

Virginia Board for Towing and Recovery Operators

April 8, 2008 - 9:00 AM

Department of Motor Vehicles, Conference Room (131)
2300 West Broad Street, Richmond, Virginia 23220

Final Minutes

Virginia Board for Towing and Recovery Operators was held on April 8, 2008 at the Department of Motor Vehicles Headquarters, 2300 West Broad Street, Richmond, Virginia.

Board Members present:

Ray Hodge, Chairman

Roy Boswell

Charlie Brown

Cary Coleman

Ray Drumheller

Woody Herring

Mark Sawyer

Randy Seibert

Gary Teter

Ron Minor

Jeff Davis

Andres Alvarez (designee of the Commissioner of Agriculture and Consumer Services)

Lt. Colonel Robert B. Northern, Virginia State Police

Other Members present:

Captain Steve Chumley

Lt. Curtis Hardsion

Board Members absent:

Vinay Patel

Staff present:

Benjamin Foster, Board Executive Director

Daphane Phillips, Administrative Assistant

Ellen M. Hess, Policy and Legal Affairs

Jo Anne Maxwell, Esq., Senior Assistant Attorney General

Victoria Simmons, Regulatory Coordinator

Jeff Spencer, Assistant Attorney General

Acceptance of March, 25 2008 Board Minutes

Chairman Hodge asked the members if they reviewed the minutes from the last meeting. Captain Steve Chumley, Lt. Colonel Robert B. Northern and Lt. Curtis Hardsion names were omitted from last minutes. Hodge called for a motion to approve the minutes with the necessary corrections. A motion was made by Gary Teter Coleman and seconded by Roy Boswell. The minutes were adopted unanimously.

Public Comments:

George Philbates: He expressed concerns that too much regulation will put the private contractors out of business with the high cost for fees and insurance. This speaker thinks that the board needs to rewrite the regulations.

Chairman Report:

Mr. Hodge: "Most of the day's meeting will be hearing a report from Mrs. Simmons regarding the public comments. It is his understanding that Ron Minor will give a report from the education committee meeting.

Mr. Foster gave a brief report of the Board's budget: one thing I would like to bring up is, at the last meeting, there was some question of the loans that the Board has and I talked to Jack Christenson at DMV about processing our financial matters and basically what Mr. Christenson told me was that "Once we start bringing in revenue, they will meet with the Department of Accounts about repaying the loan and he foresees that the Board will have to pay the loan back in two years."

Committee Report:

Communications Committee

Mr. Coleman reported that they had placed an advertisement in the Footnotes & Tow Times publications magazine and so far the Board has received over 30 contact cards from the towers.

Education Ad hoc Committee

Mr. Minor reported that the committee looked at two items that needed to be addressed. The first item was the operator's licensure by examination, and they also discussed the questions for the test. Mr. Minor has already developed 25 questions and general administration that he is having reviewed by a company named Fields Consulting, which does testing for the state police and the community colleges.

The second thing the committee was asked to develop were safety questions and the committee came up with several options from Chapters 30, 12, and 28 from the Code where they thought the safety questions should come from. Mr. Minor & Mr. Seibert will

work on these questions and bring them back to the Board at a later date. The committee discussed that this should be an open book test, and not be an exclusionary test, it should be a test that allows the Board to know that the towers have read and understand the laws and regulations that were written by the Board. Mr. Minor and the committee had further discussion on whether it should be online or proctored.

Finance Report:

Alicia Hotinger stated that since the board is new, it has not generated any revenue, they took a \$350,000 treasury loan last year, and the Board still has a little less than \$100,00 left of the original loan and the in the process of getting the second \$350,00. She stated that basically how that works is when the Board starts generating revenue; the Board has to start paying back the loans. They spoke with the Department of Accounts and they will work out a payment plan.

New Business:

Mr. Minor thinks that the board needs to look at hiring a full time investigator to do two things:

- 1). Someone who is familiar with what the laws and regulations are.
- 2). A local representative who would go out into the field and communicate with the towers.

The board discussed various options on this fulltime position.

Mr. Hodge wants the administrative committee to meet and draft a guideline for a fulltime investigator. He would like for the Board to be aware of when they set the fees in the regulations, it will greatly affect the way the loan is paid back.

Old business

Mr. Herring stated that they didn't have any luck with hiring a P14. After speaking with Mr. Foster, the real problem is with the recent phone system. Mr. Foster will look into getting the phone system upgraded so that the towers can get through when they call

Victoria Simmons, Regulatory Coordinator Committee Report.

Mrs. Simmons reported that after the Board finished making the adjustments to the proposed regulations, once they become final and in affect, after that, if they want to change the fees the Board should anticipate a long process. If you want to increase the fees, you should anticipate the Notice if intended Regulatory Action and proposed regulations.

In summery she stated that: if the board feels the need to increase or decrease the fees they will have to go through further regulatory action

- The following motions were made and voted by the Board:
- 24VAC 27-30-10 Definitions: Mr. Minor made the motion to change the wording in the definition of 'towing and recovery service'. It was seconded and the Board approved this change to this regulation section.
- 24VAC 27-30-100. Item 8 Unprofessional conduct: Mr. Minor made the motion to changed "may be" to "are" in the last paragraph which was seconded and approved by the Board.
- 24VAC 27-30-110. Item 3 Unprofessional conduct: Mr. Sawyers made the motion to change "termination within 15 days" to "30days" which was seconded and approved by the Board.
- 24VAC 27-30-130 Expedited process to consider consumer complaints: Mr. Seibert made the motion to respond to the secretary office, the Board will rewrite the policy over the next month, and to leave as is in the regulations which was seconded and approved by the Board.
- 24VAC 27-30-140 item (A) prerequisites for application for tow truck driver's authorization document: .Minor made the motion to" strike board application fee and replace it with tow truck driver authorization document" which was seconded and approved by the Board.
- 24VAC 27-30-170. item (C) Renewal of licensure; reinstatement; renewal of fees. Mr. Seibert made a motion to "Change 62 days to two months" and "August 31" should be changed to "September 1st" which was seconded and approved by the Board.
- 24VAC 27-30-180. Requirements for continuing education shall become effective. Mr. Minor made a motion to strike all the language in section 24VAC 27-30-180 to read:" requirements for continuing education. (Reserved), and the chair will direct the education committee to come back with substantial process towards this section with in five months" which was seconded by Mr. Herring. Chairman Hodge asked that all in favor please raise their right hand. 11 in favor and 2 opposed.

