

VIRGINIA ACTS OF ASSEMBLY -- 1995 SESSION

CHAPTER 851

An Act to amend and reenact §§ 46.2-1176, 46.2-1177, 46.2-1178, 46.2-1179, 46.2-1180, 46.2-1181, 46.2-1182, 46.2-1182.1, 46.2-1183 and 46.2-1187.2 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 46.2-1178.1, relating to motor vehicle emissions inspections.

[H 2321]

Approved May 5, 1995

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-1176, 46.2-1177, 46.2-1178, 46.2-1179, 46.2-1180, 46.2-1181, 46.2-1182, 46.2-1182.1, 46.2-1183 and 46.2-1187.2 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 46.2-1178.1 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), 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 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 shall include selection of the most cost effective equipment to perform test procedures which meet emissions standards established by the Board to reduce air pollution from motor vehicles as required by applicable provisions of Title I of the Clean Air Act 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:

1. Was manufactured for the 1968 model year or a more recent model year;
2. Is designed for the transportation of persons or property; and
3. Is more than one year old, calculated from the date such motor vehicle was first titled; and
4. Is powered by an internal combustion engine.

The term "motor vehicle" does not include any:

1. Vehicle powered by a diesel engine or powered by a clean special fuel as defined in § 58.1-2101, providing provisions of the Clean Air Act permit such exemption for vehicles powered by a clean special fuel;

2. Motoreycle;

3. Vehicle which, at the time of its manufacture, was not designed to meet emissions standards set or approved by the federal government; or

4. Any antique motor vehicle as defined in § 46.2-100 and licensed pursuant to § 46.2-730.

"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.

"Test only" means motor vehicle emissions inspection facilities that perform only official motor vehicle emissions inspections and such other procedures and functions as permitted by regulations of the Board.

§ 46.2-1177. Emissions inspection program.

The Director shall administer an emissions inspection program. Such program shall require biennial inspections of motor vehicles at official emissions inspection stations in accordance with this article *and may require additional inspections of motor vehicles that have been shown by on-road testing to exceed emissions standards established by the Board.*

The emissions inspections required in § 46.2-1178 shall not apply to any:

1. Vehicle powered by a clean special fuel as defined in § 58.1-2101, provided provisions of the federal Clean Air Act permit such exemption for vehicles powered by a clean special fuel;

2. Motorcycle;

3. Vehicle which, at the time of its manufacture was not designed to meet emissions standards set or approved by the federal government;

4. Antique motor vehicle as defined in § 46.2-100 and licensed pursuant to § 46.2-730; or

5. Vehicle for which no testing standards have been adopted by the Board.

§ 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 (§ 9-6.14:1 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 same emissions inspections program required for motor vehicles registered in any locality specified in this subsection shall also apply to Virginia-registered motor vehicles that are not registered in that locality, but have a base of operations in that locality. 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, and (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, 1994 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, 1995 1996; or (ii) the date on which the Federal Environmental Protection Agency, pursuant to the Clean Air Act, formally and in writing disapproves the redesignation request for such localities submitted on November 15, 1992 approves this program for such localities or on such later date as may be provided by regulations of the Board. If the Governor shall determine in writing that expedited promulgation of such regulations is in the best interest of the Commonwealth, such determination shall constitute an "emergency situation" pursuant to § 9-6.14:4.1 C 5 and the Governor may at his discretion authorize the Board to promulgate the regulations as emergency regulations in accordance with that section.~~

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 ~~road~~ *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 ~~26,000~~ *10,000* pounds or less and are registered *or operated primarily, as defined by the Board in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.) in the Counties of Arlington, Fairfax, Fauquier, Loudoun, Prince William, and Stafford and the Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park.*

~~The same test and repair enhanced emissions inspection program or an equivalent program required for motor vehicles registered in any locality specified in this subsection shall also apply to Virginia-registered motor vehicles that are not registered in that locality, but have base of operations in~~

