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**SENATE BILL NO. 508**

Offered January 14, 2004

Prefiled January 14, 2004

*A BILL to amend and reenact § 33.1-46.2 of the Code of Virginia, as it is currently effective and as it may become effective, relating to high-occupancy vehicle lanes; penalties.*

Patron—Mims

Referred to Committee on Transportation

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

**1. That § 33.1-46.2 of the Code of Virginia, as it is currently effective and as it may become effective, is amended and reenacted as follows:**

§ 33.1-46.2. Designation of high-occupancy vehicle lanes; use of such lanes; penalties.

A. In order to facilitate the rapid and orderly movement of traffic to and from urban areas during peak traffic periods, the Commonwealth Transportation Board may designate one or more lanes of any highway in the interstate, primary, or secondary highway systems as high-occupancy vehicle lanes, hereinafter referred to in this section as HOV lanes. When lanes have been so designated and have been appropriately marked with such signs or other markers as the Board may prescribe, they shall be reserved during periods designated by the Board for the exclusive use of buses and high-occupancy vehicles. Any local governing body may also, with respect to highways under its exclusive jurisdiction, designate HOV lanes and impose and enforce restrictions on the use of such HOV lanes. Any highway for which the local jurisdiction receives highway maintenance funds pursuant to § 33.1-41.1 shall be deemed to be within the exclusive jurisdiction of the local governing body for the purposes of this section. HOV lanes shall be reserved for high-occupancy vehicles of a specified number of occupants as determined by the Board or, for HOV lanes designated by a local governing body, by that local governing body. Notwithstanding the foregoing provisions of this section, no designation of any lane or lanes of any highway as HOV lanes shall apply to the use of any such lanes by:

1. Emergency vehicles such as fire-fighting vehicles, ambulances, and rescue squad vehicles,
2. Law-enforcement vehicles,
3. Motorcycles,
4. a. Transit and commuter buses designed to transport 16 or more passengers, including the driver,
- b. Commuter buses and motor coaches operating under irregular route passenger certificates issued under § 46.2-2010 and any vehicle operating under a certificate of Public Convenience and Necessity or as a common carrier of passengers under § 46.2-2075 or § 46.2-2080,
5. Vehicles of public utility companies operating in response to an emergency call,
6. Until July 1, 2006, vehicles bearing clean special fuel vehicle license plates issued pursuant to § 46.2-749.3, or
7. Taxicabs having two or more occupants, including the driver.

In the Hampton Roads Planning District, HOV restrictions may be temporarily lifted and HOV lanes opened to use by all vehicles when restricting use of HOV lanes becomes impossible or undesirable and the temporary lifting of HOV limitations is indicated by signs along or above the affected portion of highway.

The Commissioner of VDOT shall implement a program of the HOV facilities in the Hampton Roads Planning District beginning not later than May 1, 2000. This program shall include the temporary lifting of HOV restrictions and the opening of HOV lanes to all traffic when an incident resulting from nonrecurring causes within the general lanes occurs such that a lane of traffic is blocked or is expected to be blocked for 10 minutes or longer. The HOV restrictions for the facility will be reinstated when the general lane is no longer blocked and is available for use.

The Commissioner shall maintain necessary records to evaluate the effects of such openings on the operation of the general lanes and the HOV lanes. He shall report on the effects of this program. This program will terminate if the Federal Highway Administration requires repayment of any federal highway construction funds because of the program's impact on the HOV facilities in Hampton Roads.

B. In designating any lane or lanes of any highway as HOV lanes, the Board, or local governing body as the case may be, shall specify the hour or hours of each day of the week during which the lanes shall be so reserved, and the hour or hours shall be plainly posted at whatever intervals along the lanes the Board or local governing body deems appropriate. Any person driving a motor vehicle in a designated HOV lane in violation of this section shall be guilty of a traffic infraction which shall not be a moving violation and on conviction shall be fined \$50. However, violations committed within the

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59 boundaries of Planning District Eight shall be punishable as follows:

60 For a first offense, by a fine of \$50;

61 For a second offense, by a fine of ~~\$100~~\$200;

62 For a third offense within a period of two years of the second offense, by a fine of ~~\$250~~ \$500; and

63 For a fourth or subsequent offense within a period of three years of the second offense, by a fine of  
64 ~~\$500~~\$1,000.

