

Virginia Board for Towing and Recovery Operators (BTRO)
LICENSING and REGULATORY AFFAIRS COMMITTEE

November 4, 2010 – 9:30 AM

Department of State Police
Police Academy Room 219
7700 Midlothian Turnpike
Richmond, Virginia 23235

MEETING AGENDA & DISCUSSION MATERIALS

1. Call to order
2. Public comments
3. Acceptance of meeting minutes, as necessary
4. Discussions
 - Review of Suggested Statutory and Regulatory Amendments Including Recommendations for the Issuance of Temporary Driver Authorization Documents
7. Additional Public Comments
8. Other Business
9. Next Meeting
10. Adjournment

Instructions for Accessing Meeting Location

1. When you enter State Police Headquarters on Midlothian Turnpike, stay to the right until you come to a gate.
2. If the gate is not open upon arrival, press button number 3 and the # button, and the duty sergeant will answer.
3. Inform him that you are attending the Board of Towing and Recovery Operators meeting, and they will buzz you in.
4. The Academy is back behind the Headquarters Building on a hill to the left. The State Trooper statue is standing in front of the Academy.
5. Once inside the Academy, you will see the stairs. Proceed to the top floor; bear left and Room 219 is located down the hall on the left.

DISCUSSION MATERIALS

Transportation Government Reform Initiatives – State Code

Subject	Statute	How Administered Today	Proposed Change	Justification for the Change
72. Idea Title: Annual Report	§ 46.2-2806	Description. The Code requires that annual reports be submitted before November 1 of each year.	Description. Allow the BTRO to submit the report biennially.	<u>Improve efficiency:</u> The BTRO initially required a biennial report, and in 2009, it was changed to annually. As the Board's revenue and functions remain constant, this will improve the efficiency of the office, reduce staff resources, and reduce the costs associated with the distribution of the Report.
73. Idea Title: Powers with respect to hearings under this chapter.	§ 46.2-2807	Description. The Code establishes authority relative to hearings, including date, time, and location, the subpoenaing of witnesses, depositions for person outside of the Commonwealth for civil actions, payment of fees to witnesses, and the administration of oaths.	Description. Narrow down the authority of the BTRO with respect to the manner in which the Board can specifically act.	<u>Improve efficiency:</u> Constituents would be better served if the authority were more clearly defined. The BTRO would be able to easily and clearly determine cost factors associated with the conduct of hearings.
74. Idea Title: Licenses required	§ 46.2- 2812	Description. The Code establishes that it shall be unlawful for any person to engage in business in the Commonwealth as a towing and recovery operator without first obtaining a license as a Class A or Class B operators license, and establishes the penalty as a Class 1 misdemeanor.	Description. Establish the same requirement under this provision for a tow truck driver to ensure that only BTRO licensed drivers are driving tow trucks, and providing a penalty for non-compliance. Also offer some sort of review and credentialed oversight for those exempt from the statutory/regulatory provisions to ensure same.	<u>Improve continuity.</u> The BTRO currently has no reference in the Statute for a person driving a tow truck absent a license from the Board. The same is true for those persons or entities exempt from regulation. These changes will enhance compliance and offer the Board the ability to impose civil sanctions, up to \$1000 per incident, for convictions under this section for persons operating in contraction to the statute. <u>Increase revenue and help ensure compliance:</u> Will allow the BTRO to generate additional revenue by encouraging compliance.

