2. Any vehicle that (i) is controlled and operated by a farmer, whether or not it is owned by the farmer, and that 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;

3. Any vehicle operated for military purposes by (i) active duty military personnel; (ii) members of the military reserves; (iii) 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

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59 technicians (civilians who are required to wear military uniforms), but not U.S. Reserve technicians; and
60 (iv) active duty U.S. Coast Guard personnel; or

61 4. Emergency equipment operated by a member of a firefighting, rescue, or emergency entity in the
62 performance of his official duties.

63 "Commercial Motor Vehicle Safety Act" means the federal Commercial Motor Vehicle Safety Act of
64 1986, Title XII of P.L. 99-570, as amended.

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

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

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

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

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

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

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

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

98 "FMCSA" means the Federal Motor Carrier Safety Administration of the U.S. Department of
99 Transportation.

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

101 "Gross combination weight rating" means the value specified by the manufacturers of an articulated
102 vehicle or combination of vehicles as the maximum loaded weight of such vehicles. In the absence of
103 such a value specified by the manufacturer, for law-enforcement purposes, the gross combination weight
104 rating shall be the greater of (i) the gross vehicle weight rating of the power units of the combination
105 vehicle plus the total weight of the towed units, including any loads thereon, or (ii) the gross weight at
106 which the articulated vehicle or combination of vehicles is registered in its state of registration; however,
107 the registered gross weight shall not be applicable for determining the classification of an articulated
108 vehicle or combination of vehicles for purposes of skills testing pursuant to § 46.2-341.14 or
109 46.2-341.16.

110 "Gross vehicle weight rating" means the value specified by the manufacturer of the vehicle as the
111 maximum loaded weight of a single vehicle. In the absence of such a value specified by the
112 manufacturer, for law-enforcement purposes, the gross vehicle weight rating shall be the greater of (i)
113 the actual gross weight of the vehicle, including any load thereon, or (ii) the gross weight at which the
114 vehicle is registered in its state of registration; however, the registered gross weight of the vehicle shall
115 not be applicable for determining the classification of a vehicle for purposes of skills testing pursuant to
116 § 46.2-341.14 or 46.2-341.16.

117 "Hazardous materials" means materials designated to be hazardous in accordance with § 103 of the
118 federal Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq., as amended, and which
119 require placarding when transported by motor vehicle as provided in the federal Hazardous Materials
120 Regulations, 49 C.F.R. Part 172, Subpart F; it also includes any quantity of any material listed as a

121 select agent or toxin in federal Public Health Service Regulations at 42 C.F.R. Part 73.

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

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

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

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

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

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

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

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

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

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

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

178 "Third party tester" means a person (including another state, a motor carrier, a private institution, the
179 military, a government entity, including each comprehensive community college in the Virginia
180 Community College System established by the State Board for Community Colleges pursuant to Chapter
181 29 (§ 23.1-2900 et seq.) of Title 23.1, or a department, agency, or instrumentality of a local government)

182 certified by the Department to employ third party examiners to administer a test program for testing
183 commercial driver's license applicants in accordance with this article.

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

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

191 **§ 46.2-341.12. Application for commercial driver's license or commercial learner's permit.**

192 A. No entry-level driver shall be eligible to (i) apply for a Virginia Class A or Class B commercial
193 driver's license for the first time, (ii) upgrade to a Class A or Class B commercial driver's license for the
194 first time, or (iii) apply for a hazardous materials, passenger, or school bus endorsement for the first
195 time, unless he has completed an entry-level driver training course related to the license, classification,
196 or endorsement he is applying for and the training is provided by a training provider. An individual is
197 not required to complete an entry-level driver training course related to the license, classification, or
198 endorsement he is applying for if he is exempted from such requirements under 49 C.F.R. § 380.603.

199 B. Every application to the Department for a commercial driver's license or commercial learner's
200 permit shall be made upon a form approved and furnished by the Department, and the applicant shall
201 write his usual signature in ink in the space provided. The applicant shall provide the following
202 information:

- 203 1. Full legal name;
- 204 2. Current mailing and residential addresses;
- 205 3. Physical description including sex, height, weight, and eye and hair color;
- 206 4. Year, month, and date of birth;
- 207 5. Social security number;
- 208 6. Domicile or, if not domiciled in the Commonwealth, proof of status as a member of the active
209 duty military, military reserves, National Guard, active duty United States Coast Guard, or Coast Guard
210 Auxiliary pursuant to 49 U.S.C. § 31311(a)(12); and
- 211 7. Any other information required on the application form.

