

VIRGINIA ACTS OF ASSEMBLY -- 2011 SESSION

CHAPTER 62

An Act to amend and reenact §§ 46.2-217, 46.2-388, 46.2-703, 46.2-1133, 46.2-1134, 46.2-1136, 46.2-1137, and 46.2-1139 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 46.2-613.1 through 46.2-613.5, relating to size and weight compliance agents.

[H 2051]

Approved March 14, 2011

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-217, 46.2-388, 46.2-703, 46.2-1133, 46.2-1134, 46.2-1136, 46.2-1137, and 46.2-1139 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 46.2-613.1 through 46.2-613.5 as follows:

§ 46.2-217. Enforcement of laws by Commissioner; authority of officers.

The Commissioner, his several assistants, including those who are full-time sworn members of the enforcement division of the Department of Motor Vehicles, and police officers appointed by him are vested with the powers of sheriffs for the purpose of enforcing the laws of the Commonwealth which the Commissioner is required to enforce. Such full-time sworn members of the enforcement division of the Department of Motor Vehicles are hereby authorized to enforce the criminal laws of the Commonwealth.

The Commissioner may also appoint or designate any of his staff to be "size and weight compliance agents" who shall thereby have the authority to (i) enforce the requirements for the use of dyed diesel fuel in §§ 58.1-2265 and 58.1-2267; (ii) enforce the requirements of Article 17 (§ 46.2-1122 et seq.) of Chapter 10; (iii) issue citations for violations of license, registration, and tax requirements and vehicle size limits pursuant to § 46.2-613.1; and (iv) carry out the vehicle seizure provisions of §§ 46.2-613.4, 46.2-613.5, 46.2-1134, and 46.2-1136 at any permanent weighing station.

Nothing in this title shall relieve any law-enforcement officer, commissioner of the revenue, or any other official invested with police powers and duties, state or local, of the duty of assisting in the enforcement of such laws within the scope of his respective authority and duty.

All law-enforcement officers appointed by the Commissioner may administer oaths and take acknowledgments and affidavits incidental to the administration and enforcement of this title and all other laws relating to the operation of motor vehicles, applications for driver's licenses, and the collection and refunding of taxes levied on gasoline. They shall receive no compensation for administering oaths or taking acknowledgments.

§ 46.2-388. Uniform summons to be used for reportable motor vehicle law violations; citations.

A. The Attorney General, after consultation with the Committee on District Courts, the Superintendent of State Police and the Commissioner, shall approve a form for the summons to be issued in either an electronic or paper format and all revisions to the form to be used by all law-enforcement officers throughout the Commonwealth in cases of motor vehicle law violations reportable to the Department under the provisions of §§ 46.2-382 and 46.2-383 and for other offenses charged on a summons pursuant to § 19.2-74. The commencement and termination date for the use of the form and each revised version of the form shall be made by the Attorney General after consultation with the Committee on District Courts, the Superintendent of State Police and the Commissioner. The law-enforcement agency issuing the summons shall determine whether to use an electronic or paper format.

The form of the summons shall include multiple copies with the original to be used for court records and other copies in sufficient number to permit the use of one copy by the courts for purposes of filing abstracts of records with the Department as required by § 46.2-383 and shall be a form prepared by the Department within the meaning of § 46.2-386. The form of the summons shall also include appropriate space for use in cases of violation of either state laws or local ordinances.

B. A separate citation which has been approved in the manner prescribed in subsection A shall be used for violations of §§ 46.2-1122 through 46.2-1127 and 46.2-1130. The citation shall be directed to the owner, operator or other person responsible for the overweight violation, and shall advise him of:

1. The nature of the violation charged against him;
2. The amount of monetary fees, penalties, and damages that may be assessed for violations;
3. The requirement that he either pay the fees, penalties, and damages in full or deliver a notice of his intent to contest the charge to the Department;
4. The procedures and time limits for making the payments or contesting such charge, which shall include the trial date, which shall in no event be earlier than 60 days after the violation; and
5. The consequences of a failure to timely pay or contest the charge.

C. A separate citation that has been approved in the manner prescribed in subsection A shall be

used for violations of § 46.2-613.1. The citation shall be directed to the owner, operator, or other person responsible for the violation and shall advise him of:

1. The nature of the violation charged against him;
2. The amount of monetary fees and penalties that may be assessed for violations;
3. The requirement that he either pay the fee and penalties in full or deliver a notice of his intent to contest the charge to the Department;
4. The procedures and time limits for making the payments or contesting such charge which shall include the trial date, which shall in no event be earlier than 60 days after the violation; and
5. The consequences of a failure to timely pay or contest the charge.

