

VIRGINIA ACTS OF ASSEMBLY -- 2006 SESSION

CHAPTER 859

An Act to amend and reenact §§ 33.1-56.4, 33.1-252, 46.2-208, 46.2-819.1, and 46.2-819.3 of the Code of Virginia, relating to use of toll facilities without payment of toll; penalties.

[H 1000]

Approved April 19, 2006

Be it enacted by the General Assembly of Virginia:

1. That §§ 33.1-56.4, 33.1-252, 46.2-208, 46.2-819.1, and 46.2-819.3 of the Code of Virginia are amended and reenacted as follows:

§ 33.1-56.4. Release of personal information; penalty.

A. 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.).

B. Information collected by a photo-enforcement system shall be limited exclusively to that information that is necessary for the collection of unpaid tolls. Notwithstanding any other provision of law, all photographs, microphotographs, electronic images, or other data collected by a photo-enforcement system shall be used exclusively for the collection of unpaid tolls and shall not (i) be open to the public; (ii) be sold and/or used for sales, solicitation, or marketing purposes; (iii) be disclosed to any other entity except as may be necessary for the collection of unpaid tolls or to a vehicle owner or operator as part of a challenge to the imposition of a toll; and (iv) be used in a court in a pending action or proceeding unless the action or proceeding relates to a violation of § 33.1-56.3 or upon order from a court of competent jurisdiction. Information collected under this section shall be purged and not retained later than 30 days after the collection and reconciliation of any unpaid tolls, administrative fees, and/or civil penalties. Any entity operating a photo-enforcement system shall annually certify compliance with this section and make all records pertaining to such system available for inspection and audit by the Commonwealth Transportation Commissioner or the Commissioner of the Department of Motor Vehicles or their designee. Any violation of this subsection shall constitute a Class 1 misdemeanor. In addition to any fines or other penalties provided for by law, any money or other thing of value obtained as a result of a violation of this section shall be forfeited to the Commonwealth.

§ 33.1-252. Free use of toll facilities by certain state officers and employees; penalties.

A. Vehicles transporting two or more persons, including the driver, may be permitted toll-free use of the Dulles Toll Road during rush hours by the Commonwealth Transportation Board; however, notwithstanding the provisions of subdivision B 1 of § 56-543 said vehicles shall not be permitted toll-free use of a roadway as defined pursuant to the Virginia Highway Corporation Act of 1988 (§ 56-535 et seq.). Upon presentation of a toll pass issued pursuant to regulations promulgated by the Commonwealth Transportation Board, the following persons may use all toll bridges, toll ferries, toll tunnels, and toll roads in this Commonwealth without the payment of toll while in the performance of their official duties:

1. The Commonwealth Transportation Commissioner;
2. Members of the Commonwealth Transportation Board;
3. Employees of the Virginia Department of Transportation;
4. The Superintendent of the Department of State Police;
5. Officers and employees of the Department of State Police;
6. Members of the Alcoholic Beverage Control Board;
7. Employees of the regulatory and hearings divisions of the Department of Alcoholic Beverage Control and special agents of the Department of Alcoholic Beverage Control;
8. The Commissioner of the Department of Motor Vehicles;
9. Employees of the Department of Motor Vehicles;
10. Local police officers;
11. Sheriffs and their deputies;
12. Regional jail officials;
13. Animal wardens;

14. The Director and officers of the Department of Game and Inland Fisheries;
15. Persons operating fire-fighting equipment and ambulances owned by a political subdivision of the Commonwealth or a nonprofit association or corporation;
16. Operators of school buses being used to transport pupils to or from schools;
17. Operators of (i) commuter buses having a capacity of 20 or more passengers, including the driver, and used to regularly transport workers to and from their places of employment and (ii) public transit buses;
18. Employees of the Department of Rail and Public Transportation;
19. Employees of any transportation facility created pursuant to the Virginia Highway Corporation Act of 1988; and
20. Law-enforcement officers of the Virginia Marine Resources Commission.

