

VIRGINIA ACTS OF ASSEMBLY -- 2012 SESSION

CHAPTER 216

An Act to amend and reenact §§ 46.2-1176, 46.2-1178, 46.2-1178.1, 46.2-1180, 46.2-1181, 46.2-1182, and 46.2-1182.2 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 46.2-1177.1, relating to motor vehicle emissions inspection.

[H 805]

Approved March 10, 2012

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-1176, 46.2-1178, 46.2-1178.1, 46.2-1180, 46.2-1181, 46.2-1182, and 46.2-1182.2 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 46.2-1177.1 as follows:

§ 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), an OBD-II (on-board diagnostic system) with wireless capability, and a two-speed idle analyzer~~ 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 *federal* 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 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 that shall designate, *as the only authorized testing equipment for emissions inspection stations, (i) the use of the ASM 50-15 (acceleration simulation mode or method) as the only authorized testing equipment together with an OBD-II (on-board diagnostic system) with wireless capability, (ii) the use of the ASM 50-15 together with the use of a dynamometer, and (iii) two-speed tailpipe testing equipment. Possession and availability of a dynamometer shall be required for enhanced emissions inspection stations.* Only those computer software programs and emissions testing procedures necessary to comply with applicable provisions of Title I of the *federal* Clean Air Act shall be included. Such testing equipment shall be approvable for motor vehicle manufacturers' warranty repairs. *An enhanced emissions inspection program shall include remote sensing and an on-road clean screen program as provided in this article.*

"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 that:

1. Is designed for the transportation of persons or property; and
2. Is powered by an internal combustion engine.

"On-road clean screen program" means a program that allows a motor vehicle owner to voluntarily certify compliance with emissions standards by means of on-road remote sensing.

"On-road emissions inspector" means the entity or entities authorized by the Department of Environmental Quality to perform on-road testing, including on-road testing in accordance with the on-road clean screen program.

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

"Program coordinator" means any person or corporation that has entered into a contract with the Director to provide services in accordance with this article.

"Qualified hybrid motor vehicle" means a motor vehicle that (i) meets or exceeds all applicable regulatory requirements, (ii) meets or exceeds the applicable federal motor vehicle emissions standards for gasoline-powered passenger cars, and (iii) can draw propulsion energy both from gasoline or diesel

fuel and a rechargeable energy storage system.

"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. *Emissions inspections and vehicle safety inspections may be performed in the same service bay, provided that the facility is both an emissions inspection station and an official safety inspection station pursuant to §§ 46.2-1163 and 46.2-1166. Emissions inspections may be performed in any service bay of the emissions inspection station or, if by wireless means, in any other area on the premises of the emissions inspection station.*

"Validation program" or "program validation" means a program approved by the Director by which vehicles are randomly identified and provided a free emissions inspection for the purpose of monitoring the effectiveness of the emissions inspection program. A "validation program" may be conducted at an emissions inspection station, as defined by § 46.2-1176, in conjunction with a state safety inspection or using on-road testing.

§ 46.2-1177.1. Inspection program coordinator; agreement for services.

The Director may enter into an agreement to designate a program coordinator for all inspection programs pursuant to this article, except that no on-road clean screen program or any program or inspection process that utilizes remote sensing shall be included in the agreement. The Director shall determine the services to be provided by the program coordinator and the amount to be paid to the program coordinator for such services by the Department. Such agreement shall include a provision that the program coordinator shall provide and maintain inspection stations as defined in § 46.2-1176 with equipment, as set forth in this article, as required for a station to provide inspections. In addition to the amount the Director agrees for the Department to pay the program coordinator, the agreement shall permit the program coordinator to be paid up to \$3,500 per year from each inspection station for each set of required equipment for the provision and maintenance of such equipment by the program coordinator.

§ 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 *federal* 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~~ U.S. Environmental Protection Agency, pursuant to the *federal* 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.