Transportation Government Reform Initiatives – State Code

Subject	Statute	How Administered Today	Proposed Change	Justification for the Change
75. Idea Title: Drivers to have tow truck driver authorization document.	§ 46.2-2814	Description. The Code establishes that the BTRO shall issue licenses to tow truck drivers who meet qualifications for a license, and provides for temporary tow truck driver authorization documents by regulation.	Description. Establishes that temporary tow truck driver authorization documents may be provided by statute versus regulation.	<u>Improve efficiency:</u> With the statutory provision, the BTRO does not have to expend resources to establish the process via the APA to create authority for the issuance of temporary driver authorization.
76. Idea Title: Action on applications; hearing on denial	§ 46.2-2815	Description. The BTRO shall take action on applications for a Class A or Class B operator's license within 60 days of receipt...and any applicant denied a license shall....	Description. Remove Class A and Class B operator so that <u>all</u> applicants, including driver authorization document applicants, are included under this provision.	<u>Improve continuity:</u> This allows the BTRO to utilize this provision for all applicants, in lieu of Class A and Class B applicants.
77. Idea Title: Issuance, expiration, and renewal of licenses.	§ 46.2-2817.B.	Description. A license shall not be deemed to have expired if received within 30 days after expiration, and the license fee shall be 150% of the fees provided for in regulations.	Description. Replace language with the following: If a complete renewal application is received, 45 days or more prior to the expiration of the license, the license shall continue to be effective until such time as the Board has taken final action. Otherwise, the permit shall expire at the end of its term.	<u>Improve continuity:</u> This clarifies the terms and conditions for renewal purposes, and will encourage timely filing of renewal applications. <u>Improve efficiency:</u> This will allow staff resources to be focused more on renewals, and ensures that applicants who timely file will receive their licenses in a timely manner prior to expiration. While the BTRO will continue to process all applications expeditiously, this does not require the staff to extend additional resources to process an application not timely filed.
78. Idea Title: Prohibited acts.	§ 46.2-2820	Description. Establishes prohibited acts.	Description. Add a new No. 2 as follows: To engage in the towing and recovery of vehicles without holding a valid tow truck driver authorization document.	<u>Improve continuity:</u> This adds that tow truck drivers must have a proper valid authorization document, and mirrors the requirement to have an operator's license issued by the BTRO.
79. Idea Title: Report of conviction or injunction to BTRO;	§ 46.2-2821	Description. It shall be the duty of any person who is convicted of any violation of this chapter or enjoined from	Description. Add at the end of the paragraph that the Board fine shall not	<u>Improve continuity:</u> Clarifies that the civil penalty assessment shall not exceed \$1,000 per conviction for failure

Transportation Government Reform Initiatives – State Code

Subject	Statute	How Administered Today	Proposed Change	Justification for the Change
revocation or suspension of license or registration.		unlawfully engaging in towing and recovery services to report same to the BTRO, and establishes the fine for such convictions.	exceed \$1,000 <i>per conviction</i> .	to report the conviction to the BTRO.
80. Idea Title: Examination.	§ 46.2-2822	Description. 3 rd PP – The examination shall include laws and regulations governing the towing and recovery of vehicles and the proper and safe means by which such may be offered to the public.	Description. At the end of the 3 rd PP, add: Examinations shall be passed within the first two attempts, and any third or subsequent examination shall occur no sooner than 30 days after the second attempt.	<u>Improve efficiency:</u> Allows the BTRO to conserve resources for persons not able to successfully complete the exam in the first two attempts. The 30-day wait period allows an applicant the opportunity to further evaluate their understanding of the laws and regulations governing towing and recovery in the Commonwealth.
81. Idea Title: Qualifications of applicants.	§ 46.2-2823	Description. 3 rd PP – An application for a license as an operator shall be in a form to be determined and approved by the BTRO. The BTRO shall set forth in regulations those requirements for application for a license as a Class A and Class B operator. The examination shall include laws and regulations governing the towing and recovery of vehicles and the proper and safe means by which such may be offered to the public.	Description. Revise as follows: An application for a license as an operator or driver shall be on a form prescribed by the Board. The Board shall set forth in statute those requirements for application for a Class A, Class B., or a Driver's Authorization Document.	<u>Improve efficiency:</u> Allows BTRO to set standards in statute and remove provisions in regulation that require the APA process to change. <u>Improve continuity:</u> By adding “driver”, conforms to the Board's oversight of all applicants, not just Class A and Class B.

Transportation Government Reform Initiatives – State Code

Subject	Statute	How Administered Today	Proposed Change	Justification for the Change
82. Idea Title: Reprimand, revocation, and suspension.	§ 46.2-2825	Description. Establishes criteria for the reprimand, revocation, or suspension of a license.	Description. Add the following to this section: <ul style="list-style-type: none"> • Failure to pay any BTRO imposed penalty. • Failure to provide a driver's authorization document when requested by law enforcement. • Failure to return a license requested or required by the Board. • Failure to place a BTRO issued decal visibly on the driver's side door for law enforcement purposes. 	<u>Improve efficiency:</u> By including these provisions, allows BTRO staff to handle current Board matters. This change also would reduce the number of calls related to questions on licensing by both the public and law enforcement, thereby reducing staff follow up time on these issues.
83. Idea Title: Suspension, revocation, and refusal to renew licenses or driver authorization documents; notice and hearing.	§ 46.2-2825.1	Description. Establishes criteria for the reprimand, revocation, or suspension of a license, and sets out the notice and hearing requirements.	Description. Add an exception to the provision that no license or driver authorization document issued under this chapter shall be suspended, denied or revoked absent a notice and hearing except as follows: <ul style="list-style-type: none"> • Failure to pay any civil penalties or fees imposed by or assessed by the Board. 	<u>Improve efficiency:</u> No license shall be issued by the BTRO if an applicant owes any money to the Board including civil penalty or other fees imposed by the Board.

