

VIRGINIA ACTS OF ASSEMBLY -- 2002 SESSION

CHAPTER 710

An Act to amend and reenact §§ 46.2-208, 46.2-1176, 46.2-1178, 46.2-1178.1, and 46.2-1179 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 46.2-1178.2, relating to records of the Department of Motor Vehicles on-road testing of motor vehicle emissions by the Department of Environmental Quality; subsidies to owners of certain motor vehicles found not in compliance with motor vehicle emissions requirements.

[H 570]

Approved April 6, 2002

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-208, 46.2-1176, 46.2-1178, 46.2-1178.1, and 46.2-1179 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 46.2-1178.2 as follows:

§ 46.2-208. Records of Department; when open for inspection; release of privileged information.

A. All records in the office of the Department containing the specific classes of information outlined below shall be considered privileged records:

1. Personal information, including all data defined as "personal information" in § 2.2-3801;
2. Driver information, including all data that relates to driver's license status and driver activity; and
3. Vehicle information, including all descriptive vehicle data and title, registration, and vehicle activity data.

B. The Commissioner shall release such information only under the following conditions:

1. Notwithstanding other provisions of this section, medical data included in personal data shall be released only to a physician as provided in § 46.2-322.

2. Insurance data may be released as specified in §§ 46.2-372, 46.2-380, and 46.2-706.

3. Notwithstanding other provisions of this section, information disclosed or furnished shall be assessed a fee as specified in § 46.2-214.

4. When the person requesting the information is (i) the subject of the information, (ii) the parent or guardian of the subject of the information, (iii) the authorized representative of the subject of the information, or (iv) the owner of the vehicle that is the subject of the information, the Commissioner shall provide him with the requested information and a complete explanation of it. Requests for such information need not be made in writing or in person and may be made orally or by telephone, provided that the Department is satisfied that there is adequate verification of the requester's identity. When so requested in writing by (~~i~~ a) the subject of the information, (~~ii~~ b) the parent or guardian of the subject of the information, (~~iii~~ c) the authorized representative of the subject of the information, or (~~iv~~ d) the owner of the vehicle that is the subject of the information, the Commissioner shall verify and, if necessary, correct the personal information provided and furnish driver and vehicle information in the form of an abstract of the record.

5. On the written request of any insurance carrier, surety, or representative of an insurance carrier or surety, the Commissioner shall furnish such insurance carrier, surety, or representative an abstract of the record of any person subject to the provisions of this title. The abstract shall include any record of any conviction of a violation of any provision of any statute or ordinance relating to the operation or ownership of a motor vehicle or of any injury or damage in which he was involved and a report of which is required by § 46.2-372. No such report of any conviction or accident shall be made after sixty months from the date of the conviction or accident unless the Commissioner or court used the conviction or accident as a reason for the suspension or revocation of a driver's license or driving privilege, in which case the revocation or suspension and any conviction or accident pertaining thereto shall not be reported after sixty months from the date that the driver's license or driving privilege has been reinstated. This abstract shall not be admissible in evidence in any court proceedings.

6. On the written request of any business organization or its agent, in the conduct of its business, the Commissioner shall compare personal information supplied by the business organization or agent with that contained in the Department's records and, when the information supplied by the business organization or agent is different from that contained in the Department's records, provide the business organization or agent with correct information as contained in the Department's records. Personal information provided under this subdivision shall be used solely for the purpose of pursuing remedies ~~which~~ *that* require locating an individual.

7. The Commissioner shall provide vehicle information to any business organization or agent on such business' or agent's written request. Disclosures made under this subdivision shall not include any personal information and shall not be subject to the limitations contained in subdivision 6 of this subsection.

8. On the written request of any motor vehicle rental or leasing company or its designated agent, the Commissioner shall (i) compare personal information supplied by the company or agent with that contained in the Department's records and, when the information supplied by the company or agent is different from that contained in the Department's records, provide the company or agent with correct information as contained in the Department's records and (ii) provide the company or agent with driver information in the form of an abstract of any person subject to the provisions of this title. Such abstract shall include any record of any conviction of a violation of any provision of any statute or ordinance relating to the operation or ownership of a motor vehicle or of any injury or damage in which the subject of the abstract was involved and a report of which is required by § 46.2-372. No such abstract shall include any record of any conviction or accident more than sixty months after the date of such conviction or accident unless the Commissioner or court used the conviction or accident as a reason for the suspension or revocation of a driver's license or driving privilege, in which case the revocation or suspension and any conviction or accident pertaining thereto shall cease to be included in such abstract after sixty months from the date on which the driver's license or driving privilege was reinstated. No abstract released under this subdivision shall be admissible in evidence in any court proceedings.