The chair called for a 30 minute lunch break at 12:02.

The board meeting reconvened at 12:38.

Background on fingerprinting from Captain Turner, fingerprinting process expert from the State Police

Captain Turner stated that the finger process is backwards. There are two types of searches: Name and AFIS (Automated Fingerprint Identification System) There are 14 images on each card of five fingers for the right and left hand and the four slabs at the bottom and the two thumbs. The process starts by running the thumbs and the two index fingers first in order to get a clear reading, and that's how the process works.

The state police will bill the Board on a monthly basis on the number of finger prints that they receive and they will send it to the FBI. The system can only store up to 80 to 90 fingerprints from Live Scan. There are only six companies that do Live Scan in the state, and seven police stations that are set up to process the fingerprinting with Live Scan and the charge is \$10 per person.

Captain Turner touched on the issue of fraud. To try to cut down on fraud, they ask for two ids: a photo id, and some type of geographical information.

After this presentation from Captain Turner, the Board returned to its consideration of public comments on the proposed General Regulations:

- 24VAC 27-30-30 item 8. General requirements for operator's licensure: Mr. Minor made the motion to change the wording on line two" after license number" which was seconded and approved by the Board.
- 24VAC 27-30-100 item 10 last sentence. Unprofessional conduct: Mr. Teter made a motion to remove the word 'location' and replace it with 'facilities" which was seconded and approved by the Board.
- 24VAC 27-30-140 item 4. Prerequisites for application for tow truck driver's authorization document: Mr. Minor made a motion to add the word to read after the initial authority, 'criminal history and background checks will be conducted every 3 years as part of the renewal". Chairman Hodge asked that all in favor please raise your right hand. Most were in favor, and 1 opposed.
- 24VAC 27-30-160 item 2 & 3. Requirement for drivers: Mr. Minor made the motion to add language in this section; it was seconded and approved by the Board.
- 24VAC 27-30-160 item 3. Requirement for drivers: Mr. Sawyers made the motion to strike 'drivers appropriate and the name and board issued license number of the driver's employer" which was seconded and approved by the Board.

Next Meeting:

The next meeting will be held on April 23, 2008, with the location to be determined by the Director

Adjourned:

Chairman Hodge called for a motion to adjourn. Mr. Coleman made the motion which was seconded by Mr. Herring; the adjournment passed unanimously. The meeting was adjourned at 4:31 p.m.

See working document below:

BOARD OF TOWING AND RECOVERY OPERATORS

General Regulations For Towing and Recovery Operators

CHAPTER 30

GENERAL REGULATIONS FOR TOWING AND RECOVERY OPERATORS

24VAC27-30-10. Definitions.

The following words and terms when used in these regulations by the Virginia Board of Towing and Recovery Operators or the board's related documents, unless expressly stated otherwise, shall have the following meanings:

"Board" means the Virginia Board of Towing and Recovery Operators.

"Class A operator" means a towing and recovery business towing vehicles of an unlimited gross vehicle weight.

"Class B operator" means a towing and recovery business towing vehicles of a gross vehicle weight of 26,000 pounds or less.

"Driver" means a person who drives or is in actual physical control of a tow truck. A driver shall have obtained an authorization document issued by the board in order to drive a tow truck while providing towing or recovery services.

"Equipment" means any tow truck, vehicle or related machinery or tools used to provide towing or recovery services.

"Gross vehicle weight" means the aggregate weight of a vehicle and the load thereon.

"Gross vehicle weight rating" means as defined in §46.2-341.4 of the Code of the Virginia.

"Law-enforcement officer" means any officer authorized to direct or regulate traffic or to make arrests for violations of the Code of Virginia or local ordinances authorized by law relating to drivers or driving of motor vehicles.

"Operator" means the same as "towing and recovery operator," notwithstanding the provisions of §46.2-100 of the Code of Virginia, which defines operator differently.

"Private property/trespass tow" means requests for towing and recovery services made by the owner, operator or lessee of private property, or the authorized agent thereof, pursuant to the provisions of Article 3 (§46.2-1216 et seq.) of Chapter 12 of Title 46.2 of the Code of Virginia, or local ordinances adopted under that article, or under contract between such person and a towing and recovery operator that specifies what tows are to be made from the property when a motor vehicle or vehicle or self-propelled apparatus is on the property in violation of law or rules promulgated by the owner, operator, or lessee of the private property.

"Responsible individual" means an individual identified through the operator's licensure process who is designated by the operator to represent and be accountable for

all aspects of licensure for the operator and who is either the principal owner or chief executive officer of the business entity or manager or both of business operations for the operator.

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

"Towing and recovery operator" means any person, including a business, corporation, or sole proprietor, offering services involving the use of a tow truck and services incidental to the use of a tow truck. Such services shall include but not be limited to those engaged in the business of (i) removing disabled vehicles, parts of vehicles, their cargoes, and other objects to facilities for repair or safekeeping and (ii) restoring to the highway or other location where they either can be operated or removed to other locations for repair or safekeeping vehicles that have come to rest in places where they cannot be operated.

"Towing and recovery services" means services offered by a towing and recovery operator. Any person who in any way advertises himself as a towing and recovery operator or in any way conveys the impression that he is engaged in services of providing towing and recovery of vehicles shall be deemed to be engaged in towing and recovery services.

