

Property Carriers in Virginia 2016 Report

Virginia Department
of Motor Vehicles
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Executive Summary

In August, 2015, then Chairmen of the House and Senate Transportation committees, Thomas Rust and Steve Newman, requested that DMV conduct a stakeholder study to examine companies using mobile app and web-based platforms to transport goods in private passenger vehicles. The charge letters asked DMV to include as stakeholders package delivery companies, household goods moving companies, new entrants to the property carrier market, representatives from the insurance industry, state and local law enforcement officials, and others as DMV deemed necessary. The charge letters asked DMV to report the recommendations of the study, along with any proposed legislation, by December 1, 2016.

In response to the charge letters, DMV held stakeholder meetings in 2015 and 2016. The agency also undertook a comprehensive review and analysis of current Virginia law regarding all types of property carriage, and of federal regulations regarding interstate transportation of property. As a result of all these efforts, DMV concluded that Virginia law should be amended by combining current property carrier authorities into two broad categories, reducing the regulatory burden for smaller vehicles to facilitate compliance, adapting insurance requirements to new models, and eliminating the requirement for DMV to issue specially designated license plates for property-carrying vehicles operated for hire. This report documents the research, analysis, findings and recommendations of the study, including current carriers, new companies using mobile platforms, and individuals using their personal vehicle in a for-hire capacity.

Detailed recommendations begin on page 16, but in summary are as follows:

Licensing Property Carriers

The study group recommends reducing the existing four operating authority types to two by collapsing the current property carrier and bulk property carrier authorities into a property carrier authority, and retaining the household goods carrier authority. The study group also recommends eliminating the current license requirement for property brokers.

Under current law a property carrier is required to maintain \$50,000 in cargo insurance whereas a bulk property carrier, one that transports bulk commodities such as sand or gravel, is not required to carry cargo insurance. After a review of interstate property carrier requirements showed that such carriers are not required to maintain cargo insurance, the study group determined that the requirement was unnecessary for intrastate carriers. Eliminating the cargo requirement for property carriers enables these two authority types to be collapsed.

Household goods carriers are subject to additional regulatory oversight beyond insurance regulation. These carriers must undergo a fitness examination, file and adhere to published rates and charges, carry and maintain bills of lading, follow certain statutorily defined procedures for management of written claims of loss or damage, and maintain cargo insurance and a surety bond.

While the study group recommends retaining these requirements for “household goods carriers”,

the definition of household goods carrier should be amended to include only those carriers engaged in transporting personal effects and property between residences or between a residence and storage facility on a temporary basis, rather than broadly including any carrier delivering property that is used or intended to be used in a household.

Reducing the Regulatory Burden to Facilitate Compliance

The study group further recommends eliminating the licensing requirement for carriers using smaller vehicles to transport property, while still requiring these operators to maintain insurance to cover the for-hire operation.

The legislature charged DMV to study emerging app and web-based businesses and, more generally, “new models of property transportation.” The key change identified by the study is that technology facilitates transportation by drivers who do not have operating authority and do not maintain full time commercial insurance coverage.

Websites like Craigslist allow easy advertisement of hauling services. Other websites and programs allow people to accept requests to perform particular services, like transporting property. Smart phone apps connect businesses or customers directly to available drivers that deliver products. Under these new business models, the driver is most often not considered an employee of the company that facilitated the transportation arrangement, and uses his personal vehicle to provide these services on a part-time basis.

Current Virginia law requires operating authority for any for-hire property carriage, with some exceptions based on what is carried. The emerging business models amplify the problem of unauthorized transportation of property. To facilitate compliance, the study group recommends establishing minimum insurance requirements for passenger cars, motorcycles, autocycles, and vehicles with a gross vehicle weight rating (GVWR) under 10,001 pounds, but exempting operators solely operating these smaller vehicles and mopeds from the requirement to obtain an operating authority permit or certificate.

Insurance

The study process revealed that in certain cases Virginia’s insurance requirements for intrastate property carriers were more stringent than the federal requirements for interstate property carriers. The study group recommends more closely aligning Virginia’s minimum insurance requirements with those for interstate carriers, which vary depending upon the weight of the vehicle.

It is recommended that the insurance limits for “household goods carriers” and property carriers operating vehicles with a GVWR in excess of 10,000 pounds remain at \$750,000, but that insurance limits for carriers operating vehicles with a GVWR between 7,501 and 10,000 pounds are reduced from \$750,000 to \$300,000.

It is further recommended that the insurance limits for passenger cars, motorcycles, autocycles, and vehicles with a GVWR of 7,500 pounds or less should be \$50,000 per person and \$100,000

per incident for death and bodily injury, and \$25,000 for property damage. This is a reduction from the current requirement of \$750,000 in liability coverage.

It is recommended that carriers who are required to obtain operating authority continue to be required to maintain full-time commercial coverage and to file proof of that coverage with DMV. For operators of vehicles under the 10,001-pound threshold, coverage should begin to apply when the service request has been accepted and the vehicle is on the way to pick up the cargo, and should remain in effect until the cargo is delivered to its final destination. It is also recommended that operators of these smaller vehicles no longer be required to file proof of insurance.

For-Hire License Plates

The study group recommends eliminating the requirement that for-hire property carrying vehicles display a for-hire license plate. The stakeholders discussed this requirement and determined that it did not provide substantial assistance to law enforcement, the motor carriers or the customers they serve. Customers do not commonly look at for-hire plates on property carrying vehicles, and law enforcement agencies are able to search a vehicle's record based on the license plate, regardless of whether there is a for-hire designation. Accordingly, it was determined that eliminating this requirement would provide benefits for all stakeholders. It should be noted, however, that the requirement that passenger carriers display for-hire plates will not change.

Fees

The study did not reveal a need to adjust any fees currently paid by property carriers. Carriers who are required to obtain operating authority will continue to pay a \$10 per vehicle annual fee at the time the vehicle is registered, unless fees have been paid for the vehicle under the Unified Carrier Registration (UCR) or International Fuel Tax Agreement (IFTA) programs. This fee would no longer apply to passenger cars, motorcycles, autocycles, mopeds, and vehicles with a GVWR of 10,000 pounds or less, because these vehicles would no longer be subject to operating authority requirements.

“Household goods carriers” would continue to pay a one-time \$50 certificate filing fee.

Introduction

After the successful implementation of the 2015 transportation network company (TNC) legislation, the chairs of the House and Senate transportation committees called upon the Department of Motor Vehicles (DMV) to undertake a study of businesses that employ smart phones and websites to connect customers with drivers who use their personal vehicles to transport property.

Many companies have started using technology, including app and web-based platforms, to better connect with customers to transport property. These businesses are not necessarily well-known, but in some cases operate regionally in Virginia for the purpose of food delivery. Examples of these services include OrderUp, GrubHub, and UberEats. In addition, the Commonwealth is aware that individuals often use personal vehicles to transport property for compensation. These individuals conduct business in different ways, including postings on websites such as Craigslist and via telephone. Not all these companies and individuals have been licensed to operate as property carriers.

While DMV has regulated property carriers for many years, the introduction of new technologies offers an opportunity to review all business models being used to transport property within the Commonwealth. Department staff reviewed the new business models and compared them to currently-licensed property carriers. Specifically, DMV staff reviewed the types of cargo being transported, the vehicles being used, and the methods in which customers arrange transportation through these companies or individuals.

Based on this review, the study group recommends creating a regulatory framework for all property carriers in the Commonwealth that protects the public, allows current businesses to expand and new businesses to offer service in the Commonwealth, and reduces the barriers to entry for those who want to offer services in this market.

The report analyzes business models of both new and currently licensed property carriers, reviews the types of operating authority authorized by the *Code of Virginia* as well as the temporary operating authority made available in April 2016, examines federal regulations on interstate property carriers, and finally offers recommendations for consideration by the General Assembly.

In July 2015, DMV held a meeting with current property carriers to discuss app-based and web-based companies providing services in Virginia. Included were representatives from delivery companies such as FedEx and UPS, representatives of household goods carriers, the Virginia Trucking Association, trucking operators, and representatives from new market entrants offering various types of app-based and web-based property carrier services. Stakeholders determined at this meeting that a more in-depth study of the issue would be required as more information was learned about the specific business models involved. After the initial stakeholder meeting, DMV staff monitored the entrance of new companies into the property carrier market, and informed the General Assembly that the marketplace was continuing to expand. In response, Chairman Rust and Chairman Newman requested a complete stakeholder study on property carriers in Virginia¹.

¹ A copy of both charge letters can be found in Appendix A of this report

In early 2016, some legislators expressed an interest in authorizing DMV to issue temporary operating authority (TOA)² allowing new property carrier services to operate legally in Virginia while the stakeholder study was ongoing. The General Assembly passed legislation as part of the state budget (Chapters 732 and 780, 2016 Acts of Assembly) granting the DMV Commissioner authority to issue a TOA to a motor carrier to transport property for compensation on an intrastate basis utilizing a digital platform that connects persons seeking a property transportation service with persons authorized by the motor carrier to transport property. According to the Appropriations Act, any TOA issued by DMV must expire no later than 130 days after the end of the 2017 Session of the General Assembly.

During the legislative session, Portier, LLC, a wholly-owned subsidiary of Uber Technologies, Inc., began working with DMV to apply for and receive a TOA for two services, UberEats and UberRush, which are described in detail on page 10. The TOA was issued to Portier on April 18. DMV reached out to other companies interested in offering services that would be within the scope of the TOA. On November 2, Instacart applied for and obtained operating authority under the terms of the TOA effective in November, 2016.

The Department also continued research and analysis and continued to meet with stakeholders to review property carrier laws, new entrants, and new federal regulations on interstate property carriers.

Drawing upon this research and the feedback and recommendations received from stakeholders, DMV convened another stakeholder meeting in June 2016. This meeting was expanded to include other stakeholder groups such as law enforcement, local governments, the insurance industry and trial lawyers. Discussion focused on several important issues: insurance requirements, the livery exclusion for property carriage, exemptions to operating authority, and for-hire plate requirements. As indicated above, the principal objective of this study was to examine new entrants to the property carrier market and determine if a framework was needed specific to these carriers. However, through the course of the study, DMV believed that it was important to examine the current regulatory requirements for all property carriers and determine if a standard set of rules should and could apply to business models offering similar services in similar vehicles.

The Department offered an initial proposal to stakeholders on August 19, 2016, and requested feedback. Based on the comments received, DMV revised its proposal and convened another stakeholder meeting on September 8. On the basis of the feedback received at this second meeting, the study team drafted a revised regulatory framework based on a concept of modifying current law to regulate property carriers under two classes of operating authority.

Drafts of the legislation and of this report were submitted to stakeholders for comment. All stakeholder comments DMV received are included in Appendix B to this report.

² A copy of the Temporary Operating Authority can be found in Appendix D of this report

Property Carrier Market Overview

Business Models Using Mobile Platforms

The use of digital platforms to arrange transportation of property is a fairly new phenomenon, with many starting in the past one or two years. Department staff examined companies currently offering some form of on-demand property carrier service. The following is a list of some of the companies the agency identified and general information about the services they provide. The information about each service is not comprehensive, but rather summarizes information the companies have made readily available to the public via the web.

- UberEats*³. This service contracts with local restaurants to deliver food. Companies partnering with UberEats make their menus available on a digital app, allowing customers to order, purchase, and arrange delivery of meals by a driver. Portier, LLC, a wholly-owned subsidiary of Uber Technologies Inc., launched this service in cities such as Los Angeles, Chicago and Boston, before receiving temporary authority from DMV to start this service in Virginia in April, 2016.
- UberRush. This service, also offered by Portier, LLC, offers an application that integrates with platforms so companies can build deliveries into their day-to-day operations. Real-time tracking allows businesses and customers to see where the delivery is on the map. UberRush is designed primarily for large retailers, such as Nordstrom's , but it also provides delivery solutions for smaller businesses that do not need to integrate an application into their online services. It uses independent contractor drivers for delivery service.
- TaskRabbit. This service connects contract workers with individuals who have tasks they need performed such as errands, chores, handyman, delivery, moving help, and cleaning. Requesters post a task, view hourly rates for the qualified taskers and book and pay online. The platform insures each task performed up to \$1 million.
- Buddytruk. This service operates a network of delivery drivers who deliver goods locally with a focus on furniture delivery. It uses an app to receive orders and dispatch delivery drivers.
- Trucker Path. This service offers an app to truckers enabling communication between truckers about places to park, stop, and eat, among other things. It offers a "Truckloads" app to connect brokers with carriers for load matching purposes. Carriers can post information about their equipment and availability in the app to notify brokers, and brokers can post load information in the app to find qualified carriers. Brokers contact carriers directly to negotiate and book the transportation.
- Cargomatic. This service connects shippers with licensed carriers, providing instant access to partial truckload, full truckload, and shipping service over short distances.

³ Companies with a * are those with operations in either the Commonwealth of Virginia or the District of Columbia.

Companies use the website or app to find carriers to ship their product. Cargomatic vets drivers, reviewing their commercial licenses and insurance to make sure they are qualified to transport freight. The service provides pricing transparency by determining the amount the driver should be making based on the weight and distance of goods they are moving. Shippers enter their credit card information, which Cargomatic uses to pay the carriers after the job is completed.

- Convoy. This service connects shippers with licensed carriers via the web and a mobile app.
- Deliv*. This service partners with retailers to provide customers with same-day delivery within a certain radius of the retailer's location. Customers opt for delivery service within a retailer's ecommerce site or during in-store checkout. The service uses independent contractors to provide delivery services through crowdsourcing via an app.
- Postmates. This service partners with stores and restaurants to provide on-demand delivery services using independent contractors as drivers. The service uses an app to receive orders and dispatch delivery drivers.
- Instacart*. This service partners with grocery stores to let customers order groceries online and schedule pickup or delivery. Instacart uses independent contractor drivers for delivery services.
- Bellhops*: This company provides moving services, including packing, loading, transport and delivery. Bellhops focuses on small- and medium-scale moves. Bellhops are all college students and they are not advertised as professional movers. Bookings are accepted online or by phone. Charges include an hourly cost per bellhop along with travel charges per minute based on addresses. In some markets, trucks, dollies and furniture blankets are provided.

In addition to the companies mentioned above, there are several others that use mobile platforms to partner with restaurants to deliver food to homes and offices. These companies include:

- Caviar*
- OrderUp* /Groupon to Go
- GrubHub*
- Seamless*

These companies' platforms handle the logistics of web- and app-based ordering and delivery. They use independent contractor drivers managed through a mobile driver app.

Established Business Models

DMV has issued operating authority to several types of property carriers under Chapter 21 of the *Code of Virginia* household goods carriers are one type of property carrier identified in statute. Readers will recognize the names of national companies such as Mayflower and United Van

Lines. These companies contract with local carriers such as Harrison's Moving and Storage and Kloke Enterprises. It is these Virginia companies that apply for and receive operating authority as household goods carriers to provide intrastate services in the Commonwealth.

The Department also issues bulk property permits for carriers transporting non-liquid and non-gaseous cargo such as dirt, gravel, sand, and aggregate. Examples of companies that hold bulk property operating authority in Virginia are Slurry Pavers and A&K Towing and Recovery.

The Department issues property carrier permits for companies transporting anything not covered as household goods or bulk commodities. Examples of these companies include Estes Express Lines and Old Dominion Freight Line.

Finally, DMV issues licenses for Property Brokers. Brokers arrange transportation between customers and businesses. Brokers can provide this service for any licensed motor carrier. There are currently seven companies holding a Property Brokers license in Virginia.

Temporary Authority Issued Pursuant to 2016 General Assembly

The 2016 Appropriations Act (Chapters 732 and 780, 2016 Acts of Assembly) contained language authorizing the DMV Commissioner to issue a Temporary Operating Authority (TOA) to a motor carrier to transport property for compensation on an intrastate basis utilizing a digital platform that connects persons seeking a property transportation service with persons authorized by the motor carrier to transport property. The TOA allowed only for the use of passenger vehicles and pickup or panel trucks, and directed DMV to set reasonable conditions for the operation of this service. The TOA remains in effect until 130 days after the end of the 2017 General Assembly Session.

During the first quarter of 2016, DMV crafted a TOA that met the requirements of the budget passed by the General Assembly. In consultation with the Attorney General's office and other state agencies, DMV made available a TOA with requirements it felt addressed public safety and consumer protection.

The TOA included the following provisions:

- **Driver Requirements:** Operators are required to obtain a DMV driving record check on all potential drivers, and must restrict service to those who are at least 18 years old.
- **Insurance Requirements:** Operators or their partners are required to keep in force an insurance policy providing liability coverage of at least \$50,000 per person and \$100,000 per crash, and at least \$25,000 for property damage per crash, while the driver is providing property transportation services. If such insurance is maintained by the partner and fails to provide the required coverage, insurance maintained by the operator is responsible for providing coverage at these levels.
- **Operational Requirements:** Among these requirements, drivers are limited to delivering property within a 50-mile radius of the origin of the trip. Operators are not allowed to transport household goods more than 30 road miles. They must also meet all requirements of state law for the transportation of restricted goods such as alcohol. As

stated above, operators are limited to using passenger cars or pickup or panel trucks. In addition, drivers must carry at all times proof of all insurance coverage available, as well as a valid driver's license.

- **Property Liability:** The TOA states that the company holding the TOA is not liable for any damage to the property being transported, unless specifically stated in the agreement with the merchant requesting services.
- **Disclosures to Drivers:** The company holding the TOA is required to provide several notices to drivers, including a notice regarding required insurance coverage and information on the potential consequences of using vehicles encumbered with liens.
- **Record Keeping:** Companies holding TOA are required to retain certain documents and provide them to DMV in response to any complaint filed against the driver or the company. These documents include any record that DMV determines is reasonably necessary to conduct an investigation of a complaint.

Current Operating Authorities and Statutory Exemptions

A “motor carrier of property” is defined in *Va. Code* § 46.2-2100 as “any person who undertakes, whether directly or by lease, to transport property, including household goods, as defined by this chapter, for compensation over the highways of the Commonwealth.” In general, anyone who either provides or arranges the transportation of property by motor carrier on an intrastate basis is subject to state regulation in Virginia.

The statewide requirements that apply to different types of property carriers, which are set forth in Chapter 21 of Title 46.2 of the *Code of Virginia*, are summarized below. DMV has issued a total of 5,952 permits or licenses under that chapter to businesses operating a total of 16,668 vehicles.

The *Code of Virginia* establishes four operating authorities for property carriage: property carriers, bulk property carriers, household goods carriers, and property brokers. In addition, Virginia law exempts other types of carriers from regulation. The following section provides details on each of the operating authorities issued by DMV, as well as a description of exempt carriers.

Broker

A broker is someone who is not employed by a licensed property carrier but rather holds himself out to the public as offering to arrange property transportation services. Brokers are limited to arranging transportation of property only for pick-up and delivery within the Commonwealth. In addition, brokers can only arrange transportation through property carriers licensed by the Department. Property brokers are required to pay a \$50 filing fee, and \$3 for a duplicate license. They are also required to file a \$25,000 bond with the Department. Property brokers are not subject to tariff and time table schedule requirements, and are not required to file liability insurance with DMV. There are currently seven licensed property brokers in Virginia.

Bulk Property Carrier

A bulk property carrier is one who transports only bulk commodities⁴, or who operates wreckers for hire. DMV has permitted 4,127 bulk property carriers in Virginia. These companies own a total of 6,156 vehicles, with an additional 1,150 vehicles leased.

Permitted carriers are authorized to haul bulk property intrastate under the following conditions:

- Bulk property carriers are required to carry \$750,000 in liability insurance to cover bodily injury and property damage.
- Bulk property carriers are required to pay a yearly \$10 operating authority registration fee per vehicle.
- A replacement license costs \$3.
- Bulk property carriers are not required to file tariffs or time schedules with DMV.
- There is no bond requirement.

Household Goods Carrier

A household goods carrier can transport only household goods, which are generally defined as personal effects and property used or to be used in a dwelling. DMV has licensed a total of 162 Household goods carriers in Virginia. These businesses own a total of 520 vehicles, with an additional 176 vehicles leased.

In order to obtain a household goods carrier certificate, the following requirements must be met:

- Carriers are required to obtain a certificate of fitness.⁵
- Carriers are required to file with DMV all rates charged, and any rules, policies or guidelines imposed on customers.
- Carriers transporting household goods over 30 miles are required to post the rates listed in the tariff it files with DMV.
- All vehicles must carry a copy of the bill of lading while transporting property.
- Copies of all bills of lading are required to be kept at the business location for three years.
- Carriers must hold \$750,000 in liability insurance coverage, and \$50,000 in cargo coverage.
- Carriers must file a \$50,000 surety bond⁶ or letter of credit, and retain it for five years after the initial date the authority was issued.
- Carriers are subject to a \$50 filing fee, an annual \$10 per vehicle operating authority registration fee, and a \$3 fee for any duplicate license requested.

⁴ A "bulk commodity" is defined in § 46.2-2100 as, "any non-liquid, non-gaseous commodity shipped loose or in mass/aggregate and which in the loading and unloading thereof is ordinarily shoveled, scooped, forked, or mechanically conveyed or which is not in containers or in units of such size to permit piece by piece loading and unloading."

