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HOUSE BILL NO. 128**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee on Transportation
on January 24, 2002)

(Patron Prior to Substitute—Delegate Rollison)

A BILL to amend and reenact § 46.2-1137 of the Code of Virginia, relating to weighing of vehicles; ability to shift the load of certain overweight vehicles prior to assessment of liquidated damages; penalties.

Be it enacted by the General Assembly of Virginia:

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

§ 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 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 unless the load can be successfully shifted to bring the vehicle's axle weight within limits permitted under this title by (i) sliding the axle or axles of the semitrailer or the fifth wheel of the tractor truck, (ii) repositioning the load if the motor vehicle is transporting off-the-road mobile construction equipment, or (iii) adjusting the load if the vehicle is operating on non-interstate highways that qualify and qualifies for weight extensions 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.

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

60 of testing, shall be admissible when attested by one such inspector who executed and signed it as
61 evidence of the facts therein stated and the results of such testing. #