Notwithstanding the foregoing provision of this subsection requiring presentation of a toll pass for toll-free use of such facilities, in cases of emergency and circumstances of concern for public safety on the highways of the Commonwealth, the Department shall, in order to alleviate an actual or potential threat or risk to the public's safety, facilitate the flow of traffic on or within the vicinity of the toll facility by permitting the temporary suspension of toll collection operations on its facilities.

a. The assessment of the threat to public safety shall be performed and the decision temporarily to suspend toll collection operations shall be made by the Commissioner or his designee.

b. Major incidents that may require the temporary suspension of toll collection operations shall include, but not necessarily be limited to (i) natural disasters such as hurricanes, tornadoes, fires, and floods; (ii) accidental releases of hazardous materials such as chemical spills; (iii) major traffic accidents such as multivehicle collisions; and (iv) other incidents deemed to present a risk to public safety.

c. In any judicial proceeding in which a person is found to be criminally responsible or civilly liable for any incident resulting in the suspension of toll collections as provided in this subsection, the court may assess against the person an amount equal to lost toll revenue as a part of the costs of the proceeding and order that such amount, not to exceed \$2,000 for any individual incident, be paid to the Department for deposit into the toll road fund.

B. Any tollgate keeper who shall refuse to permit the persons listed in subsection A of this section to pass through such tollgate or over such toll bridge or ferry, or toll road or toll tunnel upon presentation of such a toll pass, shall be guilty of a misdemeanor and punished by a fine of not more than \$50, and not less than \$2.50. Any person other than those listed in subsection A who shall exhibit any such toll pass for the purpose of using any toll bridge, toll tunnel or ferry shall be guilty of a Class 1 misdemeanor and punished accordingly.

B1. Any vehicle operated by the holder of a valid driver's license issued by Virginia or any other state shall be allowed free use of all toll bridges, toll roads, and other toll facilities in Virginia if:

1. The vehicle is specially equipped to permit its operation by a handicapped person;
2. The driver of the vehicle has been certified, either by a physician licensed by Virginia or any other state or by the Adjudication Office of the United States Veterans Administration, as being severely physically disabled and having permanent upper limb mobility or dexterity impairments which substantially impair his ability to deposit coins in toll baskets;
3. The driver has applied for and received from the Department of Transportation a vehicle window sticker identifying him as eligible for such free passage; and
4. Such identifying window sticker is properly displayed on the vehicle.

A copy of this subsection shall be posted at all toll bridges, toll roads, and other toll facilities in Virginia. The Department of Transportation shall provide envelopes for payments of tolls by those persons exempted from tolls pursuant to this subsection and shall accept any payments made by such persons.

C. Nothing contained in this section or in § 33.1-251 or 33.1-285 shall operate to affect the provisions of § 22.1-187.

D. Notwithstanding the provisions of subsections A and B, only the following persons may use the Chesapeake Bay Bridge-Tunnel ~~or~~, facilities of the Richmond Metropolitan Authority, *or facilities of an operator authorized to operate a toll facility pursuant to the Public-Private Transportation Act of 1995 (§ 56-556 et seq.)* without the payment of toll when necessary and incidental to the conduct of official business:

1. The Commonwealth Transportation Commissioner;
2. Members of the Commonwealth Transportation Board;
3. Employees of the Department of Transportation;
4. The Superintendent of the Department of State Police;
5. Officers and employees of the Department of State Police;
6. The Commissioner of the Department of Motor Vehicles;
7. Employees of the Department of Motor Vehicles; and
8. Sheriffs and deputy sheriffs.

E. Any vehicle operated by a quadriplegic driver shall be allowed free use of all toll facilities in Virginia controlled by the Richmond Metropolitan Authority, pursuant to the requirements of subsection

B1 (1 through 4).

§ 46.2-208. Records of Department; when open for inspection; release of privileged information.