B1. The emissions inspection program provided for in this article shall not apply to any qualified hybrid motor vehicle if such vehicle obtains a rating from the U.S. Environmental Protection Agency of at least 50 miles per gallon during city fuel economy tests unless remote sensing devices indicate the hybrid vehicle may not meet current emissions standards. The Board shall adopt such regulations as may be required to implement this exemption.

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~~ *shall* include on-road testing, ~~and~~ remote

sensing devices, *and an on-road clean screen program*. 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 25 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. *On and after July 1, 2012, and before July 1, 2013, an on-road clean screen program shall be limited to no more than 10 percent of the motor vehicles described in this subsection which are eligible for emissions inspection during the applicable 12-month period. On and after July 1, 2013, and before July 1, 2014, an on-road clean screen program shall be limited to no more than 20 percent of the motor vehicles described in this subsection which are eligible for emissions inspection during the applicable 12-month period. On and after July 1, 2014, an on-road clean screen program shall be limited to no more than 30 percent of the motor vehicles described in this subsection which are eligible for emissions inspection during the applicable 12-month period. An on-road clean screen program or a validation program utilizing remote sensing equipment shall not be considered emissions inspection stations. The Board may reduce the percentage of vehicles eligible to participate in the on-road clean screen program as is necessary to meet applicable air quality requirements under the federal Clean Air Act, 42 U.S.C. § 7401 et seq., as amended. Notwithstanding the provisions of § 46.2-1176, the Board shall designate remote sensing equipment as authorized testing equipment pursuant to this section.*

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)~~ (a) the ~~federal~~ U.S. Environmental Protection Agency, pursuant to the federal Clean Air Act, formally and in writing approves the program for such localities; ~~(ii)~~; (b) 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)~~ (c) 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 *and an on-road clean screen program*. The Board ~~may~~ shall promulgate regulations establishing on-road testing *and on-road clean screen program* requirements including, but not limited to, collecting ~~of~~ data and information necessary to comply with ~~the federal Clean Air Act Amendments of 1990 or determine compliance with applicable laws and regulations~~, 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, *and standards for operating the on-road clean screen program, including provisions for the suspension or revocation of any on-road emissions inspection program for failure to act in accordance with the provisions of this article and regulations 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 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~~ 12 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 ~~the~~ on-road ~~testing~~ *clean screen program* indicates that a motor vehicle does not exceed emissions standards adopted by the Board for on-road testing pursuant to § 46.2-1179, *then* 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.

§ 46.2-1180. Board to adopt regulations; exemption of certain motor vehicles.

A. The Board is authorized to adopt such regulations for purposes of implementation, administration, and regulation as may be necessary to carry out the provisions of this article. Such regulations shall include but not necessarily be limited to requirements for the following:

1. The collection of data and maintenance of records of emissions inspection test results and vehicle repairs under this article and the inspection results of the air pollution control systems or devices in accordance with § 46.2-1048 and regulations of the Board.

2. The calibration of emissions testing equipment by emissions inspection stations to ensure conformance with the standards adopted by the Board.

3. The establishment of appropriate referee stations.

4. The permitting of emissions inspection stations and fleet emissions inspection stations and the licensing of emissions inspectors, including the suspension or revocation of such permit or license.

5. The protection of consumer interests in accordance with regulations of the Board concerning, but not limited to: (i) the number of inspection facilities and inspection lanes relative to population density, (ii) the proximity of inspection facilities to motor vehicle owners, (iii) the time spent waiting for inspections, and (iv) the days and hours of operation of inspection facilities.

6. The prohibition of any manufacturer or distributor of emissions testing equipment from directly or indirectly owning or operating any emissions testing facility or having any direct or indirect financial interest in any such facility other than the leasing of or providing financing for equipment related to emissions testing.

7. The certification of motor vehicle emissions repair technicians and emissions repair facilities, including the suspension or revocation of such certification. The regulations shall apply to emissions repair technicians and emissions repair facilities that conduct emissions-related repairs for vehicles that have failed a motor vehicle emissions test according to regulations adopted by the Board.