⁵ A Certificate of Fitness evaluates the applicant's character and fitness. This is determined through a criminal history background check and check of consumer service agency databases accessible via the internet as well as past compliance with motor carrier laws, when applicable. Financial responsibility is also a part of the evaluation and is satisfied through the filing of a surety bond, liability insurance, and cargo insurance.

⁶ A surety bond is intended to protect the consumer against fraudulent acts by the motor carrier.

Property Carrier

Property carriers are those who transport property that does not meet the definition of bulk property or household goods. However, they are permitted to transport household goods so long as the trip does not exceed 30 road miles. DMV has permitted 1,663 property carriers in Virginia. These companies own a total of 5,244 vehicles, with an additional 1,026 vehicles leased.

Property carriers must meet the following requirements:

- Carry \$750,000 in liability insurance coverage.
- Carry \$50,000 in cargo insurance.
- Pay a yearly \$10 operating authority registration fee per vehicle, and a \$3 fee for any replacement license requested.
- If transporting household goods less than 30 miles, the carrier must abide by the rules for claims of loss set out for household goods carriers.

Statutory Exemptions to Property Carrier Operating Authority

The following types of transportation are exempt from Chapter 21 of Title 46.2:

- Motor vehicles owned and operated by the Commonwealth of Virginia or one of its political subdivisions, the District of Columbia, or any other state.
- Any interstate transportation, or transportation wholly within the limits of a city or town in Virginia.
- Motor vehicles controlled and operated by a bona fide cooperative association.
- Motor vehicles solely transporting the following cargo⁷:
 - Newspapers, water, livestock, poultry, poultry products, buttermilk, fresh milk and cream, meats, butter and cheese produced on a farm, fish (including shellfish), slate, horticultural or agricultural commodities (not including manufactured products thereof), and forest products, including lumber and staves (but not including manufactured products thereof)
 - Farm supplies being sent to a farm or farms
 - Hauling for the Department of Transportation
 - Fertilizer being sent to any warehouse or warehouses for subsequent distribution to a local area farm or farms
 - Trash, garbage and other refuse being collected and discarded
- Motor vehicles used for transporting property by an air carrier or carrier affiliated with a direct air carrier.
- Motor carriers exclusively operating vehicles with a registered gross weight of 7,500 pounds or less for the sole purpose of providing courier service. Courier services are defined as those motor carriers engaged exclusively in the transportation of letters, envelopes, negotiable or nonnegotiable instruments, or other documents or papers.

⁷ These exemptions closely follow federal exemptions for interstate carriers.

Federal Regulation of Interstate Property Transportation

Interstate property transportation is governed by federal law, and regulated by the Federal Motor Carrier Safety Administration (FMCSA). The following are the operating authorities issued by FMCSA⁸ :

- **Motor Carrier of Property (except household goods):** An authorized for-hire Motor Carrier that transports regulated commodities for the general public in exchange for payment. Motor Carriers of Property must file proof of public liability with FMCSA in order to obtain interstate Operating Authority. Cargo insurance is not required.
- **Motor Carrier of Household Goods:** An authorized for-hire Motor Carrier that transports only household goods for the general public in exchange for payment. Household goods are personal items that will be used in a home. They include items shipped from a factory or store, if purchased with the intent to use in a home, and transported at the request of the householder who pays for the transportation charges. Motor Carriers of household goods must file proof of both public liability and cargo insurance with FMCSA in order to obtain interstate Operating Authority.
- **Broker of Property (except household goods):** An individual, partnership, or corporation that receives payment for arranging the transportation of property (excluding household goods) belonging to others by using an authorized Motor Carrier. A Broker does not assume responsibility for the property and never takes possession of it.
- **Broker of Household Goods:** An individual, partnership, or corporation that receives payment for arranging the transportation of household goods belonging to others by using an authorized Motor Carrier. A Broker does not assume responsibility for the household goods and never takes possession of the goods. An individual, partnership or corporation requires registration as a household goods broker if the motor carrier providing transportation will also provide some or all of the following additional services, binding and nonbinding estimates, inventorying, protective packing and unpacking of individual items at personal residences and loading and unloading at personal residences.
- **United States-based Enterprise Carrier of International Cargo (except household goods):** A company that transports international cargo (excluding household goods) and is headquartered in the United States, but is owned or controlled (greater than 55%) by a Mexican citizen or resident alien. International cargo must originate in or be destined for a foreign country.
- **United States-based Enterprise Carrier of International Household Goods:** A company that transports international household goods and is headquartered in the United States, but is owned or controlled (greater than 55%) by a Mexican citizen or resident alien. Household goods are personal items that will be used in a home. They include items shipped from a factory or store, if purchased with the intent to be used in a home, and transported at the request of the householder who pays for the transportation charges. International household goods must originate in or be destined for a home in a foreign country.

⁸ Descriptions taken from <https://cms.fmcsa.dot.gov/registration/types-operating-authority>

- **Hazardous Material Transportation:** Transportation of hazardous materials⁹ is governed by 49 U.S.C. 5101 et seq. Insurance requirements for transporting hazardous materials depends on the class of material, as well as the size of the vehicle being used for transportation. Minimum insurance requirements range from \$750,000 to \$5,000,000.

The Department examined the federal requirements applicable to each type of carrier and compared them to state regulation of property carriers. The United States-based Enterprise Carrier of International Cargo and United States-based Enterprise Carrier of International Household goods are under the exclusive jurisdiction of federal law. The other federal permit types are closely mirrored in Virginia law, which issues authority for property carriers, household goods carriers, and brokers. Virginia issues a separate permit for the transportation of bulk property, but does not issue a separate license¹⁰ for brokering household goods shipments; a broker licensed in Virginia may provide such services for any licensed motor carrier.

Although Virginia law mirrors federal law in terms of the requirements to obtain a permit, certificate, or license, Virginia law imposes more stringent insurance requirements on intrastate carriers because unlike FMCSA, Virginia has not adopted tiered insurance requirements based on the weight of the vehicle. Virginia currently requires all property carriers, regardless of the size of the vehicles operated, to maintain \$750,000 in liability coverage. FMCSA requires \$750,000 in coverage for interstate carriers operating vehicles over 10,000 pounds, but requires only \$300,000 for those operating vehicles under this threshold. Additionally Virginia imposes cargo insurance requirements on intrastate carriers that interstate carriers are not required to meet.

The \$300,000 requirement is mirrored in the study recommendations for vehicles weighing between 7,501 and 10,000 pounds. While this federal requirement applies to all vehicles weighing less than 10,000 pounds, the recommendations take into account the financial burden that the \$300,000 requirement would impose on smaller vehicle owners, and instead proposes that vehicles under 7,501 pounds have minimum insurance liability limits of \$50,000 per person and \$100,000 per incident for death and bodily injury, and \$25,000 for property damage, which should facilitate compliance. The study recommendations also relax cargo insurance requirements for intrastate property carriers.

Closely tracking the federal requirements, and in many cases mirroring them, provides benefits for the Commonwealth. It ensures that vehicles in Virginia operating on both an intra- and interstate basis have largely the same requirements. This is especially relevant to local carriers who deliver property as the final leg of an interstate trip. Federal law states that, even if the final segment of a trip is intrastate, the shipment is considered as being interstate if it originated across state lines. The recommendations largely ensure that local carriers performing these operations will not come into conflict with stricter standards.

⁹ A complete list of hazardous materials can be found at: <https://www.fmcsa.dot.gov/regulations/hazardous-materials/how-comply-federal-hazardous-materials-regulations>.

¹⁰ It should be noted that permits are issued to those operating under a Property carrier authority, and licenses are issued to household goods carriers.

Recommendations for Property Carriers in Virginia

The study team considered the applicability and adaptability of existing rules regarding other types of property transportation in the Commonwealth. The team also consulted stakeholders and solicited their suggestions as to how best to regulate intrastate property carriers. Stakeholders were continually involved in the study, and offered suggestions and revisions. The views exchanged by stakeholders provided clarity to DMV's initial concepts, and identified important areas of the market that needed to be addressed by the study group's recommendations.

Several stakeholders expressed support for creating an operating authority specific to app-based businesses, while others stated a preference for applying the same regulations to all carriers providing similar services in similar vehicles. After reviewing all stakeholder comments, the recommendations contained in the report are for a consolidation of property carrier operating authorities, and applying the same requirements to services regardless of the method in which service was arranged. Above all, there was a general agreement that the protection of consumers and the promotion of public safety dictated a need for consistent rules, as well as a continued role for DMV in the oversight of property carriage.

In brief, the recommendations are to amend the *Code of Virginia* by eliminating the requirement for a Property Brokers license, and combining the property carrier and bulk property carrier into a single property carrier operating authority. While the study group recommends amending the definition of household goods, the regulatory requirements for the household goods operating authority will remain unchanged. The study group recommends requiring insurance for all vehicles transporting property for hire based on the weight of the vehicle, but adapting insurance requirements to new business models that have created the need for insurance to alternate between personal and commercial policies. To facilitate compliance the study group further recommends eliminating the requirement to obtain operating authority for the operation of smaller vehicles and to discontinue the issuance of for-hire plates for property carrying vehicles.

The following is a description of the DMV study team's discussion on key topics, as well as final recommendations for the regulation of property carriers, and an explanation of the reasoning behind specific provisions. Where stakeholders did not find consensus, the competing views are fully detailed. Legislation implementing the following recommendations is attached as Appendix C to this report. Stakeholders' responses to the recommendations and draft legislation have been collected in Appendix B.

Vehicle Weight Classifications

As noted above, the study group recommends basing operating authority and insurance requirements on the size of the vehicle. The recommendations are based on three different ranges based on gross vehicle weight rating (GVWR):

- Passenger cars, motorcycles, autocycles, mopeds, and vehicles with a GVWR of 7,500 pounds or less.
- Vehicles with a GVWR between 7,501 and 10,000 pounds.
- Vehicles with a GVWR in excess of 10,000 pounds.

GVWR is the maximum weight, including cargo and passengers, at which a manufacturer says a vehicle is built to be operated safely. GVWR is distinct from the registered weight of a vehicle, which is either the empty weight or gross weight, depending on vehicle type. Unlike the gross weight of a vehicle, which is the maximum weight, including cargo and passengers, at which the vehicle owner says the vehicle will be operated, Virginia law prohibits GVWR from changing without a re-rating of the vehicle by the manufacturer. The study group recommends using the GVWR because this figure is set by the automakers based, in part, on the amount of cargo the vehicle can carry. This figure is listed on the Manufacturer's Certificate of Origin (MCO), and should not change. As a result, the Department will be able to apply the proposed standards uniformly.

The GVWR of the vehicle will determine whether a carrier is required to obtain operating authority, the level of insurance required, whether the insurance needs to be filed with DMV, and whether the "vehicle use" captured in DMV's records is "private" or "for-hire".

Property Carriers Required to Obtain Authority

The study group recommends requiring companies and individuals transporting property for hire using vehicles with a GVWR in excess of 10,000 pounds to obtain either a permit or certificate from DMV. The vehicles would continue to be registered according to the appropriate empty or gross weights for their types; however, a person registering any vehicle for which a permit is required must declare on the registration application that the vehicle will be operated for hire, and such use will be indicated on the vehicle registration card.

This requirement will apply to some larger vehicles that will be registered as "pickup or panel trucks" under the *Code of Virginia*, regardless of how often property is carried. Because these vehicles are registered as primarily personal vehicles, the study group recommends creating a "nonbusiness use" presumption, to allow these vehicles to continue to qualify for personal property tax relief. This presumption exists for TNC Partner Vehicles. As they do today, Commissioners of Revenue will have to determine whether a specific vehicle qualifies for relief.

Property Carriers Exempt from Obtaining Authority

The study group also recommends exempting from the statutory permit requirements all companies or individuals exclusively using passenger cars, motorcycles, autocycles, mopeds, and other vehicles with a GVWR of 10,000 pounds or less. Vehicle owners would have the option of declaring the vehicles to be operated for hire; however, there would be no requirement in the Code to make such a declaration in order to carry property for compensation, and registration of these vehicles would otherwise remain as it is under current law.

Minimum Insurance Requirements

Property Carriers

The study group recommends that every property carrier be covered by motor vehicle liability

insurance that specifically covers liabilities arising from the use of a vehicle to transport property for compensation. For property carriers, three levels of coverage are recommended:

- For passenger cars, motorcycles, autocycles, and vehicles with a GVWR of 7,500 pounds or less, the study group recommends that these vehicles have a liability insurance policy of at least \$50,000 per person, \$100,000 per incident for death and bodily injury, and \$25,000 for property damage. Since these vehicles are presumed to be used primarily for private purposes, the insurance policy must be available from the time the service request has been accepted and the vehicle is en-route to pick-up the property, and remain in force until the property has been removed from the vehicle and delivered to the final destination.
- For vehicles with a GVWR between 7,501 and 10,000 pounds, the study group recommends that these vehicles have a liability insurance policy of at least \$300,000. This level mirrors FMCSA's requirement for similarly sized vehicles transporting property for hire on an interstate basis. The study group recommends that the liability coverage for these vehicles be available from the time the service request has been accepted and the vehicle is en route to pick up the property, and remain in force until the property has been removed from the vehicle and delivered to the final destination.
- For vehicles with a GVWR in excess of 10,000 pounds, the study group recommends that these vehicles have a liability policy of at least \$750,000 in effect at all times. In addition, the study group recommends that companies or individuals using these vehicles file proof of insurance as part of the permit process.

In addition, property carriers that do not transport household goods will not be required to carry the \$50,000 in cargo insurance currently required by Virginia law. The company or individual must sign a cargo insurance waiver certifying that it will not transport household goods.

Household Goods Carriers

As noted above, household goods carriers will continue to be required to carry insurance in the amounts set forth in Chapter 21 of the *Code of Virginia*. This includes:

- \$750,000 liability coverage
- \$50,000 cargo coverage
- Surety bond of \$50,000 for 5 years beginning from issuance date of certificate.

Periods of Coverage/Livery Exclusion

Periods of Coverage

There was significant debate during the study regarding insurance, with the discussion focused on the nature of property carrying services, and on the applicability of the livery exclusion to both current and new business models.

The study group recommends the following insurance requirements when the vehicle is providing commercial service:

- **Vehicles with a GVWR of 10,000 pounds or less:** Property carriers using vehicles in this weight range will be required to carry liability insurance from the time the service request has been accepted and the vehicle is en route to pick up the property, and remain in effect until the property is delivered to its final location.
- **Vehicles with a GVWR in excess of 10,000 pounds:** Property carriers using vehicles in this weight range will be required to have continual liability insurance on all vehicles.

Livery Exclusion

The livery exclusion—a provision in personal auto policies that excludes coverage for “liability arising out of the ownership or operation of a vehicle while it is being used as a public livery or conveyance”—was discussed in detail at the final stakeholder meeting. The insurance industry believes that the exclusion applies to property carriage just as it does to passenger carriage, and they cited court cases from multiple jurisdictions in support of their view. Insurance representatives argued that delivering property meets the definition of “indiscriminately holding out” one’s vehicle for public service and “operating as a livery or public conveyance.” They argued that this is the case whenever a driver is available for service. Accordingly, they contended that the periods of coverage should mirror those of the Transportation Network Company (TNC) statute and clearly delineate the personal insurer’s and TNC insurer’s respective responsibilities for covering vehicle operations.

The insurance industry’s key argument was that, as soon as a driver is available for business, they are engaged in commerce. Consequently, they believe personal insurance policies should not be required to provide coverage to these drivers. The insurance industry stated that the TNC statute requires commercial coverage when a vehicle is available to pick up passengers, and that it was the intent of the General Assembly to establish this period of operation as commercial in nature.

The new property carriers disagreed with the insurance industry on the livery exclusion, citing a Virginia case that the livery exclusion did not apply to pizza delivery. The new property carriers maintained that if the exclusion does not apply to pizza delivery, then it is not clear that it applies to any property carrying operations. In addition, these companies stated that merely being available for service does not constitute being engaged in commerce. They cited the fact that a person at home could be available for service, but not actually on the road engaged in commerce. In their view, commerce begins when a driver has picked up the property. Nevertheless, they were willing to accept a requirement making coverage apply when a driver has accepted a service request and is en route to that request.

Finally, the new property carriers disagreed with the insurance industry’s characterization of the TNC statute, arguing that the requirement to provide coverage when a driver was available to pick up passengers was negotiated with the General Assembly, and that there is nothing in the statute to indicate that the agreed-upon language meant the vehicle was engaged in commerce.

The Department reviewed the comments on the livery exclusion from both sides and undertook additional research. Based on this work, DMV concluded that the livery exclusion probably does

apply to property carriage when the vehicle is engaged full time in commercial service, but that it is unclear whether it applies to a hybrid service, where a vehicle is operated both for commercial and private purposes.

It would be difficult, however, to articulate a bright-line rule as to exactly when the livery exclusion should be triggered with such a vehicle. While one could argue that activating a digital app should trigger the operator's availability for commercial activity, there is no comparable trigger for those who offer their services through a website or by telephone. A person who places an ad on Craigslist would arguably be "available for service" immediately, negating his personal insurance even during periods when he is not engaged in any commercial activity. The same difficulties occur in other non-app-based models.

The diversity of carriers' business models makes it difficult to set in statute when commercial service should begin for each. Given the desire for uniform requirements across business practices, the study group recommends that, for vehicles with a GVWR of 10,000 pounds or less, insurance should be required when a driver is en route to fulfill a service request. This adheres closest to the spirit of the livery exclusion, with the added benefit of being a standard that can be applied to all companies providing like services in like vehicles.

Related Insurance Provisions

Another provision of DMV's proposal to stakeholders was the inclusion of certain insurance provisions in § 46.2-2099.52 that apply to TNCs. The insurance industry sought to apply all these provisions to app-based property carriers.

Examples of these provisions include uninsured motor vehicle coverage and the TNC insurer's duties to defend and to cooperate in a claims investigation. Many TNC insurance provisions appear to be applicable to property carriage, particularly those that can be modified to apply to all property carriers rather than only to app-based business models. The TNC insurance provisions addressed the new issue of vehicles switching between personal and commercial use. Since the same issue will now arise with property carriers, the study group recommends incorporating similar provisions in the property carrier statutes. These provisions include:

- Requiring liability insurance.
- Property carrier insurance has the duty to defend any liability claim against a property carrying vehicle.
- Property carrier coverage is not contingent on personal insurance first declining coverage.
- Personal coverage is not required to provide excess or primary coverage for property transporting vehicles.
- Insurance maintained by the property carrier must be available if insurance carried by the driver lapses or ceases to exist.
- The liability of property carriers is not limited.
- Property carrier insurance may be provided by a surplus lines insurer as defined in § 38.2-4805.2.
- Property carrier insurance must meet the requirements of § 46.2-706 while the vehicle is being operated as a property carrier.

- Property carriers and their insurance provider have a duty to cooperate in a claims coverage investigation.

Fees

The study team examined the fees paid by property carriers under current law, and tried to determine if a different structure is warranted.

The study and resulting recommendations did not reveal a need to adjust any fees currently paid by property carriers. Carriers who are required to obtain operating authority will continue to pay a \$10 per vehicle annual operating authority registration fee, unless fees have been paid for the vehicle under the Unified Carrier Registration (UCR) or International Fuel Tax Agreement (IFTA) programs. This fee would no longer apply to passenger cars, motorcycles, autocycles, mopeds, and vehicles with a GVWR of 10,000 pounds or less because these vehicles would no longer be subject to operating authority requirements.

Due to the additional regulatory oversight imposed on “household goods carriers” these carriers would continue to pay a one-time \$50 certificate filing fee.

New Definition of Household Goods

The study recommends amending the definition of household goods so as to more accurately define the type of service being offered by carriers in this market. The current definition of household goods in the *Code of Virginia* is:

“Household goods” means personal effects and property used or to be used in a dwelling, when transported or arranged to be transported (i) between residences or (ii) between a residence and a storage facility with the intent to later transport to a residence. Transportation of the goods must be arranged and paid for by, or on behalf of, the householder.

While this definition may be intended to denote the transport of an entire dwelling, the plain language of the text includes anyone transporting individual household items. This has the consequence of requiring an individual who moves a single piece of household furniture (a mattress or dresser) to obtain a household goods certificate of fitness which requires \$750,000 in full-time liability insurance, \$50,000 in cargo insurance, and a \$50,000 surety bond. This is a substantial burden for an individual transporting a single piece of property.

The study group concluded that the definition of household goods should be amended to more accurately reflect the service being performed. The following definition will make it clear that only those businesses and individuals transporting entire dwelling units are required to obtain a household goods certificate:

Household goods means personal effects and property used or to be used in a dwelling, when transported or arranged to be transported between residences, or between a residence and a storage facility with the intent to later transport to a

residence. Transportation of the goods must be arranged and paid for by, or on behalf of, the householder.

Elimination of For-Hire License Plates for Property Carriers

Section 46.2-2108.3 of the *Code of Virginia* requires DMV to issue an “identification marker” to any property carrier operating on an intrastate basis. In light of the fact that § 46.2-711 requires DMV to issue appropriately designated license plates to vehicles operated for hire, the Department determined that the for-hire license plate would also serve as the identification marker. In addition, vehicles with for-hire plates have their registration marked as being for hire. The Department links a company’s operating authority with the vehicles in its fleet and issues the appropriate plate and registration. These requirements provide information to the public, law enforcement and localities about which vehicles are operating in a for-hire capacity.