212 Applicants shall be permitted to choose between "male," "female," or "non-binary" when designating
213 the applicant's sex on the commercial driver's license or commercial learner's permit application form.

214 The applicant's social security number shall be provided to the Commercial Driver's License
215 Information System as required by 49 C.F.R. § 383.153.

216 C. Every applicant for a commercial driver's license or commercial learner's permit shall also submit
217 to the Department the following:

- 218 1. A consent to release driving record information;
- 219 2. Certifications that:
 - 220 a. He either meets the federal qualification requirements of 49 C.F.R. Parts 383 and 391, or he is
221 exempt from or is not subject to such federal requirements;
 - 222 b. He either meets the state qualification requirements established pursuant to § 52-8.4, or he is
223 exempt from or is not subject to such requirements;
 - 224 c. The motor vehicle in which the applicant takes the skills test is representative of the class and, if
225 applicable, the type of motor vehicle for which the applicant seeks to be licensed;
 - 226 d. He is not subject to any disqualification, suspension, revocation or cancellation of his driving
227 privileges;
 - 228 e. He does not have more than one driver's license;
- 229 3. Other certifications required by the Department;
- 230 4. Any evidence required by the Department to establish proof of identity, citizenship or lawful
231 permanent residency, domicile, and social security number notwithstanding the provisions of
232 § 46.2-328.1 and pursuant to 49 C.F.R. Part 383;
- 233 5. A statement indicating whether (i) the applicant has previously been licensed to drive any type of
234 motor vehicle during the previous 10 years and, if so, all states that licensed the applicant and the dates
235 he was licensed, and (ii) whether or not he has ever been disqualified, or his license suspended, revoked
236 or canceled and, if so, the date of and reason therefor; and
- 237 6. An unexpired employment authorization document (EAD) issued by the U.S. Citizenship and
238 Immigration Services (USCIS) or an unexpired foreign passport accompanied by an approved Form I-94
239 documenting the applicant's most recent admittance into the United States for persons applying for a
240 nondomiciled commercial driver's license or nondomiciled commercial learner's permit.

241 D. Every application for a commercial driver's license shall include a photograph of the applicant
242 supplied under arrangements made therefor by the Department in accordance with § 46.2-323.

243 E. The Department shall disqualify any commercial driver for a period of one year when the records

244 of the Department clearly show to the satisfaction of the Commissioner that such person has made a
 245 material false statement on any application or certification made for a commercial driver's license or
 246 commercial learner's permit. The Department shall take such action within 30 days after discovering
 247 such falsification.

248 F. The Department shall review the driving record of any person who applies for a Virginia
 249 commercial driver's license or commercial learner's permit, for the renewal or reinstatement of such
 250 license or permit or for an additional commercial classification or endorsement, including the driving
 251 record from all jurisdictions where, during the previous 10 years, the applicant was licensed to drive any
 252 type of motor vehicle. Such review shall include checking the photograph on record whenever the
 253 applicant or holder appears in person to renew, upgrade, transfer, reinstate, or obtain a duplicate
 254 commercial driver's license or to renew, upgrade, reinstate, or obtain a duplicate commercial learner's
 255 permit. If appropriate, the Department shall incorporate information from such other jurisdictions' records
 256 into the applicant's Virginia driving record, and shall make a notation on the applicant's driving record
 257 confirming that such review has been completed and the date it was completed. The Department's
 258 review shall include (i) research through the Commercial ~~Driver~~ Driver's License Information System
 259 established pursuant to the Commercial Motor Vehicle Safety Act and the National Driver Register
 260 Problem Driver Pointer System in addition to the driver record maintained by the applicant's previous
 261 jurisdictions of licensure and (ii) requesting information from the Drug and Alcohol Clearinghouse in
 262 accordance with 49 C.F.R. § 382.725. This research shall be completed prior to the issuance, renewal,
 263 transfer, or reinstatement of a *commercial learner's permit*, commercial driver's license or additional
 264 commercial classification or endorsement.

