

VIRGINIA ACTS OF ASSEMBLY -- 2004 SESSION

CHAPTER 783

An Act to amend the Code of Virginia by adding in Chapter 1 of Title 33.1 an article numbered 3.1, consisting of sections numbered 33.1-56.1 through 33.1-56.5, relating to High-Occupancy Toll Lanes.

[H 151]

Approved April 14, 2004

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 1 of Title 33.1 an article numbered 3.1, consisting of sections numbered 33.1-56.1 through 33.1-56.5, as follows:

Article 3.1.

High-Occupancy Toll Lanes.

§ 33.1-56.1. Definitions.

For purposes of this section:

"Board" means the Commonwealth Transportation Board;

"High-occupancy requirement" means the number of persons required to be traveling in a vehicle for the vehicle to use HOT lanes without the payment of a toll. Emergency vehicles, law-enforcement vehicles using HOT lanes in the performance of their duties, and transit and commuter buses shall meet the high-occupancy requirement for HOT lanes, regardless of the number of occupants in the vehicle;

"High-occupancy toll lanes" or "HOT lanes" means a portion of a highway containing one or more travel lanes separated from other lanes, that is accessed through an electronic toll collection system, provides for free passage by vehicles carrying a certain number of persons, and contains a photo-enforcement system for use in such electronic toll collection. HOT lanes shall not be a "toll facility" or "HOV lanes" for the purposes of any other provision of law or regulation;

"HOT lanes operator" means the operator of the facility containing HOT lanes, which may include the Virginia Department of Transportation or some other entity;

"Owner" means the registered owner of a vehicle on record with the Department of Motor Vehicles, or with the equivalent agency in another state. "Owner" does not mean a vehicle rental or vehicle leasing company; and

"Photo-enforcement system" means a sensor installed in conjunction with a toll collection device to detect the presence of a vehicle that automatically produces one or more photographs, one or more microphotographs, a videotape, or other recorded images of each vehicle's license plate at the time it is detected by the toll collection device.

§ 33.1-56.2. Designation of HOT lanes.

The Board may designate one or more lanes of any highway, including lanes that may previously have been designated HOV lanes under § 33.1-46.2, in the interstate system of highways, primary system of highways, or national highway system, or any portion thereof, as high-occupancy toll lanes, or HOT lanes. In making HOT lanes designations, the Board shall also specify the high-occupancy requirement and conditions for use of such HOT lanes, or may authorize the Commissioner to make such determination consistent with the terms of a comprehensive agreement executed pursuant to § 56-566. The high-occupancy requirement for a HOT lanes facility constructed or operated as a result of the Public-Private Transportation Act (§ 56-556 et seq.) shall not be less than three.

§ 33.1-56.3. HOT lanes enforcement.

Any person operating a motor vehicle on designated HOT lanes shall make arrangements with the HOT lanes operator for payment of the required toll prior to entering such HOT lanes. The driver of a vehicle who enters the HOT lanes without payment of the required toll, or without having made arrangements with the operator for payment of the required toll, shall have committed a violation of this section, which may be enforced in the following manner:

A. A summons for violation of this section may be executed by a law-enforcement officer, when such violation is observed by such officer. Upon a finding by a court of competent jurisdiction that the driver of a vehicle observed by a law-enforcement officer was in violation of this section, the court shall impose a fine upon the driver of such vehicle, together with applicable court costs, as follows: for a first offense, \$50; for a second offense, \$250; for a third offense within a period of two years of the second offense, \$500; and for a fourth and subsequent offense within a period of three years of the second offense, \$1,000. A person convicted under this subsection shall be guilty of a traffic infraction that shall not be a moving violation. Notwithstanding the provisions of § 46.2-492, no driver demerit points shall be assessed for any violation of this subsection. No person shall be subject to both prosecution under this subsection and under subsection B for actions arising out of the same transaction or occurrence.