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

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

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

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

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

4. Fails to obtain a proper registration card, identification marker, or other evidence of registration as required by Chapter 21 (§ 46.2-2100 et seq.).

5. Operates or causes to be operated on any highway in the Commonwealth any truck or tractor truck that does not carry the proper registration and identification marker required by Chapter 21 (§ 46.2-2100 et seq.) or any motor vehicle that does not display (i) an identification marker in such manner as is prescribed by the Department or (ii) other identifying information required by this title.

6. Operates or causes to be operated on any highway in the Commonwealth any truck or tractor truck requiring registration from the Department under Chapter 21 (§ 46.2-2100 et seq.) after such registration cards or identification markers have been revoked, canceled, or suspended.

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

B. Upon collection by the Department, civil penalties levied pursuant to subdivisions A 1 and A 3 through A 6 shall be paid into the Commonwealth Transportation Fund, but civil penalties levied pursuant to subdivisions A 2 and A 7 and all processing fees levied pursuant to this section shall be paid into the state treasury and shall be set aside as a special fund to meet the expenses of the Department of Motor Vehicles.

C. The penalties and fees specified in this section shall be in addition to any other penalty, fee, tax, or liability that may be imposed by law.

§ 46.2-613.2. Service of process in civil penalty cases for violation of license, registration, and tax requirements and vehicle size limitations.

Any person, whether resident or nonresident, who permits the operation of a motor vehicle in the Commonwealth by his agent or employee shall be deemed to have appointed the operator of such motor vehicle his statutory agent for the purpose of service of process in any proceeding against such person growing out of any violation under § 46.2-613.1. Acceptance by a nonresident of the rights and privileges conferred by Article 5 (§ 46.2-655 et seq.) of Chapter 6 shall have the same effect under this section as operation of such motor vehicle by such nonresident, his agent, or his employee.

§ 46.2-613.3. Special processing provisions for civil penalties levied for violation of license, registration, and tax requirements and vehicle size limitations.

Notwithstanding any other provision of law, all civil penalties levied pursuant to § 46.2-613.1 shall be processed in the following manner:

1. The size and weight compliance agent charging the violation shall serve a citation on the operator of the vehicle. The citation shall be directed to the owner, operator, or other person responsible for the violation as determined by the size and weight compliance agent. Service of the citation on the vehicle operator shall constitute service of process upon the owner, operator, or other person charged with the violation as provided in § 46.2-613.5.

2. The size and weight compliance agent charging the violation shall cause the citation to be delivered or sent by first-class mail to the Department within 24 hours after it is served.

3. The owner, operator, or other person charged with the violation shall, within 21 days after the citation is served upon the vehicle operator, either make full payment to the Department of the civil penalty and processing fee as stated on the citation or deliver to the Department a written notice of his election to contest the charges in court.

4. Failure of the owner, operator, or other person charged with the violation to timely deliver to the Department either payment in full of the uncontested civil penalty and processing fee or a notice of contest of the violation shall cause the Department to issue an administrative order of assessment against such person. A copy of the order shall be sent by first-class mail to the person charged with the violation. Any such administrative order shall have the same effect as a judgment entered by a general district court.

5. Upon timely receipt of a notice of contest of a violation under § 46.2-613.1, the Department shall:

a. Forward the citation to the general district court named in the citation; and

b. Send by first-class mail to the person charged with the violation and to the size and weight compliance agent who issued the citation confirmation that the citation has been forwarded to the court for trial.

6. Notices and pleadings may be served by first-class mail to the address shown on the citation as the address of the person charged with the weight violation or, if none is shown, to the address of record for the person to whom the vehicle is registered.

7. An alleged violation that is contested shall be tried as a civil case. The attorney for the Commonwealth shall represent the interests of the Commonwealth. The disposition of the case shall be recorded in an appropriate order, a copy of which shall be sent to the Department in lieu of any record that may be otherwise required by § 46.2-383. If judgment is for the Commonwealth, payment shall be made to the Department.