"Tow truck" means a motor vehicle for hire (i) designed to lift, pull, or carry another vehicle by means of a hoist or other mechanical apparatus and (ii) having a manufacturer's gross vehicle weight rating of at least 10,000 pounds. "Tow truck" also includes vehicles designed with a ramp on wheels and a hydraulic lift with a capacity to haul or tow another vehicle, commonly referred to as "rollbacks." "Tow truck" does not

include any "automobile or watercraft transporter," "stinger-steered automobile or watercraft transporter," or "tractor truck" as defined in §46.2-100 of the Code of Virginia.

"Tow truck decal," "decal" or similar words mean a board-issued decal to be affixed to the driver side door of a tow truck owned, leased or operated by a licensed towing and recovery operator.

24VAC27-30-20. Fees.

A. The following fees shall be applicable:

| <u>License Item</u> | <u>Fee</u> |
|---|--------------------------------|
| <u>Initial fee structure/application fee (includes the fee for one driver authorization)</u> | <u>\$500</u> |
| <u>Annual license renewal, Class A operator (includes the fee for one driver authorization)</u> | <u>\$500</u> |
| <u>Annual license renewal, Class B operator (includes the fee for one driver authorization)</u> | <u>\$500</u> |
| <u>Annual tow truck decal, per vehicle</u> | <u>\$10</u> |
| <u>Annual driver authorization documentation, per driver</u> | <u>\$50</u> |
| <u>Late renewal (operator, truck decal and driver)</u> | <u>150% of renewal fee</u> |
| <u>Reinstatement following revocation or suspension of license</u> | <u>\$1,000</u> |
| <u>Verification of licensure to another jurisdiction or government entity</u> | <u>\$25</u> |
| <u>Returned check</u> | <u>\$35</u> |
| <u>Duplicate copy of license, tow truck decal or driver authorization</u> | <u>\$10</u> |
| <u>Out-of-state temporary trip permit (each permit)</u> | <u>\$50</u> |

B. All fees shall be nonrefundable.

C. Examination fees shall be determined by the board.

24VAC27-30-30. General requirements for operator's licensure.

As a condition for licensure, an operator shall:

1. Be an individual or other entity legally authorized to conduct business in the Commonwealth of Virginia.

2. Provide the name of the individual or business entity under which the applicant intends to be licensed. However, the applicant/licensee, at time of application and each renewal of license, shall provide the board with any and all trade or fictitious names under which the operator conducts or offers towing and recovery services.

3. Designate and advise the board of the main or principal office and all additional satellite facilities and the physical addresses. Should such change, the board shall be notified within 30 days such change occurs.

4. Designate a responsible individual who shall be knowledgeable of all applicable state, federal or local laws and regulations related to those towing and recovery services offered or rendered by the operator and who shall be responsible for assuring that the operator conforms to them.

5. List the principal owner's name or owners' names and the name of the responsible individual and of the principal manager and of all other individuals involved in the management and operation of the business on the application for license and advise the board of any change [within 30 days] of same.

6. Certify on the application whether any owner, manager, or other individual involved in the management or operation of the business entity, including the responsible individual, has been convicted of any criminal offense, whether felony or misdemeanor.

a. An applicant may not be refused a license or a tow truck driver's authorization document by the board solely because of a prior criminal

conviction against such applicant or against any individual who is an owner, manager or other person involved in the management or operation of the applicant's business, including the responsible individual, unless the criminal conviction directly relates to the provision of towing and recovery services or the safety of the users of such services offered by a licensee or holder of a tow truck driver's authorization document. However, the board may refuse to issue a license or tow truck driver's authorization document if, based upon all the information available, including the record of prior convictions of the applicant or any individual who is an owner, manager or other person involved in the management or operation of the applicant's business, including the responsible individual, it finds that the applicant is unfit or unsuited to engage in providing towing and recovery services.

b. The board shall consider the following criteria in determining whether a criminal conviction [whether an applicant is unfit or unsuited to engage in providing towing and recovery services] directly relates to the provision of towing and recovery services or the safety of the users of towing and recovery services:

(1) The nature and seriousness of the crime;

(2) The relationship of the crime to the purpose for requiring a license or tow truck driver's authorization document to provide towing and recovery services, which includes protecting the safety of users of such services;

(3) The extent to which providing towing and recovery services might offer an opportunity to engage in further criminal activity of the same type as that in which the convicted person had been involved;

(4) The relationship of the crime to the ability, capacity or fitness required to perform the duties and discharge the responsibilities of providing towing and recovery services;

(5) The extent and nature of the person's past criminal activity;

(6) The age of the person at the time of the commission of the crime;

(7) The amount of time that has elapsed since the person's last involvement in the commission of a crime;

(8) The conduct and work activity of the person prior to and following the criminal activity; and

(9) Evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release or at any time following the conviction.

c. The board may consider the criminal information as contained in the state or national criminal history record of the applicant or of each individual who is an owner, manager, or other person involved in the management or operation of the applicant's business, including the responsible individual, if such record is available, in lieu of the applicant providing certified copies of court records as to such convictions in determining whether a criminal conviction directly relates to the provision of towing and recovery services, and in determining whether an applicant is unfit or unsuited to engage in towing and recovery services. The board may request additional information from the applicant or relevant individuals in making such determination.

d. The following criminal convictions may not be considered a bar to licensing by the board, meaning that the inclusion of these items on the record of any individual who is an owner, manager or other person involved in the

management or operation of the business entity, including the responsible individual, shall not be sufficient as the sole grounds for denial of an operator's license.

(1) Felony convictions more than 10 years old with no subsequent reportable convictions, unless the conviction resulted in incarceration where the release date is less than three years from the date of the application. This does not include convictions involving murder, manslaughter, sexual assault, rape, robbery, or indecent liberties.

(2) Misdemeanor convictions more than three years old from the date of application.

(3) Felony convictions for possession of controlled substances more than two years old from the date of application, where the applicant has completed a deterrence program.

(4) Felony convictions of Title 46.2 of the Code of Virginia (Traffic Code) more than three years old from the date of application.

(5) Convictions of grand larceny, breaking and entering, or burglary, more than five years old with no subsequent convictions, provided they did not result in incarceration where the release date is less than three years from the application date.

