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HOUSE BILL NO. 1146

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Transportation
on February 3, 2022)

(Patrons Prior to Substitute—Delegates Bell and Hudson [HB 628])

A BILL to amend and reenact §§ 46.2-341.14:1 and 46.2-341.14:9 of the Code of Virginia, relating to commercial driver's license examinations.

Be it enacted by the General Assembly of Virginia:

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

§ 46.2-341.14:1. Requirements for third party testers.

A. Pursuant to § 46.2-341.14, third party testers will be authorized to issue skills test certificates, which will be accepted by the Department as evidence of satisfaction of the skills test component of the commercial driver's license examination. Authority to issue skills test certificates will be granted only to third party testers certified by the Department.

B. To qualify for certification, a third party tester shall:

1. Make application to and enter into an agreement with the Department as provided in § 46.2-341.14:3;

2. Maintain a place of business in the Commonwealth;

3. Have at least one certified third party examiner in his employ;

4. Ensure that all third party examiners in his employ are certified and comply with the requirements of §§ 46.2-341.14:2 and 46.2-341.14:7;

5. Permit the Department and the FMCSA of the U.S. Department of Transportation to conduct random examinations, inspections, and audits of its records, facilities, and operations that relate to the third party testing program without prior notice;

6. Maintain at the principal place of business a copy of the state certificate authorizing the third party tester to administer a commercial driver's license testing program and current third party agreement;

7. Maintain at a location in the Commonwealth, for a minimum of two years after a skills test is conducted, a record of each driver for whom the third party tester conducts a skills test, whether the driver passes or fails the test. Each such record shall include:

a. The complete name of the driver;

b. The driver's social security number or other driver's license number and the name of the state or jurisdiction that issued the license held by the driver at the time of the test;

c. The date the driver took the skills test;

d. The test score sheet or sheets showing the results of the skills test and a copy of the skills test certificate, if issued;

e. The name and certification number of the third party examiner conducting the skills test; and

f. Evidence of (i) the driver's employment with the third party tester at the time the test was taken, or if unless the third party tester is a school board governmental entity, including a comprehensive community college in the Virginia Community College System, that tests drivers who are trained but not employed by the school board, that governmental entity, or a Class A driver training school certified as a third party tester pursuant to § 46.2-326. If the third party tester is a governmental entity that tests drivers who are not employed by that governmental entity, the third party tester shall maintain evidence that (a) the driver was employed by a school board at the time of the test and (b) the third party tester trained the driver in accordance with the Virginia School Bus Driver Training Curriculum Guide, or (ii) the student's enrollment governmental entity or enrolled in a commercial driver training course offered by a community college or Class A driver training school at the time the test was taken. If the testing entity is a Class A driver training school certified as a third party tester pursuant to § 46.2-326.1, the third party tester shall maintain evidence that the driver was a student enrolled in that Class A driver training school at the time the test was taken. If the driver was trained or employed by a school board, the third party tester shall maintain evidence that the driver was trained in accordance with the Virginia School Bus Driver Training Curriculum Guide;

8. Maintain at a location in the Commonwealth a record of each third party examiner in the employ of the third party tester. Each record shall include:

a. Name and social security number;

b. Evidence of the third party examiner's certification by the Department;

c. A copy of the third party examiner's current training and driving record, which must be updated annually;

d. Evidence that the third party examiner is an employee of the third party tester; and

e. If the third party tester is a school board, a copy of the third party examiner's certification of instruction issued by the Department of Education;

9. Retain the records required in subdivision 8 for at least two years after the third party examiner leaves the employ of the third party tester;

10. Ensure that skills tests are conducted, and that skills test certificates are issued in accordance with the requirements of §§ 46.2-341.14:8 and 46.2-341.14:9 and the instructions provided by the Department;

11. Maintain compliance with all applicable provisions of this article and the third party tester agreement executed pursuant to § 46.2-341.14:3; and

12. Maintain a copy of the third party tester's road test route or routes approved by the Department.

C. In addition to the requirements listed in subsection B, all third party testers who are not governmental entities, including a comprehensive community college in the Virginia Community College System, shall:

1. Be engaged in a business involving the use of commercial motor vehicles, which business has been in operation in the Commonwealth for a minimum of one year;

2. For employers that are testing their own employees, employ at least 50 drivers of commercial motor vehicles licensed in the Commonwealth during the 12-month period preceding the application, including part-time and seasonal drivers. This requirement may be waived by the Department pursuant to § 46.2-341.14:10;

3. If subject to the FMCSA regulations as a motor carrier and rated by the U.S. Department of Transportation, maintain a rating of "satisfactory";

4. Comply with the Virginia Motor Carrier Safety Regulations; and

5. Initiate and maintain a bond in the amount of \$5,000 to pay for retesting drivers in the event that the third party tester or one or more of its examiners are involved in fraudulent activities related to conducting knowledge or skills testing for applicants.

D. (For effective date, see Acts 2019, c. 750, cl. 3, as amended by Acts 2020, c. 546) Certified third party testers are authorized to provide entry-level driver training to ~~individuals in their employ or applicants for employment~~ *any individual to whom the third party tester would be permitted to administer a skills test pursuant to this article*. If a certified third party tester elects to provide entry-level driver training, the third party tester shall (i) employ and utilize third party instructors, as defined in § 46.2-341.4, to provide all training and instruction to entry-level driver trainees; (ii) develop an entry-level driver training curriculum that complies with requirements prescribed by the Department and submit such curriculum to the Department for approval; (iii) upon notification by the Department that curriculum requirements have been updated, certify, in a format prescribed by the Department, that the third party tester has added the new topics to the course curriculum; and (iv) comply with the requirements provided in §§ 46.2-1708 through 46.2-1710. Notwithstanding the provisions of § 46.2-1708, no third party tester or third party instructor shall be required to be licensed by the Department. A certified third party tester may not provide entry-level driver training to driver trainees until such tester has been issued a unique training provider number and appears on the federal Training Provider Registry.

§ 46.2-341.14:9. The skills test certificate; validity of results.

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

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

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

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

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

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

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

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

D. The results of the skills test shall be valid for six months following the completion of the test.