The Director shall administer these regulations and seek compliance with conditions of any contractual arrangements which the Commonwealth may make for inspection services related to air pollution control *and may include entering into an agreement with a program coordinator to implement provisions of this subsection.*

B. (For contingent expiration date, see Editor's note) Motor vehicles being titled for the first time may be registered for up to two years without being subject to an emissions inspection, and the four immediately preceding model years being held in a motor vehicle dealer's inventory for resale may be registered in the localities mentioned in subsection C of § 46.2-1178 for up to one year without being subject to an emissions inspection, provided that the dealer states in writing that the emissions equipment on the motor vehicle was operating in accordance with the manufacturer's or distributor's warranty at the time of resale.

B. (For contingent effective date, see Editor's note) Motor vehicles being titled for the first time may be registered for up to four years without being subject to an emissions inspection, and the four immediately preceding model years being held in a motor vehicle dealer's inventory for resale may be registered in the localities mentioned in subsection C of § 46.2-1178 for up to one year without being subject to an emissions inspection, provided that the dealer states in writing that the emissions equipment on the motor vehicle was operating in accordance with the manufacturer's or distributor's warranty at the time of resale.

C. No motor vehicle for which the Board has not adopted emissions inspection standards shall be subject to an emissions inspection.

D. The Director may enter into bilateral agreements with other states providing for assistance in enforcing each state's statutes and regulations relating to motor vehicle emissions and motor vehicle emissions programs as to vehicles registered in one state and operated in another. Subject to such bilateral agreement, owners of motor vehicles registered in other states and operated in Virginia shall be subject to the on-road testing provisions of § 46.2-1178.1, and shall be notified of test results and assessment of civil charges for noncompliance with emissions standards adopted by the Board. Such notification shall also be provided to the appropriate motor vehicle agency in the state of registration.

§ 46.2-1181. Emissions inspection; cost of repairs; waivers.

A. A motor vehicle shall qualify for an emissions inspection waiver in the event that such vehicle has failed an initial inspection and subsequently failed a reinspection if the owner provides written proof that (i) at least the amount specified in this section has been spent by the owner on the maintenance and repair of the vehicle's engine and emission control system and related equipment and (ii) any emission control system or part thereof which has been removed, damaged, or rendered inoperable by any act enumerated in § 46.2-1048 has been replaced and restored to operating condition.

B. The Director shall establish and revise, as necessary, specifications and procedures for motor vehicle maintenance and repair of pollution control devices and systems.

C. For the purposes of subsection A ~~of this section~~:

For motor vehicles subject to *basic* emissions inspections under subsection A of § 46.2-1178, cost

limitations on repairs under the emissions inspection program, including parts and labor, but excluding costs of repairs covered by warranties, shall be \$175 for pre-1980 model vehicles and \$200 for 1980 and newer vehicles, *using 2012, or a later date if allowed by federal regulations and approved by the Board, as the base year and annually adjusted by the Consumer Price Index. The Board may phase in waiver amounts.*

For motor vehicles subject to emissions inspections under subsection C of § 46.2-1178, the cost limitations *on repairs* shall be a base amount of \$450 per vehicle using 1990, or a later date if allowed by federal regulations and approved by the Board, as the base year and annually adjusted by the Consumer Price Index. The Board may phase in waiver amounts.

Repairs credited toward this waiver must be done by a repair technician certified in accordance with § 46.2-1180. Repairs shall include parts and labor.

D. For the purposes of subsection A of this section, for motor vehicles subject to emissions inspections under subsection B of § 46.2-1178, the cost limitations on repairs under the emissions inspection program, including parts and labor but excluding costs of repairs covered by warranties, shall be:

1. \$75 for pre-1981 vehicles; and
2. \$200 for 1981 and newer vehicles.

§ 46.2-1182. Emissions inspection fees; exemption.

Emissions inspection stations performing emissions inspections under subsection A of § 46.2-1178 may charge \$11.40 for each emissions inspection, but such charge shall not be mandatory. Any such fee shall be paid to the emissions inspection station.