265 1. *If the information the Department receives from the Drug and Alcohol Clearinghouse indicates*
 266 *that the applicant is prohibited from operating a commercial motor vehicle, the Department shall deny*
 267 *the application. If the applicant currently holds a commercial driver's license or a commercial learner's*
 268 *permit, the Department must initiate a CDL downgrade of the applicant's commercial driver's license or*
 269 *commercial learner's permit as defined in 49 C.F.R. § 383.5.*

270 2. *If the FMCSA notifies the Department that an existing holder of a commercial driver's license or*
 271 *commercial learner's permit is prohibited from operating a commercial motor vehicle pursuant to 49*
 272 *C.F.R. § 382.501(a), the Department shall initiate a CDL downgrade of the driver's commercial driver's*
 273 *license or commercial learner's permit as defined in 49 C.F.R. § 383.5 and record the CDL downgrade*
 274 *on the driver's record on the Commercial Driver's License Information System within 60 days of*
 275 *receiving the notification.*

276 3. *If the FMCSA notifies the Department that an existing holder of a commercial driver's license or*
 277 *commercial learner's permit was erroneously identified as prohibited from operating a commercial*
 278 *motor vehicle, the Department shall both reinstate the driver's commercial driver's license or*
 279 *commercial learner's permit privilege and remove any reference to the driver's erroneous prohibited*
 280 *status from the driver's record on the Commercial Driver's License Information System as expeditiously*
 281 *as possible.*

282 G. The Department shall verify the name, date of birth, and social security number provided by the
 283 applicant with the information on file with the Social Security Administration for initial issuance of a
 284 commercial learner's permit or transfer of a commercial driver's license from another state. The
 285 Department shall make a notation in the driver's record confirming that the necessary verification has
 286 been completed and noting the date it was done. The Department shall also make a notation confirming
 287 that proof of citizenship or lawful permanent residency has been presented and the date it was done.

288 G. H. Every new applicant for a commercial driver's license or commercial learner's permit, including
 289 any person applying for a commercial driver's license or permit after revocation of his driving privileges,
 290 who certifies that he will operate a commercial motor vehicle in non-excepted interstate or intrastate
 291 commerce shall provide the Department with an original or certified copy of a medical examiner's
 292 certificate prepared by a medical examiner as defined in 49 C.F.R. § 390.5. Upon receipt of an
 293 appropriate medical examiner's certificate, the Department shall post a certification status of "certified"
 294 on the *driver's* record ~~of the driver~~ on the Commercial Driver's License Information System. Any new
 295 applicant for a commercial driver's license or commercial learner's permit who fails to comply with the
 296 requirements of this subsection shall be denied the issuance of a commercial driver's license or
 297 commercial learner's permit by the Department.

298 H. I. Every existing holder of a commercial driver's license or commercial learner's permit who
 299 certifies that he will operate a commercial motor vehicle in non-excepted interstate or intrastate
 300 commerce shall provide the Department with an original or certified copy of a medical examiner's
 301 certificate prepared by a medical examiner as defined in 49 C.F.R. § 390.5. Upon receipt of an
 302 appropriate medical examiner's certificate, the Department shall post a certification status of "certified"
 303 and any other necessary information on the *driver's* record ~~of the driver~~ on the Commercial Driver's
 304 License Information System. If an existing holder of a commercial driver's license fails to provide the

305 Department with a medical certificate as required by this subsection, the Department shall post a
 306 certification status of "noncertified" on the *driver's* record of the ~~driver~~ on the Commercial Driver's
 307 License Information System and initiate a *CDL* downgrade of his commercial driver's license as defined
 308 in 49 C.F.R. § 383.5.

309 ~~F.~~ *J.* Any person who provides a medical certificate to the Department pursuant to the requirements
 310 of subsections ~~G~~ and ~~H~~ and *I* shall keep the medical certificate information current and shall notify the
 311 Department of any change in the status of the medical certificate. If the Department determines that the
 312 medical certificate is no longer valid, the Department shall initiate a *CDL* downgrade of the driver's
 313 commercial driver's license as defined in 49 C.F.R. § 383.5.