Supplemental State Statutory Initiatives

Subject	Statute/Regulation	How Administered Today	Proposed Change	Justification for the Change
S-1. Idea Title: Operators submit all applications	New Code section	Description. The Code and regulations require that initial and annual renewals be submitted by operators and drivers	Description. Whenever possible, require operators to submit all applications	<u>Improve efficiency:</u> This change would greatly reduce the amount of paperwork BTRO has to manage.
S-2. Idea Title: Reduce late fee and change effective date of its applicability for renewals (a revised version of Item 77 in the State Matrix)	§ 46.2-2817	Description. A license shall not be deemed to have expired if received within 30 days after expiration, and the license fee shall be 150% of the fees provided for in regulations.	Description. Either provide a discount for early submission or require license and driver authorization applications to be submitted no later than 60 days prior to the expiration of the credential. If received on the 59th day, a penalty of \$25 -\$100 per credential, depending on the type, would be added on to the renewal fee. An additional late fee of \$5-\$10/day, depending upon the credential, would be imposed for those credentials received after the 59th day, not to exceed \$150-\$300.	<u>Improve continuity:</u> This clarifies the terms and conditions for renewal purposes, and will encourage timely filing of renewal applications. <u>Improve efficiency:</u> This change would greatly improve the efficiency of the office, allowing existing staff resources to process applications in a timely manner and reducing overall costs.
S-3. Idea Title: Allow for 5 year credentialing; adjust national criminal history background check periods from three to five years from initial application	New Code section	Description. Current credentialing is an annual process; national criminal history background checks are every three years from initial application.	Description. Extend the valid credentialing period from only one year to up to five years. Likewise, provide for annual name checks but a national criminal history background check per driver every five years from initial application.	<u>Improve efficiency.</u> Will reduce impacts of credentialing processes on BTRO and allow operators and drivers longer periods of licensure, reducing the frequency of making renewal applications and the costs associated with that process.
S-4. Idea Title: Clarify enforceability of BTRO statutes	New Code section(s)	Description. The Code and regulations require towing and recovery operators to have valid licenses and tow truck drivers to have valid driver authorization documents.	Description. Clarify the requirements in statute and provide for strict enforceability against those operating without credentials.	<u>Improve efficiency:</u> Over time, will minimize the time staff devotes to complaints about uncredentialed operators and drivers. <u>Increase revenue and help ensure compliance:</u> Will allow the BTRO to generate additional revenue by encouraging compliance.

Supplemental State Statutory Initiatives

Subject	Statute/Regulation	How Administered Today	Proposed Change	Justification for the Change
S-5. Idea Title: Charge less for processing of applications received online	New Code section or add to an existing one	Description. The various fees are currently established by regulation	Description. Once available to applicants, reduce the costs for the submission of online applications.	<u>Improve efficiency:</u> This change would greatly reduce the amount of paperwork BTRO has to manage and ensure the costs to process applications are covered by the associated fees.

Government Reform Initiatives – Federal Issues

Subject	Current Legislation, Statute, or Regulation	How Administered Today	Position or Proposed Change	Justification for the Position or Change
35. Idea Title: Tow Companies to Determine if Vehicle Owner is Active Duty Military	SS 53.7	If a vehicle owner cannot be located and if it cannot be determined if the owner is active duty military, the tow company must apply to the court and have a Guardian Ad Litem appointed, regardless of the value of the vehicle. Current state code permits the vehicle to be towed if its value is less than \$7500.	The national database that exists today cannot be accessed by tow companies, as they do not have the date of birth or SSN of the vehicle owner. The tow company could pay a fee to the DMV and have them access the DOD database with a reciprocal agreement with other states to determine if the owner is active duty. If the vehicle is valued under \$7500 and all steps have been taken to locate the owner through this process and the vehicle has been held a minimum of 6 months, the vehicle may be sold without any further obligation on the tow company. If the cost of storage exceeds the value of the car and the vehicle is valued at less than \$7500 the vehicle may be sold with to the tow company. For vehicles valued over \$7500 court approval would be required.	Lower value vehicles are being abandoned and tow companies have no ability to collect tow, storage, and legal fees by selling the vehicles. Many companies are holding these vehicles for very extended periods and have no ability to verify the military status of vehicle owners. The tow company needs a process to show that they have complied with the law and a way to clear their lots of vehicles.

