

VIRGINIA ACTS OF ASSEMBLY -- 2008 SESSION

CHAPTER 280

An Act to amend and reenact §§ 33.1-56.1 and 33.1-56.3 of the Code of Virginia, relating to HOT lanes enforcement.

[S 570]

Approved March 4, 2008

Be it enacted by the General Assembly of Virginia:

1. That §§ 33.1-56.1 and 33.1-56.3 of the Code of Virginia are amended and reenacted as follows:

§ 33.1-56.1. Definitions.

For purposes of this ~~section~~ article:

"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 *mass transit vehicles* 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~~ has an electronic toll collection system, provides for free passage by vehicles ~~carrying a certain number of persons that meet the high-occupancy requirement~~, 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;

"*Mass transit vehicles*" and "*commuter buses*" mean vehicles providing a scheduled transportation service to the general public. Such vehicles shall comprise nonprofit, publicly or privately owned or operated transportation services, programs, or systems that may be funded pursuant to § 58.1-638;

"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; ~~and~~

"Unauthorized vehicle" means a motor vehicle that is restricted from use of the HOT lanes pursuant to subdivision D 1 of § 33.1-56.3.

§ 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 *in an unauthorized vehicle, in violation of the conditions for use of such HOT lanes established pursuant to § 33.1-56.2*, without payment of the required toll, or without having made arrangements with the *HOT lanes* 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~~ *On a form prescribed by the Supreme Court, a summons for civil violation of this section may be executed by a law-enforcement officer, when such violation is observed by such officer. The form shall contain the option for the driver of the vehicle to prepay all penalties, unpaid toll, administrative fees, and costs. 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 HOT lanes operator shall install and operate, or cause to be installed or operated, a photo-enforcement system at locations where tolls are collected for the use of such HOT lanes.*

2. *A summons for civil violation of this section may be executed pursuant to § 19.2-76.2 this subsection, 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 3. *On a form prescribed by the Supreme Court, a summons issued under this subsection may be executed pursuant to § 19.2-76.2. Such form shall contain the option for the driver or registered owner to prepay all penalties, unpaid toll, administrative fees, and costs. HOT lanes operator 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 this subsection, 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.*

4. *The registered owner of such vehicle shall be given reasonable notice by way of a summons as provided in this subsection 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 and notice of the civil penalty and costs for such offense.*

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 driver of the vehicle at the time of the violation, a summons will also be issued to the alleged driver of the vehicle at the time of the offense. The affidavit shall constitute prima facie evidence that the person named in the affidavit was driving the vehicle at all the relevant times relating to the matter named in the affidavit.

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.

C. 1. *The HOT lanes 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. The operator of the vehicle shall pay the unpaid tolls and any administrative fee detailed in a notice or invoice issued by a HOT lanes operator. If paid within 30 days of notification, the administrative fee shall not exceed \$25.*

2. *Upon a finding by a court of competent jurisdiction that the driver of the vehicle observed by a law-enforcement officer under subsection A, or the vehicle described in the summons for civil violation issued pursuant to evidence obtained by a photo-enforcement system under subsection B was in violation of this ~~subsection~~ section, the court shall impose a civil penalty upon the driver of such vehicle issued a summons under subsection A, or upon the driver or registered owner of such vehicle issued a summons under subsection B, 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, in each case, the unpaid toll, all accrued administrative fees imposed by the HOT lanes operator as authorized by this section, and applicable court costs. The court shall remand penalties, unpaid toll, and administrative fees assessed for violation of this section to the treasurer or director of finance of the county or city in which the violation occurred for payment to the HOT lanes operator's account operator 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 both subsections A and B for actions arising out of the same transaction or occurrence.*

3. *Upon a finding by a court that a person has violated this ~~subsection~~ section, 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.

4. Except as provided in subsections D and E, imposition of a civil penalty pursuant to this section shall not be deemed a conviction as an operator of a motor vehicle under Title 46.2 and shall not be made part of the 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.

D. 1. The HOT lanes operator may restrict the usage of the HOT lanes to designated vehicle classifications pursuant to an interim or final comprehensive agreement executed pursuant to § 56-566 or 56-566.1. Notice of any such vehicle classification restrictions shall be provided through the placement of signs or other markers prior to and at all HOT lanes entrances.

2. Any person driving an unauthorized vehicle on the designated HOT lanes shall be guilty of a traffic infraction, which shall not be a moving violation, and shall be punishable as follows: for a first offense, by a fine of \$125; for a second offense within a period of five years from a first offense, by a fine of \$250; for a third offense within a period of five years from a first offense, by a fine of \$500; and for a fourth and subsequent offense within a period of five years from a first offense, by a fine of \$1,000.

Upon a conviction under this subsection, 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 that 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 subsection, except that persons convicted of a second, third, fourth, or subsequent violation within five years of a first offense shall be assessed three demerit points for each such violation.

€ E. 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, or D for actions arising out of the same transaction or occurrence.

*~~D.~~ Upon a conviction under *this* subsection A ~~or~~ € 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.*

€ F. 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.

G. Any action under this section shall be brought in the general district court of the county or city in which the violation occurred.