Since the nature of property transportation has evolved, stakeholders agreed that the for-hire license plate no longer provides useful information to either customers or the Commonwealth. Law enforcement and local governments have access to registration information electronically, and customers will still be able to select service from a wide variety of providers.

Conclusion

The starting point for the stakeholder study was the charge letters from Chairmen Rust and Newman. DMV, through the study request, was tasked with the following:

- Examining new models of property transportation using app and web-based platforms to facilitate the transportation of good in private passenger vehicles; and
- Providing recommended changes to the *Code of Virginia* as well as legislation in support of the recommendations.

Over the course of the study, the stakeholders have gathered and presented information, discussed important issues, considered options, drawn conclusions, and made recommendations. In conclusion, the study makes the following recommendations:

Operating Authorities

The study group recommends consolidating the operating authorities listed in Chapter 21 of the *Code of Virginia* into one for property carriers and one for household goods carriers. Stakeholders also recommend establishing a new operating authority exemption for carriers operating solely passenger cars, motorcycles, autocycles, mopeds, and vehicles with a GVWR of 10,000 pounds or less. It is further recommended that the current exemption for motor carriers exclusively operating vehicles with a registered gross weight of 7,500 pounds or less for the sole purpose of providing courier service be eliminated as these services will now fall under the newly formed exemption noted above. All other exemptions currently in the *Code* will remain unchanged.

Minimum Insurance Requirements and Periods of Coverage

Although exempt from obtaining operating authority, property carriers operating solely passenger cars, motorcycles, autocycles, mopeds, and vehicles with a GVWR of 10,000 pounds or less, will be required to carry insurance coverage in the amount of \$50,000 per person, \$100,000 per incident for death and bodily injury, and \$25,000 for property damage. Coverage will apply when the service request has been accepted and the vehicle is en route to pick up the property, and applies until the cargo is delivered.

Property carriers operating vehicles with a GVWR between 7,501 and 10,000 pounds will be required to carry a liability insurance policy providing \$300,000 in liability coverage. The coverage will apply when the service request has been accepted and the vehicle is en route to pick up the property, and applies until the cargo is delivered.

Property carriers operating vehicles with a GVWR in excess of 10,000 pounds will be required to carry an insurance policy providing \$750,000 in full-time liability coverage. Carriers in this weight class will be required to file proof of insurance as part of the process to obtain operating authority.

Fees

The study and resulting recommendations did not reveal a need to adjust any fees currently paid by property carriers.

Elimination of For-Hire License Plates

The study group recommends striking from *Code* the requirement for DMV to issue for-hire plates to property carrying vehicles.

New Definition of Household Goods

The study group recommends amending the definition of household goods to more accurately reflect the nature of services being provided by these companies.

In closing, DMV would like to again acknowledge and thank the stakeholders for the time and dedication they brought to this endeavor. Their willingness to actively participate and explore ways to make property carrier laws reflect today's marketplace enabled the team to meet and exceed the challenges posed by this study.

Appendix A: Charge Letters



THOMAS DAVIS RUST
HERNDON TOWN HALL
730 ELDEN STREET
HERNDON, VIRGINIA 20170

EIGHTY-SIXTH DISTRICT

COMMONWEALTH OF VIRGINIA
HOUSE OF DELEGATES
RICHMOND

COMMITTEE ASSIGNMENTS:
TRANSPORTATION (CHAIRMAN)
EDUCATION
COMMERCE AND LABOR
SCIENCE AND TECHNOLOGY

August 14, 2015

Mr. Richard D. Holcomb
Commissioner
Virginia Department of Motor Vehicles
P.O. Box 27412
2300 West Broad Street
Richmond, VA 23269

Dear Commissioner Holcomb:

Your leadership and the extraordinary efforts of your staff at the Department of Motor Vehicles (DMV) were instrumental in the success of the 2014 legislative study regarding Transportation Network Companies (TNC) and the resulting legislation passed by the 2015 Session of the General Assembly. The work done by DMV, the stakeholders of this study, and the General Assembly helped make Virginia one of the first states to pass a comprehensive law that both welcomes new business models and ensures the protection of the traveling public.

As app and web-based businesses move into new markets such as property transportation, I trust that DMV will remain a national leader in examining these new models. I was pleased to hear your remarks in the recent meeting of the Joint Committee on Transportation Accountability that the Department has taken the proactive step of hosting another stakeholder meeting with representatives from the property carrier industry. Examining new property carrier business models and discussing them with industry representatives will ensure that Virginia continues to be a leader in addressing transportation innovations.

To that end, I respectfully request that you continue your initiative and conduct a study regarding new models of property transportation. In undertaking this study, I request that DMV continue to obtain input from all interested parties, including package delivery companies, household goods moving companies, TNCs, representatives from the insurance industry, law enforcement officials, and any other agencies or stakeholders you deem appropriate.

I request that you report back to the House Transportation Committee no later than December 1, 2016. As part of this report, please provide recommendations regarding any further action to be taken. Also, please include any proposed legislation that may be necessary to implement the recommendations. I have the utmost confidence that, as DMV Commissioner, you will make every possible effort to ensure that the Commonwealth takes the steps necessary to help Virginia attract new businesses while protecting the interest of the public.

Sincerely,

A handwritten signature in black ink that reads "THOMAS DAVIS RUST".

Thomas Davis Rust

cc: Senator Stephen D. Newman

DISTRICT: (703) 437-9400 • RICHMOND: (804) 698-1086 • E-MAIL: DELTRUST@HOUSE.VIRGINIA.GOV

SENATE OF VIRGINIA



STEPHEN D. NEWMAN
23rd SENATORIAL DISTRICT
ALL OF BOTETOURT AND CRAIG COUNTIES;
PART OF BEDFORD, CAMPBELL, AND ROANOKE
COUNTIES; AND PART OF THE CITY OF LYNCHBURG
P.O. BOX 480
FOREST, VIRGINIA 24551
EMAIL: SNEWMAN@SENATORNEWMAN.COM
PHONE: (434) 385-1065
FAX: (434) 485-8111

COMMITTEE ASSIGNMENTS
TRANSPORTATION, CHAIR
COMMERCE AND LABOR
EDUCATION AND HEALTH
FINANCE
RULES

August 12, 2015

Mr. Richard D. Holcomb
Commissioner
Virginia Department of Motor Vehicles
P.O. Box 27412
2300 West Broad Street
Richmond, VA 23269

Dear Commissioner Holcomb:

Your leadership and the extraordinary efforts of your staff at the Department of Motor Vehicles (DMV) were instrumental in the success of the 2014 legislative study regarding Transportation Network Companies (TNC) and the resulting legislation passed by the 2015 Session of the General Assembly. The work done by DMV, the stakeholders of this study, and the General Assembly helped make Virginia one of the first states to pass a comprehensive law that both welcomes new business models and ensures the protection of the traveling public.

As app and web-based businesses move into new markets such as property transportation, I trust that DMV will remain a national leader in examining these new models. I was pleased to hear your remarks in the recent meeting of the Joint Committee on Transportation Accountability that the Department has taken the proactive step of hosting another stakeholder meeting with representatives from the property carrier industry. Examining new property carrier business models and discussing them with industry representatives will ensure that Virginia continues to be a leader in addressing transportation innovations.

To that end, I respectfully request that you continue your initiative and conduct a study regarding new models of property transportation. In undertaking this study, I request that DMV continue to obtain input from all interested parties, including package delivery companies, household goods moving companies, TNCs, representatives from the insurance industry, law enforcement officials, and any other agencies or stakeholders you deem appropriate.

I request that you report back to the Senate Transportation Committee no later than December 1, 2016. As part of this report, please provide recommendations regarding any further action to be taken. Also, please include any proposed legislation that may be necessary to implement the recommendations. I have the utmost confidence that, as DMV Commissioner, you will make every possible effort to ensure that the Commonwealth takes the steps necessary to help Virginia attract new businesses while protecting the interest of the public.

Sincerely,

A handwritten signature in dark ink, appearing to read "Stephen D. Newman". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Stephen D. Newman

cc: Delegate Thomas D. Rust

Appendix B: Comments from Stakeholders

From: [McCutchan, Robert L \(Lindsey\)](#)
To: [Whitham, Craig \(DMV\)](#)
Cc: [Hussey, Rena \(DMV\)](#); [Holcomb, Richard \(DMV\)](#); [Smoot, Janet \(DMV\)](#)
Subject: VA DMV Property Carrier Report - Public Comments
Date: Monday, November 28, 2016 11:53:18 AM
Attachments: [image001.png](#)

Greetings!

Please allow the following to serve as input relative to the Department's recent draft study property carriers in Virginia.

Nationwide has had the opportunity to review the Virginia Department of Motor Vehicles' 2016 Report, "Property Carriers in Virginia," as well as proposed draft legislation to amend certain sections of the Virginia Code as it relates to transportation of property for compensation. While the study and draft bill appear quite comprehensive in their observations and effect, Nationwide identified two potential notable concerns: (i) the apparent disconnect (or possible lack of clarity) between the proposed definitions and insurance requirements of transporters of property versus those for transportation of passengers and (ii) the potential for failure to preserve livery exclusions in personal insurance policies.

Section 46.2-2000 of the Virginia Code speaks to existing law regarding TNC operators in the state (i.e., those transporting passengers for compensation). The proposed changes to Section 46.2-2100 of the Code miss several key definitions present in Section 46.2-2000, which are vital to personal auto insurers. We recommend that the proposed legislation be consistent with the state's existing TNC statute with respect to the definitions throughout each, including "Digital Platform," "Operation of a TNC Partner Vehicle," "Prearranged Ride," "TNC Insurance," "TNC Partner," "TNC Partner vehicle," and "Transportation Network Company."

In addition, the proposed changes to Section 46.2-2143.1 fail to take into consideration operators of personal vehicles who may be transporting property for compensation and utilizing digital platforms for the dispatch of such deliveries. Like transportation of passengers for compensation, the livery exclusions in personal auto policies should be protected in the state by requiring that appropriate commercial coverage be in place from the time a digital platform is turned on, until it is turned off. We recommend that the language in proposed legislation be consistent with the existing TNC statute with respect to the requirement that commercial insurance coverage must begin when the digital platform has been turned on and continues until the digital platform is turned off. Lastly, there may be opportunity for the Virginia Bureau of Insurance to assist in crafting language that would appropriately address any necessary exclusions that would apply to companies engaging in property transport for compensation.

Nationwide appreciates the opportunity to comment and strongly encourages modifications to the proposed legislation to ensure consistency with existing Virginia law addressing TNC operators and the preservation of livery exclusions in personal auto policies.



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Valerie M. O'Brien
Executive Director
vobrien@vtla.com

November 28, 2016

Craig Whitham
Virginia Department of Motor Vehicles
2300 W. Broad Street
Richmond, VA 23269

Dear Mr. Whitham:

Thank you for soliciting comments in response to the "Property Carriers in Virginia report". We write today to accept your offer to include our response in the final report submitted to the Chairmen of the House and Senate Transportation committees.

Your report mentions that there were several stakeholder meetings in 2015 and 2016, but the Virginia Trial Lawyers Association was not invited to any meetings in 2015, and has only been invited to two meetings in 2016. At the meeting on September 8th, Janet Smoot stated that "the DMV will review all comments and produce a final draft proposal that seeks to find consensus among the stakeholders." The report lists many "recommendations" on page 18, but there was no agreement or consensus on these "recommendations" at the stakeholder meetings that I attended. In my opinion, the consensus of the stakeholders in the room was completely opposite to the insurance "recommendations" made in the report. As mentioned in the minutes from the meetings, the VTLA and the representatives from the insurance companies were actually in agreement on most issues, and are still in agreement to oppose these recommendations.

VTLA's recommendations and opinions have been expressed at the DMV meetings, and also with follow up letters, but none of our recommendations were followed or mentioned in the report. I am very disappointed that there was no balance in this discussion, and that there were only minor changes to the original DMV proposals after all of the stakeholder input.

Please feel free to call or email me if you would like to discuss further.



John D. Ayers

General Counsel for VTLA

jayers@vtla.com



To: Craig Whitham

Re: Property Carriers in Virginia 2016 Report

Comments from J. Christopher LaGow

CC: Rena Hussey, Richard Holcomb, Janet Smoot

Please file these comments to the draft report entitled Property Carriers in Virginia, 2016 Report, along with my email to you dated September 13, 2016 and my email and attached memo dated July 14, 2016 sent to Janet Smoot into Appendix B of this report.

As stated in my Comments filed with the TNC Report, I will focus my remarks on the insurance aspects contained in the 12/1/16 Property Carrier Report. I have been one of the insurance industry stakeholders in the process since the meetings began in June of this year.

It is apparent from the tenor of the report that DMV has wished to modernize its regulation of various property carriers currently covered in 46.2-2100 et. seq. While that may be a desirable goal in many respects, a very obvious consequence of this goal will be that the insurance buying public may pay for this in the form of higher personal auto insurance premiums, as commercial losses may be included within coverage under the personal lines automobile insurance policy, and that accident victims will be caught up in a litigation environment where insurance companies are arguing over which of their policies is applicable to cover the losses. This is all very foreseeable and avoidable. I am referring specifically to the recommendation that for vehicles under the 10,001 pound threshold, that coverage should begin to apply when the service request has been accepted and the vehicle is on the way to pick up the cargo requested to be delivered. This completely ignores the logic behind the law that Virginia passed just two years ago affecting the TNC transport of passengers. I would urge all who read these Comments to also look at Comments filed by me with respect to the TNC Study Report also dated December 1, 2016.

If one were to review the Temporary Operating Authority (TOA) dated April 18, 2016 issued by DMV to Portier, through the handouts for the June 23, 2016 stakeholder meeting, the Revised Summary of concepts and changes based on stakeholder feedback dated September 1, 2016, through the draft report dated November 16, 2016, it is abundantly apparent that within DMV, the staff has gone back and forth on the critical issues of when and whether the Livery Exclusion contained in the personal auto policy (PAP) of the driver-partner applied and at what point the commercial auto policy of Portier and others similarly situated should begin to cover claims arising out of the operation of the property transportation service.

Beginning with the April 18, 2016 TOA, insurance requirements were found in paragraphs 2 (g) and (h). I will call this position #1 of the agency. The TOA requires Portier to maintain or verify that each driver-partner maintains a liability policy with stated limits of coverage “while the driver-partner is providing property transportation services.” Since that time, Portier has been maintaining a liability policy that covers liabilities arising out of the provisions of property transportation services, because there is no policy approved for use in Virginia at present that one of the driver-partners even could maintain that would provide such coverage. See Comments to TNC Report and the TNC Report itself.

Implicit in the April 18, 2016 TOA in subsection 2 (h), is recognition that the Livery Exclusion will result in a denial of coverage under the driver-partner’s personal auto policy. The TOA requires that the PTNC Portier provides coverage beginning with the first dollar of a claim, if for “any reason” the insurance maintained by the driver-partner does not provide coverage. This is extremely similar to the provision in the TNC Act, section 46.2-2099.52(E).

The TOA was a disappointment to the insurance industry because it did not take the opportunity to draw the easy parallels between the transportation of passengers under existing law, and the proposed transportation of personal property by this new business model of one of the two principal TNC companies. In the TNC setting, it is incumbent upon the TNC company to verify that any policy of the driver-partner upon which they are relying in order to meet their insurance obligations, must “specifically” cover liabilities arising from the operation of the TNC partner vehicle. The length of time that the 4/18/16 TOA is going to be in effect will necessarily include many automobile liability claims arising out of PTNC operations. It would have been rather easy for the TOA to have lifted analogous provisions from the TNC Act to establish exactly what type of coverage was required, and when such coverage necessarily began. The terms in the TNC Act were very specifically defined.

By the meeting held on June 23, 2016, amongst the various stakeholders, DMV summarized their conclusions with regard to the Livery Exclusion and the transportation of property. The key points noted by DMV were “the Livery Exclusion likely applies to property carriage, and that they anticipated seeking a solution that fills the potential gap in coverage triggered by the Livery Exclusion.” How they could also find that they did not know if property carriage using a TNC-like business model would be regarded as “the indiscriminate holding out” for public use, is beyond comprehension, since property carriage for anyone, at anytime from anyplace to another meets the common sense definition of indiscriminate holding out for public use. I will call this Position #2. Please note that on the point where DMV said that they would seek to find a solution to fill the insurance coverage gap, that by the date of the draft report in November they had reversed themselves from their September position.

By September, in their Revised Summary, DMV properly filled the gap by saying that the PTNC and other motor carriers that employed the use of a digital platform to arrange transportation services and dispatch drivers on demand, that “the insurance must cover any time a driver is logged into the digital platform and is available to provide property transportation services, any time the property being moved for compensation is in the vehicle, and any time the driver has accepted a transportation service request through the digital platform and is en route to pick up the property.”

This is entirely consistent with and logically follows the TNC insurance provisions in 46.2-2099.52. I will call this Position #3.

Fast forward two months to the November 16, 2016 draft report, where DMV states that the coverage will apply “when the service request has been accepted and the vehicle is en route to pick up the property, and remains in force until the property has been removed from the vehicle and delivered to the final destination.” You have to ask yourself, how does this “fill the gap on insurance coverage” that they said was a key point in the June 23 handout? This was Position #4.

Going back to the 11/16/16 draft report, DMV indicated that their staff had reviewed the types of cargo being transported, the vehicles being used, and the methods in which customers arrange transportation through these companies or individuals. I would just note that the type of cargo delivered or the method arranging transport has nothing to do with a determination of whether the Livery Exclusion applies and whether the personal auto policy (PAP) or the commercial auto policy of the business operator (BAP) is responsible for liability claims arising out of the latter’s business activities. The personal auto policy of the driver should never be called upon to pay claims arising out of the commercial context! It is not priced to pay for commercial losses. The wrong policy decision on this one issue will adversely affect all constituents that insure their vehicles in Virginia.

One thing to note about the business models of the new companies using mobile platforms, is that the driver closest to the pickup point of the personal property to be delivered, gets the request to make the delivery. Unless they live next door to one of the retailers or restaurants with whom they have contracts to make deliveries, they will not be the driver-partner who gets pinged. Thus, it is my understanding that these drivers are constantly driving from one delivery point to the next in order to put themselves in position to be pinged for the next delivery request. Otherwise, the driver-partner cannot earn a fee.

On page 18 of the draft report, under the recommendations for property carriers in Virginia, the report states that “the study group recommends requiring insurance for all vehicles transporting property for hire based on the weight of the vehicle, but adapting insurance

requirements to new business models that have created the need for insurance to alternate between personal and commercial policies.” You have to ask yourself, when do we know that the driver for the new business model is using his vehicle on an indiscriminate basis to offer his services to the public? It is the same time that we determined in the TNC setting (and in the 9/1/16 Revised Summary) that when the app has been turned on and the driver is announcing his availability to use his vehicle to provide the company’s commercial service. In the context of liability exposure, it really does not matter whether the transportation service is to pick up and deliver a passenger, or pick up and deliver a bag of groceries or some other personal property. It is the use of the vehicle in the furtherance of the business interest that increases the risk of loss, losses that are not intended to ever be covered under the personal auto policy.

At this point, please go to the direct link (<https://www.ispot.tv/ad/Au3e/uber-earning-chilling#>) for an Uber TV commercial that recently began airing. This ad says it all! “Driving with Uber lets you go from earning ... to working ... to chilling at the push of a button.” The ad shows the driver pushing the “go online” button as he indicates he is “earning.” It is all done from behind the wheel. A transcript of the ad is attached.

On page 19 and 20, a mention is made about the qualification for personal property tax relief on certain vehicles, including PTNC partner vehicles. The report on page 20 unfortunately conflates the presumption of personal use for such vehicles with a GVWR of 7,500 pounds or less, for personal property tax purposes, with the timing of the commercial insurance. That presumption has nothing whatsoever to do with the legal responsibility for claims arising while using the vehicle to transport property for compensation.

The risk of loss and liability exposure arising from the use of a vehicle to transport property for compensation does not start when the service request has been accepted. Conceptually, this PTNC operation begins at exactly the same point in time that it does for TNC’s governed under chapter 20—when the driver logs onto the digital platform. Again, see the ad and attached transcription.

The section entitled “Livery Exclusion” starts at page 21 of the draft report. I would say that the discussion about this issue began in June, was followed up by my July 14 email and memo to DMV and continued at every opportunity thereafter. At the risk of being somewhat redundant, I would urge the reader to again read the Comments to the TNC report filed by me.

There is not a single appellate court decision anywhere in the United States that has held that the Livery Exclusion only applies to the transport of passengers, or that it does not apply to the transport of property. No case was cited by the new model property carriers to either effect. If I find one that cuts against my argument, I will produce it.

The mere mention by DMV of the “pizza delivery” case cited by the property carriers, is frankly appalling. In that case, the phrase “Livery Exclusion” was mentioned in the procedural headnote of the proceeding, but the sole issue before the court was over which insurer had primary or excess coverage! Neither the lower court or the Virginia Supreme Court said that the Livery Exclusion did not apply in the case of a person delivering pizza or making food delivery, as was represented by Uber representatives at the stakeholder meeting and as is recited in this report. DMV further stated that the new property carriers “cited the fact that a person at home could be available for service, but not actually on the road engaged in commerce.” This statement absurdly ignores the reality of the app based business models, where the partner driver who is closest to the point of pickup of the personal property (or the passenger in the case of the TNC’s) is the driver-partner who gets pinged. There is actually a link to various blogs written by driver-partners around the country (See <http://therideshareguy.com/what-to-make-of-the-2016-uber-hourly-guarantees/>), none of whom indicate that they are sitting at home waiting for their app to ping them. Their vehicle is the most important tool in their commercial toolbox, and without it there is no commerce.