A. All records in the office of the Department containing the specific classes of information outlined below shall be considered privileged records:

1. Personal information, including all data defined as "personal information" in § 2.2-3801;
2. Driver information, including all data that relates to driver's license status and driver activity; and
3. Vehicle information, including all descriptive vehicle data and title, registration, and vehicle activity data.

B. The Commissioner shall release such information only under the following conditions:

1. Notwithstanding other provisions of this section, medical data included in personal data shall be released only to a physician or nurse practitioner as provided in § 46.2-322.

2. Insurance data may be released as specified in §§ 46.2-372, 46.2-380, and 46.2-706.

3. Notwithstanding other provisions of this section, information disclosed or furnished shall be assessed a fee as specified in § 46.2-214.

4. When the person requesting the information is (i) the subject of the information, (ii) the parent or guardian of the subject of the information, (iii) the authorized representative of the subject of the information, or (iv) the owner of the vehicle that is the subject of the information, the Commissioner shall provide him with the requested information and a complete explanation of it. Requests for such information need not be made in writing or in person and may be made orally or by telephone, provided that the Department is satisfied that there is adequate verification of the requester's identity. When so requested in writing by (a) the subject of the information, (b) the parent or guardian of the subject of the information, (c) the authorized representative of the subject of the information, or (d) the owner of the vehicle that is the subject of the information, the Commissioner shall verify and, if necessary, correct the personal information provided and furnish driver and vehicle information in the form of an abstract of the record.

5. On the written request of any insurance carrier, surety, or representative of an insurance carrier or surety, the Commissioner shall furnish such insurance carrier, surety, or representative an abstract of the record of any person subject to the provisions of this title. The abstract shall include any record of any conviction of a violation of any provision of any statute or ordinance relating to the operation or ownership of a motor vehicle or of any injury or damage in which he was involved and a report of which is required by § 46.2-372. No such report of any conviction or accident shall be made after 60 months from the date of the conviction or accident unless the Commissioner or court used the conviction or accident as a reason for the suspension or revocation of a driver's license or driving privilege, in which case the revocation or suspension and any conviction or accident pertaining thereto shall not be reported after 60 months from the date that the driver's license or driving privilege has been reinstated. This abstract shall not be admissible in evidence in any court proceedings.

6. On the written request of any business organization or its agent, in the conduct of its business, the Commissioner shall compare personal information supplied by the business organization or agent with that contained in the Department's records and, when the information supplied by the business organization or agent is different from that contained in the Department's records, provide the business organization or agent with correct information as contained in the Department's records. Personal information provided under this subdivision shall be used solely for the purpose of pursuing remedies that require locating an individual.

7. The Commissioner shall provide vehicle information to any business organization or agent on such business' or agent's written request. Disclosures made under this subdivision shall not include any personal information and shall not be subject to the limitations contained in subdivision 6 of this subsection.

8. On the written request of any motor vehicle rental or leasing company or its designated agent, the Commissioner shall (i) compare personal information supplied by the company or agent with that contained in the Department's records and, when the information supplied by the company or agent is different from that contained in the Department's records, provide the company or agent with correct information as contained in the Department's records and (ii) provide the company or agent with driver information in the form of an abstract of any person subject to the provisions of this title. Such abstract shall include any record of any conviction of a violation of any provision of any statute or ordinance relating to the operation or ownership of a motor vehicle or of any injury or damage in which the subject of the abstract was involved and a report of which is required by § 46.2-372. No such abstract shall include any record of any conviction or accident more than 60 months after the date of such conviction or accident unless the Commissioner or court used the conviction or accident as a reason for the suspension or revocation of a driver's license or driving privilege, in which case the revocation or suspension and any conviction or accident pertaining thereto shall cease to be included in such abstract after 60 months from the date on which the driver's license or driving privilege was reinstated. No abstract released under this subdivision shall be admissible in evidence in any court proceedings.