8. Notwithstanding any other provisions of this section, any and all citations and notices required by this section to be provided to the person charged with a violation or received from the person charged with a violation, with the exclusion of the citation as set out in subdivision 1, may be served or provided in an electronic manner if the Department and the person charged with the violation have agreed to utilize electronic notification.

§ 46.2-613.4. Special seizure provisions for unpaid fees and penalties.

Any size and weight compliance agent authorized to serve process under the provisions of this chapter may hold a vehicle without an attachment summons or court order, but only for such time as is reasonably necessary to promptly petition for an attachment summons to attach the vehicle.

After finding reasonable cause for the issuance of an attachment summons, the judicial officer conducting the hearing shall inform the operator of the vehicle of his option to either pay the previously assessed fees and penalties due the Commonwealth or contest the charge through the attachment proceeding. If the operator chooses to make payment, he shall do so to the judicial officer, who shall transmit the citation along with the fees and penalties to the Department for distribution in accordance with subsection B of § 46.2-613.1.

The Commonwealth shall not be required to post bond in order to attach a vehicle pursuant to this section. The size and weight compliance agent authorized to hold the vehicle pending a hearing on the attachment petition shall also be empowered to execute the attachment summons if issued. Any bond for the retention of the vehicle or for release of the attachment shall be given in accordance with § 8.01-553 except that the bond shall be taken by a judicial officer. The judicial officer shall return the bond to the clerk of the appropriate court in place of the officer serving the attachment as otherwise provided in § 8.01-554.

In the event the fees and penalties are not paid in full, or no bond is given by, or for the person charged with the violation, the vehicle involved in the violation shall be stored in a secure place, as may be designated by the owner or operator of the vehicle. If no place is designated, the officer or size and weight compliance agent executing the attachment summons shall designate the place of storage. The owner or operator shall be afforded the right of unloading and removing the cargo from the vehicle. The risk and cost of the storage shall be borne by the owner or operator of the vehicle.

Whenever an attachment summons is issued for unpaid fees and penalties the court shall forward to the Department both a copy of the order disposing of the case and the citation prepared by the size and weight compliance agent but not served.

Upon notification of the judgment or administrative order entered for such unpaid fees and penalties and notification of the failure of such person to satisfy the judgment or order, the Department, the Department of State Police, or any law-enforcement officer or size and weight compliance agent shall thereafter deny the offending person the right to operate a motor vehicle or vehicles on any highway of the Commonwealth until the judgment or order has been satisfied and a reinstatement fee of \$50 has been paid to the Department. Reinstatement fees collected under the provisions of this section shall be paid by the Commissioner into the state treasury and shall be set aside as a special fund to be used to meet the expenses of the Department.

When informed that the right to operate the motor vehicle has been denied, the driver shall drive the motor vehicle to a nearby location off the public highways and not move it or permit it to be moved until such judgment or order has been satisfied. Failure by the driver to comply with this provision shall constitute a Class 4 misdemeanor.

All costs incurred by the Commonwealth and all judgments, if any, against the Commonwealth due to action taken pursuant to this section shall be paid from the fund into which the civil penalties levied pursuant to § 46.2-613.1 are paid.

Officers of the Department of State Police and all other law-enforcement officers are vested with the same powers with respect to the enforcement of this chapter as they have with respect to the enforcement of the criminal laws of the Commonwealth.

§ 46.2-613.5. Procedures for issuing and serving process in civil penalty cases.

Any size and weight compliance agent authorized to enforce the provisions of § 46.2-613.1 may issue a citation for a violation of such provisions. Such size and weight compliance agent may also serve an attachment summons issued by a judge or magistrate in connection with a violation of § 46.2-613.1.

Service of any such citation shall be made upon the driver of the motor vehicle involved in the violation. Such service on the driver shall have the same legal force and validity as if served within the Commonwealth personally upon the owner, operator, or other person charged with the violation, whether such owner, operator, or other person charged is a resident or nonresident.

§ 46.2-703. Reciprocal agreement with other states; assessment and collection of fees on an apportionment or allocation basis; registration of vehicles and reporting of road tax; violations; vehicle seizures; penalties.

A. Notwithstanding any other provision of this title, the Governor may, on the advice of the Department, enter into reciprocal agreements on behalf of the Commonwealth with the appropriate authorities of any state of the United States or a state or province of a country providing for the assessing and collecting of license fees for motor vehicles, tractor trucks, trucks, trailers, and semitrailers on an apportionment or allocation basis, as outlined in the International Registration Plan developed by the International Registration Plan, Inc.

