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HOUSE BILL NO. 746

Offered January 13, 2010

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A BILL to amend and reenact §§ 46.2-819 and 46.2-819.1 of the Code of Virginia and to repeal § 46.2-819.3 of the Code of Virginia, relating to toll payments; penalty.

Patron—Rust

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:**1. That §§ 46.2-819 and 46.2-819.1 of the Code of Virginia are amended and reenacted as follows:**

§ 46.2-819. Requirement to pay a toll for the use of toll facility; circumstances to be considered in assessing penalty.

Except for those permitted free use of toll facilities under § 33.1-252, it shall be unlawful for the driver of a motor vehicle to use a toll facility without payment of the specified toll a user of a toll facility shall pay a toll for use of the toll facility through a toll payment device or by manual toll payment. For toll facilities that employ manual toll collection or a combination of manual toll collection and electronic toll collection systems, failure to pay the toll shall constitute a violation pursuant to this section. For toll facilities that solely have electronic toll collection systems, failure to pay the toll after notification by the toll facility operator shall constitute a violation pursuant to this section. The toll facility operator may levy charges for use of the toll collection system that are related to the cost of the method of toll collection and processing.

However, in considering the case of anyone accused of violating this section, for failure to pay a toll at a facility with a manual toll collection system, the administrative hearing officer or the court shall take into consideration (i) except for lanes equipped for payment of tolls through an automatic vehicle identification automatic toll collection system, whether the toll booth or collection facility at which the defendant failed to pay the toll was manned at the time, (ii) whether the defendant was required to pay the toll with the exact amount in change, (iii) whether the defendant had change to make the payment, and (iv) whether the defendant had been afforded appropriate advance notice, by signs or other means, that he would be required to pay a toll and pay it with the exact change. No person shall be subject to both prosecution under this section and to the provisions of § 46.2-819.1 or § 46.2-819.3 for actions arising out of the same transaction or occurrence.

§ 46.2-819.1. Electronic toll collection systems; use of 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, electronic toll collection systems that may include, but are not limited to, a photo-monitoring system or, an 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 shall send an invoice or bill for unpaid tolls to the registered owner of a vehicle as part of an other electronic or manual toll collection process, prior systems for the collection of tolls for use of the toll facility and for identification of vehicles that fail to seeking remedies under this section pay the required toll.

B. Information collected by a photo-monitoring system or automatic vehicle identification an electronic toll collection system installed and operated pursuant to subsection A shall be limited exclusively to that information that is necessary for the collection of unpaid tolls and establishing when violations occur, including use in any administrative hearing or court proceeding to determine whether a violation occurred. Notwithstanding any other provision of law, all photographs, microphotographs, electronic images, or other data collected by a photo-monitoring system or automatic vehicle identification an electronic toll collection system shall be used exclusively for the collection of unpaid tolls and for efforts to pursue violators of this section and shall not (i) be open to the public; (ii) be sold and/or used for sales, solicitation, or marketing purposes other than those of the toll facility operator to facilitate toll payment; (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 Except as provided above, information collected under this section shall be purged and not retained later than 30 days after the collection and reconciliation of any unpaid tolls, accrued charges, administrative fees, and/or civil penalties. Any entity operating a photo-monitoring an electronic toll collection system or automatic vehicle identification system shall annually certify compliance with this section and make

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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.

C. For toll facilities that employ manual toll collection or a combination of a manual toll collection and electronic toll collection systems, the toll facility operator shall deem the owner of a vehicle in violation of § 46.2-819 if the vehicle uses the toll facility without paying the toll manually or by paying the toll through a toll payment device.

For toll facilities with manual toll collection systems, the operator may, in its discretion, permit written assurances to pay an unpaid toll within a specified period of time executed by the driver of a motor vehicle and accompanied by a certificate sworn to or affirmed by an authorized agent of the toll facility to be prima facie evidence that the unpaid toll was not paid within such specified period and be prima facie evidence of the facts contained therein.

For toll facilities that solely have electronic collection systems, the toll facility operator shall deem the owner of a vehicle in violation of § 46.2-819 if payment is not received within 30 days of issuance of an invoice by a toll facility operator requesting payment of unpaid tolls and accrued charges.