B. 1. A summons for civil violation of this section may be executed pursuant to § 19.2-76.2, when

such violation is evidenced by information obtained from a photo-enforcement system as defined in this article. A certificate, sworn to or affirmed by a technician employed or authorized by the HOT lanes operator, or a facsimile of such a certificate, based on inspection of photographs, microphotographs, videotapes, or other recorded images produced by a photo-enforcement 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 under this subsection. Any vehicle rental or vehicle leasing company, if named in a summons, shall be released as a party to the action if it provides the HOT lanes operator a copy of the vehicle rental agreement or lease or an affidavit identifying the renter or lessee prior to the date of hearing set forth in the summons. Upon receipt of such rental agreement, lease, or affidavit, a summons shall be issued for the renter or lessee identified therein. Release of this information shall not be deemed a violation of any provision of the Government Data Collection and Dissemination Practices Act (§ 2.2-3800 et seq.) or the Insurance Information and Privacy Protection Act (§ 38.2-600 et seq.).

2. Upon a finding by a court of competent jurisdiction that the vehicle described in the summons for civil violation issued pursuant to evidence obtained by a photo-enforcement system was in violation of this subsection, the court shall impose a civil penalty upon the driver or registered owner of such vehicle, payable to the HOT lanes operator as follows: for a first offense, \$50; for a second offense, \$250; for a third offense within a period of two years of the second offense, \$500; and for a fourth and subsequent offense within a period of three years of the second offense, \$1,000, together with an administrative fee payable to the operator to cover costs of enforcement and the toll due, and applicable court costs. The court shall remand penalties assessed for violation of this section to the HOT lanes operator's account for expenses associated with operation of the HOT lanes and payments against any bonds or other liens issued as a result of the construction of the HOT lanes. No person shall be subject to both prosecution under this subsection and under subsection A for actions arising out of the same transaction or occurrence.

3. Upon a finding by a court that a person has violated this subsection, in the event such person fails to pay the required penalties, fees, and costs, the court shall notify the Commissioner of Motor Vehicles, who shall suspend all of the registration certificates and license plates issued for any motor vehicles registered solely in the name of such person and shall not issue any registration certificate or license plate for any other vehicle that such person seeks to register solely in his name until the court has notified the Commissioner that such penalties, fees, and costs have been paid. The HOT lanes operator and the Commissioner may enter into an agreement whereby the HOT lanes operator may reimburse the Department of Motor Vehicles for their reasonable costs to develop, implement, and maintain this enforcement mechanism, and that specifies that the Commissioner shall have an obligation to suspend such registration certificates so long as the HOT lanes operator makes the required reimbursements in a timely manner in accordance with the agreement.

C. The driver of a vehicle who enters the HOT lanes by crossing through any barrier, buffer or other area separating the HOT lanes from other lanes of travel shall have committed a violation of § 46.2-852. No person shall be subject to both prosecution under this subsection and under subsection A or B for actions arising out of the same transaction or occurrence.

D. Upon a conviction under subsection A or C of this section, the court shall furnish to the Commissioner of the Department of Motor Vehicles in accordance with § 46.2-383 an abstract of the record of such conviction which shall become a part of the convicted person's driving record.

E. No person shall be subject to prosecution under both this section and under §§ 33.1-46.2, 46.2-819 or § 46.2-819.1 for actions arising out of the same transaction or occurrence.

§ 33.1-56.4. Release of personal information.

The HOT lanes operator may enter into an agreement with the Department of Motor Vehicles, in accordance with the provisions of subdivision 21 of subsection B of § 46.2-208, to obtain vehicle owner information regarding the registered owners of vehicles that use HOT lanes, and with the Department of Transportation to obtain any information that is necessary to conduct electronic toll collection and otherwise operate HOT lanes. No HOT lanes operator shall disclose or release any personal information received from the Department of Motor Vehicles or the Department of Transportation to any third party, except in the issuance of a summons and institution of court proceedings in accordance with § 33.1-56.3. Information in the possession of a HOT lanes operator under this section shall be exempt from disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

§ 33.1-56.5. Exclusion from other laws.

Notwithstanding any other provision of law, the provisions of §§ 22.1-187, 33.1-46.2, 33.1-252, 46.2-819, and 46.2-819.1 shall not apply to HOT lanes.