The Commissioner is authorized to audit the records of any owner, lessor, or lessee to verify the accuracy of any information required by any jurisdiction to determine the registration fees due. Based on this audit, the Commissioner may assess any owner, lessor, or lessee for any license fees due this Commonwealth, including interest and penalties as provided in this section. In addition to any other penalties prescribed by law, the Commissioner or the Reciprocity Board may deny the owner, lessor, or lessee the right to operate any motor vehicle on the highways in the Commonwealth until the assessment has been paid.

Trip permit registration may be issued for any vehicle or combination of vehicles that could be lawfully operated in the jurisdiction if full registration or proportional registration were obtained. The fee for this permit shall be \$15 and the permit shall be valid for 10 days.

Any person who operates or permits the operation of any motor vehicle, trailer, or semitrailer over any highway in the Commonwealth without first having paid to the Commissioner the fees prescribed and payable under this section shall be guilty of a Class 2 misdemeanor. Failure to display a license plate indicating that the vehicle is registered on an apportionment or allocation basis or carry a trip permit, as outlined in the International Registration Plan, shall constitute prima facie evidence the apportioned or allocated fee has not been paid.

If the Commissioner ascertains that any fees that he is authorized to assess any owner, lessor, or lessee for any license year have not been assessed or have been assessed for less than the law required for the year because of failure or refusal of any owner, lessor, or lessee to make his records available for audit as provided herein, or if any owner, lessor, or lessee misrepresents, falsifies, or conceals any of these records, the Commissioner shall determine from any information obtainable the lawful fees at the rate prescribed for that year, plus a penalty of five percent and interest at the rate of six percent per year, which shall be computed on the fees and penalty from the date the fees became due to the date of assessment, and is authorized to make an assessment therefor against the owner, lessor, or lessee. If the assessment is not paid within 30 days after its date, interest at the rate of six percent per year shall accrue thereon from the date of such assessment until the fees and penalty are paid. The notice of the assessment shall be forthwith sent to the owner, lessor, or lessee by registered or certified mail to the address of the owner, lessor, or lessee as it appears on the records in the office of the Department. The notice, when sent in accordance with these requirements, shall be sufficient regardless of whether it was received.

If any owner, lessor, or lessee fails to pay the fees, penalty, and interest, or any portion thereof, assessed pursuant to this section, in addition to any other provision of law, the Attorney General or the Commissioner shall bring an appropriate action before the Circuit Court of the City of Richmond for the recovery of the fees, penalty, and interest, and judgment shall be rendered for the amount found to be due together with costs. If it is found that the failure to pay was willful on the part of the owner, lessor or lessee, judgment shall be rendered for double the amount of the fees found to be due, plus costs.

B. Notwithstanding any other provision of this title or Chapter 27 (§ 58.1-2700 et seq.) of Title 58.1,

the Governor, on the advice of the Department, may enter into reciprocal agreements on behalf of the Commonwealth with the duly authorized representatives of other jurisdictions providing for the road tax registration of vehicles, establishing periodic road tax reporting and road tax payment requirements from owners of such vehicles, and disbursement of funds collected due to other jurisdictions based on mileage traveled and fuel used in those jurisdictions as outlined in the International Fuels Tax Agreement.

Notwithstanding any statute contrary to the provisions of any reciprocal agreement entered into by the Governor or his duly authorized representative as authorized by this title, the provisions of the reciprocal agreement shall govern and apply to all matters relating to administration and enforcement of the road tax. In the event the language of any reciprocal agreement entered into by the Governor as authorized by this title is later amended so that it conflicts with or is contrary to any statute, the Department shall consider the amended language of the reciprocal agreement controlling and shall administer and enforce the road tax in accordance with the amended language of the reciprocal agreement.

An agreement may provide for determining the base state for motor carriers, records requirements, audit procedures, exchange of information, persons eligible for tax licensing, defining qualified motor vehicles, determining if bonding is required, specifying reporting requirements and periods, including defining uniform penalties and interest rates for late reporting, determining methods for collecting and forwarding of motor fuel taxes and penalties to another jurisdiction, and other provisions as will facilitate the administration of the agreement.

The Governor may, as required by the terms of the agreement, forward to officers of another member jurisdiction any information in the Department's possession relative to the use of motor fuels by any motor carrier. The Department may disclose to officers of another state the location of offices, motor vehicles, and other real and personal property of motor carriers.