The Upon a finding that a violation has occurred, the toll facility operator may impose and collect an administrative fee in addition to the unpaid toll and accrued charges so as to recover the expenses of collecting the unpaid tolls, which administrative fee shall be reasonably related to the actual cost of collecting the unpaid tolls 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 owner of the vehicle shall pay the unpaid tolls, accrued charges, 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.

Upon a finding by the toll facility operator that a toll payment violation has occurred, the registered owner of a vehicle shall be notified that he is liable for unpaid tolls, accrued charges, and fees and notified of the process to appeal the toll payment violation. If the toll that is due, along with any accrued charges and fees, is not paid according to the measures prescribed by the toll facility operator, the owner may request an appeal of the finding through a hearing presided over by an administrative hearing officer from a list prepared by the Executive Secretary of the Supreme Court and maintained in the Office of the Executive Secretary of the Supreme Court. If the owner does not remit payment or appeal the toll payment violation through the measure prescribed within the notice, the toll facility operator may seek remedies under subsection G.

C. If the matter proceeds to court, if the administrative hearing officer finds a toll payment violation has occurred, the registered owner or operator of a 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 any subsequent 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 charges and administrative fees imposed by the toll facility operator, and applicable court costs 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 administrative hearing charges. All penalties, fees, accrued charges, and unpaid tolls ordered to be paid by the administrative hearing officer shall be remanded to the operator of the toll facility where the violation occurred.

D. Any action under this section shall be brought Following a finding by the administrative hearing officer, the owner of a vehicle may, upon depositing a payment with the toll facility operator equal to the amount of unpaid tolls, accrued charges, and fees, appeal the finding in the General District Court of the city or county in which the toll facility is located failure to pay the toll occurred. If the owner does not place a deposit and file an appeal to the court and does not pay all monies due as found by the administrative hearing officer within 30 days of such finding, the toll facility operator may cause to be issued a court summons pursuant to subsection K.

If the matter proceeds to court, and the registered owner is found to have used the facility without having paid the required toll, the registered owner 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 charges and administrative fees imposed by the toll facility operator, and applicable court costs. If the court finds that a violation has not occurred, the toll facility operator shall return the deposited moneys to the owner.

E. Proof of a violation of this section shall be evidenced by information obtained from a photo-monitoring an electronic toll collection 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~~ *an electronic collection 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 *hearing or court* 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~~ *a toll payment device with the electronic toll collection system* at the time of a violation of this section shall be prima facie evidence that the ~~automatic vehicle identification toll payment device~~ was located in the vehicle registered to use such device in the records of the Virginia Department of Transportation *or the toll facility operator*.

F. It shall be prima facie evidence that the vehicle described in the summons issued pursuant to subsection 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 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 ~~C of this section~~ *D*, together with applicable court costs, the operator's administrative fee, *accrued charges*, and the *unpaid* 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 operator.

The registered owner of such vehicle shall be given reasonable notice by way of a summons as provided in subsection 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.

Upon the filing of an affidavit with the *administrative hearing officer or court* at least 14 days prior to ~~the any~~ 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 *notice of a toll violation or summons* will also be issued to the alleged operator of the vehicle at the time of the offense. *Such filing shall not be permitted by a vehicle rental agency.*

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.

If ~~the a~~ 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 *administrative hearing officer or court* shall dismiss the *toll violation notice from the toll facility operator or the summons* issued to the registered owner of the vehicle.