9. On the request of any federal, state, or local governmental entity, law-enforcement officer, attorney for the Commonwealth, court, or the authorized agent of any of the foregoing, the Commissioner shall (i) compare personal information supplied by the governmental entity, officer, attorney for the Commonwealth, court, or the authorized agent of any of the foregoing, with that contained in the Department's records and, when the information supplied by the governmental entity, officer, attorney for the Commonwealth, court, or the authorized agent of any of the foregoing, is different from that contained in the Department's records, provide the governmental entity, officer, attorney for the Commonwealth, court, or the authorized agent of any of the foregoing, with correct information as contained in the Department's records and (ii) provide driver and vehicle information in the form of an abstract of the record showing all convictions, accidents, driver's license suspensions or revocations, and other appropriate information as the governmental entity, officer, attorney for the Commonwealth, court, or the authorized agent of any of the foregoing, may require in order to carry out its official functions.

10. On request of the driver licensing authority in any other state or foreign country, the Commissioner shall provide whatever classes of information the requesting authority shall require in order to carry out its official functions.

11. On the written request of any employer, prospective employer, or authorized agent of either, and with the written consent of the individual concerned, the Commissioner shall (i) compare personal information supplied by the employer, prospective employer, or agent with that contained in the Department's records and, when the information supplied by the employer, prospective employer, or agent is different from that contained in the Department's records, provide the employer, prospective employer, or agent with correct information as contained in the Department's records and (ii) provide the employer, prospective employer, or agent with driver information in the form of an abstract of an individual's record showing all convictions, accidents, driver's license suspensions or revocations, and any type of driver's license that the individual currently possesses, provided that the individual's position or the position that the individual is being considered for involves the operation of a motor vehicle.

12. On the written request of any member of or applicant for membership in a volunteer fire company or volunteer rescue squad, the Commissioner shall (i) compare personal information supplied by the volunteer fire company or volunteer rescue squad with that contained in the Department's records and, when the information supplied by the volunteer fire company or volunteer rescue squad is different from that contained in the Department's records, provide the volunteer fire company or volunteer rescue squad with correct information as contained in the Department's records and (ii) provide driver information in the form of an abstract of the member's or applicant's record showing all convictions, accidents, license suspensions or revocations, and any type of driver's license that the individual currently possesses. Such abstract shall be provided free of charge if the request is accompanied by appropriate written evidence that the person is a member of or applicant for membership in a volunteer fire company or volunteer rescue squad and the abstract is needed by a volunteer fire company or volunteer rescue squad to establish the qualifications of the member or applicant to operate equipment owned by the volunteer fire company or volunteer rescue squad.

13. On the written request of any person who has applied to be a volunteer with a Virginia affiliate of Big Brothers/Big Sisters of America, the Commissioner shall (i) compare personal information supplied by a Virginia affiliate of Big Brothers/Big Sisters of America with that contained in the Department's records and, when the information supplied by a Virginia affiliate of Big Brothers/Big Sisters of America is different from that contained in the Department's records, provide the Virginia affiliate of Big Brothers/Big Sisters of America with correct information as contained in the Department's records and (ii) provide driver information in the form of an abstract of the applicant's record showing all convictions, accidents, license suspensions or revocations, and any type of driver's license that the individual currently possesses. Such abstract shall be provided free of charge if the request is accompanied by appropriate written evidence that the person has applied to be a volunteer with a Virginia affiliate of Big Brothers/Big Sisters of America.

14. On the written request of any person who has applied to be a volunteer with a court-appointed special advocate program pursuant to § 9.1-153, the Commissioner shall provide an abstract of the applicant's record showing all convictions, accidents, license suspensions or revocations, and any type of driver's license that the individual currently possesses. Such abstract shall be provided free of charge if the request is accompanied by appropriate written evidence that the person has applied to be a volunteer with a court-appointed special advocate program pursuant to § 9.1-153.