As stated in my Comments to the TNC Report, 35 states plus Virginia apparently agreed with the assertions made by the insurance industry that commercial insurance coverage for TNC operations began when the driver-partner logged onto the digital platform, all since March, 2015.

At the top of page 22 of the report, DMV concluded that it was “unclear whether the (Livery Exclusion) applies to a hybrid service, where a vehicle is operated both for commercial and private purposes.” This is a complete misread and mischaracterization of the Livery Exclusion and of the service. The service itself is not a hybrid service. The Livery Exclusion applies when a private passenger vehicle is engaged in commercial activities, for a fee. When use of the vehicle is strictly private, the Livery Exclusion does not apply. Commercial transportation service is anything but a “hybrid service.” It is entirely commercial.

There are a few other things to point out to the reader about these new business models. First, as mentioned in the TNC Report, DMV has registered in the first fifteen months of the TNC law some 144,000 plus vehicles in Virginia; nearly half of which have Virginia license plates. It is assumed that many of the drivers who are engaged in the transport of personal property, will also be engaged in the transport of passengers. In the passenger transport business, when that driver is logged onto the digital platform, the insurance requirements of 46.2-2099.52 will apply in their entirety. Having different insurance requirements for the transport of property makes no sense whatsoever when the liability exposure risks are identical in each instance.

I am grateful that the study group recommends incorporating similar provisions as contained in the TNC statute mentioned above, into the proposed property carrier statute. These are important protections for the public, the insurers, and the PTNC's.

In conclusion, businesses that hold themselves out as being ready, willing, and able to transport any property, anywhere, for anyone on an indiscriminate basis, for a fee, and who use automobiles owned or operated by their driver-partners, will find the driver's personal auto policy to be unavailable to them to pay any claims due to the Livery Exclusion and/or the additional other exclusions found in the personal auto policy when the driver is engaged in activity covered by any of those exclusions. They need to be required to carry auto insurance that "specifically covers property transport network company activity." The rules regarding liability insurance for these new sharing economy business models transporting property need to be the same as those constructed in 2015 for the transport of passengers for the protection of the public.

The draft legislation attached to this report needs to be amended in 46.2-2143.1(A) to reflect the app on app off timeframe reflected in the TNC legislation passed in 2015. It is unclear in the new proposed 46.2-2143(A)(b) what is intended by that language. It is inconsistent with similar provisions contained in the TNC Act. In subsection (b) in 46.2-2143.2, that needs to be amended to require a verification that the policy is maintained by the other person, and that it specifically covers liabilities arising from PTNC operations. That latter term should be defined as it is in the TNC Act. Subsection (c) should also be amended to reflect the correct timeframe and recognition of the Livery Exclusion's applicability. In subsection (f), it is recommended that that language be amended to include any case where the driver-partner's insurance has denied coverage. That seems to be the intent; it needs to be stated more clearly.

For the sake of consistency and clarity, it is recommended that new definitions in Chapter 21 be added for the following terms: Digital Platform, Operation of a PTNC partner vehicle, Prearranged Transport, PTNC insurance, PTNC partner, PTNC partner vehicle, and Property Transportation network company. Analogous definitions are found in Chapter 20 of Title 46.2 and can be easily adapted.

Thank you for the opportunity to provide these Comments.

Sincerely,

J. Christopher LaGow

Uber TV Commercial “Earning/Chilling” Aired November 2016

Direct link: <https://www.ispot.tv/ad/Au3e/uber-earning-chilling#>

[Opens with actor driving car as Uber Driver]

Uber Driver: These days, everyone needs a side hustle. And driving with Uber lets you go from earning ...

[Uber Driver selects “Going offline” button on Uber app on smartphone, poses in chemistry classroom]

... to working

[Uber Driver playing pool in basement with friends]

... to chilling at the push of a button.

[Uber Driver resumes driving car, while already driving Uber Driver pushes “Go online” button on Uber app, app is shown updating driver’s status.]

Earning.

[Uber Driver plays with dog]

Chilling.

[Uber Driver seen driving vehicle again]

Earning.

[Uber Driver plays guitar at home]

Chilling.

[Uber Driver is again driving car, camera focuses on Uber app, shows an “Instant Pay” screen with “Cash Transferred” message with a large green checkmark clearly visible as Uber Driver receives \$325.80.]

Earning.

[Uber Driver is shown sleeping on couch, daughter is awake next to him, speaks next line]

Daughter: Chilling.

[Uber Driver is again seen driving vehicle, car stops, passenger wearing wedding dress hops in back seat]

Uber Driver: Earning.

Passenger: Go go go!

Uber Driver: Uh, seatbelt.

Passenger: Okay, alright, please go!

[Camera zooms out to show view of road and message]

Voice: Get your side hustle on. Sign up at uber.com/drivenow.

Memo Regarding Transport of Property/Livery Exclusion

Morris v. Butney (dba Northwoods Delivery Service) Court of Appeals of Wisconsin (1999) (Case No. 99-0873) is a very illustrative case that cited a line of cases from California, Texas, Kentucky, South Dakota and Arizona.

The defendant respondent in the case operated a general delivery service, available to the public, that was in the business of “picking up and delivering essentially anything except hazardous waste and groceries.”

Defendant was driving his Jeep, transporting packages, insured under his personal auto policy (PAP) at the time of the accident. He had another vehicle insured under a commercial policy issued by a second insurer. In truth, it appears he was using both vehicles in his business. One was properly insured, while the vehicle involved in the accident was not.

The Wisconsin Court of Appeals looked at the exact same exclusion language as is found in the Virginia PAP. “We do not provide liability coverage for any ... person’s liability arising out of the ownership or operation of a vehicle while it is being used as a public or livery conveyance.” They concluded “that the term ‘public or livery conveyance’ applies to the transport for hire of things as well as people...and that the (Jeep) vehicle was additionally held out for hire to the general public.”

The Court rejected all of the cases cited by the defendant, for the proposition that the Livery Exclusion only applied to the transport of people, since the cited cases only applied to the transport of people, and the question of whether the Livery Exclusion applied to both people and things was “not an issue.”

The Wisconsin court cited: Wetzler v. State Farm Mut. Auto Ins. Co., 246 Cal App 2d 472, 474, 54 Cal Rptr 756, 757 (1966). Wetzler had relied upon: Life and Cas. Ins. Co. v. Brame, 232 Ky 63, 22 S.W.2d 439, 440 (1929). “Manifestly, a public conveyance is one that is used for transporting the public or the personal property of the public.” (Emphasis added)

See also: Allied Mut. Casualty Co. v. Milbank Mut. Ins. Co., 80 S.D. 613, 129 N.W. 2d 543 (1964); Canal Ins. Co. v. Jenco, Inc., 404 S.W. 2d 908 (Tex Civ. App. 1966); Keplinger v. Mid-Century Ins. Co., 115 Arizona 387, 565 P. 2d 893 (Ct. App. 1977). In Allied, the South Dakota Supreme Court held “that the hauling of any commodity for hire would constitute a vehicle’s use as a public conveyance.” (Emphasis added)

The Morris Court found that a consistent interpretation over time of the term “public and livery conveyance” had been addressed and applied by various courts, and concluded “that a common meaning has attached to this term—this common meaning contemplates the transport for hire of things as well as people.”

No case has been found to date that holds the livery exclusion is applicable only to the transport of passengers for a fee, or that holds that the transport of property is not within the livery exclusion.

In the *Milbank Insurance Company v. Wagemaker* case, the Minnesota Court of Appeals in a 1996 unpublished opinion, noted that various other jurisdictions “have applied public or livery conveyance exclusions uniformly whether people or goods are being transported.” (Emphasis added) They found against the insurer asserting the exclusion, however, because the insured vehicle had not been held out to the (general) public. At the time of the accident, the insured was hauling water for two friends in the bottled water business; he did not promote or advertise any kind of “hauling business.” These facts are inapposite to the Portier business model.

Where the facts have been such that the insured’s use of the vehicle was restricted to whom or what they could transport, or the route they could take, courts have construed the Livery Exclusion more narrowly and against the insurer asserting it. Their rationales were generally that the use of the vehicle at the time in question was not held out to the public for its use indiscriminately. There is a 1972 Virginia Supreme Court opinion, *Smith v. Stonewall Casualty Company* (Record No. 7692), where the Court reversed a judgment in favor of the insurer on the basis that the facts depicted ridesharing and not holding out the vehicle to the public for transporting passengers for hire and used indiscriminately to carry the public. Co-employees of the insured were being transported and expenses were being shared in that case.

Again, these exceptions do not fit with the app driven business models. The latter are commercial, for profit enterprises, that are not limited to what or for whom they will make delivery. Their commercial use of the TNC operator’s personal vehicle is not an infrequent or isolated use. It is not done to help out a friend or neighbor. It is habitual commercial activity, that will be routinely excluded from coverage under the PAP of the TNC operator.

The Livery Exclusion is reasonable on its face, and the insurer could have declined to enter into the insurance contract unless the insured agreed their car would not be used at any time to carry goods or passengers for compensation. It is commonly known that premiums for insurance used for commercial purposes are higher than premiums on cars used for pleasure, based upon the risk exposure the former entails. The terms of the contract dictate the rate charged.

The Massachusetts Division of Insurance issued a Consumer Alert in 2014 that sums up their interpretation of the livery exclusion as it applies to the ridesharing programs. “The best advice to insureds about insurance coverage for any arrangement ... where they use their personal vehicle for transporting passengers for hire may be that the insured should expect that the only coverage available will be what coverage the ... ride sharing program they plan to use may provide, if any.” That same sentiment will apply equally to the transport of property, things, commodities or freight.

In determining whether certain facts fall within the livery exclusion, one question to ask is whether the transportation or carriage of property is a regular and repetitive endeavor, or is it a casual and occasional endeavor. It is abundantly clear that Uber/Portier and other transportation service providers are in this property transport business to earn profits, and that their goal must be to transport property on a regular and repetitive basis. Geographically speaking, their reach is limited only to intrastate transport within a 50 mile radius from the location where the property is initially received by the Driver/Partner. Anyone with an app and a credit card can use this service. It is beyond question that their business model falls squarely within the term “public or livery conveyance” as that term has been uniformly interpreted in various state appellate courts and that coverage for claims while so engaged will be denied under the terms of the PTNC’s driver’s personal auto policy.

Inevitably, there will be auto accidents and liability claims arising for personal injury and property damage from the new business models currently in place. To protect the public victims from having to endure endless declaratory judgment actions between the transportation service operator’s personal auto policy and any commercial policy that may exist, clear lines of responsibility and accountability need to be drawn into a statutory framework, not unlike what Virginia and most states have done since 2014 with the transport of passengers for a fee in privately owned or rented vehicles.

For your convenience, please see the attached summary of cases from across the country.

I look forward to being a part of those discussions with all the relevant stakeholders.

Definitions: “Public or livery conveyance use”

From: Insurance and Risk Management Glossary

“The transporting of people and/or goods for hire, such as by ... a delivery service. This coverage is excluded under the personal auto policy (PAP). A ... delivery service would need a business auto policy (BAP)”

From: US Legal Home

“The term livery of conveyance refers to the transporting of people or goods for hire. It includes conveyance by ... or delivery service.”

From: Merriam Webster

“Livery: (4) the art of delivering legal possession of property.”

Summary of Livery Exclusion Cases

No cases have been overturned

- Niemeyer v. W. Res. Mut. Cas. Co., 2010 Ohio 1710 (Ohio App. 4/19/2010), 2010 Ohio 1710 (Ohio App., 2010)
 - Cited 12 times, no negative treatment
- Morris v. Buttney, 606 N.W.2d 626, 232 Wis.2d 462, 2000 WI App 23 (Wis. App., 1999)
 - Cited 25 times, no negative treatment
- Pender v. United States (1994)
 - Cited 40 times, no negative treatment, discussed by Morris v. Buttney
- Aetna Casualty & Surety Company v. Rosezene Davis and Clarence Cohen, Jr. (1992)
 - Cited 23 times, no negative treatment
- U.S. Fidelity and Guar. Co. v. American Interinsurance Exchange, 718 S.W.2d 955 (Ky. App., 1986)
 - Cited 13 times, no negative treatment, discussed by Pender v. U.S.
- Keplinger v. Mid-Century Ins. Co., 565 P.2d 893, 115 Ariz. 387 (Ariz. App., 1977)
 - Cited 46 times, no negative treatment, discussed by Morris v. Buttney
- Eason v. Weaver, 402 F.Supp. 508 (S.D. Ga., 1974)
 - Cited 70 times, examined by 2 appellate briefs (cannot access), no negative treatment
- Smith, et al. v. Stonewall Casualty Company 212 Va. 765 (1972)
 - Cited 16 times, cited by Eason v. Weaver, Keplinger v. Mid-Century, mentioned by U.S Fidelity v. American Interinsurance
- American Fidelity Fire Ins. Co. v. Pardo, 299 N.Y.S.2d 521, 32 A.D.2d 536 (N.Y.A.D. 2 Dept., 1969)
 - Cited 47 times, no negative treatment,
- Canal Ins. Co. v. Gensco, Inc., 404 S.W.2d 908 (Tex.Civ.App.-San Antonio, 1966)
 - Cited 35 times, no negative treatment, discussed by Morris v. Buttney, cited by Milbank v. Wagemaker
- Wetzler v. State Farm Mut. Auto. Ins. Co., 54 Cal.Rptr. 756, 246 Cal.App.2d 472 (Cal. App. 2 Dist., 1966)
 - Cited 10 times
 - Discussed by Morris v. Buttney: “Buttney focuses on the language regarding the "carrying of passengers for hire" to support his interpretation of the term's applicability. However, the cases Buttney cites deal exclusively with situations in which people, as opposed to things, were being transported.¹ Any reference to the transportation of property in these cases would therefore have been extraneous, as the question of whether the "public or livery conveyance" exclusion applied to both people and things was not at issue. See Wetzler v. State Farm Mut. Auto. Ins. Co., 246 Cal.App.2d 472, 474, 54 Cal.Rptr. 756, 757 (Cal. App.2d 1966). **The Wetzler court, in contrast, was faced with the specific issue of whether a public or livery conveyance exclusion was applicable to a common freight carrier.** See id. at 473, 54 Cal.Rptr. at 757. In determining that the exclusion language applied to freight, as well as passengers, the Wetzler court relied on Life

& Cas. Ins. Co. v. Brame, 22 S.W.2d 439, 440 (Ky. App. 1929), which defined the term "public conveyance" as follows: "Manifestly, a public conveyance is one that is used for transporting the public or the personal property of the public." See Wetzler, 246 Cal. App.2d at 475-76, 54 Cal. Rptr. at 758. As in Wetzler and Brame, where courts have addressed the issue presented in the instant case, the public or livery conveyance exclusion has been interpreted as applying to the hired transport of both people and things. See Allied Mut. Cas. Ins. Co. v. Milbank Mut. Ins. Co., 129 N.W.2d 543 (S.D. 1964); Canal Ins. Co. v. Gensco, Inc., 404 S.W.2d 908 (Tex. Civ. App. 1966); Keplinger v. Mid-Century Ins. Co., 565 P.2d 893 (Ariz. App. 1977). In Allied, the South Dakota Supreme Court held that the hauling of any commodity for hire would constitute a vehicle's use as a public conveyance. 11. The Canal court, while acknowledging the exclusion's applicability to the transport of passengers for hire, additionally recognized that the public or livery conveyance exclusion is applicable "if the insured vehicle is held out to the general public for carrying freight and is being so used."

- Lakeshore Development Corp. v. Gulf Insurance Co., 353 F.2d 163 (5th Cir., 1965)
 - Cited 18 times, no negative treatment, cited by U.S. Fidelity v. American Interinsurance, Canal Insurance v. Gensco, and mentioned in Keplinger v. Mid-Century
- Allied Mutual Casualty Co. v. Milbank Mutual Ins. Co. 129 N.W.2d 543, 80 S.D. 613 (S.D., 1964)
 - Cited 9 times, cited by Wetzler v. State Farm and Morris v. Buttney, mentioned in Milbank v. Wagemaker, no negative treatment
- Sonoco Products Company v. Travelers Indemnity Company, 315 F.2d 126 (10th Cir., 1963)
 - Cited 29 times, cited by Keplinger v. Mid-Century, Canal Ins. v. Gensco
 - Distinguished (negatively) by Seabulk Offshore v. American Home Assur.: "The primary decisions on which American Home relies to limit Seabulk's coverage are not at odds with our conclusion. First of all, American Home relies on the Tenth Circuit's decision in Sonoco Products Co. v. Travelers Indemnity Co., 315 F.2d 126 (10th Cir.1963). In Sonoco, the court observed that, under Texas law, an insurance policy does not extend any greater coverage to an additional insured than to the named insured "so as to insure such person for an unauthorized use when the named insured would not have been covered under the same circumstances." American Home's reliance on the Sonoco decision is misplaced. The Tenth Circuit there analyzed an omnibus clause of an automobile liability policy issued to a single named insured. The omnibus clause purported to extend coverage to those using the automobile with the permission of the insured, and the court recognized that, while the clause was intended to extend coverage to others, it did not alter the nature of coverage, the policy's declarations, or its exclusions. Importantly, because that dispute involved a single named insured, his coverage was synonymous with that generally provided by the policy. In this dispute, on the other hand, the Policy covers many insureds, some of which (like Dyn Marine) do not enjoy the Policy's full CGL coverage because of certain exceptions. The Exposures Footnote creates one such exception. Although the Exposures Footnote limits Dyn Marine's CGL coverage to "US Office Exposures

Only," its plain language does not limit the coverage of an additional insured such as Seabulk. Indeed, the Broad Named Insured Endorsement — containing the Exposures Footnote — does not explicitly address the scope of coverage afforded to additional insureds under the Policy. Instead, the scope of such coverage is set forth in the Additional Insured Endorsement.”

- Stanley v. American Motorists Ins. Co. (1950)
 - Cited 57 times, discussed by Pender v. U.S., cited by Lakeshore v. Gulf Insurance
 - Distinguished (negatively) by Morris v. Buttney: “As here, the insurance policy excluded coverage where "the automobile is used as a public or livery conveyance." Stanley involved the transportation of club members to a picnic for the aggregate sum of \$18 in transportation tickets. The Stanley court determined that the exclusion was inapplicable because the **vehicle was not held out to the public, but rather was available to club members only.**”
 - Distinguished (negatively) by Wetzler v. State Farm: “She cites cases, two arising in California, which not only hold that the phrase in question is not ambiguous but, on the [246 Cal.App.2d 474] contrary, assertedly determine that the subject language conveys the meaning contended for by her. It appears, however, that in all of such cases the court was not confronted with the exact situation here, namely, a conveyance of freight as against a conveyance of passengers. Thus, in each instance the insurer denied coverage under a 'public or livery conveyance' exclusion clause because the named automobile was being used to transport passengers for compensation; since the facts of each case established that the transportation, albeit for compensation, was only casual or on a selective (share-the-ride) basis, **the named automobile was not a 'public conveyance' and the exclusion did not apply.**” (Court is referring to Wetzler and Allor cases)
- Allor v. Dubay et al. (Keystone Mut. Casualty Co. of Pittsburgh, PA., Garnishee) 1947
 - Cited 46 times, including Stanley v. American Motorists, Smith v. Stonewall Casualty
 - Distinguished (negatively) by Concordia Fire Ins. Co. of Milwaukee v. Nelson: “It is our opinion that the cases cited by appellee as holding contrary to our view as here expressed, namely: Allor v. Dubay et al., 317 Mich. 281, 26 N.W.2d 772, and the cases therein cited, are not applicable to the facts here because in those cases the insured was using the car for his own individual needs and was an occupant of and in charge of the car, and while so doing was carrying others on a share the expense or share the ride plan.”
 - Distinguished (negatively) by Wetzler v. State Farm: “She cites cases, two arising in California, which not only hold that the phrase in question is not ambiguous but, on the [246 Cal.App.2d 474] contrary, assertedly determine that the subject language conveys the meaning contended for by her. It appears, however, that in all of such cases the court was not confronted with the exact situation here, namely, a conveyance of freight as against a conveyance of passengers. Thus, in each instance the insurer denied coverage under a 'public or livery conveyance' exclusion clause because the named automobile was being used to transport passengers for compensation; since the facts of each case established that the transportation, albeit for compensation, was only casual or on a selective (share-

the-ride) basis, the named automobile was not a 'public conveyance' and the exclusion did not apply.” (Court is referring to Wetzler and Allor cases)

From: [Chris Lagow](#)
To: [Whitham, Craig \(DMV\)](#)
Cc: [Holcomb, Richard \(DMV\)](#); [Hussey, Rena \(DMV\)](#); [Smoot, Janet \(DMV\)](#); [Micaela Isler \(micaela.isler@pciaa.net\)](mailto:micaela.isler@pciaa.net)
Subject: RE: Meeting Transcript
Date: Tuesday, September 13, 2016 2:52:31 PM
Importance: High

Thanks, Craig. That dictates a response from me to DMV and the other stakeholders, because of the misstatements made on a critical point in the discussion.