9. On the request of any federal, state, or local governmental entity, law-enforcement officer, attorney for the Commonwealth, court, or the authorized agent of any of the foregoing, the Commissioner shall

(i) compare personal information supplied by the governmental entity, officer, attorney for the Commonwealth, court, or the authorized agent of any of the foregoing, with that contained in the Department's records and, when the information supplied by the governmental entity, officer, attorney for the Commonwealth, court, or the authorized agent of any of the foregoing, is different from that contained in the Department's records, provide the governmental entity, officer, attorney for the Commonwealth, court, or the authorized agent of any of the foregoing, with correct information as contained in the Department's records and (ii) provide driver and vehicle information in the form of an abstract of the record showing all convictions, accidents, driver's license suspensions or revocations, and other appropriate information as the governmental entity, officer, attorney for the Commonwealth, court, or the authorized agent of any of the foregoing, may require in order to carry out its official functions.

10. On request of the driver licensing authority in any other state or foreign country, the Commissioner shall provide whatever classes of information the requesting authority shall require in order to carry out its official functions.

11. On the written request of any employer, prospective employer, or authorized agent of either, and with the written consent of the individual concerned, the Commissioner shall (i) compare personal information supplied by the employer, prospective employer, or agent with that contained in the Department's records and, when the information supplied by the employer, prospective employer, or agent is different from that contained in the Department's records, provide the employer, prospective employer, or agent with correct information as contained in the Department's records and (ii) provide the employer, prospective employer, or agent with driver information in the form of an abstract of an individual's record showing all convictions, accidents, driver's license suspensions or revocations, and any type of driver's license that the individual currently possesses, provided that the individual's position or the position that the individual is being considered for involves the operation of a motor vehicle.

12. On the written request of any member of or applicant for membership in a volunteer fire company or volunteer rescue squad, the Commissioner shall (i) compare personal information supplied by the volunteer fire company or volunteer rescue squad with that contained in the Department's records and, when the information supplied by the volunteer fire company or volunteer rescue squad is different from that contained in the Department's records, provide the volunteer fire company or volunteer rescue squad with correct information as contained in the Department's records and (ii) provide driver information in the form of an abstract of the member's or applicant's record showing all convictions, accidents, license suspensions or revocations, and any type of driver's license that the individual currently possesses. Such abstract shall be provided free of charge if the request is accompanied by appropriate written evidence that the person is a member of or applicant for membership in a volunteer fire company or volunteer rescue squad and the abstract is needed by a volunteer fire company or volunteer rescue squad to establish the qualifications of the member or applicant to operate equipment owned by the volunteer fire company or volunteer rescue squad.

13. On the written request of any person who has applied to be a volunteer with a Virginia affiliate of Big Brothers/Big Sisters of America, the Commissioner shall (i) compare personal information supplied by a Virginia affiliate of Big Brothers/Big Sisters of America with that contained in the Department's records and, when the information supplied by a Virginia affiliate of Big Brothers/Big Sisters of America is different from that contained in the Department's records, provide the Virginia affiliate of Big Brothers/Big Sisters of America with correct information as contained in the Department's records and (ii) provide driver information in the form of an abstract of the applicant's record showing all convictions, accidents, license suspensions or revocations, and any type of driver's license that the individual currently possesses. Such abstract shall be provided free of charge if the request is accompanied by appropriate written evidence that the person has applied to be a volunteer with a Virginia affiliate of Big Brothers/Big Sisters of America.

14. On the written request of any person who has applied to be a volunteer with a court-appointed special advocate program pursuant to § 9.1-153, the Commissioner shall provide an abstract of the applicant's record showing all convictions, accidents, license suspensions or revocations, and any type of driver's license that the individual currently possesses. Such abstract shall be provided free of charge if the request is accompanied by appropriate written evidence that the person has applied to be a volunteer with a court-appointed special advocate program pursuant to § 9.1-153.

