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## SENATE BILL NO. 378

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Transportation

on January 19, 2006)

(Patron Prior to Substitute—Senators McDougale and Williams [SB 308])

A BILL to amend and reenact § 46.2-819.2 of the Code of Virginia, relating to failure to pay for motor fuel; penalty.

Be it enacted by the General Assembly of Virginia:

1. That § 46.2-819.2 of the Code of Virginia is amended and reenacted as follows:

§ 46.2-819.2. Driving a motor vehicle from establishment where motor fuel offered for sale; suspension of license; penalty.

A. No person shall drive a motor vehicle off the premises of an establishment at which motor fuel offered for retail sale was dispensed into the fuel tank of such motor vehicle unless payment for such fuel has been made. *There shall be a rebuttable presumption that the motor vehicle described in the summons was the motor vehicle into which the fuel was dispensed in violation of this section and that the registered owner, lessee, or renter of the vehicle 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 was not the operator of the vehicle at the time of the alleged violation or (ii) testifies in open court under oath that he 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.*

A summons for a violation of this section may be executed pursuant to § 19.2-76.2. Notwithstanding the provisions of § 19.2-76.2, 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 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 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 § 19.2-76.2.

B. Any person who violates this section shall be liable for a civil penalty not to exceed \$250 and applicable court costs if the matter proceeds to court.

C. The driver's license of any person found to have violated this section (i) may be suspended, for the first offense, for a period of up to 30 days and (ii) shall be suspended for a period of 30 days for the second and subsequent offenses.

D. Nothing herein shall preclude a prosecution for larceny.