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HOUSE BILL NO. 1157

House Amendments in [] — February 11, 2004

A *BILL to amend and reenact §§ 46.2-819 and 46.2-819.1 of the Code of Virginia and to amend the Code of Virginia by adding in Article 1 of Chapter 8 of Title 46.2 a section numbered 46.2-819.3, relating to the use of toll facilities without payment of toll.*

Patron Prior to Engrossment—Delegate Rust

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-819 and 46.2-819.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 1 of Chapter 8 of Title 46.2 a section numbered 46.2-819.3 as follows:

§ 46.2-819. Use of toll facility without payment of toll; circumstances to be considered in assessing penalty.

Except for those permitted free use of toll facilities under § 33.1-252, it shall be unlawful for the driver of a motor vehicle to use a toll facility without payment of the specified toll.

However, in considering the case of anyone accused of violating this section, the court shall take into consideration (i) except for lanes equipped for payment of tolls through an automatic vehicle identification system, whether the toll booth or collection facility at which the defendant failed to pay the toll was manned at the time, (ii) whether the defendant was required to pay the toll with the exact amount in change, (iii) whether the defendant had change to make the payment, and (iv) whether the defendant had been afforded appropriate advance notice, by signs or other means, that he would be required to pay a toll and pay it with the exact change. ~~Where any photo-monitoring system provided for in § 46.2-819.1 is in operation, no~~ No person shall be subject to both prosecution under this section and to the provisions of § 46.2-819.1 or § 46.2-819.3 for actions arising out of the same transaction or occurrence.

§ 46.2-819.1. Installation and use of photo-monitoring system or automatic vehicle identification system in conjunction with certain toll facilities; penalty.

A. The operator of any toll facility or the locality within which such toll facility is located may install and operate or cause to be installed and operated a photo-monitoring system *or automatic vehicle identification system, or both*, at locations where tolls are collected for the use of such toll facility. The operator of a toll facility may send an invoice or bill to the registered owner of a vehicle as part of an electronic or manual toll collection process, prior to seeking remedies under this section.

B. The operator of a vehicle shall be liable for a civil penalty of \$25 for a first offense or \$50 for any subsequent offense plus the *operator's administrative fee [of \$25 per summons issued under subsection G of § 46.2-819.3]* and the toll due, and applicable court costs if the matter proceeds to court or if the operator of the toll facility incurs costs of court, if the vehicle is found, as evidenced by information obtained from a photo-monitoring system *or automatic vehicle identification system* as provided in this section, to have used such a toll facility without payment of the required toll.

C. Any action under this section shall be brought in the General District Court of the city or county in which the toll facility is located.

D. Proof of a violation of this section shall be evidenced by information obtained from a photo-monitoring system *or automatic vehicle identification system* as provided in this section. A certificate, sworn to or affirmed by a technician employed or authorized by the operator of a toll facility or by the locality wherein the toll facility is located, or a facsimile of such a certificate, based on inspection of photographs, microphotographs, videotapes, or other recorded images produced by a photo-monitoring system, *or of electronic data collected by an automatic vehicle identification system* shall be prima facie evidence of the facts contained therein. Any photographs, microphotographs, videotape, or other recorded images *or electronic data* evidencing such a violation shall be available for inspection in any proceeding to adjudicate the liability for such violation under this section. *A record of communication by an automatic vehicle identification device with the automatic vehicle identification system at the time of a violation of this section shall be prima facie evidence that the automatic vehicle identification device was located in the vehicle registered to use such device in the records of the Virginia Department of Transportation.*

E. It shall be prima facie evidence that the vehicle described in the summons issued pursuant to subsection H of this section was operated in violation of this section.

Upon a finding by a court of competent jurisdiction that the vehicle described in the summons issued

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59 pursuant to subsection H of this section was in violation of this section, the court shall impose a civil
60 penalty upon the registered owner of such vehicle in accordance with the amounts specified in
61 subsection B of this section, together with applicable court costs, *the operator's administrative fee* and
62 the toll due. Such civil penalty shall constitute a lien on such vehicle, subordinate to any other liens on
63 the vehicle, unless such civil penalty is paid within 30 days of imposition of judgment for such civil
64 penalty, costs and toll due. Penalties assessed as the result of action initiated by the Virginia Department
65 of Transportation shall be remanded to the Virginia Department of Transportation's Toll Facilities
66 Revolving Fund. Penalties assessed as the result of action initiated by an operator of a toll facility other
67 than the Virginia Department of Transportation shall be remanded to the toll facility's account for
68 expenses associated with operation of the facility and payments against any bonds or other liens issued
69 as a result of the construction of the facility.

70 The registered owner of such vehicle shall be given reasonable notice by way of a summons as
71 provided in subsection H of this section that his vehicle had been used in violation of this section and
72 such owner shall be given notice of the time and place of the hearing as well as the civil penalty and
73 costs for such offense.

74 Such summons shall be dismissed upon the filing of an affidavit by the registered owner of the
75 vehicle stating that he was not the driver of the vehicle on the date of the violation.

76 In addition thereto, if the registered owner of the vehicle produces a certified copy of a police report
77 showing that the vehicle had been reported to the police as stolen prior to the time of the alleged
78 offense, then the court shall dismiss the summons.