A number of the cases I cited had the exact same Livery Exclusion language which VA uses, and where they did my memo pointed that out back in July. It was not accurate to say that the cases I had cited contained different language than what Virginia uses in its form policy. Some did, some did not, as there is no standard form in use across the country. Since issued, those opinions have been cited in about three dozen cases, and none of them have been overturned. From our research, there appears to be no case out there that states or even suggests that the livery exclusion only applies to the transport of passengers, or that it does not apply to the transport of property. The law is not “in flux” on this issue as alleged.

By now, if you have read the case produced by the Uber team, you know that that case had nothing to do with whether the Livery exclusion applied to the transport of property. It had to do with the question of how much the two insurance companies involved on the case were required to pay on the settlement and other costs. The Va Supreme Court decision merely recited that the livery exclusion defense was thrown out by the trial court, as one of the alternative theories of the case submitted to the trial court. Fewer than 35 words, and only in the Headnotes section of the opinion, were devoted to the phrase “livery exclusion”; perhaps the Uber team did not read past the Headnotes. In the opinion itself, it states that the “sole issue is whether the coverage provided by one carrier is “excess insurance”, available only after the coverage provided by the other, which is admittedly “primary insurance”, has been exhausted. The issue turns on the language of the two policies.” 240 VA 214, at 216. The appeal itself was “limited to the issue of excess insurance”. Id.

The obvious (to all except the Uber team apparently) reason for the livery exclusion not being applicable to the pizza delivery is that it was not a public conveyance subject to the Exclusion language. The delivery driver worked for the pizzeria, and delivered just that one product for his employer as an incident of his employment, as opposed to holding himself out to the general public as being ready, willing and able to transport any property , anywhere , for anyone on an indiscriminate basis, for a fee. This is the conduct that triggers the livery exclusion in the personal auto policy.

Nothing we do on this matter should allow or foster commercial auto losses to be included within the paid losses under the personal auto policy.

The case is simply inapplicable to the question of whether the exclusion does or does not apply to the transport of property in any timeframe of the Uber business model, and certainly it adds absolutely nothing to the question of whether insurance should be required in the Period 1 timeframe. Promoting it as if it did seems disingenuous at best, and an intellectually dishonest attempt to obscure the issue, to the detriment of the stakeholders not familiar with the case. The case handed out could not stand for the proposition that the issue was “in flux” as stated at the meeting, and it flatly said nothing about the livery exclusion not being applicable to “food delivery” as alleged. Those comments about the case reveal a lack of understanding about the issues actually involved in the opinion, and the implications of that case to the issues we were considering completely escape me. The case in question has neither been cited nor followed since 1990.

I have copied Rena, Janet and the Commissioner on this. Please feel free to circulate it to the other stakeholders. Thank you for your consideration of this request.

Chris

From: [Judy Swystun](#)
To: [Whitham, Craig \(DMV\)](#)
Cc: [Charles R. Duvall Jr.](#); [Charlie King](#); [Trip Perrin](#); [Robert Werth](#)
Subject: Re: TNC Report
Date: Monday, November 28, 2016 5:26:22 PM

Craig,

Thank you for the report. It was well done - thorough and well researched. Also, the DMV has been very good throughout the years about including various stakeholders in the process of legislative changes and taking their concerns and recommendations into account. We commend this approach, which is again evident in this report.

My only comment is regarding the statement on Page 19 under *Stimulus for Additional Regulatory Change*: “The current classification system dates back to the days of heavy economic regulation, and the different authority types largely serve to segregate the marketplace and protect the different classes of service providers.” I feel that this does not accurately reflect the history of motor carrier regulations in the Commonwealth. Just as the TNC statutes may now be revised so have the other motor carrier laws throughout the years, with the focus remaining throughout on consumer protection, including satisfaction of the public’s interests in understanding and choosing among the different types of services provided, in preserving the benefits of fair competition, and in there being adequate enforcement to ensure the safety and reliability of those services. To ascribe all of this to economic protectionism risks diminishing the beneficial purposes for which these regulations have been developed and have evolved.

Again, thank you for the opportunity to comment on the TNC report.

Sincerely,

Judy Swystun
President
Black and White Cabs
6304 Sewells Point Rd.
Norfolk, Va. 23513
(757) 853-1844

November 28, 2016

Rena Hussey
Assistant Commissioner
Commonwealth of Virginia
Department of Motor Vehicles
2300 West Broad Street
Post Office Box 27412
Richmond, VA 23269

Dear Ms. Hussey:

I write on behalf of Portier, LLC (“Portier”), in response to the Department of Motor Vehicles’ (“DMV’s”) request for comment on its 2016 draft report on Property Carriers in Virginia. Portier generally supports DMV’s efforts to modernize the regulatory framework for property carriers in the Commonwealth and thanks the DMV for its work and consideration on this matter.

Portier is particularly supportive of the draft legislation’s treatment of property carriers in an equitable manner, rather than treating them differently based on the means of dispatch. Additionally, Portier is supportive of this legislation’s approach to reduce existing and outdated requirements while also not placing new, unnecessary regulatory burdens on property carriers.

Notwithstanding our belief that the legislative revisions proposed by the DMV generally accomplish the goal of simplifying the regulatory structure while maintaining important consumer protections, we support additional clarification and expansion of exemptions. Specifically, within §46.2-2143.1, insurance requirements are delineated for personal vehicles that are en route to pick-up property or transporting property. The insurance limits for passenger vehicles with a GVWR of 7,500 lbs. or less are proposed at 50/100/25. While we suggest that a better approach is to tie the insurance amount for vehicles in this class to the Commonwealth’s minimum financial responsibility for personal autos, we believe that a requirement at 50/100 25 is generally reasonable.

Within §46.2-2143.2, efforts are made to clarify which insurance policies can and will provide coverage for the transportation of property. Most of these subsections borrow heavily from language in the Virginia TNC statute. We believe that property transportation is fundamentally different from passenger transportation, and that this section is unnecessary and confusing. If DMV is persuaded that there are genuine areas of concern that can be clarified by this section, then a better approach would be to utilize language from national models that were developed subsequent to the passage of the Virginia TNC law and that have been agreed to by

both the TNCs and the insurance industry. If, however, it is DMV's desire to maintain consistency on this issue of insurance policy applicability with the TNC statutes, then we suggest revisions to the proposed language that we believe clarify the roles and obligations of the parties involved in insuring this activity. Our suggestions are forthcoming.

Once again, thank you for the opportunity to review and provide comment on these proposed legislative changes. We appreciate the chance to work constructively with the Department of Motor Vehicles to protect consumers while fostering new and innovative business models that unlock economic potential for the Commonwealth.

Sincerely,



Emily Madavo

November 29, 2016

Rena Hussey
Assistant Commissioner
Commonwealth of Virginia
Department of Motor Vehicles
2300 West Broad Street
Post Office Box 27412
Richmond, VA 23269

Dear Ms. Hussey:

I write on behalf of Portier, LLC (“Portier”), to supplement Portier’s November 28, 2016 response to the Department of Motor Vehicles’ request for comment on its 2016 draft report on Property Carriers in Virginia.

Consistent with the Department’s stated goal of reducing unnecessary regulatory burdens, Portier suggests deleting proposed § 46.2-2143.2 in its entirety. As Portier has previously asserted, the requirements contained in this proposed section are unnecessary with regard to transport of property. The insurance requirements set forth in proposed § 46.2-2143.1 are sufficient to ensure that motor carriers maintain adequate coverage either through their own policies or through coverage that companies such as Portier purchase for motor carriers.

If the Department feels that additional requirements are, in fact, necessary, Portier proposes that the Department replace the proposed language in § 46.2-2143.2 with current language from national TNC models that were developed subsequent to the passage of the Virginia TNC law and that have been agreed to by both the TNCs and the insurance industry. Sample language is included at Appendix I for the Department’s consideration.

Once again, thank you for the opportunity to review and provide comment on these proposed legislative changes.

Sincerely,

/s/

Emily Madavo

APPENDIX I

A. The provisions of this section shall apply only to insurance covering motor carriers exempt under clause 6 of §46.2-2101.

B. The insurance requirements as set forth in §46.2-1243.1 may be satisfied by a policy of insurance that recognizes that an owner, driver, or motor carrier engages in the transportation of property, and may be satisfied by any of the following:

- a. Insurance maintained by a motor carrier;
- b. Insurance maintained by another person on behalf of a motor carrier; or
- c. Any combination of subdivisions a and b.

C. If insurance maintained by a person other than a motor carrier to satisfy the requirements of §46.2-2143.1 has lapsed or does not provide the required coverage, insurance maintained by the motor carrier shall provide the coverage required by §46.2-2143.1 beginning with the first dollar of a claim and shall have the duty to defend such claim.

D. Coverage under an insurance policy that qualifies under subsection B of this section to satisfy the requirements of §46.2-2143.1 shall not be dependent on a personal automobile insurance policy first denying a claim, nor shall a personal automobile insurance policy be required to first deny a claim.

E. Any insurance required by subsection B of §46.2-2143.1 shall satisfy the financial responsibility requirement for a motor vehicle under §46.2-706 during the period such vehicle is being operated for, in conjunction with, or on behalf of a motor carrier.

F. Any insurance required by subsection B of §46.2-2143.1 may be placed with an insurer that has been admitted in Virginia or with an insurer providing surplus lines insurance as defined in §38.2-4805.2.

G. Any person, or an attorney acting on his behalf, who suffers a loss in an automobile accident with a reasonable belief that the accident involves a vehicle operated in connection with a motor carrier and who provides the motor carrier with the date, approximate time, and location of the accident, and if available the name of the driver and if available the accident report, may request in writing from the motor carrier information relating to the insurance coverage and the company providing the coverage. The motor carrier shall respond electronically or in writing within 30 days. The motor carrier's response shall contain the following information: (i) whether, at the approximate time of the accident, the vehicle was being operated for the motor carrier; (ii) the name of the insurance carrier providing primary coverage; and (iii) the identity and last known address of the driver.

H. Insurers that write automobile insurance in Virginia may exclude any and all coverage afforded under the policy issued to an owner or operator of a personal vehicle for any loss or injury that occurs while an owner, driver, or motor carrier is engaged in activities under subsection A of §46.2-2143.1. This right to exclude coverage may apply to any coverage included in an automobile insurance policy, including, but not limited to:

- a. Liability coverage for bodily injury and property damage;
- b. Uninsured and underinsured motorist coverage;
- c. Medical payments coverage;
- d. Comprehensive physical damage coverage; and
- e. Collision physical damage coverage.

Nothing in this section implies or requires that a personal automobile insurance policy provide coverage while a driver is engaged in activities under subsection A of §46.2-2143.1. Nothing in this section shall be construed as to require an insurer to use any particular policy language or reference to this section in order to exclude any and all coverage for any loss or injury that occurs while a driver is engaged in activities under subsection A of §46.2-2143.1. Nothing shall be deemed to preclude an insurer from providing primary or excess coverage for activities under subsection A of §46.2-2143.1 if it chose to do so by contract or endorsement.

Automobile insurers that exclude coverage pursuant to this subsection shall have no duty to defend or indemnify any claim expressly excluded thereunder. Nothing in this section shall be deemed to invalidate or limit an exclusion contained in a policy, including any policy in use or approved for use in Virginia prior to the enactment of this section that excludes coverage for vehicles engaged in activities under subsection A of §46.2-2143.1.

An automobile insurer that defends or indemnifies a claim against a driver that is excluded under the terms of its policy shall have a right of contribution against other insurers that provide automobile insurance to the same driver in satisfaction of the coverage requirements of subsection B of §46.2-2143.1.



Property Casualty Insurers
Association of America

Advocacy. Leadership. Results.

Micaela Isler
Assistant Vice President,
State Government Relations

November 28, 2016

Mr. Craig Whitham
Virginia Department of Motor Vehicles
P.O. Box 27412
Richmond, VA 23269

Dear Mr. Whitham,

The Property Casualty Insurers Association of America ("PCI") has been the leading advocate for rules that support innovation and establish clarity on insurance issues for sharing economy participants. Clarity is particularly important when the commercial activity involves use of a motor vehicle, where long standing policy language excludes coverage for accidents when the vehicle is available for hire. PCI members, whom together write 42 percent of the auto insurance in Virginia representing \$2.3 billion in direct written premium, believes that the same basic rules that have supported innovation and the growth of Transportation Network Companies (TNC's) in Virginia, should also apply to property carriers that use digital platforms similar to those used by TNC's.

Because the nature of the risk changes once a driver becomes available to provide transportation for hire, the Virginia legislature passed Senate Bill 1025 that requires TNC's and their drivers to have coverage in place that specifically recognizes that the driver is driving for a TNC and requires primary coverage for the entire time that the driver is available to provide transportation through the platform. Virginia was one of the first states to enact legislation with such requirements back in 2015. Other states have followed Virginia, as of today 40 states have enacted legislation putting similar requirements in place.

Unlike the other types of commercial property carriers mentioned in the DMV's report "Property Carriers in Virginia", those using a digital platform to receive assignments do not have full time commercial auto coverage. As was the case with TNC's, many will be unaware that their personal auto policies may exclude coverage whenever they make themselves available for hire, i.e. to accept a service request.

PCI is encouraged that the Virginia Department of Motor Vehicles (DMV) proposed legislation for property carriers applies most of the same requirements as are in place for TNC's, however there are three key elements missing that will leave drivers exposed should they get in an accident while available to accept a delivery. First, the required liability coverage must specifically cover the commercial activity, or recognize that the vehicle is being used to provide motor carrier services.

Second, the proposed legislation requires that liability insurance coverage need only apply when a service request is accepted until the cargo is delivered to its final destination will create a same gap in coverage that existed prior to enactment of the TNC law. As is the case for TNC's, the driver that is closest to the source of the service request gets the assignment, so delivery drivers will position themselves to give themselves the best chance to get the request.

And finally, because these type of motor carriers may not be aware that their personal auto policy may not provide any coverage when they are available to provide motor carrier services, a clear disclosure of the coverage provided by the platform operator and that a personal auto policy may not provide any coverage should be provided before they become eligible to receive requests in the platform.

To address these missing elements, PCI recommends the following changes to the bill draft:

- Use definitions that are comparable to and consistent with those contained in the TNC law (Section 46.2-2000).
- Revise section 46.2-2143.1 A. to close the gap in coverage while a driver is available, but has not yet accepted a request for service as follows:

A. All motor carriers shall keep in force at all times insurance, a bond, or bonds in an amount required by this section. However, motor carriers exempt under clause 6 of § 46.2-2101 shall only be required to keep in force insurance, a bond, or bonds in an amount required by this section that provides primary coverage for any period of time the motor carrier or a person acting for or on behalf of the motor carrier is available to accept a request to transport property.

- Revise Section 46.2-2143.2 A to require that the insurance coverage specifically recognize that the driver is provided motor carrier services:

The provisions of this section shall apply only to motor carriers exempt under clause 6 of §46.2-2101 and insurance maintained by those carriers pursuant to this article. Such insurance shall be primary and recognize that the motor carrier is providing motor carrier services or otherwise uses a vehicle to transport property for compensation and covers the driver for any period of time the motor carrier or a person acting for or on behalf of the motor carrier is available to accept a request to transport property. This requirement may be satisfied by any of the following:

- a. Insurance maintained by the motor carrier;
- b. Insurance maintained by another person on behalf of the motor carrier; or
- c. Any combination of subdivisions a and b.

- Because many drivers will be unaware that their personal auto policy does not provide coverage for providing motor carrier services, incorporate a disclosure requirement similar to TNC law in section 46.2-2143 requiring that drivers receive notice of the insurance coverage being provided for them, and that their personal auto policy might not provide any coverage while they are available to accept a request to transport property.

Under the legislation passed in 2015, TNC's have flourished in Virginia, by making these changes to the proposed legislation, we can have the same outcome for this innovative type of on demand delivery services. As always, please do not hesitate to contact me if you have questions or would like to discuss our recommendations further at 404-844-8230 or at Micaela.isler@pciaa.org.

Sincerely,

Micaela Isler

From: [Allen Kidd](#)
To: [Whitham, Craig \(DMV\)](#)
Cc: [Kevin Logan](#)
Subject: FW: Uber
Date: Tuesday, November 29, 2016 4:10:56 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)
[image007.png](#)

<http://mm1.lettermark.net/snllaw/lhead/snllaw.gif>

Mr. Whitham,

Please see the below from Mr. Logan.

Thank you,

Allen Kidd

From: Kevin Logan
Sent: Tuesday, November 29, 2016 3:58 PM
To: Ccraig.whitham@dmv.virginia.gov

Cc: Rooks, Sam <Sam.Rooks@vafb.com>; Wells, Darlene <Darlene.Wells@vafb.com>; J. Christopher LaGow <chris@lagowlobby.com>; Dorinda Davidson <ddavidson@snllaw.com>; Allen Kidd <akidd@snllaw.com>
Subject: Uber

Dear Mr. Whitham,

I represent Virginia Farm Bureau Mutual Insurance Company, I have reviewed the comment submitted by Mr. Christopher Lagow with my client and they have instructed me to advise you that they concur with the comments of Mr. Lagow and would like to adopt them and ask that you consider them when addressing this issue.

Thank you for time.

Kevin V. Logan



Ryan Black
Legal Process Manager
Maplebear Inc., d/b/a Instacart
50 Beale Street, Suite 600
San Francisco, CA 94105

+1.415.737.9269 (direct)
ryan.black@instacart.com

November 29, 2016

VIA EMAIL (PATRICK.HARRISON@DMV.VIRGINIA.GOV)

Commonwealth of Virginia
Department of Motor Vehicles
Attn: Patrick Harrison
2300 West Broad Street
P.O. Box 27412
Richmond, VA 23269-0001

Re: *Property Carriers in Virginia 2016 Report*

Dear Mr. Harrison:

Maplebear Inc. (d/b/a Instacart) (“Instacart”) submits this letter in response to the Property Carriers in Virginia 2016 Report recently circulated for comment by the Virginia Department of Motor Vehicles (the “DMV”).

The DMV has proposed that property transportation network carriers like Instacart, which operate solely through a fleet of low-weight passenger vehicles owned by independent contractor driver-partners (each a “PTNC”), be subjected to requirements similar to those contained in Virginia Code §46.2-2099.52 (the “TNC Law”). Instacart respectfully objects to this recommendation, specifically to those provisions that require a PTNC to maintain primary insurance on vehicles operated by its independent contractor delivery drivers (each a “Driver-Partner”) and require the PTNC’s insurance carrier to defend all claims irrespective of whether the Driver-Partner’s personal insurance has first declined coverage.

An important distinction between the activities conducted by a traditional transportation network company (a “TNC”) versus those conducted by a PTNC lies in the fact that TNCs transport human passengers. By comparison, the average dollar value of the goods transported by Instacart is under \$100 per delivery. It is Instacart’s understanding that the intent of the TNC Law is to provide additional assurances of safety for passengers who choose to be personally transported in a TNC vehicle. Unlike TNCs, PTNCs do not transport passengers, but only limited amounts of property. More limited insurance requirements are therefore appropriate. The existing requirement for a PTNC to procure and maintain secondary insurance is adequate and provides significant additional coverage for vehicles driven in connection with a PTNC.

Requiring PTNCs like Instacart to obtain primary insurance coverage to transport inexpensive goods places an undue burden on the business operations of the PTNC and would make the Commonwealth of Virginia a prohibitively expensive place for PTNCs to operate. Moreover, certain Instacart competitors who operate

both as a TNC and a PTNC would receive an unreasonable advantage by the proposed law, given any carrier also operating as a TNC would have already procured adequate coverage under the existing TNC Law.

The insurance guidelines issued as part of the DMV's temporary operating authority pilot program sufficiently ensure the safe transport of goods across the Commonwealth and protect its citizens. Instacart respectfully requests that the DMV withdraw its recommendation to subject PTNCs to insurance provisions more appropriately directed at companies involved in the transport of human passengers.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'R. Black', written in a cursive style.