G. Upon *either (i) 60 days after a violation, if the registered owner has not appealed the toll through the administrative hearing, or (ii) a finding by the administrative hearing officer or a court that a person has three or more unpaid tolls and such person fails to pay the required accrued charges, penalties, fees, and unpaid tolls within 30 days of such finding*, the court, *the hearing officer, or the toll facility operator* shall notify the Commissioner of the Department of Motor Vehicles, who shall refuse to issue or renew *any the* 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 issued for the motor vehicle that was used when the toll violation occurred. The Commissioner shall not issue or renew the registration certificate until he has been notified that such accrued charges, penalties, fees, and unpaid tolls have been paid. The owner may request an administrative hearing within 30 days of notification by the Commissioner of a refusal to issue or renew any vehicle registration certificate if the owner has not already participated in an administrative hearing process for the toll violation that resulted in the Commissioner's actions. Failure to request such a hearing shall result in the Commissioner's determination being final unless (i) the owner makes a deposit with the toll facility operator under subsection D or (ii) the owner pursues an appeal to the court and is found not to have violated this section. An owner who has received a notice from the Commissioner as a result of a court order shall not be afforded the opportunity to request a subsequent administrative hearing. The owner~~

shall be liable for all civil penalties under subsection C if he is found to have violated this section regardless of whether he requested an administrative hearing. If the owner submits a deposit under subsection D, the suspension of registration shall be delayed until the court appeal has been completed. 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, the hearing officer, or the toll facility operator 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 accrued charges, penalties, fees, and unpaid tolls, the court shall notify the Commissioner shall be notified, and he or she 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 the operator until the court has notified the Commissioner has been notified that such accrued charges, penalties, fees, and unpaid tolls have been paid by the operator. Such funds representing payment Payments of unpaid tolls and all accrued charges and 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 a court 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.

H. For purposes of this section, "operator" means a person who was driving a vehicle that was the subject of a toll violation but who is not the owner of the vehicle; "operator of a toll facility other than the Virginia Department of Transportation" means any agency, political subdivision, authority, or other public or private entity that operates a toll facility; "owner" means the registered owner or co-owner of a vehicle on record with the Department of Motor Vehicles, or, in the case of a vehicle where the owner of the vehicle is a vehicle leasing entity, the owner is the lessee. For purposes of this section, "owner" does not mean a vehicle rental or vehicle leasing company; "photo-monitoring; "electronic toll collection system" means a vehicle sensor installed to work in conjunction with a toll collection device used by a toll facility operator that automatically produces records information to permit the collection of the required toll and may produce 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 and that may include, but is not limited to, a photo-monitoring system, an automatic vehicle identification system, or other electronic systems for the collection of tolls; "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 "toll payment device" means an electronic device that communicates by wireless transmission with an automatic vehicle identification system electronic toll collection system to pay the toll due a toll operator for use of the toll facility.

I. Any vehicle rental or vehicle leasing company, if named in a summons, shall be released as a party to liable for payments of tolls and charges incurred for the action if it provides the operator use of the a 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 notice shall be 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 any administrative fees 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 penalties incurred for a failure to pay a toll.

J. Imposition of a civil penalty pursuant to this section shall not be deemed a conviction violation of this section as an operator of a vehicle that failed to pay the required toll for use of a toll facility and shall not be made part of the driving record of the person upon whom such civil penalty is imposed nor shall it after the fifth violation in a period of less than three years at which such time said person shall be assessed three driver demerit points. Such information may be used for insurance purposes in the provision of motor vehicle insurance coverage and for assigning point values in accordance with § 46.2-492. The provisions of § 46.2-395 shall not be applicable to any civil penalty, fee, unpaid toll, fine or cost imposed or ordered paid under this section for a violation of this section.

K. 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.

L. 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, to obtain vehicle owner information regarding the registered owners of vehicles that 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.

The toll facility operator may enter into an agreement with the Executive Secretary of the Supreme Court to permit payments by the operator of sufficient funds to cover the direct and actual costs of the administrative hearing process. Such administrative hearing charges may be levied upon an owner or operator who violates this section and who participates in a hearing.

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.

2. That § 46.2-819.3 of the Code of Virginia is repealed.

3. That the Commissioners of the Department of Transportation and the Department of Motor Vehicles and the Executive Secretary of the Supreme Court shall convene a working group of toll facility operators and other interested parties as designated by the Commissioners to develop forms and guidelines for the implementation of the administrative hearing officer review process for toll violations. The working group shall provide its report to the Chairs of the House and Senate Committees on Transportation by December 15, 2010.

4. That the provisions of this act shall become effective on January 1, 2011.