15. Upon the request of any employer, prospective employer, or authorized representative of either, the Commissioner shall (i) compare personal information supplied by the employer, prospective employer, or agent with that contained in the Department's records and, when the information supplied by the employer, prospective employer, or agent is different from that contained in the Department's records, provide the employer, prospective employer, or agent with correct information as contained in the Department's records and (ii) provide driver information in the form of an abstract of the driving record of any individual who has been issued a commercial driver's license, provided that the individual's position or the position that the individual is being considered for involves the operation of a commercial motor vehicle. Such abstract shall show all convictions, accidents, license suspensions, revocations, or disqualifications, and any type of driver's license that the individual currently possesses.

16. Upon the receipt of a completed application and payment of applicable processing fees, the

Commissioner may enter into an agreement with any governmental authority or business to exchange information specified in this section by electronic or other means.

17. Upon the request of an attorney representing a person in a motor vehicle accident, the Commissioner shall provide vehicle information, including the owner's name and address, to the attorney.

18. Upon the request, in the course of business, of any authorized representative of an insurance company or of any not-for-profit entity organized to prevent and detect insurance fraud, or perform rating and underwriting activities, the Commissioner shall provide to such person (i) all vehicle information, including the owner's name and address, descriptive data and title, registration, and vehicle activity data as requested or (ii) all driver information including name, license number and classification, date of birth, and address information for each driver under the age of 22 licensed in the Commonwealth of Virginia meeting the request criteria designated by such person, with such request criteria consisting of driver's license number or address information. No such information shall be used for solicitation of sales, marketing, or other commercial purposes.

19. Upon the request of an officer authorized to issue criminal warrants, for the purpose of issuing a warrant for arrest for unlawful disposal of trash or refuse in violation of § 33.1-346, the Commissioner shall provide vehicle information, including the owner's name and address.

20. Upon written request of the compliance agent of a private security services business, as defined in § 9.1-138, which is licensed by the Department of Criminal Justice Services, the Commissioner shall provide the name and address of the owner of the vehicle under procedures determined by the Commissioner.

21. Upon the request of the operator of a toll facility, or an authorized agent or employee of a toll facility operator, for the purpose of obtaining vehicle owner data under subsection 1 L of § 46.2-819.1. *Information released pursuant to this subdivision shall be limited to the name and address of the registered owner of the vehicle having failed to pay a toll and the vehicle information, including all descriptive vehicle data and title and registration data of the same vehicle.*

22. On the written request of any person who has applied to be a volunteer with a Virginia affiliate of Compeer, the Commissioner shall (i) compare personal information supplied by a Virginia affiliate of Compeer with that contained in the Department's records and, when the information supplied by a Virginia affiliate of Compeer is different from that contained in the Department's records, provide the Virginia affiliate of Compeer with correct information as contained in the Department's records and (ii) provide driver information in the form of an abstract of the applicant's record showing all convictions, accidents, license suspensions or revocations, and any type of driver's license that the individual currently possesses. Such abstract shall be provided free of charge if the request is accompanied by appropriate written evidence that the person has applied to be a volunteer with a Virginia affiliate of Compeer.

23. Upon the request of the Department of Environmental Quality for the purpose of obtaining vehicle owner data in connection with enforcement actions involving on-road testing of motor vehicles, pursuant to § 46.2-1178.1.

24. On the written request of any person who has applied to be a volunteer vehicle operator with a Virginia chapter of the American Red Cross, the Commissioner shall (i) compare personal information supplied by a Virginia chapter of the American Red Cross with that contained in the Department's records and, when the information supplied by a Virginia chapter of the American Red Cross is different from that contained in the Department's records, provide the Virginia chapter of the American Red Cross with correct information as contained in the Department's records and (ii) provide driver information in the form of an abstract of the applicant's record showing all convictions, accidents, license suspensions or revocations, and any type of driver's license that the individual currently possesses. Such abstract shall be provided free of charge if the request is accompanied by appropriate written evidence that the person has applied to be a volunteer vehicle operator with a Virginia chapter of the American Red Cross.