Ryan Black
Legal Process Manager
of MAPLEBEAR INC. (d/b/a Instacart)

Appendix C: Draft Legislation

1 **HOUSE BILL NO. _____/**
2 **SENATE BILL NO. _____**
3

4 *A BILL to amend and reenact §§ 46.2-613.1, 46.2-711, 46.2-2100, 46.2-2101, 46.2-2108.2, 46.2-*
5 *2108.4, 46.2-2108.5, 46.2-2108.6, 46.2-2109, 46.2-2115, 46.2-2118, 46.2-2120, 46.2-2121,*
6 *46.2-2122, 46.2-2124, 46.2-2125, 46.2-2126, 46.2-2129, 46.2-2130, 46.2-2131, 46.2-2132,*
7 *46.2-2133, 46.2-2134, 46.2-2135, 46.2-2136, 46.2-2137, 46.2-2138, 46.2-2139, 46.2-2140,*
8 *46.2-2143, 46.2-2143.1, and 46.2-2144 of the Code of Virginia; to amend the Code of Virginia*
9 *by adding in Article 1 of Chapter 21 of Title 46.2 two sections numbered 46.2-2121.1 and 46.2-*
10 *2143.2; and to repeal §§ 46.2-2108.3, 46.2-2174, 46.2-2175, and 46.2-2176 of the Code of*
11 *Virginia, relating to the transportation of property for compensation.*
12

13 **Be it enacted by the General Assembly of Virginia:**

14 **1. That §§ 46.2-613.1, 46.2-711, 46.2-2100, 46.2-2101, 46.2-2108.2, 46.2-2108.4, 46.2-2108.5,**
15 **46.2-2108.6, 46.2-2109, 46.2-2115, 46.2-2118, 46.2-2120, 46.2-2121, 46.2-2122, 46.2-2124,**
16 **46.2-2125, 46.2-2126, 46.2-2129, 46.2-2130, 46.2-2131, 46.2-2132, 46.2-2133, 46.2-2134, 46.2-**
17 **2135, 46.2-2136, 46.2-2137, 46.2-2138, 46.2-2139, 46.2-2140, 46.2-2143, 46.2-2143.1, and**
18 **46.2-2144 of the Code of Virginia are amended and reenacted and that the Code of Virginia**
19 **is amended by adding in Article 1 of Chapter 21 of Title 46.2 two sections numbered 46.2-**
20 **2121.1 and 46.2-2143.2 as follows:**
21

22 **§ 46.2-613.1. Civil penalty for violation of license, registration, and tax requirements and**
23 **vehicle size limitations.**
24

25 A. A civil penalty of \$250 and a processing fee of \$20 shall be levied against any person who
26 while at a permanent weighing station:
27

28 1. Operates or permits the operation of a truck or tractor truck with a gross weight greater than
29 7,500 pounds, a trailer, or a semitrailer owned, leased, or otherwise controlled by him on any
30 highway in the Commonwealth unless (i) it is registered, (ii) a certificate of title therefor has
31 been issued, and (iii) it has displayed on it the license plate or plates and decal or decals required
32 by this title.
33

34 2. Operates or causes to be operated on any highway in the Commonwealth any motor vehicle
35 that is not in compliance with the Unified Carrier Registration System authorized under 49
36 U.S.C. § 14504a, enacted pursuant to the Unified Carrier Registration Act of 2005, and the
37 federal regulations promulgated thereunder.
38

39 3. Operates or permits the operation of any truck or tractor truck for which the fee for registration
40 is prescribed by § 46.2-697 on any highway in the Commonwealth (i) without first having paid
41 the registration fee hereinabove prescribed or (ii) if at the time of operation the gross weight of
42 the vehicle or of the combination of vehicles of which it is a part is in excess of the gross weight
43 on the basis of which it is registered. In any case where a pickup truck is used in combination
44 with another vehicle, the civil penalty and processing fee shall be assessed only if the combined
45 gross weight exceeds the combined gross weight on the basis of which each vehicle is registered.
46

47 4. (i) Fails to declare a motor vehicle to be operated for hire when required by § 46.2-2121.1 or
48 obtain a proper registration card, identification marker, or other evidence of registration as
49 required by this Chapterchapter 21 (§ 46.2-2100 et seq.); (ii) operates or causes to be operated on
50 any highway in the Commonwealth any motor vehicle that does not carry the proper registration
51 and identification marker required by Chapter 21 (§ 46.2-2100 et seq.) or any motor vehicle that
52 does not required by this title, display an identification marker issued for the vehicle by the
53 Department in the manner prescribed by the Department, or display any other identifying
54 information as prescribed by the Department or required by this Titletitle requires it to display;
55 or (iii) operates or causes to be operated on any highway in the Commonwealth any motor
56 vehicle requiring registration cards or identification markers from the Department after such
57 registration cards or identification markers have been revoked, canceled, or suspended.

58
59 5. (i) Fails to obtain a proper registration card, identification marker, or other evidence of
60 registration required by Chapter 27 (§ 58.1-2700 et seq.) of Title 58.1 or the terms and provisions
61 of the International Fuel Tax Agreement, as amended by the International Fuel Tax Association,
62 Inc.; (ii) operates or causes to be operated on any highway in the Commonwealth any motor
63 vehicle that does not carry the proper registration and identification marker required by Chapter
64 27 (§ 58.1-2700 et seq.) of Title 58.1 or the terms and provisions of the International Fuel Tax
65 Agreement, as amended by the International Fuel Tax Association, Inc., or any motor vehicle
66 that does not display an identification marker or other identifying information as prescribed by
67 the Department or required by Title 58.1 or the terms of the International Fuel Tax Agreement,
68 as amended by the International Fuel Tax Association, Inc.; or (iii) operates or causes to be
69 operated on any highway in the Commonwealth any motor vehicle requiring registration cards or
70 identification markers from the Department after such registration cards or identification markers
71 have been revoked, canceled, or suspended.

72
73 6. Operates or causes to be operated on any highway in the Commonwealth any truck or tractor
74 truck or combination of vehicles exceeding the size limitations of Articles 14 (§ 46.2-1101 et
75 seq.), 15 (§ 46.2-1105 et seq.), 16 (§ 46.2-1112 et seq.), and 18 (§ 46.2-1139 et seq.) of Chapter
76 10.

77
78 B. Upon collection by the Department, civil penalties levied pursuant to subdivisions A 1 and A
79 3 through A 5 shall be paid into the Commonwealth Transportation Fund, but civil penalties
80 levied pursuant to subdivisions A 2 and A 6 and all processing fees levied pursuant to this
81 section shall be paid into the state treasury and shall be set aside as a special fund to meet the
82 expenses of the Department of Motor Vehicles.

83
84 **§ 46.2-711. Furnishing number and design of plates; displaying on vehicles required.**

85
86 A. The Department shall furnish one license plate for every registered moped, motorcycle,
87 autocycle, tractor truck, semitrailer, or trailer, and two license plates for every other registered
88 motor vehicle, except to licensed motor vehicle dealers and persons delivering unladen vehicles
89 who shall be furnished one license plate. The license plates for trailers, semitrailers, commercial
90 vehicles, and trucks, other than license plates for dealers, may be of such design as to prevent
91 removal without mutilating some part of the indicia forming a part of the license plate, when
92 secured to the bracket.

- 93
94 B. The Department shall issue appropriately designated license plates for:
95
96 1. Passenger-carrying vehicles for rent or hire for the transportation of passengers for private
97 trips, other than TNC partner vehicles as defined in § 46.2-2000 and emergency medical services
98 vehicles pursuant to clause (iii) of § 46.2-649.1:1;
99
100 2. Taxicabs;
101
102 3. Passenger-carrying vehicles operated by common carriers or restricted common carriers;
103
104 4. Property-carrying motor vehicles ~~to applicants who operate as private carriers only~~ registered
105 pursuant to § 46.2-697, except pickup or panel trucks as defined in § 46.2-100;
106
107 5. Applicants, other than TNC partners as defined in § 46.2-2000 and emergency medical
108 services vehicles pursuant to clause (iii) of § 46.2-649.1:1, who operate motor vehicles as
109 passenger carriers for rent or hire;
110
111 6. Vehicles operated by nonemergency medical transportation carriers as defined in § 46.2-2000;
112 and
113
114 7. Trailers and semitrailers.

115
116 C. The Department shall issue appropriately designated license plates for motor vehicles held for
117 rental as defined in § 58.1-1735.

118
119 D. The Department shall issue appropriately designated license plates for low-speed vehicles.
120

121 E. No vehicles shall be operated on the highways in the Commonwealth without displaying the
122 license plates required by this chapter. The provisions of this subsection shall not apply to
123 vehicles used to collect and deliver the United States mail to the extent that their rear license
124 plates may be covered by the "CAUTION, FREQUENT STOPS, U.S. MAIL" sign when the
125 vehicle is engaged in the collection and delivery of the United States mail.
126

127 ~~F. Pickup or panel trucks are exempt from the provisions of subsection B with reference to~~
128 ~~displaying for hire license plates when operated as a carrier for rent or hire. However, this~~
129 ~~exemption shall not apply to pickup or panel trucks subject to regulation under Chapter 21 (§~~
130 ~~46.2-2100 et seq.).~~

131
132 **§ 46.2-2100. Definitions.**
133

134 Whenever used in this chapter, unless expressly stated otherwise:
135

136 "Authorized insurer" means, in the case of an interstate motor carrier whose operations may or
137 may not include intrastate activity, an insurer authorized to transact business in any one state, or,

138 in the case of a solely intrastate motor carrier, an insurer authorized to transact business in the
139 Commonwealth.

140
141 ~~"Broker" means any person not included in the term "motor carrier" and not a bona fide~~
142 ~~employee or agent of any such carrier, who, as principal or agent, sells or offers for sale any~~
143 ~~transportation subject to this chapter, or negotiates for, or holds himself out by solicitation,~~
144 ~~advertisement, or otherwise as one who sells, provides, furnishes, contracts, or arranges for such~~
145 ~~transportation.~~

146
147 ~~"Bulk commodity" means any non-liquid, non-gaseous commodity shipped loose or in~~
148 ~~mass/aggregate and which in the loading and unloading thereof is ordinarily shoveled, scooped,~~
149 ~~forked, or mechanically conveyed or which is not in containers or in units of such size to permit~~
150 ~~piece by piece loading and unloading.~~

151
152 ~~"Bulk property carrier" means any person, not herein exempted, who undertakes either directly~~
153 ~~or by lease, to transport exclusively bulk commodities, as defined, for compensation including~~
154 ~~for purposes of this section for hire tow truck operations.~~

155
156 "Certificate of fitness" means a certificate issued by the Department to certain "household goods
157 carriers" under this chapter.

158
159 "Constructive weight" means a measurement of seven pounds per cubic foot of properly loaded
160 van space.

161
162 ~~"Courier service" means a motor carrier that engages, directly or by lease, exclusively in the~~
163 ~~transportation of letters, envelopes, negotiable or nonnegotiable instruments, or other documents~~
164 ~~or papers for compensation.~~

165
166 "Department" means the Department of Motor Vehicles.

167
168 "Financial responsibility" means the ability to respond in damages for liability thereafter incurred
169 arising out of the ownership, maintenance, use, or operation of a motor vehicle, in the amounts
170 provided for in this chapter.

171
172 "Gross weight" means the weight of a truck after a shipment has been loaded.

173
174 "Highway" means every public highway or place of whatever nature open to the use of the public
175 for purposes of vehicle travel in this Commonwealth, excluding the streets and alleys in towns
176 and cities.

177
178 "Household goods" means personal effects and property used or to be used in a dwelling, when
179 transported or arranged to be transported (i) between residences or (ii) between a residence and a
180 storage facility with the intent to later transport to a residence. Transportation of the goods must
181 be arranged and paid for by, or on behalf of, the householder a part of the equipment or supplies
182 of such dwelling, and similar property if the transportation of such effects or property is (i)
183 arranged and paid for by the householder, including transportation of the property from a factory

184 ~~or store when the property is purchased by the householder with intent to use it in his dwelling or~~
185 ~~(ii) arranged and paid for by another party.~~

186
187 "Household goods carrier" means a ~~restricted common~~ carrier who undertakes, whether directly
188 or by a lease or other arrangement, to transport "household goods," as herein defined, by motor
189 vehicle for compensation, on any highway in this Commonwealth, between two or more points
190 in this Commonwealth, whether over regular or irregular routes.

191
192 ~~"Identification marker" means a decal or other visible identification issued by the Department to~~
193 ~~show (i) that the operator of the vehicle has registered with the Department for the payment of~~
194 ~~the road tax imposed under Chapter 27 (§ 58.1-2700 et seq.) of Title 58.1, (ii) proof of the~~
195 ~~possession of a certificate or permit issued pursuant to Chapter 21 (§ 46.2-2100 et seq.) of this~~
196 ~~title, and/or (iii) proof of compliance with the insurance requirements of this chapter.~~

197
198 "Interstate" means the transportation of property between states.

199
200 "Intrastate" means the transportation of property solely within a state.

201
202 ~~"License" means a license issued by the Department to a broker.~~

203
204 "Motor carrier" means any person who undertakes whether directly or by a lease, to transport
205 property, including household goods, as defined by this chapter, for compensation over the
206 highways of the Commonwealth.

207
208 "Motor vehicle" means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by
209 mechanical power and used upon the highways in the transportation of property, but does not
210 include any vehicle, locomotive or car operated exclusively on a rail or rails.

211
212 "Net weight" means the tare weight subtracted from the gross weight.

213
214 "Permit" means a permit issued by the Department authorizing the transportation of property,
215 excluding household goods transported for a distance greater than 30 road miles.

216
217 "Person" means any individual, firm, copartnership, corporation, company, association or joint-
218 stock association, and includes any trustee, receiver, assignee, or personal representative thereof.

219
220 "Property carrier" means any person, not herein exempted, who undertakes either directly or by a
221 lease, to transport property for compensation.

222
223 ~~"Restricted common carrier" means any person who undertakes, whether directly or by a lease or~~
224 ~~other arrangement, to transport household goods by motor vehicle for compensation whether~~
225 ~~over regular or irregular routes.~~

226
227 "Services" and "transportation" includes the services of, and all transportation by, all vehicles
228 operated by, for, or in the interest of any motor carrier, irrespective of ownership or contract,
229 express or implied, together with all facilities and property operated or controlled by any such

230 carrier or carriers and used in the transportation of property or in the performance of any service
231 in connection therewith.

232
233 ~~"Single state insurance receipt" means any receipt issued pursuant to 49 C.F.R. Part 367~~
234 ~~evidencing that the carrier has the required insurance and paid the requisite fees to the~~
235 ~~Commonwealth and other qualified jurisdictions.~~

236
237 "Tare weight" means the weight of a truck before being loaded at a shipper's residence or place
238 of business, including the pads, dollies, hand-trucks, ramps and other equipment normally used
239 in the transportation of household goods shipments.

240
241 **§ 46.2-2101. Exemptions from chapter.**

242
243 The following are exempt from this chapter:

244
245 1. Motor vehicles owned and operated by the United States, District of Columbia, any state,
246 municipality, or any other political subdivision of the Commonwealth.

247
248 2. Transportation of property between any point in this Commonwealth and any point outside
249 this Commonwealth or between any points wholly within the limits of any city or town in the
250 Commonwealth. This exemption shall not apply to the requirement to declare for hire operation
251 pursuant to § 46.2-2121.1 or the insurance requirement imposed on motor carriers pursuant to §
252 46.2-2143.1.

253
254 3. Motor vehicles controlled and operated by a bona fide cooperative association as defined in
255 the Federal Marketing Act, approved June 15, 1929, as amended, or organized or existing under
256 Article 2 (§ 13.1-312 et seq.) of Chapter 3 of Title 13.1, while used exclusively in the conduct of
257 the business of such association. This exemption shall not apply to the requirement to declare for
258 hire operation pursuant to § 46.2-2121.1.

259
260 4. Motor vehicles while used exclusively in (i) carrying newspapers, water, livestock, poultry,
261 poultry products, buttermilk, fresh milk and cream, meats, butter and cheese produced on a farm,
262 fish (including shellfish), slate, horticultural or agricultural commodities (not including
263 manufactured products thereof), and forest products, including lumber and staves (but not
264 including manufactured products thereof), (ii) transporting farm supplies to a farm or farms, (iii)
265 hauling for the Department of Transportation, (iv) carrying fertilizer to any warehouse or
266 warehouses for subsequent distribution to a local area farm or farms, or (v) collecting and
267 disposing of trash, garbage and other refuse. This exemption shall not apply to the requirement to
268 declare for hire operation pursuant to § 46.2-2121.1.

269
270 5. Motor vehicles used for transporting property by an air carrier or carrier affiliated with a direct
271 air carrier whether or not such property has had or will have a prior or subsequent air movement.
272 This exemption shall not apply to the requirement to declare for hire operation pursuant to §
273 46.2-2121.1.

274

275 6. Motor carriers exclusively operating ~~vehicles with a registered gross weight of 7,500 pounds~~
276 ~~or less for the sole purpose of providing courier service~~ passenger cars, motorcycles, autcycles,
277 mopeds, and vehicles with a gross vehicle weight rating of 10,000 pounds or less. This
278 exemption shall not apply to the insurance requirements imposed on motor carriers pursuant to
279 §§ 46.2-2143.1 or 46.2-2143.2.

280

281 **§ 46.2-2108.2. Necessity of a ~~license, permit, or certificate.~~**

282

283 It shall be unlawful for any person to operate, offer, advertise, provide, procure, furnish, or
284 arrange ~~by contract, agreement or arrangement~~ to transport property for compensation on an
285 intrastate basis as a motor carrier ~~or broker~~ without first obtaining from the Department a ~~license,~~
286 ~~permit,~~ or certificate of fitness as required by this chapter.

287

288 **§ 46.2-2108.4. Application; notice requirements.**

289

290 A. Applications for a ~~license, permit, or certificate of fitness~~ or renewal of a ~~license, permit, or~~
291 ~~certificate of fitness~~ under this chapter shall be made to the Department and contain such
292 information as the Department shall require. Such information shall include, in the application or
293 otherwise, the matters set forth in §§ 46.2-2133 and 46.2-2134 as grounds for denying ~~licenses,~~
294 ~~permits,~~ and certificates.

295

296 B. The applicant for a certificate of fitness issued under this chapter shall cause a notice of such
297 application, on the form and in the manner prescribed by the Department, to be served on every
298 affected person who has requested notification.

299

300 **§ 46.2-2108.5. Registered for fuels tax; business, professional, and occupational license**
301 **taxes.**

302

303 ~~License, p~~Permit, and certificate of fitness holders shall be licensed and registered in accordance
304 with the road tax requirements of Chapter 27 (§ 58.1-2700 et seq.) of Title 58.1 and licensed for
305 payment of local business, professional, and occupational license taxes of Chapter 37 (§ 58.1-
306 3700 et seq.) of Title 58.1 as required.

307

308 **§ 46.2-2108.6. Considerations for determination of issuance of ~~license, permit, or~~**
309 **certificate.**

310

311 In determining whether a ~~license, permit, or certificate of fitness~~ required by this chapter shall be
312 issued, the Department may, among other things, consider compliance with financial
313 responsibility, bonding and other requirements of this chapter.

314

315 **§ 46.2-2109. Action on applications; hearings on denials and protests.**

316

317 A. The Department may act upon any application required under this chapter without a hearing,
318 unless such application is protested by any party based upon fitness allegations. Parties may
319 protest an application by submitting written grounds to the Department setting forth (i) a precise
320 statement of the party's objections to the application being granted; (ii) a full and clear statement

321 of the facts that the person is prepared to provide by competent evidence; (iii) the case number
322 assigned to the application; and (iv) a certification that a copy of the protest was sent to the
323 applicant. The Department shall have full discretion as to whether a hearing is warranted based
324 on the merits of any protest filed.

325
326 B. Any applicant denied without a hearing an original ~~license or certificate of fitness under~~
327 ~~subsection A, or any request for a transfer for such license or certificate,~~ shall be given a hearing
328 at a time and place determined by the Commissioner or his designee upon the applicant's written
329 request for such hearing made within thirty days of denial.

330
331 **§ 46.2-2115. Determination for issuance of ~~license, permit, or certificate.~~**

332
333 If the Department finds the applicant has met all requirements of this chapter, it shall issue a
334 ~~license, permit, or certificate of fitness~~ to the applicant, subject to such terms, limitations and
335 restrictions as the Department may deem proper.

336
337 **§ 46.2-2118. Issuance, expiration, and renewal of ~~license, permit, and certificate.~~**

338
339 All ~~licenses, permits, and certificates of fitness~~ issued under this chapter shall be issued for a
340 period of twelve consecutive months except, at the discretion of the Department, the periods may
341 be adjusted as necessary. Such ~~licenses, permits, and certificates~~ shall expire if not renewed
342 annually. Such expiration shall be effective thirty days after the Department has provided the
343 ~~licensee, permittee, or certificate holder~~ notice of non-renewal. If the ~~license, permit, or~~
344 ~~certificate~~ is renewed within thirty days after notice of non-renewal, then the ~~license, permit, or~~
345 ~~certificate~~ shall not expire.

346
347 **§ 46.2-2120. Filing and application fees.**

348
349 Every applicant for an original ~~license or certificate of fitness~~ issued under this chapter ~~and~~
350 ~~transfer of a license or certificate of fitness under this chapter~~ shall, upon the filing of an
351 application, deposit with the Department, as a filing fee, a sum in the amount of fifty dollars. The
352 Department shall collect a fee of three dollars for the issuance of a duplicate ~~license or certificate~~
353 of fitness.