15. Upon the request of any employer, prospective employer, or authorized representative of either, the Commissioner shall (i) compare personal information supplied by the employer, prospective employer, or agent with that contained in the Department's records and, when the information supplied by the employer, prospective employer, or agent is different from that contained in the Department's records, provide the employer, prospective employer, or agent with correct information as contained in the Department's records and (ii) provide driver information in the form of an abstract of the driving record of any individual who has been issued a commercial driver's license, provided that the individual's position or the position that the individual is being considered for involves the operation of a commercial motor vehicle. Such abstract shall show all convictions, accidents, license suspensions, revocations, or disqualifications, and any type of driver's license that the individual currently possesses.

16. Upon the receipt of a completed application and payment of applicable processing fees, the Commissioner may enter into an agreement with any governmental authority or business to exchange information specified in this section by electronic or other means.

17. Upon the request of an attorney representing a person in a motor vehicle accident, the Commissioner shall provide vehicle information, including the owner's name and address, to the attorney.

18. Upon the request, in the course of business, of any authorized representative of an insurance company or of any not-for-profit entity organized to prevent and detect insurance fraud, the Commissioner shall provide all vehicle information, including the owner's name and address, descriptive data and title, registration, and vehicle activity data to such person.

19. Upon the request of an officer authorized to issue criminal warrants, for the purpose of issuing a warrant for arrest for unlawful disposal of trash or refuse in violation of § 33.1-346, the Commissioner shall provide vehicle information, including the owner's name and address.

20. Upon written request of the compliance agent of a private security services business, as defined in § 9.1-138, which is licensed by the Department of Criminal Justice Services, the Commissioner shall provide the name and address of the owner of the vehicle under procedures determined by the Commissioner.

21. Upon the request of the operator of a toll facility, or an authorized agent or employee of a toll facility operator, for the purpose of obtaining vehicle owner data under subsection H of § 46.2-819.1.

22. *Upon the request of the Department of Environmental Quality for the purpose of obtaining vehicle owner data in connection with enforcement actions involving on-road testing of motor vehicles, pursuant to § 46.2-1178.1.*

C. Whenever the Commissioner issues an order to suspend or revoke the driver's license or driving privilege of any individual, he may notify the National Driver Register Service operated by the United States Department of Transportation and any similar national driver information system and provide whatever classes of information the authority may require.

D. Accident reports may be inspected under the provisions of §§ 46.2-379 and 46.2-380.

E. Whenever the Commissioner takes any licensing action pursuant to the provisions of the Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.), he may provide information to the Commercial Driver License Information System, or any similar national commercial driver information system, regarding such action.

F. In addition to the foregoing provisions of this section, vehicle information may also be inspected under the provisions of §§ 43-33, 43-34, 46.2-633, and 46.2-1200.1 through 46.2-1237.

G. The Department may promulgate regulations to govern the means by which personal, vehicle, and driver information is requested and disseminated.

H. Driving records of any person accused of an offense involving the operation of a motor vehicle shall be provided by the Commissioner upon request to any person acting as counsel for the accused. If such counsel is from the public defender's office or has been appointed by the court, such records shall be provided free of charge.

I. The Department shall maintain the records of persons convicted of violations of subsection B of § 29.1-738, and §§ 29.1-738.02, 29.1-738.2, and 29.1-738.4 which shall be forwarded by every general district court or circuit court or the clerk thereof, pursuant to § 46.2-383. Such records shall be electronically available to any law-enforcement officer as provided for under clause (ii) of subdivision B 9 of this section.

§ 46.2-1176. Definitions.

The following words and phrases when used in this article shall have the following meanings except where the context clearly indicates a different meaning:

"Basic, test and repair program" means a motor vehicle emissions inspection system established by

regulations of the Board which shall designate the use of a BAR-90, designed so it may be upgraded in the future to an ASM 50-15 (acceleration simulation mode or method), as the only authorized testing equipment. Only those computer software programs and emissions testing procedures necessary to comply with the applicable provisions of Title I of the Clean Air Act shall be included. Such testing equipment shall be approvable for motor vehicle manufacturers' warranty repairs.

"Board" means the State Air Pollution Control Board.

"Certificate of emissions inspection" means a document, device, or symbol, prescribed by the Director and issued pursuant to this article, which indicates that (i) a motor vehicle has satisfactorily complied with the emissions standards and passed the emissions inspection provided for in this article; (ii) the requirement of compliance with such emissions standards has been waived; or (iii) the motor vehicle has failed such emissions inspection.

