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**HOUSE BILL NO. 733**

Offered January 21, 2000

*A BILL to amend the Code of Virginia by adding a section numbered 46.2-885.1, relating to use of photo-monitoring systems to enforce railroad warning signals; penalty.*

Patrons—Devolites and McQuigg

Referred to Committee on Transportation

**Be it enacted by the General Assembly of Virginia:****1. That the Code of Virginia is amended by adding a section numbered 46.2-885.1 as follows:**

*§ 46.2-885.1. Use of photo-monitoring systems to enforce railroad warning signals; penalty.*

*A. The governing body of any county, city, or town may provide by ordinance for the establishment of a program imposing monetary liability on the operator of a motor vehicle for failure to comply with railroad warning signals in such locality in accordance with the provisions of this section. Each such locality may install and operate traffic light signal photo-monitoring systems at no more than twenty-five railroad grade crossings within each locality at any one time.*

*B. The operator of a vehicle shall be liable for a monetary penalty imposed pursuant to this section if such vehicle is found, as evidenced by information obtained from a railroad warning signal violation monitoring system, to have failed to comply with a railroad warning signal within such locality.*

*C. Proof of a violation of this section shall be evidenced by information obtained from a railroad warning signal violation monitoring system authorized pursuant to this section. A certificate, sworn to or affirmed by a technician employed by a locality authorized to impose penalties pursuant to this section, or a facsimile thereof, based upon inspection of photographs, microphotographs, videotape, or other recorded images produced by a railroad warning signal violation monitoring system, shall be prima facie evidence of the facts contained therein. Any photographs, microphotographs, videotape, or other recorded images evidencing such a violation shall be available for inspection in any proceeding to adjudicate the liability for such violation pursuant to an ordinance adopted pursuant to this section.*

*D. In the prosecution of an offense established under this section, prima facie evidence that the vehicle described in the summons issued pursuant to this section was operated in violation of this section, together with proof that the defendant was at the time of such violation the owner, lessee, or renter of the vehicle, shall constitute in evidence a rebuttable presumption that such owner, lessee, or renter of the vehicle was the person who committed the violation. Such presumption shall be rebutted if the owner, lessee, or renter of the vehicle (i) files an affidavit by regular mail with the clerk of the general district court that he or she was not the operator of the vehicle at the time of the alleged violation or (ii) testifies in open court under oath that he or she was not the operator of the vehicle at the time of the alleged violation. Such presumption shall also be rebutted if a certified copy of a police report, showing that the vehicle had been reported to the police as stolen prior to the time of the alleged violation of this section, is presented, prior to the return date established on the summons issued pursuant to this section, to the court adjudicating the alleged violation.*

*E. For purposes of this section, "owner" means the registered owner of such vehicle on record with the Department of Motor Vehicles. For purposes of this section, "railroad warning signal violation-monitoring system" means a vehicle sensor installed to work in conjunction with a traffic light that automatically produces two or more photographs, two or more microphotographs, a videotape, or other recorded images of each vehicle at the time it is used or operated in violation of § 46.2-884 or § 46.2-885.*

*F. Imposition of a penalty pursuant to this section shall not be deemed a conviction as an operator and shall not be made part of the operating record of the person upon whom such liability is imposed nor shall it be used for insurance purposes in the provision of motor vehicle insurance coverage. No monetary penalty imposed under this section shall exceed fifty dollars nor shall it include court costs.*

*G. A summons for a violation of this section may be executed pursuant to § 19.2-76.2. Notwithstanding the provisions of § 19.2-76, a summons for a violation of this section may be executed by mailing by first-class mail a copy thereof to the address of the owner, lessee, or renter of the vehicle as shown, in the case of vehicle owners, in the records of the Department of Motor Vehicles or, in the case of vehicle lessees or renters, in the records of the lessor or renter. Every such mailing shall include, in addition to the summons, a notice of (i) the summoned person's ability to rebut the presumption that he was the operator of the vehicle at the time of the alleged violation through the filing of an affidavit as provided in subsection D of this section and (ii) instructions for filing such affidavit, including the address to which the affidavit is to be sent. If the summoned person fails to*

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59 appear on the date of return set out in the summons mailed pursuant to this section, the summons shall  
60 be executed in the manner set out in § 19.2-76.3. No proceedings for contempt or arrest of a person  
61 summoned by mailing shall be instituted for failure to appear on the return date of the summons.

62 H. In any action at law brought by any person or entity as the result of personal injury or death or  
63 damage to property, such evidence derived from a photo-monitoring system shall be admissible in the  
64 same method prescribed as required in the prosecution of an offense established under this section  
65 without the requirements of authentication as otherwise required by law.

66 I. On behalf of a locality, a private entity may not obtain records regarding the registered owners of  
67 vehicles which fail to comply with railroad warning signals. A private entity may enter into an  
68 agreement with a locality to be compensated for providing the railroad warning signal  
69 violation-monitoring system or equipment, and all related support services, to include consulting,  
70 operations and administration. However, only an employee of the locality may swear to or affirm the  
71 certificate required by subsection C.