354
355 **§ 46.2-2121. Vehicle fees.**

356
357 Every person who operates a property carrying vehicle for compensation over the highways of
358 the Commonwealth, ~~unless such operation is exempted from this chapter,~~ shall be required to pay
359 an annual fee of \$10 for each such vehicle so operated, unless (i) such operation is exempted
360 from this chapter; (ii) the property carrying vehicle is a passenger car, motorcycle, autocycle,
361 moped, or vehicle with a gross vehicle weight rating of 10,000 pounds or less; (iii) a vehicle
362 identification marker fee has been paid to the Department as to such vehicle for the current year
363 under the provisions of Chapter 27 (§ 58.1-2700 et seq.) of Title 58.1. Such fee shall be paid
364 through the single state registration system established pursuant to 49 U.S.C. § 14504 and 49
365 CFR Part 367 or; or (iv) a fee has been paid for the vehicle through the unified carrier
366 registration system established pursuant to 49 U.S.C. § 14504a and the regulations promulgated

367 thereunder for carriers registered pursuant to those provisions. No more than one vehicle fee
368 shall be charged or paid as to any vehicle in any one year under Chapter 27 (§ 58.1-2700 et seq.)
369 of Title 58.1 and this chapter, including payments made pursuant to the ~~single state registration~~
370 ~~system or the unified carrier registration system.~~

371
372 **§ 46.2-2121.1. Declaration of for hire operation; presumption of nonbusiness use.**
373

374 Before any motor vehicle is used by a motor carrier to transport property for compensation over
375 the highways of the Commonwealth, the owner of the vehicle shall declare to the Department
376 that the operation of such vehicle is for hire.
377

378 Any passenger car, motorcycle, autocycle, or pickup or panel truck, as defined in § 46.2-100,
379 subject to this section that is determined pursuant to the provisions of Chapter 35.1 (§ 58.1-3523
380 et seq.) of Title 58.1 to be (i) privately owned, (ii) leased pursuant to a contract requiring the
381 lessee to pay the tangible personal property tax on such vehicle, or (iii) held in a private trust for
382 nonbusiness purposes and that is registered with the Department as a personal vehicle shall be
383 presumed to be used for nonbusiness purposes for the purpose of determining whether it is a
384 qualifying vehicle under § 58.1-3523 absent clear and convincing evidence to the contrary, and
385 any declaration pursuant to this section shall not create any presumption of business or
386 commercial use of the vehicle or of business activity on the part of the vehicle owner, lessee, or
387 operator, for purposes of any state or local requirement.
388

389 **§ 46.2-2122. Bond and letter of credit requirements of applicants for license and certificate.**
390

391 A. Every applicant for an original certificate of fitness under this chapter shall obtain and file
392 with the Department, along with the application, a surety bond or an irrevocable letter of credit,
393 in addition to any other bond or letter of credit required by law, in the amount of \$50,000, which
394 shall remain in effect for the first five years of licensure. The bond or letter of credit shall be in a
395 form and content acceptable to the Department. The bond or letter of credit shall be conditioned
396 on a statement by the applicant that the applicant will not practice fraud, make any fraudulent
397 representation, or violate any provision of this chapter in the conduct of the applicant's business.
398 The Department may, without holding a hearing, suspend the certificate of fitness during the
399 period that the certificate holder does not have a sufficient bond or letter of credit on file.
400

401 ~~B. Every applicant for an original license pursuant to Article 5 (§ 46.2-2174 et seq.) shall obtain~~
402 ~~and file with the Department, along with the application, a surety bond or an irrevocable letter of~~
403 ~~credit, in addition to any other bond or letter of credit required by law, in the amount of \$25,000.~~
404 ~~The bond or letter of credit shall be in a form and content acceptable to the Department. The~~
405 ~~bond or letter of credit shall be conditioned on a statement by the applicant that the applicant will~~
406 ~~not practice fraud, make any fraudulent representation, or violate any provision of this chapter in~~
407 ~~the conduct of the applicant's business. The Department may, without holding a hearing, suspend~~
408 ~~the license during the period that the licensee does not have a sufficient bond or letter of credit~~
409 ~~on file.~~
410

411 ~~€B.~~ If a person suffers any of the following: (i) loss or damage in connection with the
412 transportation service by reason of fraud practiced on him or fraudulent representation made to

413 him by a ~~licensee or~~ certificate holder or his agent or employee acting within the scope of
414 employment; (ii) loss or damage by reason of a violation by a ~~licensee or~~ certificate holder or his
415 agent or employee of any provision of this chapter in connection with the transportation service;
416 or (iii) loss or damage resulting from a breach of a contract entered into on or after the effective
417 date of this act, that person shall have a claim against the ~~licensee or~~ certificate holder's bond or
418 letter of credit, and may recover from such bond or letter of credit the amount awarded to such
419 person by final judgment of a court of competent jurisdiction against the ~~licensee or~~ certificate
420 holder as a result of such loss or damage up to, but not exceeding, the amount of the bond or
421 letter of credit.

422
423 DC. The ~~licensee or~~ certificate holder's surety shall notify the Department when a claim is made
424 against a ~~licensee or~~ certificate holder's bond, when a claim is paid and/or when the bond is
425 canceled. Such notification shall include the amount of a claim and the circumstances
426 surrounding the claim. Notification of cancellation shall include the effective date and reason for
427 cancellation.

428
429 ED. The surety on any bond filed by a ~~licensee or~~ certificate holder shall be released and
430 discharged from all liability accruing on such bond after the expiration of 60 days from the date
431 on which the surety files with the Department a written request to be released and discharged.
432 Such request shall not operate to relieve, release, or discharge the surety from any liability
433 already accrued or that shall accrue before the expiration of the 60-day period.

434
435 **§ 46.2-2124. Notice of discontinuance of service.**

436
437 Every motor carrier ~~or broker~~ who ceases operation or abandons his rights under a ~~license,~~
438 permit, or certificate of fitness issued shall notify the Department within thirty days of such
439 cessation or abandonment.

440
441 **§ 46.2-2125. Reports, records, etc.**

442
443 A. The Department is hereby authorized to require annual, periodical, or special reports from
444 motor carriers, except such as are exempted from the operation of the provisions of this chapter;
445 to prescribe the manner and form in which such reports shall be made; and to require from such
446 carriers specific answers to all questions upon which the Department may deem information to
447 be necessary. Such reports shall be under oath whenever the Department so requires. The
448 Department may also require any motor carrier to file with it a true copy of each or any contract,
449 agreement, or arrangement between such carrier and any other carrier or person in relation to the
450 provisions of this chapter.

451
452 B. The Department may, in its discretion, prescribe (i) the forms of any and all accounts, records,
453 and memoranda to be kept by motor carriers and (ii) the length of time such accounts, records,
454 and memoranda shall be preserved, as well as of the receipts and expenditures of money. The
455 Department or its employees shall at all times have access to all lands, buildings, or equipment of
456 motor carriers used in connection with their operations and also all accounts, records, and
457 memoranda, including all documents, papers, and correspondence now or hereafter existing, and
458 kept, or required to be kept, by motor carriers. The Department and its employees shall have

459 authority to inspect and examine any and all such lands, buildings, equipment, accounts, records,
460 and memoranda, including all documents, papers, and correspondence now or hereafter existing
461 and kept or required to be kept by such carriers. These provisions shall apply to receivers of
462 carriers and to operating trustees and, to the extent deemed necessary by the Department, to
463 persons having control, direct or indirect, over or affiliated with any motor carrier.

464

465 C. ~~As used in this section the term "motor carriers" includes brokers.~~

466

467 **§ 46.2-2126. Certificate, ~~license,~~ or permit holder not relieved of liability for negligence.**

468

469 Nothing in this chapter shall relieve any holder of a certificate, ~~license,~~ or permit by and under
470 the authority of the Department from any liability resulting from his negligence, whether or not
471 he has complied with the requirements of this chapter.

472

473 **§ 46.2-2129. Unlawful use of registration and identification markers.**

474

475 It shall be unlawful for any person to operate or cause to be operated on any highway in the
476 Commonwealth any motor vehicle that (i) does not carry the proper registration and
477 identification that this title requires, (ii) does not display an identification marker issued for the
478 vehicle by the Department in such manner as is prescribed by the Department, or (iii) bears
479 registration or identification markers of persons whose ~~license, permit,~~ or certificate issued by
480 the Department has been revoked, suspended, or renewal thereof denied in accordance with this
481 chapter.

482

483 **§ 46.2-2130. Registration violations; penalties.**

484

485 A. The following violations of laws shall be punished as follows:

486

487 1. Any person who does not declare a motor vehicle to be operated for hire when required by §
488 46.2-2121.1 or otherwise obtain a proper registration card, ~~identification marker,~~ or other
489 evidence of registration as required by ~~this chapter~~ Chapter 6 (§ 46.2-600 et seq.) shall be guilty
490 of a Class 4 misdemeanor.

491

492 2. Any person who operates or causes to be operated on any highway in the Commonwealth any
493 motor vehicle that does not carry the proper registration and identification that this title requires
494 or any motor vehicle that does not display (i) an identification marker issued for the vehicle by
495 the Department in such manner as is prescribed by the Department or (ii) other identifying
496 information that this title requires it to display shall be guilty of a Class 4 misdemeanor.

497

498 3. Any person who knowingly displays or uses on any vehicle operated by him any identification
499 marker or other identification that has not been issued to the owner or operator thereof for such
500 vehicle and any person who knowingly assists him to do so shall be guilty of a Class 3
501 misdemeanor.

502

503 4. Any person who operates or causes to be operated on any highway in the Commonwealth any
504 motor vehicle requiring registration from the Department under this ~~article~~ title or Title 58.1 after

505 such registration cards or identification markers have been revoked, canceled or suspended shall
506 be guilty of a Class 3 misdemeanor.

507
508 B. The officer charging the violation under this section shall serve a citation on the operator of
509 the vehicle in violation. Such citation shall be directed to the owner, operator or other person
510 responsible for the violation as determined by the officer. Service of the citation on the vehicle
511 operator shall constitute service of process upon the owner, operator, or other person charged
512 with the violation under this article, and shall have the same legal force as if served within the
513 Commonwealth personally upon the owner, operator, or other person charged with the violation,
514 whether such owner, operator, or other person charged is a resident or nonresident.

515
516 **§ 46.2-2131. Violation; criminal penalties.**

517
518 A. Any person knowingly and willfully violating any provision of this chapter, or any rule or
519 regulation thereunder, or any term or condition of any certificate, ~~or permit, or license,~~ for which
520 a penalty is not otherwise herein provided, shall, upon conviction thereof, be fined not more than
521 \$2,500 for the first offense and not more than \$5,000 for any subsequent offense. Each day of
522 such violation shall constitute a separate offense.

523
524 B. Any person, whether carrier, ~~broker,~~ shipper, consignee, or any officer, employee, agent, or
525 representative thereof, who shall knowingly and willfully by any such means or otherwise
526 fraudulently seek to evade or defeat regulation as in this chapter provided for motor carriers ~~or~~
527 ~~brokers,~~ shall be deemed guilty of a misdemeanor and, upon conviction thereof, be fined not
528 more than \$500 for the first offense and not more than \$2,000 for any subsequent offense.

529
530 C. Any motor carrier ~~or broker,~~ or any officer, agent, employee, or representative thereof who
531 willfully fails or refuses to make a report to the Department as required by this chapter or to keep
532 accounts, records, and memoranda in the form and manner approved or prescribed by the
533 Department, or knowingly and willfully falsifies, destroys, mutilates, or alters any such report,
534 account, record or memorandum, or knowingly and willfully files any false report, account,
535 record or memorandum, shall be deemed guilty of a misdemeanor and upon conviction thereof
536 be subject for each offense to a fine of not less than \$100 and not more than \$5,000.

537
538 **§ 46.2-2132. Violations; civil penalties.**

539
540 The Department may impose a civil penalty not exceeding \$1,000 if any person has:

541
542 1. Made any misrepresentation of a material fact to obtain proper operating credentials as
543 required by this chapter or other requirements in this title regulating the operation of motor
544 vehicles;

545
546 2. Failed to make any report required in this chapter;

547
548 3. Failed to pay any fee or tax properly assessed against him; or

549

550 4. Failed to comply with any provision of this chapter or lawful order, rule or regulation of the
551 Department or any term or condition of any certificate, or permit, ~~or license~~.

552
553 Any such penalty shall be imposed by order; however, no order issued pursuant to this section
554 shall become effective until the Department has offered the person an opportunity for an
555 administrative hearing to show cause why the order should not be enforced. Instead of or in
556 addition to imposing such penalty, the Department may suspend, revoke, or cancel any ~~license,~~
557 permit, certificate of fitness, or registration card or identification marker issued pursuant to this
558 title. If, in any such case, it appears that the defendant owes any fee or tax to the Commonwealth,
559 the Department shall enter order therefor.

560
561 For the purposes of this section, each separate violation shall be subject to the civil penalty.

562
563 **§ 46.2-2133. Grounds for denying, suspending, or revoking ~~licenses or certificates~~.**

564
565 A ~~license or~~ certificate of fitness issued under this chapter may be denied, suspended, or revoked
566 on any one or more of the following grounds, where applicable:

- 567
- 568 1. Material misstatement or omission in application for ~~license or~~ certificate of ~~public~~
569 ~~convenience and necessity, identification marker, fitness~~ or vehicle registration;
 - 570
 - 571 2. Failure to comply subsequent to receipt of a written warning from the Department or any
572 willful failure to comply with a lawful order, any provision of this chapter or any regulation
573 promulgated by the Department under this chapter, or any term or condition of any ~~license or~~
574 certificate of fitness;
 - 575
 - 576 3. Use of deceptive business acts or practices;
 - 577
 - 578 4. Knowingly advertising by any means any assertion, representation, or statement of fact that is
579 untrue, misleading, or deceptive relating to the conduct of the business for which a ~~license,~~
580 certificate of fitness, ~~identification marker,~~ or vehicle registration is held or sought;
 - 581
 - 582 5. Having been found, through a judicial or administrative hearing, to have committed fraudulent
583 or deceptive acts in connection with the business for which a ~~license or~~ certificate of fitness is
584 held or sought or any consumer-related fraud;
 - 585
 - 586 6. Having been convicted of any criminal act involving the business for which a ~~license or~~
587 certificate of fitness is held or sought;
 - 588
 - 589 7. Improper leasing, renting, lending, or otherwise allowing the improper use of a ~~license,~~
590 certificate of fitness, identification marker issued by the Department, or vehicle registration;
 - 591
 - 592 8. Having been convicted of a felony;
 - 593
 - 594 9. Having been convicted of any misdemeanor involving lying, cheating, stealing, or moral
595 turpitude;

- 596
597 10. Failure to submit to the Department any tax, fees, dues, fines, or penalties owed to the
598 Department;
599
600 11. Failure to furnish the Department information, documentation, or records required or
601 requested pursuant to statute or regulation;
602
603 12. Knowingly and willfully filing any false report, account, record, or memorandum;
604
605 13. Failure to meet or maintain application certifications or requirements of character, fitness,
606 and financial responsibility pursuant to this chapter;
607
608 14. Willfully altering or changing the appearance or wording of any license, certificate,
609 identification marker issued by the Department, license plate, or vehicle registration;
610
611 15. Failure to provide services in accordance with ~~license or~~ certificate of fitness terms,
612 limitations, conditions, or requirements;
613
614 16. Failure to maintain and keep on file with the Department motor carrier liability insurance or
615 cargo insurance, issued by a company licensed to do business in the Commonwealth, or a bond,
616 certificate of insurance, certificate of self-insurance, or unconditional letter of credit in
617 accordance with this chapter, with respect to each motor vehicle operated in the Commonwealth;
618
619 17. Failure to comply with the Workers' Compensation Act of Title 65.2;
620
621 18. Failure to properly register a motor vehicle under this title;
622
623 19. Failure to comply with any federal motor carrier statute, rule, or regulation; or
624
625 20. Inactivity of a motor carrier as may be evidenced by the absence of a motor vehicle
626 registered to operate under such certificate ~~or permit~~ for a period of greater than three months.
627

628 **§ 46.2-2134. Grounds for denying, suspending, or revoking permits.**
629

630 A permit issued under this chapter may be denied, suspended, or revoked on any one or more of
631 the following grounds:
632

- 633 1. Failure to submit to the Department any tax, fees, fines, or penalties owed to the Department.
634
635 2. Failure to maintain and keep on file with the Department motor carrier liability insurance or
636 cargo insurance, issued by a company licensed to do business in the Commonwealth, or a bond,
637 certificate of insurance, certificate of self-insurance, or unconditional letter of credit in
638 accordance with this chapter, with respect to each motor vehicle operated in the Commonwealth.
639
640 3. Inactivity of a motor carrier as may be evidenced by the absence of a motor vehicle registered
641 to operate under such permit ~~or certificate~~ for a period of greater than three months.

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§ 46.2-2135. Altering or amending ~~licenses, permits, or certificates.~~

The Department may alter or amend a ~~license, permit,~~ or certificate of fitness at the request of a ~~licensee,~~ permittee, or certificate holder, or upon a finding by the Department that a ~~licensee,~~ permittee, or certificate holder failed to observe any of the provisions within this chapter, or any of the rules or regulations of the Department, or any term, condition, or limitation of such ~~license permit~~ or certificate.

§ 46.2-2136. Suspension, revocation, and refusal to renew ~~license, permit, or certificate;~~ notice and hearing.

A. Except as provided in subsection D of this section, unless otherwise provided in this chapter, no ~~license, permit,~~ or certificate of fitness issued under this chapter shall be suspended or revoked, or renewal thereof refused, unless the ~~licensee,~~ permittee, or certificate holder has been furnished a written copy of the complaint against him and the grounds upon which the action is taken and has been offered an opportunity for an administrative hearing to show cause why such action should not be taken.

B. The order suspending, revoking, or denying renewal of a ~~license, permit,~~ or certificate of fitness shall not become effective until the ~~licensee,~~ permittee, or certificate holder has, after notice of the opportunity for a hearing, had thirty days to make a written request for such a hearing. If no hearing has been requested within such thirty-day period, the order shall become effective and no hearing shall thereafter be held. A timely request for a hearing shall automatically stay operation of the order until after the hearing.

C. Notice of an order suspending, revoking, or denying renewal of a ~~license, permit,~~ or certificate of fitness and an opportunity for a hearing shall be mailed to the ~~licensee,~~ permittee, or certificate holder by registered or certified mail at the address as shown on the ~~license, permit, or~~ certificate, or other record of information in possession of the Department and shall be considered served when mailed.

D. If the Department makes a finding, after conducting a preliminary investigation, that the conduct of a ~~licensee,~~ permittee, or certificate holder (i) is in violation of this chapter or regulations adopted pursuant to this chapter and (ii) such violation constitutes a danger to public safety, the Department may issue an order suspending the ~~license, permit,~~ or certificate. Notice of the suspension shall be in writing and mailed in accordance with subsection C of this section. Upon receipt of a request for a hearing appealing the suspension, the ~~licensee,~~ permittee, or certificate holder shall be afforded the opportunity for a hearing within thirty days. The suspension shall remain in effect pending the outcome of the hearing.

§ 46.2-2137. Basis for reinstatement of suspended ~~licenses, permits, or certificates;~~ reinstatement fees.

A. The Department shall reinstate any ~~license, permit,~~ or certificate suspended pursuant to this chapter provided the grounds upon which the suspension action was taken have been satisfied

688 and the appropriate reinstatement fee and other applicable fees have been paid to the
689 Department.

690
691 B. The reinstatement fee for suspensions issued pursuant to this chapter shall be fifty dollars. In
692 the event multiple credentials have been suspended under this chapter for the same violation only
693 one reinstatement fee shall be applicable.

694
695 C. In addition to a reinstatement fee, a fee of \$500 shall be paid for failure of a motor carrier to
696 keep in force at all times insurance, a bond or bonds, in an amount required by this chapter. Any
697 motor carrier who applies for a new ~~license, permit, or certificate~~ because his prior ~~license,~~
698 ~~permit, or certificate~~ was revoked for failure to keep in force at all times insurance, a bond or
699 bonds, in an amount required by this chapter, shall also be subject to a fee of \$500.

700
701 **§ 46.2-2138. Basis for relicensure after revocation of ~~licenses, permits, or certificates~~; fees.**
702

703 The Department shall not accept an application for a ~~license, permit, or certificate~~ from an
704 applicant where such credentials have been revoked pursuant to this chapter until the period of
705 revocation imposed by the Department has passed. The Department shall process such
706 applications under the same provisions, procedures and requirements as an original application
707 for such ~~license, permit, or certificate~~. The Department shall issue such ~~license, permit, or~~
708 ~~certificate~~ provided the applicant has met all the appropriate qualifications and requirements, has
709 satisfied the grounds upon which the revocation action was taken, and has paid the appropriate
710 application or filing fees to the Department.

711
712 **§ 46.2-2139. Surrender of ~~identification marker, license plate, and registration card~~;**
713 **~~removal by law enforcement; operation of vehicle denied.~~**
714

715 A. It shall be unlawful for a ~~licensee, permittee, or certificate holder~~ whose ~~license, permit, or~~
716 ~~certificate~~ has expired or been revoked or suspended or whose renewal thereof has been denied
717 pursuant to this chapter to fail or refuse to surrender, on demand, to the Department license
718 plates, ~~identification markers,~~ and registration cards issued under this title.

719
720 B. It shall be unlawful for a vehicle owner who is not the holder of a valid permit or certificate or
721 whose vehicle is not validly leased to a motor carrier holding an active permit or certificate to
722 fail or refuse to surrender to the Department on demand license plates, ~~identification markers,~~
723 and registration cards issued under this title.

724
725 C. If any law-enforcement officer finds that a vehicle bearing Virginia license plates or
726 temporary transport plates is in violation of subsection A or B, such law-enforcement officer
727 may remove the license plate or plates, ~~identification marker,~~ and registration card. If a law-
728 enforcement officer removes a license plate, ~~identification marker,~~ or registration card, he shall
729 forward such license plate, ~~identification marker,~~ and registration card to the Department.

