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## SENATE BILL NO. 261

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance  
on February 11, 2010)

(Patron Prior to Substitute—Senator Whipple)

A *BILL to amend and reenact §§ 3.2-5609 and 62.1-44.34:13 of the Code of Virginia, relating to the imposition of weights and measures fees.*

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 3.2-5609 and 62.1-44.34:13 of the Code of Virginia are amended and reenacted as follows:**

§ 3.2-5609. Testing and inspection of weights and measures offered for sale or commercially used; fee.

A. When not otherwise provided by law, the Commissioner shall have the power to inspect and test, to ascertain if they are correct, all weights and measures kept, offered, or exposed for sale. It shall be the duty of the Commissioner to inspect and test on a periodic basis as he deems necessary, to ascertain if they are correct, all weights and measures commercially used: (i) in determining the weight, measurement, or count of commodities or things sold, or offered or exposed for sale, on the basis of weight, measure, or of count; or (ii) in computing the basic charge or payment for services rendered on the basis of weight, measure, or count. With respect to any single-service devices and any uniformly mass-produced devices, a test may be made on representative samples of such devices; and any lot of which such samples are representative shall be held to be correct or incorrect upon the basis of the results of the inspections and tests on such samples. As used in this chapter, "single-service devices" means any devices designed to be used commercially once and then discarded. "Uniformly mass-produced devices" includes any devices made by means of a mold or die, and not susceptible to individual adjustment. *It is the intent of the General Assembly that the Commissioner at least annually inspect each weight and measure commercially used.*

B. *The moneys collected pursuant to subsection E of § 62.1-44.34:13 shall be deposited into the Weights and Measures Fund established under § 3.2-5628 and shall be used solely to test such petroleum dispensing pumps. However, if the amount of such moneys collected in a fiscal year pursuant to subsection E of § 62.1-44.34:13 exceeds the actual costs incurred during that year for the testing of such petroleum dispensing pumps then, as soon as practicable after the close of the fiscal year, the Commissioner shall report such excess to the Comptroller, who shall transfer such excess to the Virginia Petroleum Storage Tank Fund established under § 62.1-44.34:11.*

C. The Commissioner shall submit a report by October 1 of each year to the Chairmen of the Senate Committee on Finance and the Senate Committee on Agriculture, Conservation and Natural Resources, and the Chairmen of the House Appropriations Committee and House Committee on Agriculture, Chesapeake and Natural Resources on the testing and inspection activities of the Department weights and measures program including the number and frequency of inspections for the weights and measures devices.

§ 62.1-44.34:13. Levy of fee for Fund maintenance.

A. In order to generate revenue for the Fund and to make the Fund available to owners and operators of underground storage tanks and to owners and operators of aboveground storage tanks, there shall be imposed a fee of one-fifth of one cent on each gallon of the following fuels sold and delivered or used in the Commonwealth: gasoline, aviation gasoline, diesel fuel (including dyed diesel fuel), blended fuel, and heating oil, as such terms are defined in § 58.1-2201; however, such fee shall not be imposed on (i) gasoline, aviation gasoline, diesel fuel (including dyed diesel fuel), blended fuel, and heating oil sold and delivered to the United States or its departments, agencies and instrumentalities for the exclusive use by the United States or its departments, agencies and instrumentalities, (ii) alternative fuel as defined in § 58.1-2201, or (iii) aviation jet fuel as defined in § 58.1-2201.

*For purposes of this section the term "Fund" means the Virginia Petroleum Storage Tank Fund.*

B. The fee shall be remitted to the Department of Motor Vehicles in the same manner and subject to the same provisions specified in Chapter 22 (§ 58.1-2200 et seq.) of Title 58.1, except § 58.1-2236 shall not apply.

C. Any person who purchases gasoline, aviation gasoline, diesel fuel (including dyed diesel fuel), blended fuel, or heating oil upon which the fee imposed by this article has been paid shall be entitled to a refund for the amount of the fee paid if such person subsequently transports and delivers such fuel to another state, district or country for sale or use outside the Commonwealth. The application for refund shall be accompanied by a paid ticket or invoice covering the sales of such fuel and shall be filed with the Commissioner of the Department of Motor Vehicles within one year of the date of payment of the

60 fee for which the refund is claimed. A refund shall not be granted pursuant to this article on any fuel  
61 which is transported and delivered outside the Commonwealth in the fuel supply tank of a highway  
62 vehicle or aircraft.

63 D. To maintain the Fund at an appropriate operating level, the Commissioner of the Department of  
64 Motor Vehicles shall increase the fee to three-fifths of one cent when notified by the Comptroller that  
65 the Fund has been or is likely in the near future to be reduced below three million dollars, exclusive of  
66 fees collected pursuant to § 62.1-44.34:21, and he shall reinstitute the one-fifth of one cent fee when the  
67 Comptroller notifies him that the Fund has been restored to twelve million dollars exclusive of fees  
68 collected pursuant to § 62.1-44.34:21.

69 E. *In addition to all other fees imposed under this section, there is hereby imposed an additional fee*  
70 *of one-tenth of one cent on each gallon of fuel for which the fee under subsection A is imposed. The fee*  
71 *shall be remitted to the Department of Motor Vehicles in the same manner as provided under subsection*

72 *B. The Commissioner of the Department of Motor Vehicles shall collect the fee and shall remit the*  
73 *revenues from the fee into the state treasury. As soon as practicable after such remittance, the*  
74 *Comptroller shall deposit the revenues from the fee into the Weights and Measures Fund established*  
75 *under § 3.2-5628 to be used as provided in § 3.2-5609. For any refund paid pursuant to subsection C,*  
76 *the portion of the refund relating to the fee imposed under this subsection shall be paid by the*  
77 *Commissioner from the revenues from the fee imposed under this subsection.*

78 EF. The Comptroller shall report to the Commissioner quarterly regarding the Fund expenditures and  
79 Fund total for the preceding quarter.

80 FG. Revenues from such fees, less refunds and administrative expenses, shall be deposited in the  
81 Fund and used for the purposes set forth in this article.