AAA Draft Recommendations
Relating to Temporary Driver Authorizations – Draft Regulations

Virginia Board of Towing and Recovery Operators (Board)

Recommended Regulations for Conditional Driver Authorization Document (DAD)

August 3, 2010

These regulations are provided as a working draft only and are not necessarily representative of how the final regulations will read. They are offered as suggested wording for final regulation drafting.

Scope

The following regulations provide Licensed Towing and Recovery Operators in the Commonwealth of Virginia the ability to accept responsibility, through specified guidelines, for new driver applicants to receive a Conditional DAD upon application to the Board for their original or renewal of an expired DAD.

General Requirements

1. The applicant company (Company) must complete an Application for Conditional DAD. This form must be executed by the company owner, senior officer, responsible person as listed with the Board, or company manager, in the presence of a Notary Public.
2. An Application for Driver Authorization Document must be completed in its entirety and submitted with the Application for Conditional DAD.
3. The Company, through the company owner, senior officer, responsible person as listed with the Board, or company manager shall attest:
 - i. The Company is licensed by the Board as a Towing and Recovery Operator in the Commonwealth of Virginia.
 - ii. Company has not, at any time in the previous six (6) months, been found by the Board to be non-compliant with this regulation.
 - iii. Company has completed all of the pre-application requirements.
 - iv. Applicant driver (Driver) has never had a DAD or equivalent document revoked or suspended in any governmental jurisdiction.
 - v. Board has not denied the application of or revoked or taken any adverse action with respect to any DAD held by the applicant during the five-year period ending on the date of filing of application.
 - vi. Driver has not been convicted of a felony that would otherwise authorize the Board to deny a DAD.
 - vii. Application meets or exceeds all of the applicable requirements for a DAD.
 - viii. Driver is employed by or contracted to act as a tow truck driver for the Company.
 - ix. Company will be responsible for the acts of the applicant as a tow truck driver in its employ during the period that the Application for DAD is pending.

AAA Draft Recommendations Relating to Temporary Driver Authorizations – Draft Regulations

Pre-Application Requirements

1. The company must perform a criminal background check on the driver applicant that is consistent with the conviction guidelines set forth in 24VAC27-30-140.
2. The company must utilize the provided Authorization for Criminal Background Investigation form during the hiring process and perform criminal background checks in all states that the driver applicant has listed as previous residences.
3. Criminal background checks must have been completed within thirty (30) days of the date of Application for Conditional DAD.

Application Process

1. The company may apply under this regulation by mailing a completed Application for Conditional DAD, Application for DAD, fingerprint card, and payment to the Board at the address listed on the applications.
2. Within 48 hours of receipt and verification that all of the required documentation is present, complete and accurate, the Board shall issue and mail the permanent DAD to the applicant driver.
3. The Board shall fax a photocopy of the DAD to the applicant company within the same 48 hour period.

Conditions

1. DAD's issued under this regulation shall be considered Conditional pending the results of the criminal background check performed by the Board.
2. If the final decision of the Board is to deny the Application for the DAD after the criminal background check has been performed, the Board shall immediately notify the company of its decision and then subsequently send written notification to the driver applicant.
3. Upon notification from the Board that a DAD application has been denied, the company shall
 - i. Retrieve the original DAD from the applicant driver within 24 hours and return it to the Board within 10 business days;
 - ii. Telephone the Board and notify them when they have retrieved the DAD, or of any difficulties in retrieving the DAD from the applicant driver; and
 - iii. Immediately remove the driver applicant from any employment activity that requires him or her to operate a towing and recovery vehicle.
4. A Conditional DAD expires on the earlier of the following:
 - i. Date upon which Board issues or denies Application for DAD
 - ii. Three months from date conditional DAD is issued

Enforcement

1. Board may (i) suspend or revoke the license of, or (ii) impose a fine not exceeding \$2,500 upon, a Towing and Recovery Operator licensed by the Board if Board finds that the licensee or the company owner, senior officer, responsible person as listed with the Board, or company manager, did not make the certification or undertakings required by this regulation in good faith.

AAA Draft Recommendations
Relating to Temporary Driver Authorizations – Draft Regulations

Denial

1. The Board will deny any Application for Conditional DAD that is submitted by a company that has had their Towing and Recovery License suspended or revoked for any reason within the six month period prior to the application date.
2. The Board reserves the right to deny any Application for a Conditional DAD based on incomplete answers or statements or answers deemed to be false or of questionable validity.

Fees

1. The Board will charge a \$10.00 administrative fee for each Application for Conditional DAD submitted.
2. The \$10.00 fee will be in addition to all fees required by the Application for DAD.