C. Whenever the Commissioner issues an order to suspend or revoke the driver's license or driving privilege of any individual, he may notify the National Driver Register Service operated by the United States Department of Transportation and any similar national driver information system and provide whatever classes of information the authority may require.

D. Accident reports may be inspected under the provisions of §§ 46.2-379 and 46.2-380.

E. Whenever the Commissioner takes any licensing action pursuant to the provisions of the Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.), he may provide information to the Commercial Driver License Information System, or any similar national commercial driver information system, regarding such action.

F. In addition to the foregoing provisions of this section, vehicle information may also be inspected under the provisions of §§ 43-33, 43-34, 46.2-633, and §§ 46.2-1200.1 through 46.2-1237.

G. The Department may promulgate regulations to govern the means by which personal, vehicle, and driver information is requested and disseminated.

H. Driving records of any person accused of an offense involving the operation of a motor vehicle

shall be provided by the Commissioner upon request to any person acting as counsel for the accused. If such counsel is from the public defender's office or has been appointed by the court, such records shall be provided free of charge.

I. The Department shall maintain the records of persons convicted of violations of § 18.2-36.2, subsection B of § 29.1-738, and §§ 29.1-738.02, 29.1-738.2, and 29.1-738.4 which shall be forwarded by every general district court or circuit court or the clerk thereof, pursuant to § 46.2-383. Such records shall be electronically available to any law-enforcement officer as provided for under clause (ii) of subdivision B 9.

§ 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~~ shall send an invoice or bill for unpaid tolls 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. Information collected by a photo-monitoring system or automatic vehicle identification system installed and operated pursuant to subsection A shall be limited exclusively to that information that is necessary for the collection of unpaid tolls. Notwithstanding any other provision of law, all photographs, microphotographs, electronic images, or other data collected by a photo-monitoring system or automatic vehicle identification system shall be used exclusively for the collection of unpaid tolls and shall not (i) be open to the public; (ii) be sold and/or used for sales, solicitation, or marketing purposes; (iii) be disclosed to any other entity except as may be necessary for the collection of unpaid tolls or to a vehicle owner or operator as part of a challenge to the imposition of a toll; and (iv) be used in a court in a pending action or proceeding unless the action or proceeding relates to a violation of this section or upon order from a court of competent jurisdiction. Information collected under this section shall be purged and not retained later than 30 days after the collection and reconciliation of any unpaid tolls, administrative fees, and/or civil penalties. Any entity operating a photo-monitoring system or automatic vehicle identification system shall annually certify compliance with this section and make all records pertaining to such system available for inspection and audit by the Commonwealth Transportation Commissioner or the Commissioner of the Department of Motor Vehicles or their designee. Any violation of this subsection shall constitute a Class 1 misdemeanor. In addition to any fines or other penalties provided for by law, any money or other thing of value obtained as a result of a violation of this section shall be forfeited to the Commonwealth.

The ~~invoice or bill~~ shall include the toll and facility operator may ~~include~~ impose and collect an administrative fee of ~~no more than \$25~~ in addition to the unpaid toll so as to recover the expenses of collecting the unpaid toll, which administrative fee shall be reasonably related to the actual cost of collecting the unpaid toll and not exceed \$100 per violation. Such fee shall not be levied upon the operator of the vehicle until the second unpaid toll has been documented. The operator of the vehicle shall pay the unpaid tolls and any administrative fee detailed in an invoice or bill issued by a toll facility operator. If paid within 30 days of notification, the administrative fee shall not exceed \$25.