730
731 D. When informed that a motor carrier vehicle is being operated in violation of this section, the
732 driver shall drive the vehicle to a nearby location off the public highways and not remove it or
733 allow it to be moved until the motor carrier is in compliance with all provisions of this chapter.

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§ 46.2-2140. Title to plates ~~and markers.~~

All registration cards and ~~identification markers~~ license plates issued by the Department shall remain the property of the Department.

§ 46.2-2143. Surety bonds, insurance, letter of credit or securities required prior to issuance of registration.

No certificate of fitness, permit, ~~identification marker~~, registration card, or license plate shall be issued by the Department to any motor carrier or for any vehicle operated by or on behalf of a motor carrier until the motor carrier certifies to the Department that the vehicle is covered by one or more of the following, in the amount or amounts set forth in § 46.2-2143.1:

1. An insurance policy or bond;
2. A certificate of insurance in lieu of the insurance policy or bond, certifying that such policy or bond covers the liability of such motor carrier in accordance with the provisions of this article, is issued by an authorized insurer, or in the case of bonds, is in an amount approved by the Department. The bonds may be issued by the Commonwealth of Virginia, the United States of America, or any municipality in the Commonwealth. Such bonds shall be deposited with the State Treasurer and the surety shall not be reduced except in accordance with an order of the Department;
3. An unconditional letter of credit, issued by a bank doing business in Virginia, for an amount approved by the Department. The letter of credit shall be in effect so long as the motor carrier operates motor vehicles in the Commonwealth; or
4. In the case of a lessor who acts as a registrant for purposes of consolidating lessees' vehicle registration applications, a statement that the registrant has, before leasing a vehicle, obtained from the lessee an insurance policy, bond, or certificate of insurance in lieu of the insurance policy or bond and can make available said proof of insurance coverage upon demand.

Vehicles belonging to carriers who have filed proof of financial responsibility in accordance with the ~~single state registration system authorized by 49 U.S.C. § 14504 or the unified carrier registration system authorized by 49 U.S.C. § 14504a~~ are deemed to have fulfilled the requirements of this article for insurance purposes, ~~provided there is on board the vehicle a copy of an insurance receipt issued pursuant to the federal regulations promulgated pursuant to 49 U.S.C. § 14504 or 14504a.~~ The Department is further authorized to ~~issue single state registration system or unified carrier registration system receipts to~~ register any qualified carrier under the unified carrier registration system as well as to collect and disperse the fees for ~~and to qualified jurisdictions registration under that system.~~

§ 46.2-2143.1. Insurance requirement for motor carriers.

779 A. All motor carriers shall keep in force at all times insurance, a bond, or bonds in an amount
780 required by this section. However, motor carriers exempt under clause 6 of § 46.2-2101 shall
781 only be required to keep in force insurance, a bond, or bonds in an amount required by this
782 section that provides primary coverage from the time the motor carrier or a person acting for or
783 on behalf of the motor carrier accepts the request to transport property and the vehicle is en route
784 to pick up the property until the property has been removed from the vehicle and delivered to its
785 final destination.

786
787 B. The minimum public liability financial responsibility requirements for motor carriers
788 operating in intrastate commerce shall be based on the type and gross vehicle weight rating of the
789 vehicle, and shall be as follows: vehicles with a gross vehicle weight rating in excess of 10,000
790 pounds -- \$750,000; vehicles with a gross vehicle weight rating between 7,501 pounds and
791 10,000 pounds -- \$300,000; passenger cars, motorcycles, autocycles, and vehicles with a gross
792 vehicle weight rating of 7,500 pounds or less -- \$50,000 per person, \$100,000 per incident for
793 death and bodily injury, and \$25,000 for property damage. The minimum insurance for motor
794 carriers operating in interstate commerce shall equal the minimum required by federal law, rule,
795 or regulation.

796
797 C. Notwithstanding subsection B, the minimum public financial responsibility requirements for
798 household goods carriers required to obtain a certificate of fitness pursuant to this chapter shall
799 be \$750,000.

800
801 ~~CD.~~ The minimum cargo insurance required for motor carriers operating in intrastate commerce
802 shall be \$50,000. Motor carriers ~~not engaged exclusively in the transportation of bulk~~
803 ~~commodities in the transportation of household goods and those solely operating passenger cars,~~
804 motorcycles, autocycles, and vehicles with a gross vehicle weight rating of 7,500 pounds or less
805 shall not be required to file any cargo insurance, bond, or bonds for cargo liability.

806
807 ~~D. Any motor carrier that meets the minimum federal financial responsibility requirements and~~
808 ~~also operates in intrastate commerce may submit, in lieu of a separate filing for its intrastate~~
809 ~~operation pursuant to § 46.2-2143, proof of the minimum federal limits, provided that (i) both~~
810 ~~interstate and intrastate operations are insured, (ii) the public liability filed is at least \$750,000,~~
811 ~~and (iii) any cargo insurance requirements of this section have been met.~~

812
813 **§ 46.2-2143.2. Special insurance provisions for certain carriers.**

814
815 A. The provisions of this section shall apply only to motor carriers exempt under clause 6 of §
816 46.2-2101 and insurance maintained by those carriers pursuant to this article. Such insurance
817 shall be primary and may be satisfied by any of the following:

818
819 a. Insurance maintained by the motor carrier;

820 b. Insurance maintained by another person on behalf of the motor carrier; or

821 c. Any combination of subdivisions a and b.

822

823 B.A motor carrier may meet its obligation under subsection B of § 46.2-2143.1 through a policy
824 obtained by a person other than the carrier under subdivision b or c only if the motor carrier
825 verifies that the policy is maintained by the other person.

826
827 C.Insurers providing insurance coverage under subsection B of § 46.2-2143.1 shall have the
828 exclusive duty to defend any liability claim, including any claim against a person operating for or
829 on behalf of the carrier, arising from an accident occurring within the time period specified in
830 subsection B of § 46.2-2143.1. Neither the personal automobile insurance policy of the vehicle
831 owner or a person operating for or on behalf of the carrier shall have the duty to defend or
832 indemnify the activities performed in connection with the motor carrier, unless the policy
833 expressly provides otherwise for the period of time to which subsection B of § 46.2-2143.1 is
834 applicable or the policy contains an amendment or endorsement to provide that coverage.

835 D.Coverage under a motor carrier’s insurance policy shall not be dependent on a personal
836 automobile insurance policy first denying a claim, nor shall a personal automobile insurance
837 policy be required to first deny a claim.

838 E.Nothing in this subsection shall be construed to require a personal automobile insurance policy
839 to provide primary or excess coverage. Neither the personal automobile insurance policy of the
840 vehicle owner or a person operating for or on behalf of the carrier shall provide any coverage to
841 the person operating for or on behalf of the carrier, the vehicle owner, or any third party, unless
842 the policy expressly provides for that coverage during the period of time to which subsection B
843 of § 46.2-2143.1 is applicable or the policy contains an amendment or endorsement to provide
844 that coverage.

845 F.In every instance where motor carrier insurance maintained by a person other than the motor
846 carrier to fulfill the insurance obligations of subsection B of § 46.2-2143.1 has lapsed or ceased
847 to exist, the motor carrier shall provide the coverage required by that section beginning with the
848 first dollar of a claim.

849 G.This section shall not limit the liability of a motor carrier arising out of an accident involving
850 a person operating for or on behalf of the carrier in any action for damages against a motor
851 carrier for an amount above the required insurance coverage.

852 H.Any person, or an attorney acting on his behalf, who suffers a loss in an automobile accident
853 with a reasonable belief that the accident involves a vehicle operated in connection with a motor
854 carrier and who provides the motor carrier with the date, approximate time, and location of the
855 accident, and if available the name of the driver and if available the accident report, may request
856 in writing from the motor carrier information relating to the insurance coverage and the company
857 providing the coverage. The motor carrier shall respond electronically or in writing within 30
858 days. The motor carrier’s response shall contain the following information: (i) whether, at the
859 approximate time of the accident, the vehicle was being operated for the motor carrier; (ii) the
860 name of the insurance carrier providing primary coverage; and (iii) the identity and last known
861 address of the driver.

862 I. Any insurance required by subsection B of § 46.2-2143.1 may be placed with an insurer
863 that has been admitted in Virginia or with an insurer providing surplus lines insurance as defined
864 in § 38.2-4805.2.

865 J. Any insurance policy required by subsection B of § 46.2-2143.1 shall satisfy the financial
866 responsibility requirement for a motor vehicle under § 46.2-706 during the period such vehicle is
867 being operated for or on behalf of a motor carrier.

868 K. In a claims coverage investigation, a motor carrier and its insurer shall cooperate with insurers
869 involved in the claims coverage investigation to facilitate the exchange of information, including
870 the dates and times of any accident involving a vehicle operated for or on behalf of the carrier
871 and the precise times that the vehicle was being operated for or on behalf of the motor carrier.

872

873 **§ 46.2-2144. Policies or surety bonds to be filed with the Department and securities with**
874 **State Treasurer.**

875

876 A. Each motor carrier shall keep on file with the Department proof of an insurance policy or
877 bond in accordance with this article. Record of the policy or bond shall remain in the files of the
878 Department six months after the certificate of fitness, registration card, license plate,
879 ~~identification marker~~ or permit is canceled for any cause. If federal, state, or municipal bonds are
880 deposited with the State Treasurer in lieu of an insurance policy, the bonds shall remain
881 deposited until six months after the registration card, license plate, certificate, or permit ~~or~~
882 ~~identification marker~~ is canceled for any cause unless otherwise ordered by the Department.

883

884 B. The Department may, without holding a hearing, suspend a permit or certificate of fitness if
885 the permittee or certificate holder fails to comply with the requirements of this section.

886

887 **2. That §§ 46.2-2108.3, 46.2-2174, 46.2-2175, and 46.2-2176 of the Code of Virginia are**
888 **repealed.**

889

900 **3. That the provisions of this act shall become effective on October 1, 2017.**

Appendix D: Temporary Operating Authority

Operating Guidelines for Temporary Operating Authority

The Department of Motor Vehicles hereby grants temporary authority pursuant to Item 433 of the 2016 Amendments to the 2015 Appropriations Act, and contingent on Item 442 of the 2016 Appropriations Act, to (insert name), to operate as a Property Transportation Network Company ("PTNC"). Such temporary authority authorizes (insert name) to contract with third parties ("Driver-Partners") who use passenger cars or pickup trucks to transport property for a fee or donation and to connect Driver-Partners to persons seeking a property transportation service via (insert name) digital platform.

The temporary authority is effective (insert date) 2016, and shall remain in effect, unless suspended or revoked and contingent on Item 442 of the 2016 Appropriations Act, until 130 days following the adjournment of the 2017 regular session of the General Assembly. This temporary authority extends only to property transportation service on an intrastate basis.

The Department shall have the authority to immediately suspend or revoke this temporary authority if (insert name) or its Driver-Partners have been found to have violated any term or operating guideline of the temporary authority and (insert name), in the sole judgment of the Department, has failed to take corrective action after being notified of the required action.

The following operational guidelines provide a framework to ensure public safety and transparency. (insert name) and (insert name) Driver-Partners shall abide by the guidelines at all times the temporary authority is in effect.

1. Definitions:

- a. "DMV" or "the Department" means the Department of Motor Vehicles of the Commonwealth of Virginia.
- b. "Property Transportation Network Company" or "PTNC" means a person, as defined in *Va. Code* § 46.2-2100, who transports property for compensation on an intrastate basis utilizing a digital platform that connects persons seeking a property transportation service with persons authorized by the PTNC to transport property.
- c. "Driver-Partner" means an individual authorized by a PTNC to use a Partner Vehicle to provide prearranged property transportation service on an intrastate basis in the Commonwealth.
- d. "Partner Vehicle" means a passenger car or pickup truck having a registered gross weight of 7,500 pounds or less used by a Driver-Partner to provide property transportation service requested through a PTNC's digital platform.
- e. "Property transportation service" means the transportation of property by a

Driver-Partner using a Partner Vehicle and includes the time commencing when the service request has been accepted by a Driver-Partner and the vehicle is in route to pick-up the property and concluding when the property has been removed from the vehicle, and delivered to the final destination.

2. The following operating requirements shall be applicable to (insert name):
 - a. (insert name) shall maintain a registered agent in the Commonwealth of Virginia.
 - b. (insert name) shall not contract or enter into any agreement to provide prearranged property transportation services with a property carrier licensed under and operating pursuant to Chapter 21 of Title 46.2.
 - c. (insert name) may offer service for compensation, no charge, or suggested compensation.
 - d. Prior to permitting an individual to act as a Driver-Partner, (insert name) shall determine that each Driver-Partner possesses a valid driver's license and proof of valid vehicle registration, and is at least 18 years of age.
 - e. Prior to permitting an individual to act as a Driver-Partner, (insert name), or a third party on behalf of (insert name), shall obtain and review a driving history research report from the Commonwealth of Virginia or the state of licensure for such individual.
 - f. Driver-Partners operating pursuant to this temporary authority who also wish to provide Transportation Network Company services pursuant to Article 15, Chapter 20 of Title 46.2 of the *Code of Virginia* cannot provide such services unless they meet the requirements set forth in Article 15.
 - g. (insert name) shall maintain or verify that each Driver-Partner maintains a liability insurance policy or policies that provide liability coverage of at least \$50,000 per person and at least \$100,000 per accident, and at least \$25,000 for property damage per accident while the Driver-Partner is providing property transportation services.
 - h. In every instance where the insurance maintained by a Driver-Partner to provide the coverage required by paragraph 2(g) has lapsed, ceased to exist, or for any reason does not provide coverage, insurance maintained by (insert name) shall provide the required coverage beginning with the first dollar of a claim.
 - i. (insert name) shall keep on file with the Department proof of an insurance policy maintained by the PTNC in accordance with paragraphs 2(g) and 2(h). Such proof shall be submitted on a Form E insurance filing from (insert name) insurer.
 - j. (insert name) and its Driver-Partners shall not transport an item of property to a

final destination more than 50 miles from the location where the property is initially received by the Driver-Partner.

- k. (insert name) and its Driver-Partners shall not transport household goods, as defined in *Va. Code* § 46.2-2100, a distance more than 30 miles from the location where the household goods are initially received by the Driver-Partner.
- l. (insert name) and its Driver-Partners shall not transport property for which purchase by a consumer is legally restricted. Notwithstanding this provision, (insert name) and its Driver-Partners may transport beer and wine under an agreement with a single merchant provided (insert name) and any applicable permittee have obtained all required permits or authorizations for the intrastate delivery and transport of beer and wine. In the event the single merchant operates multiple locations the transportation of beer and wine from any of the various locations shall be allowed provided all required permits or authorizations have been obtained. Any transportation of beer and wine pursuant to this section shall be subject to any regulations or conditions imposed by the Virginia Department of Alcoholic Beverage Control (“VABC”), including but not limited to any age, invoicing, record retention, or reporting requirements that may be imposed by VABC on (insert name) and its Driver-Partners.
- m. Unless otherwise provided in an agreement between (insert name) and a merchant requesting property transportation services, (insert name) will be responsible and liable for items of property sent for delivery by a Driver-Partner.
- n. Upon request of a merchant or other person requesting property transportation services, Portier shall disclose its insurance coverage, including the types of coverage and the limits of all coverage that it provides while property transportation services are being provided.
- o. (insert name) shall make the following disclosures in writing to a Driver-Partner or prospective Driver-Partner:
 - i. The liability insurance coverage and limits of liability that (insert name) provides while the Driver-Partner uses a Partner Vehicle in connection with (insert name) digital platform.
 - ii. Any physical damage coverage provided by (insert name) for damage to the vehicle used by the Driver-Partner in connection with (insert name) digital platform.
 - iii. The uninsured motorist and underinsured motorist coverage and policy limits provided by (insert name) while the Driver-Partner uses a vehicle in connection with (insert name) digital platform.

- iv. A notice that the Driver-Partner's personal automobile insurance policy might not provide uninsured motorist and underinsured motorist coverage when the Driver-Partner uses a vehicle in connection with (insert name) digital platform, depending on its terms.
 - v. (insert name) shall include the following disclosure prominently in writing to a Driver-Partner or prospective Driver-Partner: "If the vehicle that you plan to use to transport goods for (insert name) has a lien against it, you must review the terms of the lien to determine whether using the vehicle for property transportation services may violate the terms of your contract with the lienholder."
- p. (insert name) shall provide to each Driver-Partner a credential, which shall be displayed as part of the digital platform, that includes the following information:
 - i. The name or logo of (insert name) or the associated digital platform;
 - ii. The name of the Driver-Partner authorized to transport property; and
 - iii. The license plate number of the vehicle.
- 3. (insert name) shall only authorize Driver-Partners to use passenger cars and pickup trucks having a registered gross weight of 7,500 pounds or less.
- 4. (insert name) shall maintain accurate and up to date copies of the following documents and information for all Driver-Partners who operate in the Commonwealth:
 - a. Each Driver-Partner's driver's license and driving history research report; and
 - b. Each Partner Vehicle's valid registration card.
- 5. The following operating requirements shall be applicable to (insert name) Driver-Partners:
 - a. Each Driver-Partner shall carry at all times in the Partner Vehicle proof of both the Driver-Partner's personal insurance and (insert name) liability insurance.
 - b. Driver-Partners shall immediately inform (insert name) of any change in the Driver-Partner's driver's license status or motor vehicle registration.
 - c. Driver-Partners shall access and operate smartphones, tablets, and other mobile devices in a manner consistent with Virginia law and highway safety.
- 6. If any person files a complaint with the Department against (insert name), one of (insert name) Driver-Partners, or the operator of a vehicle providing services under (insert name) digital platform, (insert name) shall provide, when requested by the Department,

such records as are reasonably necessary to investigate and resolve that specific complaint. If the Department finds reason to question (insert name) compliance with any operating guideline, (insert name) shall provide, when requested by the Department, such records as are reasonably necessary to confirm compliance. If a third party submits a request to the Department for records that the Department obtains from (insert name), (i) the Department shall assert applicable exclusions to the request set forth in the Virginia Freedom of Information Act (*Va. Code* § 2.2- 3700 *et seq.*) and *Va. Code* § 46.2-208, in an effort to protect confidential personal, business, and proprietary information, and (ii) the Department shall, before the Department's deadline to respond to the third party's request, notify (insert name) that it has received a request and inform (insert name) of whether it will release the requested record. The Department, in the investigation of a specific third-party complaint or compliance matter, shall not seek a list or inventory of drivers or vehicles that are associated with (insert name). Nothing in this paragraph 6 waives (insert name) right to object to the scope of documents requested by the Department and to protect its rights accordingly.

Appendix E: Study Stakeholders

DMV Team

Janet Smoot, Project Manager	Barbara Klotz, Legislative Services
Rena Hussey, Assistant Commissioner	Craig Whitham, Legislative Services
Joseph Hill, Assistant Commissioner	Andrew Owens, Legal Affairs
Patrick Harrison, Motor Carrier Services	Tom Penny, Law Enforcement and Compliance Services
Judy Petersen, Motor Carrier Services	Latrice Ampy, Motor Carrier Services
David Dunston, Motor Carrier Services	Tonya Blaine, Vehicle Services
Rachel Kerns, Motor Carrier Services	

Stakeholders	
Edward Mullen	Reed Smith (Uber)
Jeff Palmore	Reed Smith (Uber)
Nicole Brenner	Reed Smith (Uber)
Dennis Stefanitsis	Uber/Portier
Emily Modavo	Uber
David Skiles	Vectre Corp (Uber)
Roger Moody	VA Movers & Warehousemen
John Lugar	VA Movers & Warehousemen
Dale Bennett	Virginia Trucking Association
Patrick Cushing	Williams Mullen (Lyft)
Ian Pourier	Lyft
Andrea Ambrose	Lyft
Funsho Owolabi	Lyft
Rob Grant	Lyft
Capt. Ronnie Maxey	Virginia State Police
Capt. Danny Glick	Virginia State Police
Mitch Nuckles	Commissioners of the Revenue
Janet Baugh	Office of the Attorney General
Katie Johnson	SCC Bureau of Insurance
Rebecca Nichols	SCC Bureau of Insurance
George Lyle	SCC Bureau of Insurance
Lee Ann Robertson	SCC Bureau of Insurance
Shannon Cohen	LaserShip
Troy Cahill	LaserShip
Ann Leigh Kerr	Kerr Strategies
Chris LaGow	Law Offices of J. Christopher LaGow (Chubb, AIG, PCI Insurance)
Kelly Sue Ling	Geico

Rich Savage	Allstate
Micaela Isler	PCIAA
Jason Konvika	Allen & Allen (Virginia Trial Lawyers Association)
John Ayers	Virginia Trial Lawyers Association
Duple Travillion	FedEx
Billy McKee	FedEx
Scott Pachnik	FedEx
Victoria King	UPS
Nick D'Andrea	UPS
Dominick Jordon	UPS
Pam Couch	GrubHub
Ashleigh de la Torre	Amazon
Victor Bonett	Amazon
Jeff Gregson	Amazon
Susannah Bennet	Groupon to Go/OrderUp
Christopher Chandler	Groupon to Go/OrderUp
Merry Chu-Suzuki	Postmates
John O'Donnell	Postmates
Francis Ebong	Postmates
Nikhil Shanbhag	Instacart
Rebekah Punak	Instacart
Ryan Black	Instacart