An agreement may provide for each state to audit the records of motor carriers based in the state to determine if the road taxes due each member jurisdiction are properly reported and paid. Each member jurisdiction shall forward the findings of the audits performed on motor carriers based in the member jurisdiction to each jurisdiction in which the carrier has taxable use of motor fuels. For motor carriers not based in the Commonwealth and which have taxable use of motor fuel in the Commonwealth, the Department may serve the audit findings received from another jurisdiction, in the form of an assessment, on the carrier as though an audit had been conducted by the Department.

Any agreement entered into pursuant to this chapter does not preclude the Department from auditing the records of any motor carrier covered by the provisions of this chapter.

The Department shall not enter into any agreement that would affect the motor fuel road tax rate.

The Department may adopt and promulgate such rules, regulations, and procedures as may be necessary to effectuate and administer this title. Nothing in this title shall be construed to affect the tax rate provisions found in Chapter 27 (§ 58.1-2700 et seq.) of Title 58.1.

C. Notwithstanding any other provision in this title or Title 56, the Governor, on the advice of the Department, may participate in the single state registration system as authorized under 49 U.S.C. § 14504 and 49 C.F.R. Part 367, and the Unified Carrier Registration System authorized under 49 U.S.C. § 14504a, enacted pursuant to the Unified Carrier Registration Act of 2005, and the federal regulations promulgated thereunder.

D. Notwithstanding any other provision of this title or Title 58.1, the following violations of laws shall be punished as follows:

1. Any person who operates or causes to be operated on any highway in the Commonwealth any motor vehicle that is not in compliance with the Unified Carrier Registration System authorized under 49 U.S.C. § 14504a, enacted pursuant to the Unified Carrier Registration Act of 2005, and the federal regulations promulgated thereunder shall be guilty of a Class 4 misdemeanor.

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

E. An officer charging a violation under subsection D shall serve a citation on the operator of the vehicle in violation. Such citation shall be directed to the owner, operator or other person responsible for the violation as determined by the officer. Service of the citation on the vehicle operator shall constitute service of process upon the owner, operator, or other person charged with the violation under this article, and shall have the same legal force as if served within the Commonwealth personally upon the owner, operator, or other person charged with the violation, whether such owner, operator, or other person charged is a resident or nonresident.

F. Any police officer or size and weight compliance agent of the Commonwealth authorized to serve process may hold a motor vehicle owned or operated by a person against whom an order or penalty has been entered pursuant to this section, the International Registration Plan, the International Fuel Tax Agreement, or the Unified Carrier Registration System authorized under 49 U.S.C. § 14504a, enacted pursuant to the Unified Carrier Registration Act of 2005, and the federal regulations promulgated thereunder, but only for such time as is reasonably necessary to promptly petition for a writ of fieri facias. The Commonwealth shall not be required to post bond in order to hold and levy upon any

vehicle held pursuant to this section. Upon notification of the *order*, judgment, or penalty entered against the ~~owner of the vehicle~~ *offending person* and notice to such person of the failure to satisfy the *order*, judgment or penalty, any investigator, special agent, ~~or~~ officer, or *size and weight compliance agent* of the Commonwealth shall thereafter deny the offending person the right to operate ~~the~~ a motor vehicle or vehicles on the highways of the Commonwealth *until the order, judgment, or penalty has been satisfied and a reinstatement fee of \$50 has been paid to the Department. Reinstatement fees collected under the provisions of this section shall be paid by the Commissioner into the state treasury and shall be set aside as a special fund to be used to meet the expenses of the Department.*

§ 46.2-1133. Special processing provisions for overweight violations.

Notwithstanding any other provision of law, all violations of any weight limit as provided in this article or any permit issued by either the Department or its designee or by local authorities pursuant to this chapter shall be processed in the following manner:

1. The officer or *size and weight compliance agent* charging the violation shall serve a citation on the operator of the overweight vehicle. The citation shall be directed to the owner, operator, or other person responsible for the overweight violation as determined by the officer or *size and weight compliance agent*. Service of the citation on the vehicle operator shall constitute service of process upon the owner, operator, or other person charged with the weight violation as provided in § 46.2-1136.

2. The officer or *size and weight compliance agent* charging the violation shall cause the citation to be delivered or mailed by first-class mail to the Department within 24 hours after it is served.