~~that locality.~~ 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, ~~and (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, ~~1995~~ 1996, or on such later date as may be provided by regulations of the Board. ~~The Director shall not enter into any agreements or contracts to implement the provisions of this section prior to February 1, 1994. 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 § 9-6.14:4.1, and (iii) the Governor authorizes the Board to promulgate the resolutions as emergency regulations in accordance with this section.~~

D. ~~Notwithstanding any other provision of this section, the Governor may at any time determine in writing that the requirements of federal law or regulation or changes in emissions by motor vehicles or other sources of air pollution in the localities mentioned in subsection C of this section warrant the adoption of an enhanced test only emissions inspection program consistent with regulations promulgated in accordance with Title I of the federal Clean Air Act. In that event, he shall direct the Board pursuant to its authority under this section and §§ 46.2-1179 and 46.2-1180 to adopt regulations to implement a test only program for those localities to replace any test and repair programs adopted hereunder. Such test only program shall be implemented as soon as practicable and economically feasible following submission by the Governor of the State Implementation Plan.~~

Any emissions inspection program regulations in effect at the time the ~~1994~~ 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 (§ 9-6.14:1 et seq.).*

C. *Civil charges assessed pursuant to this section shall be waived by the Board if, within ninety 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.*

§ 46.2-1179. Board to adopt emissions standards.

The Board shall adopt emissions standards necessary to implement the ~~enhanced~~ emissions inspection program provided for in this article.

§ 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 ~~station personnel~~ *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.

B. 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.

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

§ 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) ~~since the initial inspection~~ at least the amount specified in ~~subsection C of 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 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.*

1. ~~\$60 for pre-1972 model vehicles;~~
2. ~~\$125 for 1972 through 1974 model vehicles;~~
3. ~~\$175 for 1975 through 1979 model vehicles; and~~
4. ~~\$200 for 1980 and newer model vehicles.~~

For motor vehicles subject to emissions inspections under subsection C of § 46.2-1178, the cost limitations 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.*

1. ~~\$200 for pre-1986 model vehicles; and~~
2. ~~\$350 for 1986 and newer model vehicles.~~

However, beginning January 1, 1995, the cost limitations shall be a base amount of \$450 per vehicle, using 1990 as the base year and annually adjusted by the Consumer Price Index. 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 ~~\$13.50~~ *\$11.40* for each emissions inspection, but such charge shall not be mandatory. Any such fee shall be paid to the emissions inspection station. ~~Within thirty days following the end of each calendar quarter each official emissions inspection station shall remit to the Department of Environmental Quality \$2.10 for each emissions inspection approval and each emissions inspection waiver issued by that station under this article during that quarter. Such funds shall be forwarded to the~~

Department of Environmental Quality to be disposed of pursuant to this section.

Beginning July 1, 1994, each emissions inspection station performing emissions inspections under subsection B of § 46.2-1178 may charge for each emissions inspection an amount to be determined by the Board, not to exceed \$17.00. Any such fee shall be paid to and retained by 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. Any such fee shall be paid to and retained by the emissions inspection station.*

From July 1, 1994, through December 31, 1994, or such later date as authorized by the Board, each emissions inspection station performing emissions inspections under subsection C of § 46.2-1178 may charge \$11.40 for each emissions inspection. Thereafter, such inspection stations may charge an amount determined by the Board, not to exceed \$20. 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 \$20.00 for each emissions inspection. Any such fee shall be paid to and retained by the emissions inspection station.*

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

Local governments, governmental units, and state agencies with their own means of inspection shall be exempt from the payment of fees to the Department of Environmental Quality under this section.

§ 46.2-1182.1. Additional registration fee; exemption.

Beginning July 1, 1994, in addition to any other fees imposed, at the time of registration by the Department of Motor Vehicles, the owner of any motor vehicle subject to registration in Virginia and subject to the program provided for in this article by virtue of the locality in which it is registered shall pay two dollars per year.

