

VIRGINIA ACTS OF ASSEMBLY -- 2010 SESSION

CHAPTER 390

An Act to amend and reenact §§ 33.1-46.2, as it is currently in effect, and 46.2-749.3 of the Code of Virginia, relating to high-occupancy vehicle lanes; use of such lanes by clean special fuel vehicles.

[S 552]

Approved April 10, 2010

Be it enacted by the General Assembly of Virginia:

1. That §§ 33.1-46.2, as it is currently in effect, and 46.2-749.3 of the Code of Virginia are amended and reenacted as follows:

§ 33.1-46.2. (For expiration date - see Editor's note) 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, ~~2010~~ *2011*, 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 \$100. However, violations committed within the boundaries of Planning District Eight 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 or subsequent offense within a period of five years from a first offense, by a fine of \$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 within five years of a first offense 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 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 his failure to appear on the return date of the summons.

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

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

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

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

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

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

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

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

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

G. [Repealed.]

§ 46.2-749.3. Special license plates for clean special fuel vehicles.

A. The owner of any motor vehicle, except a motorcycle, that may utilize clean special fuel may purchase special license plates indicating the motor vehicle utilizes clean special fuels. Upon receipt of an application, the Commissioner shall issue special license plates to the owners of such vehicles.

For those motor vehicles required by law to display official government-use license plates, the Commissioner shall provide by regulation for the issuance, display, and fee for issuance of an alternative device indicating that the vehicle displaying the device is a clean special fuel vehicle. For the purposes of § 33.1-46.2, vehicles displaying such a device as provided in such regulation shall be treated as vehicles displaying special license plates issued under this section.

As used in this section, "clean special fuel" means any product or energy source used to propel a highway vehicle, the use of which, compared to conventional gasoline or reformulated gasoline, results in lower emissions of oxides of nitrogen, volatile organic compounds, carbon monoxide or particulates or any combination thereof. The term includes compressed natural gas, liquefied natural gas, liquefied petroleum gas, hydrogen, hythane (a combination of compressed natural gas and hydrogen), and electricity.

On and after July 1, 2006, license plates provided for in this section shall be issued with a new design distinctively different from the design of license plates issued to owners of vehicles that qualify

for license plates under this section whose applications are received by the Department prior to July 1, 2006, *hereinafter referred to as "the FY 2007 design."* The distinctively different design shall be developed by the Department in consultation with the Department of State Police.

On and after July 1, 2011, license plates provided for in this section shall be issued with a new design distinctively different from the design of license plates issued to owners of vehicles that qualify for license plates under this section whose applications are received by the Department prior to July 1, 2011 (hereinafter referred to as the FY 2012 design). The distinctively different design shall be developed by the Department in consultation with the Department of State Police. Thereafter, only "the FY 2012 design" plate shall be issued to owners of vehicles that qualify for license plates under this section.

1. For the purposes of subdivision A 6 of § 33.1-46.2, on HOV lanes serving the I-95/395 corridor, only vehicles registered with and displaying special license plates issued under this section prior to July 1, 2006, shall be treated as vehicles displaying special license plates issued under this section.

2. *For the purposes of subdivision A 6 of § 33.1-46.2, on HOV lanes serving the Interstate Route 66 corridor, only vehicles registered with and displaying special license plates issued under this section prior to July 1, 2011, shall be treated as vehicles displaying special license plates issued under this section.*

3. That the Commissioner of the Department of Motor Vehicles, in consultation with the Motor Vehicle Dealer Board, shall develop procedures to ensure that all potential purchasers of clean special fuel vehicles receive adequate notice of the benefits, risks and timelines required for the issuance of clean special fuel vehicle license plates.

B. The annual fee for plates issued pursuant to this section shall be \$25 in addition to the prescribed fee for state license plates. For each such \$25 fee collected in excess of 1,000 registrations pursuant to this section, \$15 shall be paid to the State Treasury and credited to a special nonreverting fund known as the HOV Enforcement Fund, established within the Department of Accounts, for use by the Virginia State Police for enhanced HOV enforcement.