VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 46.2-1135 and 46.2-1137 of the Code of Virginia, relating to liquidated damages for violation of vehicle weight limits; procedures for weighing vehicles; penalties.

[H 2046]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-1135 and 46.2-1137 of the Code of Virginia are amended and reenacted as follows:

§ 46.2-1135. Liquidated damages for violation of weight limits; powers of enforcement officers; forfeiture of vehicle and cargo.

A. Any person violating any weight limit as provided in this chapter or in any permit issued *pursuant to Article 18 (§ 46.2-1139 et seq.) of this chapter* either by the Virginia Department of Transportation or by local authorities pursuant to this chapter shall be assessed liquidated damages. The amount of those damages shall be*:* ~~two cents per pound for each pound of excess weight over the prescribed limit in this article for an excess which does not exceed 5,000 pounds, five cents per pound for each pound of excess weight over the prescribed limit in this article when such excess is more than 5,000 pounds, two cents per pound for each pound of excess axle weight over the prescribed limit in any permit issued pursuant to Article 18 (§ 46.2-1139 et seq.) of this chapter when the excess is 5,000 pounds or less, five cents per pound for each pound of excess axle weight over the prescribed limit in any permit issued pursuant to Article 18 (§ 46.2-1139 et seq.) of this chapter when such excess is more than 5,000 pounds and ten cents per pound for each pound of excess gross weight over the prescribed limit in any permit issued pursuant to Article 18 (§ 46.2-1139 et seq.) of this chapter. However, whenever any vehicle does not exceed the gross weight permitted according to the table provided in § 46.2-1139 and exceeds the axle weight in this article by 2,000 pounds or less, the liquidated damages shall be assessed in the amount of one cent per pound for each pound of excess weight over the prescribed axle limit in this article.~~

Excess weight over the prescribed or permitted axle weight limits	*Assessed amount per pound*	*Excess weight over the prescribed gross weight limit*	*Assessed amount per pound*
4,000 pounds or less	*1¢ per pound*	*4,000 pounds or less*	*1¢ per pound*
4,001 to 8,000 pounds	*10¢ per pound*	*4,001 to 8,000 pounds*	*5¢ per pound*
8,001 to 12,000 pounds	*20¢ per pound*	*8,001 to 12,000 pounds*	*10¢ per pound*
12,001 pounds or more	*30¢ per pound*	*12,001 pounds or more*	*15¢ per pound*

All gross permit violations shall be assessed 20¢ per pound over the permitted weight limit.

If a person has no prior violations under the motor vehicle weight laws, and the excess weight does not exceed 2,500 pounds, the general district court may waive the liquidated damages against such person. Except as provided by § 46.2-1138, such assessment shall be entered by the court or by the Department as a judgment for the Commonwealth, the entry of which shall constitute a lien upon the overweight vehicle. Except as provided by § 46.2-1138, such sums shall be paid to the Department or

collected by the attorney for the Commonwealth and forwarded to the State Treasurer and allocated to the fund appropriated for the construction and maintenance of state highways.

B. If the gross weight of the vehicle exceeds lawful limits by at least twenty-five percent but no more than fifty percent, the amount of the liquidated damages shall be two times the amount provided for in the foregoing provisions of this section; if the gross weight of the vehicle exceeds lawful limits by more than fifty percent, the amount of the liquidated damages shall be three times the amount provided for in the foregoing provisions of this section. The provisions of this subsection shall not apply to pickup or panel trucks.

§ 46.2-1137. Weighing vehicles; procedure; shifting loads; unloading excess load; weighing fee; certificate as to accuracy of scales admissible in evidence; penalties.

Any officer authorized to enforce the law under this title, having reason to believe that the weight of a vehicle and load is unlawful, is authorized to weigh the load and the vehicle. If the place where the vehicle is stopped is ten road miles or less from a permanent weighing station, the officer may, and upon demand of the driver shall, require the vehicle to proceed to such station. If the distance to the nearest permanent weighing station is more than ten road miles such vehicle may be weighed by wheel load weighers. Any driver who fails or unreasonably refuses to drive his vehicle to such permanent weighing station or such scales or wheel load weighers upon the request and direction of the officer to do so shall be guilty of a Class 4 misdemeanor. The penalty for such violation shall be in addition to any other penalties prescribed for exceeding the maximum weight permitted or for any other violation.

In the event of such failure or unreasonable refusal, where the officer has reason to believe the vehicle is overweight, the officer may use whatever reasonable means are available to have the vehicle weighed, including the employment of a tow truck to move the vehicle to the weighing area. He may also use whatever means are necessary to reload the vehicle if the load is intentionally dumped. In such a case, any expenses incurred in having the vehicle weighed may be taxed as costs to be imposed upon the operator who failed or unreasonably refused to drive his vehicle to such weighing area, when he has been convicted of such failure or refusal and an overweight violation. In all cases where such failure or refusal or overweight charges are dismissed, payment shall be made from highway funds.

Should the officer find that the weight of any vehicle and its load is greater than that permitted by this title or that the weight of the load carried in or on such vehicle is greater than that which the vehicle is licensed to carry under the provisions of this title, he may require the driver to unload, at the nearest place where the property unloaded may be stored or transferred to another vehicle, such portion of the load as may be necessary to decrease the gross weight of the vehicle to the maximum therefor permitted by this title. *Any property so unloaded shall be stored or cared for by the owner or operator of the overweight vehicle at the risk of such owner or operator.*

However, notwithstanding the provisions of §§ 46.2-1122 through 46.2-1127, should the officer find that the gross weight of the vehicle and its load is within limits permitted under this title and does not exceed the limit for which the vehicle is registered, but that the axle weight of any axle or axles of the vehicle exceeds that permitted under this title, the driver shall be allowed ~~two hours~~ *one hour* to shift his load within or on that same vehicle in order to bring the axle weight or axle weights within proper limits. *However, liquidated damages shall be assessed under § 46.2-1135 based on the weight prior to shifting the load, except for motor vehicles operating on non-interstate highways that qualify for weight extentions pursuant to § 46.2-1129.* Such load shifting shall be performed at the site where the vehicle was weighed and found to exceed allowable axle weight limits. No such load shifting shall be allowed if such load is required to be placarded as defined in § 10.1-1450 and consists of hazardous material as defined in § 10.1-1400. Any property so unloaded shall be stored or cared for by the owner or operator of the overweight vehicle at the risk of such owner or operator.

If the driver of an overloaded vehicle is convicted, forfeits bail, or purchases an increased license as a result of such weighing, the court in addition to all other penalties shall assess and collect a weighing fee of two dollars from the owner or operator of the vehicle and shall forward such fee to the State Treasurer. Upon receipt of the fee, the State Treasurer shall allocate the same to the fund appropriated for the administration and maintenance of the Department of State Police.

In any court or legal proceedings in which any question arises as to the calibration or accuracy of any such scales at permanent weighing stations or wheel load weighers, a certificate, executed and signed under oath by the inspector calibrating or testing such device as to its accuracy as well as to the accuracy of the test weights used in such test, and stating the date of such test, type of test and results of testing, shall be admissible when attested by one such inspector who executed and signed it as evidence of the facts therein stated and the results of such testing.