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AAA Draft Recommendations
Relating to Temporary Driver Authorizations – Draft CBC Authorization

Authorization for Criminal Background Investigation

I, (Print Name) _____, do hereby give,

consent, and authorize _____, hereinafter referred to as the Company, to conduct a criminal background investigation on me. I understand that any criminal history records found in any state, local, regional, and/or national databases will be reported to the Company regardless of their severity. I further understand that the information obtained in this background investigation will be used to determine my eligibility for 1.) Employment by the Company; and 2.) Employment and licensure as a Towing and Recovery Operator in the Commonwealth of Virginia by ANY company.

By signing this authorization form, I am further certifying that I have never been convicted of a sexual offense, whether a misdemeanor or felony, and that I am not required to register on any sexual offender's registry list.

Social Security #

Date of Birth

Current Street Address, City, State, and ZIP Code

Please list all states in which you have ever lived during your life:

Signature

Date

Acknowledgement

STATE OF _____

} ss.

CITY/COUNTY OF _____

On this _____ day of _____, 20_____, before me

personally appeared _____, to me known, and known to me to be the same person described in and who executed the within instrument and **HE** acknowledged to me that **HE** executed the same.

Notary Public

My Commission expires on _____

AAA Draft Recommendations
Relating to Temporary Driver Authorizations – Draft Application

**Commonwealth of Virginia
Board of Towing and Recovery Operators**

**Application for Conditional Driver Authorization Document
(Must Accompany Application for Driver Authorization Document)**

Driver Applicant Information

Last Name _____ First Name _____ Middle Initial _____

Date of Birth _____ Social Security Number _____

Has driver applicant ever been issued a Driver Authorization Document from the Virginia Board of Towing and Recovery Operators in the past? YES NO If yes, list previous DAD number _____

Has driver applicant ever had a previously issued DAD suspended or revoked? YES NO If yes, please explain below:

Towing and Recovery Operator Information

Full Company Name _____

DBA/Trade Names _____

Business Address _____

City/State/ZIP _____ BTRO Operator's License Number _____

Name of Owner/Responsible Person submitting Application _____

Has Operator ever had their license suspended or revoked for any reason? YES NO If yes, please explain below:

Verification

Was a criminal background check performed on the driver applicant, by a licensed and insured company, covering the driver applicant's entire life and every state he or she has lived in? YES NO

Do you have a copy of the results of the criminal background check on file? YES NO

Do you have the completed Authorization for Criminal Background Investigation on file? YES

Was a DMV Driving Record, less than 30 days old, obtained and used to verify with your liability insurer carrier that the driver applicant is in fact insurable as an employee of your company? YES NO

Do you have written verification from your insurance liability carrier on file? YES NO

Do you have a copy of the driver applicant's DMV record less than 30 days old on file? YES NO

AAA Draft Recommendations
Relating to Temporary Driver Authorizations – Draft Application

**Application for Conditional Driver Authorization Document
Continued**

Certification

By setting my hand and seal below, I certify that I am legally authorized to execute documents on behalf of the Towing and Recovery Operator named on the first page (the Company). I and the Company acknowledge the following statements:

All of the statements and answers made in this application are true and correct to the best of my knowledge. I understand that making false statements on this document is punishable under the penalties of perjury and will result in the suspension of my license as a Towing and Recovery Operator in the Commonwealth of Virginia for a period of no less than ninety (90) days.

I understand that if the Board denies the driver applicant's Application for Driver Authorization document after the final criminal background check is completed, this company is responsible for retrieving the conditional license from the driver and returning it to the board according to the stipulations outlined in the regulations for obtaining a Conditional Driver Authorization Document.

I further certify that until such time that the Board has ruled for unconditional approval of the driver applicant, this company accepts full responsibility and liability for any and all actions of the driver applicant that arise from his or her operation of a towing and recovery vehicle owned by and while being paid by this company.

I acknowledge that I have received a copy of the regulations for the Application for a Conditional Driver Authorization Document and that I have read and understand the regulations.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 20_____.

Signed _____

Print Name _____

Acknowledgement

STATE OF _____

} ss.

CITY/COUNTY OF _____

On this _____ day of _____, 20_____, before me personally appeared _____, to me known, and known to me to be the same person described in and who executed the within instrument and **HE** acknowledged to me that **HE** executed the same.

Notary Public Signature

Print Name

My commission expires on _____

The \$10.00 administrative fee must be remitted with this application. Make checks payable to the Treasurer of Virginia.