"Director" means the Director of the Department of Environmental Quality.

"Emissions inspection station" means any facility or portion of a facility ~~which~~ that has obtained an emissions inspection station permit from the Director authorizing the facility to perform emissions inspections in accordance with this article.

"Enhanced emissions inspection program" means a motor vehicle emissions inspection system established by regulations of the Board ~~which~~ that shall designate the use of the ASM 50-15 (acceleration simulation mode or method) as the only authorized testing equipment. Only those computer software programs and emissions testing procedures necessary to comply with applicable provisions of Title I of the Clean Air Act shall be included. Such testing equipment shall be approvable for motor vehicle manufacturers' warranty repairs.

"Fleet emissions inspection station" means any inspection facility operated under a permit issued to a qualified fleet owner or lessee as determined by the Director.

"Motor vehicle" means any vehicle ~~which~~ that:

1. ~~Was actually manufactured or designated by the manufacturer as a model manufactured in a calendar year less than twenty-five calendar years prior to January 1 of the present calendar year;~~
- ~~2.~~ Is designed for the transportation of persons or property; and
- ~~3.~~ 2. Is powered by an internal combustion engine.

"On-road testing" means tests of motor vehicle emissions or emissions control devices by means of roadside pullovers or remote sensing devices.

"Referee station" means an inspection facility operated or used by the Department of Environmental Quality (i) to determine program effectiveness, (ii) to resolve emissions inspection conflicts between motor vehicle owners and emissions inspection stations, and (iii) to provide such other technical support and information, as appropriate, to emissions inspection stations and vehicle owners.

"Remote sensing" means the measurement of motor vehicle emissions through electronic or light-sensing equipment from a remote location such as the roadside. Remote sensing equipment may include devices to detect and record the vehicle's registration or other identification numbers.

"Test and repair" means motor vehicle emissions inspection facilities that perform official motor vehicle emissions inspections and may also perform vehicle repairs. No regulation of the Board pertaining to test and repair shall bar inspection facilities from also performing vehicle repairs.

§ 46.2-1178. Administration and scope of emissions inspection program.

A. Except as otherwise provided in this section, the emissions inspection program provided for in this article shall apply to motor vehicles having actual gross weights of 8,500 pounds or less that are registered in the Counties of Arlington, Fairfax, and Prince William, and the Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park. The provisions of this subsection shall expire when the provisions of subsection C of this section become effective.

B. An emissions inspection program as required by regulations adopted by the Board under this article shall apply to motor vehicles that have actual gross weights of 8,500 pounds or less and are registered or operated primarily, as defined by the Board in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.), in the Counties of Chesterfield, Hanover, and Henrico and the Cities of Colonial Heights, Hopewell, and Richmond. Such emissions inspection program shall be a basic, test and repair program with the greatest number of inspection facilities consistent with the consumer protection and fee provisions herein as consistent with the Clean Air Act.

The provisions of this subsection shall apply but not necessarily be limited to (i) motor vehicles owned by governmental entities, (ii) motor vehicles owned by military personnel residing in those localities, (iii) motor vehicles owned by leasing or rental companies, and (iv) motor vehicles owned or leased by employees of the federal government and operated on a federal installation. The provisions of this subsection shall become effective July 1, 1995. The Board may promulgate regulations to implement the provisions of this article, but such regulations shall not require inspections in the localities mentioned in this subsection prior to the later of: (i) July 1, 1996; or (ii) the date on which the Federal Environmental Protection Agency, pursuant to the Clean Air Act, formally and in writing approves this program for such localities or on such later date as may be provided by regulations of the Board.

C. The emissions inspection program provided for in this subsection shall be a test and repair enhanced emissions inspection program with the greatest number of inspection facilities consistent with

the consumer protection and fee provisions herein and may include on-road testing and remote sensing devices. Any enhanced emissions inspection program provided for in this article shall apply to motor vehicles that have actual gross weights of 10,000 pounds or less *that were actually manufactured or designated by the manufacturer as a model manufactured in a calendar year less than twenty-five calendar years prior to January 1 of the present calendar year* and are registered or operated primarily, as defined by the Board in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) in the Counties of Arlington, Fairfax, Loudoun, Prince William, and Stafford and the Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park.