7. Provide the board with information indicating all tow trucks owned, leased or used by the operator, and obtain the appropriate tow truck decal for each such tow truck. Such information shall include a basic description of the type of tow truck, make, model and vehicle identification number, and its license plate number and state issuing such license plate. Information shall be provided no

less frequently than on an annual basis, at time of initial licensure or renewal of license, and when obtaining a decal for any tow truck newly acquired.

8. Provide the board with a list of all drivers employed by the operator to drive tow trucks, including their driver's license numbers [at the time of licensure, and additionally driver authorization document numbers, at the time of initial licensure and] at each renewal of the license.

24VAC27-30-40. Operator's licensure without examination.

Applicants for licensure [who were engaged in towing and recovery services on or prior to January 1, 2006 who qualify for grandfather status to take effect July 1, 2008], shall be required to:

1. Submit an application for license on a form provided by the board, indicating on the application whether it is for a Class A or Class B operator's license, and remit payment of fees applicable for application and first year license, including fees for tow truck decals. Applications shall include the operator's federal tax identification number.

2. Certify in writing that the responsible individual has read and understands the laws and regulations governing towing and recovery services.

3. In order to qualify for "grandfather status" so that no examination is required for [initial] licensure, the applicant shall submit evidence to the board that the operator was actively engaged in the business of towing and recovery services on January 1, 2006. Such evidence shall include a date prior to January 1, 2006, and the business name of the operator and may include but shall not be limited to a copy of a state or federal tax return, local business license, receipt for payment of other taxes or government fees, paid purchase order forms or similar

documents related to repair, lease, or purchase of a tow truck. The grandfather exemption shall expire if the application for license has not been received by close of business [July 1, 2008 December 31, 2008].

24VAC27-30-50. Operator's licensure by examination.

A. Applicants for licensure who were not engaged in the towing and recovery business before January 1, 2006, or who do not qualify for grandfather status or both shall be required to:

1. Submit an application for license on a form provided by the board, indicating on the application whether it is for a Class A or Class B operator's license, and remit payment of fees applicable for application and first year license, including fees for tow truck decals. Applications shall include the operator's federal tax identification number.

[2. For license as a Class A operator, submit evidence of passage by the principal owner or responsible individual of all sections of Level I and of Level II of the Towing and Recovery Association of America's certification examination or the appropriate sections of any other examination deemed by the board to be equivalent. Examinations that the board has deemed equivalent shall be posted on the board's website (<http://www.btro.vi.virginia.gov>).

3. For license as a Class B operator, submit evidence of passage by the principal owner or responsible individual of all sections of Level I of the Towing and Recovery Association of America's certification examination or the appropriate sections of any other examination deemed by the board to be equivalent. Examinations that the board has deemed equivalent shall be posted on the board's website (<http://www.btro.vi.virginia.gov>).

B. The principal owner or responsible individual of applicants for Class A and Class B operator's license shall additionally successfully pass an open book jurisprudence examination provided by the board on the laws and regulations governing towing and recovery operators. Add language from 46.2-2822

24VAC27-30-60. Operator's licensure by endorsement.

An applicant may receive licensure by endorsement providing he (i) provides evidence of passage of the applicable examination requirements set out herein for a Class A or Class B license, (ii) submits evidence that he has been actively engaged in towing and recovery services in another state for the past five consecutive years, (iii) provides a statement from a government entity in the state in which he has been conducting business or businesses in the past five consecutive years that the applicant's business has not violated or been disciplined for violation of the other state's laws and regulations governing towing and recovery services, (iv) has passed the board required jurisprudence examination, and (v) has submitted the required applications and fees to the board.

24VAC27-30-70. Exemptions.

The following shall be exempt from these regulations:

1. "Rollbacks" used exclusively to transport cargo other than vehicles.
2. "Automobile or watercraft transporters," "stinger-steered automobiles or watercraft transporters" or "tractor trucks" as defined in §46.2-100 of the Code of Virginia. Such transporters are only exempt if capable of transporting five or more vehicles and have appropriate and required interstate operating authority.

3. "Household goods carriers" as defined in §46.2-100 of the Code of Virginia providing they have been issued a valid "certificate of public convenience and necessity" means by the Virginia Department of Motor Vehicles.

4. Tow trucks solely owned and operated directly by a government entity used for public safety towing or noncommercial purposes, ~~providing such do not impose a fee for services rendered~~.

5. Tow trucks that are properly registered and domiciled in another state and have proper interstate operating authority may be operated within the Commonwealth of Virginia while passing through the Commonwealth to another jurisdiction or while delivering a vehicle within the Commonwealth, but only if the pick up of the vehicle and origin of the trip is outside of the Commonwealth. However, tow trucks registered and domiciled in another state are not exempt from licensure or provisions of applicable state laws or regulations of the board if pick up or hook up of a vehicle is in Virginia. Such tow trucks must obtain a temporary trip permit from the board prior to operating in Virginia unless licensed by the board.

6. Tow trucks owned by a person and used exclusively to transport vehicles owned by such person providing there is no charge or acceptance of fees or payment for services. In such situations, ownership of vehicles being transported must be supported by possession of title, bill of sale, registration or other legal document while the vehicle is being transported and signage must be permanently posted on the door of both sides of said tow truck indicating "NOT FOR HIRE." Letters for such signs shall each be at least three inches in height and 1/4" in width and in a color contrasting with the tow truck's color.

7. Tow trucks owned by tow truck dealers or tow truck manufacturers operating with a legally recognized dealer license plate. Such tow trucks may only be operated by an employee of the dealer or manufacturer for the sole purpose of transporting it to and from the location of sale or demonstration. Such tow trucks shall be required to have temporary or permanent lettering with the dealer's or manufacturer's name, city and state and the words "NOT FOR HIRE" displayed on both of the side doors of the tow truck. Letters for such signs shall each be at least three inches in height and 1/4" in width and in a color contrasting with the tow truck's color.

24VAC27-30-80. Transfer of operator's license.

