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HOUSE BILL NO. 746**AMENDMENT IN THE NATURE OF A SUBSTITUTE**

(Proposed by the House Committee on Transportation
on February 9, 2010)

(Patron Prior to Substitute—Delegate Rust)

A BILL to amend and reenact § 46.2-819.1 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 46.2-819.3:1, relating to toll payment; penalty.

Be it enacted by the General Assembly of Virginia:

1. That § 46.2-819.1 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 46.2-819.3:1 as follows:

§ 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 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 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 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.

C. If the matter proceeds to court, 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 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 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.

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.

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,

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60 shall be prima facie evidence of the facts contained therein. Any photographs, microphotographs,
61 videotape, or other recorded images or electronic data evidencing such a violation shall be available for
62 inspection in any proceeding to adjudicate the liability for such violation under this section. A record of
63 communication by an automatic vehicle identification device with the automatic vehicle identification
64 system at the time of a violation of this section shall be prima facie evidence that the automatic vehicle
65 identification device was located in the vehicle registered to use such device in the records of the
66 Virginia Department of Transportation.

67 F. It shall be prima facie evidence that the vehicle described in the summons issued pursuant to
68 subsection K of this section was operated in violation of this section.

69 Upon a finding by a court of competent jurisdiction that the vehicle described in the summons issued
70 pursuant to subsection K of this section was in violation of this section, the court shall impose a civil
71 penalty upon the registered owner or operator of such vehicle in accordance with the amounts specified
72 in subsection C of this section, together with applicable court costs, the operator's administrative fee and
73 the toll due. Penalties assessed as the result of action initiated by the Virginia Department of
74 Transportation shall be remanded by the clerk of the court which adjudicated the action to the Virginia
75 Department of Transportation's Toll Facilities Revolving Fund. Penalties assessed as the result of action
76 initiated by an operator of a toll facility other than the Virginia Department of Transportation shall be
77 remanded by the clerk of the court which adjudicated the action to the treasurer or director of finance of
78 the county or city in which the violation occurred for payment to the toll facility operator.

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

83 Upon *either (i) the filing of an affidavit with the toll facility operator within 14 days of receipt of an*
84 *invoice for an unpaid toll from the toll facility operator or (ii) the filing of an affidavit with the court at*
85 *least 14 days prior to the hearing date by the registered owner of the vehicle stating that he was not the*
86 *driver of the vehicle on the date of the violation and providing the legal name and address of the*
87 *operator of the vehicle at the time of the violation, a an invoice and/or summons will also be issued to*
88 *the alleged operator of the vehicle at the time of the offense.*

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

93 If the registered owner of the vehicle produces *for the toll facility operator or the court* a certified
94 copy of a police report showing that the vehicle had been reported to the police as stolen prior to the
95 time of the alleged offense and remained stolen at the time of the alleged offense, then the *toll facility*
96 *operator shall not pursue the owner for the unpaid toll and, if a summons has been issued, the court*
97 *shall dismiss the summons issued to the registered owner of the vehicle.*

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

116 H. For purposes of this section, "operator of a toll facility other than the Virginia Department of
117 Transportation" means any agency, political subdivision, authority, or other entity that operates a toll
118 facility; "owner" means the registered owner of a vehicle on record with the Department of Motor
119 Vehicles. For purposes of this section, "owner" does not mean a vehicle rental or vehicle leasing
120 company; "photo-monitoring system" means a vehicle sensor installed to work in conjunction with a toll
121 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 it receives an invoice or is 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 within 30 days of receipt of the invoice or at least 14 days 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 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.

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 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. 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.

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.

§ 46.2-819.3:1. *Installation and use of video-monitoring system and 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 video-monitoring system in conjunction with an automatic vehicle identification system on facilities for which tolls are collected for the use of such toll facility and that do not offer manual toll collection. A video-monitoring system shall include, but not be limited to, electronic systems that monitor and capture images of vehicles using a toll facility to enable toll collection for vehicles that do not pay using a toll collection device. 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 a video-monitoring toll collection process, prior to seeking remedies under this section.