314 ~~J.~~ *K.* If the Department receives notice that the holder of a commercial driver's license has been
 315 issued a medical variance as defined in 49 C.F.R. § 390.5, the Department shall indicate the existence of
 316 such medical variance on the commercial driver's license document of the driver and on the *driver's*
 317 record of the ~~driver~~ on the Commercial Driver's License Information System using the restriction code
 318 "V."

319 ~~K.~~ *L.* Any holder of a commercial driver's license who has been issued a medical variance shall keep
 320 the medical variance information current and shall notify the Department of any change in the status of
 321 the medical variance. If the Department determines that the medical variance is no longer valid, the
 322 Department shall initiate a *CDL* downgrade of the driver's commercial driver's license as defined in 49
 323 C.F.R. § 383.5.

324 ~~L.~~ *M.* Any applicant applying for a hazardous materials endorsement must comply with
 325 Transportation Security Administration requirements in 49 C.F.R. Part 1572. A lawful permanent
 326 resident of the United States requesting a hazardous materials endorsement must additionally provide his
 327 U.S. Citizenship and Immigration Services (USCIS) alien registration number.

328 ~~M.~~ *N.* Notwithstanding the provisions of § 46.2-208, the Department may release to the FMCSA
 329 medical information relating to the issuance of a commercial driver's license or a commercial learner's
 330 permit collected by the Department pursuant to the provisions of subsections F, G, H, I, ~~and~~ J, and K.

331 **§ 46.2-1700. Definitions.**

332 As used in this chapter, unless the context requires a different meaning:

333 "Behind-the-wheel instructor" means an individual who meets the requirements for licensure under
 334 § 46.2-1708 and is employed by a training provider who provides behind-the-wheel training involving
 335 the actual operation of a commercial motor vehicle by an entry-level driver on a range or a public road.

336 "Behind-the-wheel training" means training provided by a licensed behind-the-wheel instructor when
 337 an entry-level driver has actual control of the power unit during a driving lesson conducted on a range
 338 or on a public road. "Behind-the-wheel training" does not include time an entry-level driver spends
 339 observing the operation of a commercial motor vehicle when he is not in control of the vehicle.

340 "Class A licensee" means a driver training school that provides *entry-level driver* training in the
 341 operation of commercial motor vehicles as defined in § 46.2-341.4.

342 "Class B licensee" means a driver training school that provides training in the operation of any type
 343 of motor vehicle other than motorcycles and commercial motor vehicles as defined in § 46.2-341.4.

344 "Computer-based driver education course" means the classroom portion of driver education offered
 345 by a computer-based driver education provider through the Internet or other electronic means approved
 346 by the Department whose content and quality is comparable to that of courses offered in the
 347 Commonwealth's public schools.

348 "Computer-based driver education provider" means a driver training school licensed by the
 349 Department in accordance with this chapter to conduct computer-based driver education courses.

350 "Driver training school" or "school" means a business enterprise conducted by an individual,
 351 association, partnership, or corporation, for the education and training of persons, either practically or
 352 theoretically or both, to operate or drive motor vehicles, and charging a consideration or tuition for such
 353 services. "Driver training school" or "school" does not mean any institution of higher education, school
 354 established pursuant to § 46.2-1314, school maintained or classes conducted by employers for their own
 355 employees where no fee or tuition is charged, schools or classes owned and operated by or under the
 356 authority of bona fide religious institutions, or by the Commonwealth or any political subdivision
 357 thereof, training programs for school bus operators established pursuant to § 22.1-181, driver education
 358 programs established pursuant to § 22.1-205, or schools accredited by accrediting associations approved
 359 by the Department of Education; however, if any such entity or program excluded from the definition of
 360 "driver training school" offers driver education and training through a contractual arrangement with
 361 another person for consideration, then that other person shall be considered a driver training school
 362 subject to the requirements of this chapter.

363 "Entry-level driver" means the same as defined in § 46.2-341.4.

364 "Entry-level driver training" means the same as defined in § 46.2-341.4.

365 "FMCSA" means the same as defined in § 46.2-341.4.