A. Except as provided in subsection B of this section, an operator's license is not transferable.

B. Transfer of an operator's license under emergency circumstances, as agreed to by the board executive director, may be granted for up to 90 days.

24VAC27-30-90. Temporary trip permits, regulations, fees.

The board may, on application on forms provided by the board, issue a temporary trip permit to any owner of a tow truck who would otherwise be subject to licensure by the board but is not currently registered. The permit shall be valid for three days and shall show the vehicle identification number, tag number, authorized driver's name and the beginning point and the point of destination, and other information as may be required by the board, including certification that the driver is not required to register as a sex offender in any jurisdiction.

24VAC27-30-100. Unprofessional conduct.

It shall be deemed unprofessional conduct, which may be subject to disciplinary action or sanctions imposed by the board, for any licensed operator in the Commonwealth to violate any statute or regulation governing towing and recovery services, or fail to:

1. Employ only tow truck drivers who comply with the board's requirements for drivers and hold a valid driver's authorization document from the board.
2. Advise the board in writing of any change in ownership listed on the application or management, including a change in the responsible individual, or in the licensee's principal or business mailing address within 30 days of such change occurring.
3. Have the licensee's trade name, clearly indicated on all of the operator's tow trucks. Provided, however, that if the licensee's towing business is exclusively limited to towing only vehicles that are being repossessed, then the name of the licensee and any other markings that might identify the vehicle as associated with the business of repossessing vehicles shall not be required except for their board-issued decal.
4. Retain for a minimum of one year from last date of service, records of services and fees charged or collected. If said records are not maintained at the operator's principal place of business, the location of such records shall be made known to the board at the board's request.
5. Allow an authorized agent of the board to review or inspect, during regular business hours, the operator's records of services rendered and fees charged or collected, facilities and equipment. Such inspections shall be limited to that which

is related to compliance with laws or regulations governing towing and recovery operators and towing and recovery services.

6. Accept at least one of two nationally recognized credit cards. However, any individual credit card offered in payment, even if of a type normally accepted, may be considered unacceptable by the operator if the credit card processing company denies charges being applied to said card or if the actual card is not presented to the operator for inspection. Operators may insist payment by credit card be made at their principal place of business or any location at which payment for fees for services is normally accepted. ~~Operators may also insist on accepting a credit card only from the owner of the vehicle towed or impounded.~~

7. For operators engaged in towing passenger vehicles without the consent of their owners pursuant to §46.2-1231 of the Code of Virginia, also known herein as private property/trespass towing, prominently display at their main place of business and at any other location where towed vehicles may be reclaimed, a comprehensive list of all their fees for towing and recovery or the basis of such charges. This requirement to display a list of fees may also be satisfied by providing, when the towed passenger vehicle is reclaimed, a written list of such fees, either as part of a receipt or separately, to the person who reclaims the vehicle. Charges in excess of those posted shall not be collectible from any motor vehicle owner whose vehicle is towed or recovered without his consent. If the owner or representative or agent of the owner of the trespassing passenger vehicle is present and removes the trespassing vehicle from the premises before it is actually towed, the trespassing vehicle shall not be towed, but the owner or representative or agent of the owner of the trespassing vehicle shall be liable for a reasonable fee, not to exceed the fee set out in §46.2-1231 of the Code of

Virginia, or such other limit as the governing body of the county, city, or town may set by ordinance, in lieu of towing.

8. Provide, at the customer's request, a price list indicating the maximum fees normally charged for basic services for towing, recovery and processing fees for vehicles weighing 26,000 pounds or less. If storage fees are not included in the list of charges, the list shall include a statement indicating storage fees [may be are] additional and vary according to the size and condition of the vehicle, length of time the vehicle is stored and other costs that may be incurred by the operator when storing the vehicle.

9. Have affixed on the driver's side of all of the operator's tow trucks a tow truck decal issued by the board to all licensed operators.

10. Display his operator's license in a conspicuous place in the principal office in which he operates and display a copy of his operator's license at all other [facilities locations] at which payment for fees is accepted.

24VAC27-30-110. Standards of practice.

Violations of any standard of practice set out in this section may be subject to board disciplinary actions or sanctions, including suspension or revocation of an operator's license and imposition of civil penalties.

1. All of an operator's places of business, including their offices and storage facilities, shall comply with any required state or local building or zoning laws or codes.

2. If required by the locality in which the operator designates as his principal place of business, an operator must maintain a valid business license from that locality.

3. Any operator permanently ceasing to provide towing and recovery services shall notify the board in writing and return the board-issued operator's license for voluntary cancellation and termination within 30 15 days.

4. A licensed operator must maintain the following proof of insurance: (i) \$750,000 for automobile liability; (ii) \$750,000 for commercial general liability; (iii) \$50,000 for garagekeepers liability; (iv) \$50,000 for on hook coverage; and (v) worker's compensation as required by state and federal entities.

5. Operators shall assure that only equipment designed and rated for the type of vehicle being transported is used. Operators shall additionally assure that at no time shall one of their tow trucks exceed the manufacturer's gross vehicle weight rating: for a Class B operator, a minimum of 14,500 pounds on a rollback and a minimum of 10,000 pounds on a wrecker; for a Class A operator, a minimum of 29,000 pounds gross vehicle weight rating for a wrecker or the manufacturer's rated capacity for towing apparatus.

6. All tow trucks shall meet all federal Department of Transportation and applicable Virginia regulations. Towing or rollback units shall be a factory manufactured unit and only used as designed and rated to haul the vehicle being transported. Tow trucks shall be able to retain 50% of its front axle weight during towing operations. Safety chains or straps shall be used in all towing operations with such chains or straps rated to secure the towed vehicle to the tow truck.

7. Any person who in any way advertises himself as a towing and recovery operator or in any way conveys the impression that he is engaged in services of providing towing and recovery of vehicles shall be deemed to be engaged in towing and recovery services. Any and all advertisements, promotions, and offers for services shall include the operator's trade name and board license

number. Invoices shall include the operator's trade name, address, telephone number, and board license number.