~~B. C. The operator~~ If the matter proceeds to court, the registered owner or 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, as follows: for a first offense, \$50; for a second offense within one year from the first offense, \$100; for a third offense within two years from the second offense, \$250; and for a fourth and any subsequent offense within three years from the second offense, \$500 plus, in each case, the unpaid toll, all accrued administrative fees imposed by the toll facility operator, 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. D.~~ 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. E.~~ 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. F.~~ It shall be prima facie evidence that the vehicle described in the summons issued pursuant to subsection ~~H K~~ 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 pursuant to subsection ~~H K~~ of this section was in violation of this section, the court shall impose a civil penalty upon the registered owner *or operator* of such vehicle in accordance with the amounts specified in subsection ~~B C~~ of this section, together with applicable court costs, the operator's administrative fee and the toll due. ~~Such civil penalty shall constitute a lien on such vehicle, subordinate to any other liens on the vehicle, unless such civil penalty is paid within 30 days of imposition of judgment for such civil penalty, costs and toll due.~~ Penalties assessed as the result of action initiated by the Virginia Department of Transportation shall be remanded *by the clerk of the court which adjudicated the action* 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 *by the clerk of the court which adjudicated the action to the treasurer or director of finance of the county or city in which the violation occurred for payment 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 operator.*

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

~~Such summons shall be dismissed upon~~ *Upon the filing of an affidavit with the court at least 14 days prior to the hearing date by the registered owner of the vehicle stating that he was not the driver of the vehicle on the date of the violation and providing the legal name and address of the operator of the vehicle at the time of the violation, a summons will also be issued to the alleged operator of the vehicle at the time of the offense.*

In any action against a vehicle operator, an affidavit made by the registered owner providing the name and address of the vehicle operator at the time of the violation shall constitute prima facie evidence that the person named in the affidavit was operating the vehicle at all the relevant times relating to the matter named in the affidavit.

~~In addition thereto, if~~ *If the registered owner of the vehicle produces 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 offense and remained stolen at the time of the alleged offense, then the court shall dismiss the summons issued to the registered owner of the vehicle.*

G. Upon a finding by a court that a person has three or more unpaid tolls and such person fails to pay the required penalties, fees, and unpaid tolls, the court shall notify the Commissioner of the Department of Motor Vehicles, who shall refuse to issue or renew any vehicle registration certificate of any applicant or the license plate issued for the vehicle driven in the commission of the offense until the court has notified the Commissioner that such penalties, fees, and unpaid tolls have been paid. If it is proven that the vehicle owner was not the operator at the time of the offense and upon a finding by a court that the person identified in an affidavit pursuant to subsection F as the operator violated this section and such person fails to pay the required penalties, fees, and unpaid tolls, the court shall notify the Commissioner, who shall refuse to issue or renew any vehicle registration certificate of any applicant or the license plate issued for any vehicle owned or co-owned by such person until the court has notified the Commissioner that such penalties, fees, and unpaid tolls have been paid. Such funds representing payment of unpaid tolls and all administrative fees of the toll facility operator shall be transferred from the court to the Virginia Department of Transportation's Toll Facilities Revolving Fund or, in the case of an action initiated by an operator of a toll facility other than the Virginia Department of Transportation, to the treasurer or director of finance of the county or city in which the violation occurred for payment to the toll facility operator. The Commissioner shall collect a \$40 administrative fee from the registered owner or operator of the vehicle to defray the cost of processing and removing an order to deny registration or registration renewal.

~~F. H.~~ 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; "owner" means the registered owner of ~~such a~~ vehicle on record with the Department of Motor Vehicles. For purposes of this section, "owner" does not mean a vehicle rental or vehicle leasing company; "photo-monitoring system" means a vehicle sensor installed to work in conjunction with a toll collection device that automatically produces one or more photographs, one or more microphotographs, a videotape, or other recorded images of each vehicle at the time it is used or operated in violation of this section; "automatic vehicle identification system" means an electronic vehicle identification system installed to work in conjunction with a toll collection device that automatically produces an electronic record of each vehicle equipped with an automatic vehicle identification device that uses a toll facility; and "automatic vehicle identification device" means an

electronic device that communicates by wireless transmission with an automatic vehicle identification system.