3. The owner, operator, or other person charged with the weight violation shall, within 21 days after the citation is served upon the vehicle operator, either make full payment to the Department of the civil penalty, liquidated damages, weighing fee, and processing fee as stated on the citation, or deliver to the Department a written notice of his election to contest the overweight charge in court.

4. Failure of the owner, operator, or other person charged with the weight violation to timely deliver to the Department either payment in full of the uncontested civil penalty, liquidated damages, weighing fee, and processing fee or a notice of contest of the weight violation shall cause the Department to issue an administrative order of assessment against such person. A copy of the order shall be sent by first-class mail to the person charged with the weight violation. Any such administrative order shall have the same effect as a judgment for liquidated damages entered by a general district court.

5. Upon timely receipt of a notice of contest of an overweight charge, the Department shall:

a. Forward the citation to the general district court named in the citation, and

b. Send by first-class mail to the person charged with the weight violation, and to the officer or *size and weight compliance agent* who issued the citation, confirmation that the citation has been forwarded to the court for trial.

6. Notices and pleadings may be served by first-class mail sent to the address shown on the citation as the address of the person charged with the weight violation or, if none is shown, to the address of record for the person to whom the vehicle is registered.

7. An alleged weight violation which is contested shall be tried as a civil case. The attorney for the Commonwealth shall represent the interests of the Commonwealth. The disposition of the case shall be recorded in an appropriate order, a copy of which shall be sent to the Department in lieu of any record which may be otherwise required by § 46.2-383. If judgment is for the Commonwealth, payment shall be made to the Department.

8. *Notwithstanding any other provisions of this section, any and all citations and notices required by this section to be provided to the person charged with a violation or received from the person charged with a violation, with the exclusion of the citation as set out in subdivision 1, may be served or provided in an electronic manner if the Department and the person charged with the violation have agreed to utilize electronic notification.*

§ 46.2-1134. Special overweight seizure provisions; penalty.

Any officer or *size and weight compliance agent* authorized to serve process or weigh vehicles under the provisions of this chapter may hold an overweight vehicle without an attachment summons or court order, but only for such time as is reasonably necessary to promptly petition for an attachment summons to attach the vehicle.

After finding reasonable cause for the issuance of an attachment summons, the judicial officer conducting the hearing shall inform the operator of the vehicle of his option to either pay the liquidated damages, civil penalty, weighing fee, and processing fee, or contest the charge through the attachment proceeding. If the operator chooses to make payment, he shall do so to the judicial officer who shall transmit the citation, liquidated damages, civil penalty, weighing fee, and processing fee to the Department for distribution in accordance with § 46.2-1131.

The Commonwealth shall not be required to post bond in order to attach a vehicle pursuant to this section. The officer or *size and weight compliance agent* authorized to hold the overweight vehicle pending a hearing on the attachment petition shall also be empowered to execute the attachment summons if issued. Any bond for the retention of the vehicle or for release of the attachment shall be given in accordance with § 8.01-553 except that the bond shall be taken by a judicial officer. The judicial officer shall return the bond to the clerk of the appropriate court in place of the officer serving

the attachment as otherwise provided in § 8.01-554.

In the event the civil penalty, liquidated damages, weighing fee, and processing fee are not paid in full, or no bond is given by or for the person charged with the weight violation, the vehicle involved in the weight violation shall be stored in a secure place, as may be designated by the owner or operator of the vehicle. If no place is designated, the officer *or size and weight compliance agent* executing the attachment summons shall designate the place of storage. The owner or operator shall be afforded the right of unloading and removing the cargo from the vehicle. The risk and cost of the storage shall be borne by the owner or operator of the vehicle.

Whenever an attachment summons is issued for a weight violation, the court shall forward to the Department both a copy of the order disposing of the case and the weight violation citation prepared by the officer *or size and weight compliance agent* but not served.

Upon notification of the judgment or administrative order entered for such weight violation and notification of the failure of such person to satisfy the judgment or order, the Department or the Department of State Police or any law-enforcement officer *or size and weight compliance agent* shall thereafter deny the offending person the right to operate a motor vehicle or vehicles upon the highways of the Commonwealth until the judgment or order has been satisfied *and a reinstatement fee of \$50 has been paid to the Department. Reinstatement fees collected under the provisions of this section shall be paid by the Commissioner into the state treasury and shall be set aside as a special fund to be used to meet the expenses of the Department.*

When informed that the right to operate the motor vehicle has been denied, the driver shall drive the motor vehicle to a nearby location off the public highways and not move it or permit it to be moved until such judgment or order has been satisfied. Failure by the driver to comply with this provision shall constitute a Class 4 misdemeanor.