Each emissions inspection station performing emissions inspections under subsection B of § 46.2-1178 may charge for each emissions inspection an amount not to exceed ~~\$17.00~~ \$17. Any such fee shall be paid to and retained by the emissions inspection station.

Beginning at such date upon which the program becomes an enhanced emissions program, each emissions inspection station performing emissions inspections under subsection C of § 46.2-1178 may charge an amount not to exceed ~~\$28.00~~ \$28 for each emissions inspection. Any such fee shall be paid to and retained by the emissions inspection station.

Within ~~fourteen~~ 14 days of an initial failure of an emissions inspection *performed at an emissions inspection station*, the vehicle's owner shall be entitled to one free reinspection at the station *or facility* that conducted the original inspection.

The on-road emissions inspector performing emissions inspections under subsection C of § 46.2-1178 may charge each motor vehicle owner who elects to participate in the on-road clean screen program an amount not to exceed \$28 for each emissions inspection. Any such fee shall be paid to the on-road emissions inspector. From each emissions inspection fee received by the on-road emissions inspector, a minimum of \$4.50 shall be appropriated to the Highway Maintenance and Operating Fund.

§ 46.2-1182.2. Vehicle Emissions Inspection Program Fund established; use of moneys.

A special nonreverting fund known as the Vehicle Emissions Inspection Program Fund is hereby established in the state treasury.

Notwithstanding the provisions of § 2.2-1802, all moneys collected pursuant to § 46.2-1182.1 shall be paid into the treasury and credited to the Vehicle Emissions Inspection Program Fund.

No moneys remaining in the Fund at the end of each fiscal year shall revert to the general fund, but shall remain in the Fund. Interest earned on such moneys shall remain in the Fund and be credited to it.

The Department of Environmental Quality may release moneys from the Fund, on warrants issued by the State Comptroller, for covering the costs of the emissions inspection program, *including payment to the program coordinator for contracted services.* The moneys in this Fund may also be released for the purpose of long-term maintenance of air quality and the correction and prevention of nonattainment status for National Ambient Air Quality Standards through air quality programs under the direction of the Director. *Any remaining funds shall be remitted for use in transportation maintenance projects so that such funds generated from localities required to have emissions inspections pursuant to subsection B of § 46.2-1178 shall have such remaining funds generated pursuant to § 46.2-1182.1 transferred on an annual basis to the Northern Virginia Transportation District. Such funds shall be used for transportation maintenance in the respective locality.*

2. That the Department of Environmental Quality shall gather a group of stakeholders with knowledge about the emissions inspection and maintenance program to make recommendations on the specific requirements for management of the emissions inspection and maintenance program utilizing a program coordinator. The Department of Environmental Quality shall report those recommendations to the Chairmen of the House and Senate Transportation Committees no later than November 1, 2012.

3. That the provisions of this act specifically regarding a program coordinator shall not become effective until July 1, 2013.

4. That the State Air Pollution Control Board shall promulgate regulations to implement the provisions of this act specifically regarding the on-road clean screen program to be effective within 280 days of its enactment. The State Air Pollution Control Board adoption of regulations

necessary to implement the provisions of this act shall be exempt from Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia except that the Department of Environmental Quality shall utilize a regulatory advisory panel to assist in the development of necessary regulations and shall provide an opportunity for public comment on all regulations.

5. That the on-road emissions inspectors shall reimburse the Department of Environmental Quality and the Department of Motor Vehicles for all costs that the agencies incur as a result of the on-road clean screen program.

6. That the Department of Environmental Quality shall make its best efforts to obtain proposals from multiple vendors to operate the on-road clean screen program.

7. That the Department of Motor Vehicles shall confer with the Department of Environmental Quality to recommend and implement procedures to ensure that data in the Department of Motor Vehicles' vehicle registration records is accurate where that data is used to determine whether a vehicle is subject to emissions inspection requirements.

8. That the amounts appropriated to the Highway Maintenance and Operating Fund pursuant to § 46.2-1182 shall be expended in the Transportation District in which they were generated.