Beginning July 1, 1994 1995, or later if required by regulation of the Board, owners of motor vehicles which are subject to the program by virtue of the location of their base of operation *or the location where they are primarily operated* shall remit a fee of two dollars per vehicle per year to the Department of Environmental Quality. Payment shall be made according to procedures and on a schedule prescribed by the Department of Environmental Quality. State and local governmental units and agencies shall be exempt from the payment of fees to the Department of Environmental Quality under this subsection.

§ 46.2-1183. Emissions inspection required prior to registration of certain vehicles; records.

No vehicle subject to the provisions of this article shall be registered or reregistered until it has passed an emissions inspection or has been issued an emissions inspection waiver. Any (i) proof of compliance with emissions standards and emissions inspection requirements and (ii) emissions inspection waiver issued for any motor vehicle shall be valid for two years *from the end of the month in which it is issued*, regardless of any sale or trade of the motor vehicle for which either document was issued during that time. *Motor vehicles being titled for the first time shall be considered to have valid emissions inspection certificates for a period of two years from the month of first titling. The Commissioner of Motor Vehicles may enter into an agreement with the Director whereby the Department of Motor Vehicles may refuse to register or reregister those motor vehicles subject to emissions inspection programs set forth in this article if the registration period for such vehicles exceeds the valid emissions inspection period by a period of time to be determined by the Director in consultation with the Department of Motor Vehicles and the Commissioner.*

Owners of motor vehicles that are not registered with the Department of Motor Vehicles shall maintain such records pertaining to all vehicles located or operated in the areas specified in § 46.2-1178 as the Board may by regulation require. Such records shall contain proof of compliance with this article and be made available to the Department of Environmental Quality upon the Department's request.

§ 46.2-1187.2. Compelling compliance with regulations and order of Board; penalty.

Any emissions inspection station owner violating or failing, neglecting, or refusing to obey any regulation or order of the Board may be compelled to comply by injunction, mandamus, or other appropriate remedy.

Without limiting the remedies which may be obtained under the foregoing provisions of this section, any emissions inspection station owner violating or failing, neglecting, or refusing to obey any regulation or order of the Board or any provision of this article, shall, in the discretion of the court, be subject to a civil penalty of no more than \$25,000 for each violation. Each day of violation shall constitute a separate offense. In determining the amount of any civil penalty to be assessed, the court shall consider, in addition to such other factors as it may deem appropriate, the size of the emissions inspection station owner's business, the severity of the economic impact of the penalty on that business, and the seriousness of the violation. Such civil penalties may, in the discretion of the court, be directed to be paid into the treasury of the county, city, or town in which the violation occurred to be used to abate environmental pollution in whatever manner the court, by order, may direct. However, where the emissions inspection station owner is the county, city, or town or an agent thereof, the court shall direct the penalty to be paid into the state treasury.

With the consent of the emissions inspection station owner who has violated or failed, neglected, or refused to obey any regulation or order of the Board or any provision of this article, the Board may, in any order issued by the Board against such owner, provide for the payment of civil charges in specific sums, not to exceed the limit in the foregoing provisions of this section. Such civil charges shall be in lieu of any civil penalty which could be imposed under the foregoing provisions of this section.

Any penalty provided for in this section to which an emissions inspection station owner is subject shall apply to any emissions inspector or certified emissions repair mechanic employed by or at that station.

As to emissions inspection station owners, emissions inspectors, and certified emissions repair mechanics, minor violations as set forth in Board regulations may be punishable by letters of reprimand from the Department. Major violations as set forth in Board regulations may be punishable by probation, suspension and/or license or certificate revocation, depending on the nature and type of violation. Civil penalties may be imposed only for major types of violations.

The Board shall provide by regulation a process whereby emissions inspection station owners, emissions inspectors and certified emissions repair mechanics may appeal penalties for violations. Such regulations regarding the process to appeal penalties for violations shall provide that the appeal process shall be handled by a person other than the Program Manager for the applicable emissions program or one of his regional employees.