8. Operators shall be responsible for the supervision, [training] and all actions of their employees and drivers, including pertaining to their compliance with laws and regulations governing towing and recovery services.

9. Operators shall not provide public safety towing and recovery services unless they have met the criteria established by the board pursuant to §46.2-2826 of the Code of Virginia and have been placed on the list authorized by that section.

10. Whenever a trespassing vehicle is removed or towed without the owner's consent pursuant to §46.2-1231 of the Code of Virginia, then in accordance with that section, notice of the removal or towing shall forthwith be given by the driver of the tow truck to the Virginia State Police or the local law-enforcement agency of the jurisdiction from which the vehicle was towed. Should the driver fail to report such action, it shall limit the amount that may be charged for the storage and safekeeping of the towed vehicle to an amount no greater than that charged for one day of storage and safekeeping. If the vehicle is removed and stored, the vehicle owner may be charged and the vehicle may be held for a reasonable fee for the removal and storage.

11. An operator shall comply with all local ordinances and with all contracts, if any, that he has entered into, including any agreements related to private property/trespass towing pursuant to §46.2-1231 of the Code of Virginia. At the request of both the locality and a towing and recovery operator, the board may assist in conflict resolution between an operator and a locality regarding compliance with local ordinances or contracts.

12. For vehicles towed or removed from private property without the consent of the owner, unless different limits are established by ordinance of the local governing body, an operator shall not charge a hookup and initial towing fee in excess of the amount set out in §46.2-1233.1 of the Code of Virginia. For towing such a vehicle between 7 p.m. and 8 a.m. or on any Saturday, Sunday, or holiday, an additional fee of no more than the amount set out in §46.2-1233.1 of the Code of Virginia may be charged per instance; however, in no event shall more than two such fees be charged for towing any such vehicle. No charge shall be made for storage and safekeeping for such vehicle if it is stored for a period of 24 hours or less. Except for such stated fees, no other fees or charges shall be imposed during the first 24-hour period.

13. As provided in §46.2-2828 of the Code of Virginia, no operator shall impersonate a licensed operator of a like or different name.

14. As provided in §46.2-2828 of the Code of Virginia, no operator shall publish or cause to be published in any manner an advertisement that is false, deceptive, misleading or that violates regulations of the board governing advertising by towing and recovery operators.

15. No operator shall provide any towing and recovery services for vehicles of a gross vehicle weight over 26,000 pounds unless licensed as a Class A operator.

16. In addition to the foregoing, the standards of practice for operators require that no operator shall:

(a) Engage in fraud or deceit in the offering or delivering of towing and recovery services.

(b) Conduct his business or offering services in such a manner as to endanger the health and welfare of the public.

(c) Use or allow the use of alcohol or drugs to the extent such use renders the operator or his drivers unsafe to provide towing and recovery services.

(d) Neglect to maintain on record at the licensed operator's principal office a list of all drivers in the employ of the operator.

(e) Obtain any fee by fraud or misrepresentation.

(f) Advertise in a way that directly or indirectly deceives, misleads, or defrauds the public.

(g) Advertise or offer services under a name other than one's own name or trade name (as specified on the truck) as set forth on the operator's license.

(h) Fail to accept for payment cash, insurance company check, certified check, money order, at least one of two commonly used, nationally recognized credit cards, or additional methods of payment approved by the board.

(i) Fail to display at the licensed operator's principal office in a conspicuous place a listing of all towing, recovery, and processing fees for vehicles of 26,000 pounds gross vehicle weight or less.

(j) Fail to have readily available at the customer's request the maximum fees normally charged by the licensed operator for basic services for towing and initial hookup of vehicles of 26,000 pounds gross vehicle weight or less.

(k) Fail to provide at the consumer's request the phone number for which consumer complaints may be filed with the board.

(l) Knowingly charge excessive fees for towing, storage, or administrative services or charge fees for services not rendered.

(m) Fail to maintain all towing records, which shall include itemized fees, for a period of one year from the date of service.

(n) Willfully invoice for payment any services not stipulated or otherwise incorporated in a contract for services rendered between the licensed operator and any locality or political subdivision of the Commonwealth that has established a local Towing Advisory Board pursuant to §46.2-1233.2 of the Code of Virginia.

(o) Employ any driver required to register as a sex offender as provided in §9.1-901 of the Code of Virginia.

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

(q) Refuse at any operator's place of business where payment is accepted, to make change up to \$100 for the owner of the vehicle towed without the owner's consent if the owner pays in cash for charges for towing and storage of the vehicle.

(r) Violate, assist, induce, or cooperate with others in violating any provisions of law related to the offering or delivery of towing and recovery services, including the provisions of Chapter 28 (§46.2-2800 et seq.) of Title 46.2 of the Code of Virginia and the provisions of these regulations.

(s) Fail to provide the owner of a stolen vehicle written notice of his right under the law to be reimbursed for towing and storage of his vehicle out of

the state treasury from the appropriation for criminal charges as required in §46.2-1209 of the Code of Virginia.

(t) Fail to satisfy the procedural steps, including the timely mailing of all notices, required by §§43-32 and 43-34 of the Code of Virginia, in order to perfect and enforce the liens provided therein for towing and recovery and vehicle storage.

24VAC27-30-120. Operating without a license; penalties.

A. Should the board, after investigation, determine an operator is engaged in or offering towing and recovery services without a license, then, as authorized by §46.2-2808 of the Code of Virginia, the board may bring an action in the name of the Commonwealth to enjoin any such violation of law, as well as any violations of these regulations, or Chapter 28 (§46.2-2800 et seq.) of Title 46.2 of the Code of Virginia.

B. Those persons found to be engaged in or offering towing and recovery services without a license may be subject to a board-imposed civil penalty of up to \$1,000 for each violation pursuant to §§46.2-2811 and 46.2-2824 of the Code of Virginia.

C. The board may seek criminal prosecution for such a violation pursuant to §46.2-2812 of the Code of Virginia.

24VAC27-30-130. Expedited process to consider consumer complaints.