366 "Instructor" means any person, whether acting for himself as operator of a driver training school or

367 for such school for compensation, who teaches, conducts classes, gives demonstrations, or supervises
 368 persons learning to operate or drive a motor vehicle.

369 "Key information" means the training provider name, address, phone number, type or types of
 370 training offered, training provider status, and any change in state licensure, certification, or accreditation
 371 status.

372 "Range" means an area that is free of obstructions, enables the driver to maneuver safely and free
 373 from interference from other vehicles and hazards, and has adequate sight lines.

374 "Theory instruction" means knowledge instruction on the operation of a commercial motor vehicle
 375 and related matters provided by a licensed theory instructor through lectures, demonstrations,
 376 audio-visual presentations, computer-based instruction, driving simulation devices, online training, or
 377 similar means.

378 "Theory instructor" means an individual who meets the requirements for licensure under § 46.2-1708
 379 and is employed by a training provider and who provides knowledge instruction on the operation of a
 380 commercial motor vehicle.

381 "Training provider" means the same as defined in § 46.2-341.4.

382 **§ 46.2-1708. Licenses required for school and instructors.**

383 A. If a A Class A driver training school elects to provide entry-level driver training to driver trainees,
 384 that Class A driver training school shall not provide such entry-level driver training in the
 385 Commonwealth until it has (i) been licensed to provide training in the Commonwealth pursuant to this
 386 section chapter and (ii) provided the Commissioner with its unique Training Provider Registry number
 387 issued by FMCSA pursuant to 49 C.F.R. § 380.703 in a form prescribed by the Department.

388 B. If a To become a Class A driver training school elects to provide entry-level driver training, upon
 389 an applicant shall include with its application for a Class A license by such driver training school the
 390 applicant driver training school shall also provide evidence that:

391 1. The curriculum used for theory instruction and behind-the-wheel training complies with the
 392 curriculum requirements prescribed by the Department;

393 2. The facilities used for entry-level driver training for both theory instruction and behind-the-wheel
 394 training comply with all federal and state safety requirements;

395 3. The instructors employed by the applicant driver training school are licensed under this section;

396 4. The applicant driver training school (i) uses written assessments that comply with the requirements
 397 prescribed by the Department to determine the driver trainee's proficiency in the knowledge objectives of
 398 each unit of instruction in the curriculum and (ii) requires driver trainees to achieve an overall minimum
 399 score of 80 percent for passage of the theory instruction portion of the course; and

400 5. The applicant driver training school instructors evaluate and document the driver trainee's
 401 proficiency in the behind-the-wheel skills in accordance with the curriculum requirements prescribed by
 402 the Department.

403 C. The Commissioner shall not license a behind-the-wheel instructor or theory instructor unless the
 404 applicant provides evidence that his commercial driver's license has not been disqualified, canceled,
 405 suspended, or revoked due to any of the disqualifying offenses identified in 49 C.F.R. § 383.51, unless
 406 his commercial driver's license was reinstated more than two years prior to the application date, and that
 407 he either:

408 1. Currently holds a commercial driver's license of the same class or higher with all endorsements
 409 necessary to operate the commercial motor vehicle for which training will be provided and has at least
 410 two years of experience driving a commercial motor vehicle requiring a commercial driver's license of
 411 the same or higher class or the same endorsement; or

412 2. Currently holds a commercial driver's license of the same class or higher with all endorsements
 413 necessary to operate the commercial motor vehicle for which training will be provided, and has at least
 414 two years of experience as a behind-the-wheel commercial motor vehicle instructor.

415 D. The Commissioner may issue an order suspending, revoking, cancelling, or denying renewal of a
 416 training provider's license, certification, or authorization to provide training effective immediately if the
 417 order is based upon the removal of the school from the federal Training Provider Registry pursuant to
 418 49 C.F.R. § 380.723. Notice of such order shall be in writing and mailed to the training provider by
 419 registered mail to the address as shown on the training provider's most recent application and shall be
 420 considered served when mailed. Upon receipt of a request for a hearing appealing such order, the
 421 training provider shall be afforded the opportunity for a hearing as soon as practicable, but in no case
 422 later than 30 days from receipt of the hearing request. The order shall remain in effect pending the
 423 outcome of the hearing.