The provisions of this subsection shall apply but not necessarily be limited to (i) motor vehicles owned by governmental entities, (ii) motor vehicles owned by military personnel residing in those localities, (iii) vehicles owned by leasing or rental companies, and (iv) motor vehicles owned or leased by employees of the federal government and operated on a federal installation.

The provisions of this subsection shall be effective January 1, 1996, or on such later date as may be provided by regulations of the Board. However, the provisions of this subsection may become effective immediately provided that (i) the federal Environmental Protection Agency, pursuant to the Clean Air Act, formally and in writing approves the program for such localities, (ii) the Governor determines in writing that expedited promulgation of such regulations is in the best interest of the Commonwealth, determining that such shall constitute an "emergency situation" pursuant to § 2.2-4011, and (iii) the Governor authorizes the Board to promulgate the regulations as emergency regulations in accordance with this section.

D. Any emissions inspection program regulations in effect at the time the 1995 amendments to this section become effective shall remain in effect until the Board promulgates new regulations or amends or repeals existing regulations in accordance with this section.

§ 46.2-1178.1. On-road testing of motor vehicle emissions; authority to adopt regulations; civil charges.

A. The emissions inspection program authorized by § 46.2-1177 and provided for in § 46.2-1178 shall include on-road testing of motor vehicle emissions. The Board may promulgate regulations establishing on-road testing requirements including, but not limited to, collecting of data and information necessary to comply with the federal Clean Air Act Amendments of 1990, random testing of motor vehicle emissions, procedures to notify owners of test results, and assessment of civil charges for noncompliance with emissions standards adopted by the Board.

B. If an emissions test performed pursuant to this section indicates that a motor vehicle does not meet emissions standards established by the Board, the Board may collect from the owner of the vehicle a civil charge based on actual emissions. The Board shall establish a schedule of civil charges to be collected pursuant to this section. Such civil penalties shall not exceed \$450 using 1990 as the base year and adjusted annually by the Consumer Price Index. The schedule of charges and their assessment shall be established by regulations promulgated to be in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

C. Civil charges assessed pursuant to this section shall be waived by the Board if, within ~~ninety~~ *thirty* calendar days of notice of the violation, the vehicle's owner provides proof that the vehicle (i) since the date of the violation, has passed a vehicle emissions test as provided in § 46.2-1178, (ii) qualifies for an emissions inspection waiver as provided in § 46.2-1181, or (iii) has qualified for an emissions inspection waiver as provided in § 46.2-1181 within the twelve months prior to the violation.

D. Civil charges collected pursuant to this section shall be paid into the state treasury and deposited by the State Treasurer into the Vehicle Emissions Inspection Program Fund pursuant to § 46.2-1182.2.

E. If on-road testing indicates that a motor vehicle does not exceed emissions standards adopted by the Board for on-road testing pursuant to § 46.2-1179, such testing may be considered proof of compliance for the purposes of § 46.2-1183 and may be considered to satisfy the requirements of § 46.2-1177 for a biennial inspection. The Board shall establish criteria under which such testing shall satisfy the requirements of § 46.2-1183.

§ 46.2-1178.2. *Repair of certain vehicles not in compliance with standards established by the Board; payment of repairs from Vehicle Emissions Inspection Program Fund.*

The Department of Environmental Quality shall operate a program to subsidize repairs of vehicles identified by on-road testing pursuant to § 46.2-1178.1 that fail to meet emissions standards established by the Board when the owner of the vehicle is financially unable to have the vehicle repaired. The costs of implementing and operating such program shall be borne by the Vehicle Emissions Inspection Program Fund. The Board shall, in connection with such program, establish by regulation such standards, criteria, and procedures as the Board shall deem necessary or convenient.

§ 46.2-1179. Board to adopt emissions standards.

A. The Board shall adopt emissions standards necessary to implement the emissions inspection program provided for in this article. *Such standards shall include specifications and criteria that will enable the identification of vehicles whose emissions so far exceed those permissible under this article as to qualify them as "gross violators," and enable the expedited identification of such vehicles through on-road testing pursuant to § 46.2-1178.1.*

B. The Board shall establish separate and distinct emissions standards applicable to on-road testing of motor vehicles pursuant to § 46.2-1178.1. Notwithstanding any contrary provision of this article, except for any motor vehicle registered as an antique motor vehicle, such criteria shall be applicable to all motor vehicles manufactured for the 1968 model year or any more recent model year, with criteria for each model year being appropriate to that model year.