A. The board's executive director or designated staff shall have the authority to initiate an expedited process to mediate and resolve complaints filed against those licensed or otherwise regulated by the board according to guidelines developed by the board.

B. Anonymous complaints received by the board shall be handled in accordance with board's policy and guidance documents.

24VAC27-30-140. Prerequisites for application for tow truck driver's authorization document.

A. The board shall accept applications for tow truck driver's authorization documents at its office in Richmond or via its website. To be included with the application shall be the ~~[tow truck driver's authorization document application fee board application]~~ fee plus the prevailing fee required by state and federal police authorities for reviewing the fingerprints submitted by the applicant and processing the criminal history background checks required by the statutes and these regulations.

B. After the application and fees are received, the applicant shall be issued the board originating number to provide to the entity taking the fingerprints at the time the fingerprints and criminal history background check data are taken before being forwarded to Virginia State Police to be processed. [In lieu of inked fingerprints, ~~¶~~the board may accept electronically processed fingerprints], such as those available from LiveScan or other electronic systems that take the fingerprints and forward them electronically for almost immediate processing by state and federal officials~~[-, sometimes within 24 hours, in addition to ink fingerprint cards submitted to the Virginia State Police, noting that ink cards have processing times from 30 to 60 days and higher rates of rejection requiring retesting than electronic systems.]~~

C. When the results of the criminal history background check are received by the board, they shall be evaluated and the application may either continue to be processed, or, if the results are such that the applicant appears to be ineligible to obtain a driver authorization document under the statutes or these regulations, the applicant shall receive a denial notice from the board.

D. A denied applicant may appeal such denial by requesting review by the board in accordance with informal proceeding provisions of the Virginia Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia) within 30 days of the denial notice.

E. Results of the criminal history background check shall be sent directly to the board office and maintained confidentially unless its contents are used to reject or place conditions upon a driver's authorization document. An applicant shall not be refused a tow truck driver's authorization document by the board solely because of a prior criminal conviction against such applicant unless the criminal conviction directly relates to the provision of towing and recovery services or the safety of the users of such services offered by a licensee or holder of a tow truck driver's authorization document. However, the board shall refuse to issue a tow truck driver's authorization document if, based upon all the information available, including the record of prior convictions of the applicant, it finds that the applicant is unfit or unsuited to engage in providing towing and recovery services as a tow truck driver.

1. The board shall consider the following criteria in determining whether a criminal conviction directly relates to the provision of towing and recovery services or the safety of the users of towing and recovery services by a tow truck driver:

a. The nature and seriousness of the crime;

b. The relationship of the crime to the purpose for requiring a license or tow truck driver's authorization document to provide towing and recovery services, which includes protecting the safety of users of such services;

c. The extent to which providing towing and recovery services might offer an opportunity to engage in further criminal activity of the same type as that in which the convicted person had been involved;

d. The relationship of the crime to the ability, capacity or fitness required to perform the duties and discharge the responsibilities of providing towing and recovery services;

e. The extent and nature of the person's past criminal activity;

f. The age of the person at the time of the commission of the crime;

g. The amount of time that has elapsed since the person's last involvement in the commission of the crime;

h. The conduct and work activity of the person prior to and following the criminal activity; and

i. Evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release or at any time following the conviction.

2. The following criminal convictions shall not be considered a bar to authorization by the board, meaning that the inclusion of these items on a criminal history record shall not be sufficient as the sole grounds for denial of a tow truck driver's authorization document:

a. Felony convictions more than 10 years old with no subsequent reportable convictions, unless the conviction resulted in incarceration where the release date is less than three years from the date of the application. This does not include convictions involving murder, manslaughter, sexual assault, rape, robbery, or indecent liberties.

b. Misdemeanor convictions more than three years old from the date of application.

c. Convictions of grand larceny, breaking and entering, or burglary or all of these convictions, more than five years old with no subsequent convictions, provided such convictions did not result in incarceration where the release date is less than three years from the application date.

d. Driving-under-the-influence (DUI) convictions where the applicant has completed Virginia Alcohol Safety Action Program (VASAP) or another similar program accepted by the court after the latest conviction. However, no tow truck driver's authorization document shall be issued, and none shall continue to be valid, during any time period for which (i) the person's driver's license is suspended or revoked or (ii) the person has been authorized only a restricted license during a period of suspension or revocation resulting from a conviction or convictions for DUI or any DUI-related offense, except that if the driver demonstrates that he is not required to possess a commercial driver's license in order to drive a tow truck, then an authorization document can be issued for the period during which he has a restricted license if it authorizes the driver to drive only tow trucks for which a commercial drivers license is not required.

3. The applicant must possess a valid driver's license at the time of the application. The driver shall be required to possess a commercial driver's license if applicable to the class of operator the driver is to be employed by or the type of tow truck to be driven.

4. Applicants shall be required to sign a statement verifying they are not currently on any state or federal list as a sex offender and are not required to register as a

sex offender under any state, federal or local law, or the law of any foreign country.

5. A tow truck driver's authorization documents shall be valid for one year and shall be subject to annual renewal by June 30 of each year. [After the initial authorization, the applicant is required to submit criminal history background checks with fingerprints every three years thereafter as a part of the renewal.]
Driver authorization documents issued on or after April 1 of any year, with the payment of a full year's fee, shall be valid until June 30 of the following year.

24VAC27-30-150. Exemptions from tow truck driver authorizations.

A tow truck driver's authorization document shall be required for operation of a tow truck in Virginia only if such operation is for hire and involves a pick up of the towed vehicle in Virginia. Driving a tow truck into or through Virginia while towing a vehicle picked up outside of Virginia shall not require a driver's authorization document.

24VAC27-30-160. Requirements for drivers.

A tow truck driver shall:

1. Possess a valid and appropriate driver's license and tow truck driver's authorization document while operating a tow truck for hire in Virginia when the pick up of the towed vehicle takes place in Virginia.
2. Provide evidence at time of application for a tow truck driver's authorization document that he is employed or about to be employed by a licensed operator and the name and address of that operator.
3. Maintain in his possession and have readily available for inspection when providing towing and recovery services his board-issued tow truck driver's authorization document. The driver's authorization document shall include the

name of the driver and the driver's ~~appropriate driver's~~ license number of the state in which he holds a valid driver's license and the name and board-issued license number of the driver's employer.