65 Upon a conviction under this section, the court shall furnish to the Commissioner of the Department  
66 of Motor Vehicles in accordance with § 46.2-383 an abstract of the record of such conviction which  
67 shall become a part of the person's driving record. Notwithstanding the provisions of § 46.2-492, no  
68 driver demerit points shall be assessed for any violation of this section; *except that persons convicted of*  
69 *second, third, fourth, or subsequent violations committed in Planning District Eight shall be assessed*  
70 *three demerit points for each such violation.*

71 C. In the prosecution of an offense, committed in the presence of a law-enforcement officer, of  
72 failure to obey a road sign restricting a highway, or portion thereof, to the use of high-occupancy  
73 vehicles, proof that the vehicle described in the HOV violation summons was operated in violation of  
74 this section, together with proof that the defendant was at the time of such violation the registered  
75 owner of the vehicle, shall constitute in evidence a rebuttable presumption that such registered owner of  
76 the vehicle was the person who committed the violation. Such presumption shall be rebutted if the  
77 registered owner of the vehicle testifies in open court under oath that he was not the operator of the  
78 vehicle at the time of the violation. A summons for a violation of this section may be executed in  
79 accordance with § 19.2-76.2. Such rebuttable presumption shall not arise when the registered owner of  
80 the vehicle is a rental or leasing company.

81 D. Notwithstanding the provisions of § 19.2-76, whenever a summons for a violation of this section  
82 is served in any county, city, or town, it may be executed by mailing by first-class mail a copy thereof  
83 to the address of the owner of the vehicle as shown on the records of the Department of Motor  
84 Vehicles. If the summoned person fails to appear on the date of return set out in the summons mailed  
85 pursuant to this section, the summons shall be executed in the manner set out in § 19.2-76.3.

86 No proceedings for contempt or arrest of a person summoned by mailing shall be instituted for his  
87 failure to appear on the return date of the summons.

88 E. Notwithstanding § 33.1-252, high-occupancy vehicles having three or more occupants (HOV-3)  
89 may be permitted to use the Omer L. Hirst-Adelard L. Brault Expressway (Dulles Toll Road) without  
90 paying a toll.

91 F. Notwithstanding the contrary provisions of this section, the following conditions shall be met  
92 before the HOV-2 designation of Interstate Route 66 outside the Capital Beltway can be changed to  
93 HOV-3 or any more restrictive designation:

94 1. The Department shall publish a notice of its intent to change the existing designation and also  
95 immediately provide similar notice of its intent to all members of the General Assembly representing  
96 districts that touch or are directly impacted by traffic on Interstate Route 66.

97 2. The Department shall hold public hearings in the corridor to receive comments from the public.

98 3. The Department shall make a finding of the need for a change in such designation, based on  
99 public hearings and its internal data and present this finding to the Commonwealth Transportation Board  
100 for approval.

101 4. The Commonwealth Transportation Board shall make written findings and a decision based upon  
102 the following criteria:

103 a. Is changing the HOV-2 designation to HOV-3 in the public interest?

104 b. Is there quantitative and qualitative evidence that supports the argument that HOV-3 will facilitate  
105 the flow of traffic on Interstate Route 66?

106 c. Is changing the HOV-2 designation beneficial to comply with the federal Clean Air Act  
107 Amendments of 1990?

108 G. [Repealed.]

109 § 33.1-46.2. Designation of high-occupancy vehicle lanes; use of such lanes; penalties.

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111 peak traffic periods, the Commonwealth Transportation Board may designate one or more lanes of any  
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- For a first offense, by a fine of \$50;
- For a second offense, by a fine of ~~\$100~~\$200;
- For a third offense within a period of two years of the second offense, by a fine of ~~\$250~~\$500; and
- For a fourth or subsequent offense within a period of three years of the second offense, by a fine of ~~\$500~~\$1,000.

Upon a conviction under 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 person's driving record. Notwithstanding the provisions of § 46.2-492, no driver demerit points shall be assessed for any violation of this section; *except that persons convicted of second, third, fourth, or subsequent violations committed in Planning District Eight shall be assessed three demerit points for each such violation.*

C. In the prosecution of an offense, committed in the presence of a law-enforcement officer, of failure to obey a road sign restricting a highway, or portion thereof, to the use of high-occupancy vehicles, proof that the vehicle described in the HOV violation summons was operated in violation of this section, together with proof that the defendant was at the time of such violation the registered owner of the vehicle, shall constitute in evidence a rebuttable presumption that such registered owner of the vehicle was the person who committed the violation. Such presumption shall be rebutted if the registered owner of the vehicle testifies in open court under oath that he was not the operator of the vehicle at the time of the violation. A summons for a violation of this section may be executed in accordance with § 19.2-76.2. Such rebuttable presumption shall not arise when the registered owner of the vehicle is a rental or leasing company.

D. Notwithstanding the provisions of § 19.2-76, whenever a summons for a violation of this section is served in any county, city, or town, it may be executed by mailing by first-class mail a copy thereof to the address of the owner of the 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

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