All costs incurred by the Commonwealth and all judgments, if any, against the Commonwealth due to action taken pursuant to this section shall be paid from the fund into which liquidated damages are paid.

Police officers of the Department of State Police and all other law-enforcement officers are vested with the same powers with respect to the enforcement of this chapter as they have with respect to the enforcement of the criminal laws of the Commonwealth.

§ 46.2-1136. Procedures for issuing and serving process in overweight vehicle cases.

Any officer *or size and weight compliance agent* authorized to enforce overweight vehicle laws may issue a citation for a violation of such laws. Such officer may also serve an attachment summons issued by a judge or magistrate in connection with a weight violation.

Service of any such citation shall be made upon the driver of the motor vehicle involved in the violation. Such service on the driver shall have the same legal force and validity as if served within the Commonwealth personally upon the owner, operator, or other person charged with the weight violation, whether such owner, operator, or other person charged is a resident or nonresident.

§ 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 *or size and weight compliance agent* 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~~ 10 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~~ 10 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 *or size and weight compliance agent* 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 *or size and weight compliance agent* 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, 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 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 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.

§ 46.2-1139. Permits for excessive size and weight generally; penalty.

A. The Commissioner and local authorities of cities and towns, in their respective jurisdictions, may, upon written application and good cause being shown, issue a permit authorizing the applicant to operate on a highway a vehicle of a size or weight exceeding the maximum specified in this title. Any such permit may designate the route to be traversed and contain any other restrictions or conditions deemed necessary by the body granting the permit.

B. Except for permits issued under § 46.2-1141 for overweight vehicles transporting containerized freight and permits issued for overweight vehicles transporting irreducible loads, no overweight permit issued by the Commissioner or any local authority under any provision of this article shall be valid for the operation of any vehicle on an interstate highway if the vehicle has:

1. A single axle weight in excess of 20,000 pounds; or
2. A tandem axle weight in excess of 34,000 pounds; or
3. A gross weight, based on axle spacing, greater than that permitted in § 46.2-1127; or
4. A gross weight, regardless of axle spacing, in excess of 80,000 pounds.

C. The Commissioner may issue permits to operate or tow one or more travel trailers as defined in § 46.2-1900 or motor homes when any of such vehicles exceed the maximum width specified by law, provided the movement of the vehicle is prior to its retail sale and it complies with the provisions of § 46.2-1105. A copy of each such permit shall be carried in the vehicle for which it is issued.

D. Every permit issued under this article for the operation of oversize or overweight vehicles shall be carried in the vehicle to which it refers and may be inspected by any officer *or size and weight compliance agent*. Violation of any term of any permit issued under this article shall constitute a Class 1 misdemeanor. Violation of terms and conditions of any permit issued under this article shall not invalidate the weight allowed on such permit unless (i) the permit vehicle is operating off the route listed on the permit, (ii) the vehicle has fewer axles than required by the permit, (iii) the vehicle has less axle spacing than required by the permit when measured longitudinally from the center of the axle to center axle with any fraction of a foot rounded to the next highest foot, or (iv) the vehicle is transporting multiple items not allowed by the permit.

E. Any permit issued by the Commissioner or local authorities of cities and towns pursuant to state law may be restricted so as to prevent travel on any federal-aid highway if the continuation of travel on such highway would result in a loss of federal-aid funds. Before any such permit is restricted by the Commissioner, or local authority, written notice shall be given to the permittee.

F. When application is made for permits issued by the Commissioner as well as local authorities of one or more cities and towns, any fees imposed therefor by the Commissioner as well as all affected local authorities may be paid by the applicant, at the applicant's option, to the Commissioner, who shall promptly transmit the local portion of the total fee to the appropriate locality or localities.

G. Engineering analysis, performed by the Virginia Department of Transportation, shall be conducted of a proposed routing before the Commissioner issues any permit under this section when such analysis is required to promote safety and preserve the capacity and structural integrity of highways and bridges. The Commissioner shall not issue a permit when the Virginia Department of Transportation determines

that the roadway and bridges to be traversed cannot sustain the vehicles' size and weight.