4. Notify the board within five business days upon the driver being convicted of any criminal offense, including any offense for which the driver is required to register as a sex offender under any state, federal or local law, or the law of any foreign country.

5. Provide towing and recovery services in a safe manner.

6. Review and read all regulations and laws related to standards of practice, unprofessional conduct and safety prior to operating a tow truck or providing towing and recovery services. The driver shall sign a statement to be retained by the operator who employs the driver verifying the driver's compliance with this subsection.

7. Notify the board within 15 days of any change in licensed operator [or operators] ~~[who employs employing]~~ the driver. ~~[The driver's authorized documentation shall, within 30 days of any change in employer, reflect the current operator or operators who employ the driver.]~~ **STET**

8. Surrender his tow truck driver's authorization document should the board rescind, cancel, suspend, revoke or deny such tow truck driver's authorization document upon a determination by the board that the driver has violated laws or regulations governing towing and recovery services or otherwise has become unqualified to hold a tow truck authorization document.

24VAC27-30-170. Renewal of licensure; reinstatement; renewal of fees.

A. All those licensed by the board as a towing and recovery operator shall, on or before June 30 of every year, submit a completed renewal application and pay the prescribed annual licensure fee.

B. It shall be the duty and responsibility of each licensee to assure that the board has the licensee's current mailing address. All changes of mailing addresses or change of name shall be furnished to the board within 30 days after the change occurs. All notices required by law or by these rules and regulations are to be deemed validly tendered when mailed to the address given by the licensee to the board, and the licensee shall not be relieved of the obligation to comply with any notice so mailed if there has been a failure to notify the board of changes.

C. The license of every operator who does not submit the completed form and fee or forms and fees, as applicable, by June 30 of each year may be allowed to apply for renewal for up to one year after that date by paying the prescribed renewal fee and late fee. However, if the renewal has not been submitted to the board within [two months ~~62~~ days after the June 30 due date, then on and after August 31 of that year the operator's license is lapsed. Engaging in towing and recovery services with a lapsed license constitutes operating without a license and may subject the licensee to disciplinary action and civil penalties imposed by the board.

D. An operator whose license has been lapsed for more than one year and who wishes to resume providing services as a towing and recovery operator shall apply for a new operator's license.

[24VAC27-30-180. Requirements for continuing education shall become effective July 1, 2011.

A. Exclusive of additional hours that may be required of those recognized by the board to provide public safety towing and recovery services, each application for operator's license renewal shall be conditioned upon submission of evidence to the board of eight hours of continuing education taken by the principal owner or responsible individual or other person responsible for the day-to-day operations of the applicant for renewal during the previous license period, and an additional four hours of continuing education taken by each of the tow truck drivers employed by the applicant during the previous licensing period and employed by the operator at the time the operator submits his license renewal application.

1. The required hours of continuing education shall be directly related to the safe and proper rendering and business practices of towing and recovery services, proper inspection and maintenance of equipment, and laws and regulations governing towing and recovery operators.

2. Courses that are offered directly by or of which a majority of their content promote the sale of specific equipment or products or on augmenting income are excluded and may not receive credit by the board.

B. Each licensee shall attest to fulfillment of continuing education requirements on the required annual renewal application form completed by the applicant for renewal and submitted to the board. All continuing education shall be completed prior to application for renewal being submitted each year unless an extension or waiver has been granted by the board's continuing education committee.

C. Requests to the board for consideration of waiver, reduction in the number of hours or an extension for time to complete continuing education shall be in writing and must be received by the board no later than April 1 of the year for which such request is made. Such requests are only to be considered when based on documented illness or undue hardship.

D. All continuing education courses shall be offered by an approved sponsor, a list of whom shall be posted on the board's website. Courses that are not offered by an approved sponsor shall not be accepted for continuing education credit, but the sponsor of such a course may apply for approval by submitting an application to the board's executive director.

E. At least one-half of the required number of continuing education credit hours completed annually must be through face-to-face instruction, which requires the presenter and audience to see and to hear each other during the presentation.

F. Courses presented via the Internet or by correspondence must (i) be sponsored by a board approved sponsor and (ii) require a post-test with credit only to be granted for the licensee receiving a passing grade as indicated on the certificate of completion of the course.

G. Licensees shall maintain documentation for a period of at least three years of the continuing education completed as required for renewal of their license.

H. At the discretion of the board, a random audit of licensees may be conducted by the board, which shall require that the licensee, within 21 days of the request, provide evidence substantiating completion of the required continuing education courses.

I. Documentation of hours shall clearly indicate: (i) the name of the sponsor of the continuing education; (ii) the name or title of the presentation or instruction; (iii) the name

~~of the instructor or instructors; (iv) the location where the instruction was presented; (v) the time period of the instruction; (vi) the number of applicable continuing education hours received; (vii) the name of the person taking the course and that person's relationship to the licensee, as well as the name of the licensee; and (viii) either a signature, a type of stamp, or some other means to verify attendance. Documents failing to have the required information shall not be acceptable to the board. Correspondence or internet courses shall be credited according to the date on which the post-test was graded as indicated on the applicable continuing education certificate.~~

~~J. One hour of continuing education credit shall require the licensee's presence and participation for at least 50 minutes.~~

~~K. A licensee shall be exempt from the continuing education competency requirements for the first renewal following the date of initial licensure by examination in Virginia.~~

FORMS

Operators License Application, 27LIC (eff. 1/08).

Tow Truck Driver Authorization Application (eff. 1/08).

Change of Responsible Individual Application (eff. 1/08).

Certification Statement:

I certify that this regulation is full, true, and correctly dated.

_____ (Signature of certifying official)

Name and title of certifying official: _____

Name of agency: _____

Date: _____