79 F. For purposes of this section, "operator of a toll facility other than the Virginia Department of
80 Transportation" means any agency, political subdivision, authority, or other entity authorized by the
81 Code of Virginia to operate such toll facility; "owner" means the registered owner of such vehicle on
82 record with the Department of Motor Vehicles. For purposes of this section, "owner" does not mean a
83 vehicle rental or vehicle leasing company; and "photo-monitoring system" means a vehicle sensor
84 installed to work in conjunction with a toll collection device that automatically produces one or more
85 photographs, one or more microphotographs, a videotape, or other recorded images of each vehicle at
86 the time it is used or operated in violation of this section; *"automatic vehicle identification system"*
87 *means an electronic vehicle identification system installed to work in conjunction with a toll collection*
88 *device that automatically produces an electronic record of each vehicle equipped with an automatic*
89 *vehicle identification device that uses a toll facility; and "automatic vehicle identification device" means*
90 *an electronic device that communicates by wireless transmission with an automatic vehicle identification*
91 *system.* Any vehicle rental or vehicle leasing company, if named in a summons, shall be released as a
92 party to the action if it provides the operator of the toll facility a copy of the vehicle rental agreement
93 or lease or an affidavit identifying the renter or lessee prior to the date of hearing set forth in the
94 summons. Upon receipt of such rental agreement, lease, or affidavit, a summons shall be issued for the
95 renter or lessee identified therein. Release of this information shall not be deemed a violation of any
96 provision of the Government Data Collection and Dissemination Practices Act (§ 2.2-3800 et seq.) or the
97 Insurance Information and Privacy Protection Act (§ 38.2-600 et seq.).

98 G. Imposition of a civil penalty pursuant to this section shall not be deemed a conviction as an
99 operator and shall not be made part of the operating record of the person upon whom such civil penalty
100 is imposed nor shall it be used for insurance purposes in the provision of motor vehicle insurance
101 coverage.

102 H. A summons for a violation of this section may be executed pursuant to § 19.2-76.2.
103 Notwithstanding the provisions of § 19.2-76, a summons for a violation of this section may be executed
104 by mailing by first-class mail a copy thereof to the address of the owner of the vehicle as shown on the
105 records of the Department of Motor Vehicles. If the summoned person fails to appear on the date of
106 return set out in the summons mailed pursuant to this section, the summons shall be executed in the
107 manner set out in § 19.2-76.3. No proceedings for contempt or arrest of a person summoned by mailing
108 shall be instituted for failure to appear on the return date of the summons.

109 I. The operator of a toll facility may enter into an agreement with the Department of Motor Vehicles,
110 in accordance with the provisions of subdivision 21 of subsection B of § 46.2-208, to obtain vehicle
111 owner information regarding the registered owners of vehicles that fail to pay tolls required for the use
112 of toll facilities and with the Department of Transportation to obtain any information that is necessary to
113 conduct electronic toll collection.

114 J. ~~Where any photo-monitoring system provided for in this section is in operation, no~~ No person
115 shall be subject to both the provisions of this section and to prosecution under § 46.2-819 for actions
116 arising out of the same transaction or occurrence.

117 § 46.2-819.3. *Use of toll facility without payment of toll; enforcement by means other than*
118 *photo-monitoring system or automatic vehicle identification system; penalty.*

119 A. *The operator of a vehicle shall be liable for a civil penalty of \$25 for a first offense or \$50 for*
120 *any subsequent offense plus the operator's administrative fee [of \$25 per summons issued under*

subsection G] and the toll due, and applicable court costs if the matter proceeds to court or if the operator of the toll facility incurs costs of court, if the vehicle is found, as evidenced by a certificate described in subsection B, to have used such a toll facility without payment of the required toll.

B. A written promise to pay an unpaid toll within a specified period of time executed by the driver of a motor vehicle, accompanied by a certificate sworn to or affirmed by an authorized agent of the toll facility that the unpaid toll was not paid within such specified period, shall be prima facie evidence of the facts contained therein.

C. The operator of a toll facility may send an invoice or bill to the driver of a motor vehicle using a toll facility without payment of the specified toll as part of an electronic or manual toll collection process prior to seeking remedies under this section. Any action under this section shall be brought in the general district court of the city or county in which the toll facility is located.

D. Upon a finding by a court of competent jurisdiction that the driver of a motor vehicle identified in the summons issued pursuant to subsection G was in violation of this section, the court shall impose a civil penalty upon the driver of a motor vehicle in accordance with the amounts specified in subsection A, together with applicable court costs, the operator's administrative fee, and the toll due. Penalties assessed as the result of action initiated by the Virginia Department of Transportation shall be remanded to the Virginia Department of Transportation's Toll Facilities Revolving Fund. Penalties assessed as the result of action initiated by an operator of a toll facility other than the Virginia Department of Transportation shall be remanded to the toll facility's account for expenses associated with operation of the facility and payments against any bonds or other liens issued as a result of the construction of the facility.

E. For purposes of this section, "operator of a toll facility other than the Virginia Department of Transportation" means any agency, political subdivision, authority, or other entity authorized by the Code of Virginia to operate such toll facility.

F. Imposition of a civil 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 civil penalty is imposed nor shall it be used for insurance purposes in the provision of motor vehicle insurance coverage.

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 driver of a motor vehicle as shown on the records of the Department of Motor Vehicles. If the summoned person fails to appear on the date of return set out in the summons mailed pursuant to this section, the summons shall be executed in the manner set out in § 19.2-76.3. No proceedings for contempt or arrest of a person summoned by mailing shall be instituted for failure to appear on the return date of the summons.

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