I. 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 operator of the toll facility 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~~ notice shall be issued ~~for~~ mailed to 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.). *The toll facility operator shall allow at least 30 days from the date of such mailing before pursuing other remedies under this section. In any action against the vehicle operator, a copy of the vehicle rental agreement, lease, or affidavit identifying the renter or lessee of the vehicle at the time of the violation is prima facie evidence that the person named in the rental agreement, lease, or affidavit was operating the vehicle at all the relevant times relating to the matter named in the summons.*

G. J. 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~~ driving 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.

H. K. A *On a form prescribed by the Supreme Court, a summons for a violation of this section may be executed pursuant to § 19.2-76.2. Toll facility personnel or their agents mailing such summons shall be considered conservators of the peace for the sole and limited purpose of mailing such summons.* 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 of the vehicle as shown on the records of the Department of Motor Vehicles *or, if the registered owner has named and provided a valid address for the operator of the vehicle at the time of the violation in an affidavit executed pursuant to subsection F, such named operator of the vehicle.* 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.~~

I. L. ~~To the extent necessary to conduct electronic toll collections, the~~ *The operator of a toll facility 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, enter into an agreement with the Department of Transportation and the Department of Motor Vehicles to obtain vehicle owner information regarding the registered owners of vehicles that use the operator's toll facility fail to pay tolls required for the use of toll facilities and with the Virginia Department of Transportation to obtain any information that is necessary to conduct electronic toll collection. Information provided to the operator of a toll facility shall only be used for the collection of unpaid tolls and the operator of the toll facility shall be subject to the same conditions and penalties regarding release of the information as contained in subsection B.*

J. M. 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.

§ 46.2-819.3. Use of toll facility without payment of toll; enforcement; penalty.

A. ~~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 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~~ *The toll facility operator may impose and collect an administrative fee in addition to the unpaid toll so as to recover the expenses of collecting the unpaid toll, which administrative fee shall be reasonably related to the actual cost of collecting the unpaid toll and not exceed \$100 per violation. Such fee shall not be levied upon the operator of the vehicle until the second unpaid toll has been documented. The owner or operator of the vehicle shall pay the unpaid tolls and any administrative fee detailed in an invoice or bill issued by a toll facility operator. If paid within 30 days of notification, the administrative fee shall not exceed \$25.*

B. *If the matter proceeds to court, the owner or operator of the vehicle shall be liable for a civil penalty as follows: for a first offense, \$50; for a second offense within one year from the first offense, \$100; for a third offense within two years from the second offense, \$250; and for a fourth and any subsequent offense within three years from the second offense, \$500 plus, in each case, the unpaid toll, all accrued administrative fees imposed by the toll facility operator and applicable court costs if the vehicle operator is found, as evidenced by information obtained from the toll facility operator, to have used such a toll facility without payment of the required toll.*

B. C. 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.~~ *D.* 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.~~ *E.* 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~~ *I* 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~~ *B*, 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 *by the clerk of the court which adjudicated the action* 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 *by the clerk of the court which adjudicated the action to the treasurer or director of finance of the county or city in which the violation occurred for payment 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 operator.*

F. Upon a finding by a court that a person has three or more unpaid tolls and such person fails to pay the required penalties, fees, and unpaid tolls, the court shall notify the Commissioner of the Department of Motor Vehicles, who shall refuse to issue or renew any vehicle registration certificate of any applicant or the license plate issued for any vehicle owned or co-owned by the offender. The Commissioner shall collect a \$40 administrative fee from the owner or operator of the vehicle to defray the cost of processing and removing an order to deny registration or registration renewal.

~~E.~~ *G.* 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.~~ *H.* 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~~ driving 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.~~ *I.* A summons for a violation of this section may be executed pursuant to § 19.2-76.2. *Toll facility personnel or their agents mailing such summons shall be considered conservators of the peace for the sole and limited purpose of mailing such summons.* 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.~~ *J.* 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.