B. Information collected by a video-monitoring system in conjunction with an 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 and establishing when violations occur, including use in any proceeding to determine whether a violation occurred. Notwithstanding any other provision of law, all images or other data collected by a video-monitoring system in conjunction with an automatic vehicle identification 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

183 for sales, solicitation, or marketing purposes other than those of the toll facility operator to facilitate
184 toll payment; (iii) be disclosed to any other entity except as may be necessary for the collection of
185 unpaid tolls or to a vehicle owner or operator as part of a challenge to the imposition of a toll; and/or
186 (iv) be used in a court in a pending action or proceeding unless the action or proceeding relates to a
187 violation of this section or upon order from a court of competent jurisdiction. Except as provided above,
188 information collected under this section shall be purged and not retained later than 30 days after the
189 collection and reconciliation of any unpaid tolls, administrative fees, and/or civil penalties. Any entity
190 operating a video-monitoring system in conjunction with an automatic vehicle identification system shall
191 annually certify compliance with this section and make all records pertaining to such system available
192 for inspection and audit by the Commonwealth Transportation Commissioner or the Commissioner of
193 the Department of Motor Vehicles or their designee. Any violation of this subsection shall constitute a
194 Class 1 misdemeanor. In addition to any fines or other penalties provided for by law, any money or
195 other thing of value obtained as a result of a violation of this section shall be forfeited to the
196 Commonwealth.

197 If a vehicle uses a toll facility without paying the toll, the owner or operator shall be in violation of
198 this section if he refuses to pay the toll within 30 days of notification. The toll facility operator may
199 impose and collect an administrative fee in addition to the unpaid toll so as to recover the expenses of
200 collecting the unpaid toll, which administrative fee shall be reasonably related to the actual cost of
201 collecting the unpaid toll and not exceed \$100 per violation. Such fee shall not be levied upon the
202 owner or operator of the vehicle unless the toll has not been paid by the owner or operator within 30
203 days after receipt of the invoice for the unpaid tolls, which nonpayment for 30 days shall constitute the
204 violation of this section. Once such a violation has occurred, the owner or operator of the vehicle shall
205 pay the unpaid tolls and any administrative fee detailed in the invoice or bill issued by a toll facility
206 operator. If paid within 30 days of the toll violation, the administrative fee shall not exceed \$25.

207 The toll facility operator may levy charges for the direct cost of use of and processing for a
208 video-monitoring system and to cover the cost of the invoice, which are in addition to the toll and may
209 not exceed double the amount of the toll that is owed.

210 C. If the matter proceeds to court, the registered owner or operator of a vehicle shall be liable for a
211 civil penalty as follows: for a first offense, \$50; for a second offense within one year from the first
212 offense, \$100; for a third offense within two years from the second offense, \$250; and for a fourth and
213 any subsequent offense within three years from the second offense, \$500; plus, in each case, the unpaid
214 toll, all accrued administrative fees imposed by the toll facility operator, and applicable court costs if
215 the vehicle is found, as evidenced by information obtained from a video-monitoring system in
216 conjunction with an automatic vehicle identification system as provided in this section, to have used
217 such a toll facility without payment of the required toll within 30 days of receipt of the invoice for the
218 toll.

219 D. Any action under this section shall be brought in the general district court of the city or county
220 in which the toll facility is located, and the prerequisites for such action and the procedures and
221 requirements for such action shall be as set out in subsections E through M of § 46.2-819.1, the
222 provisions of which shall apply, *mutatis mutandis*.

223 2. That the Commissioner of the Department of Transportation, in consultation with the
224 Department of Motor Vehicles, shall convene a working group of toll facility operators and other
225 interested parties as designated by the Commissioner to (i) examine the impact of increased
226 development of toll roads in the Commonwealth on the ability of the courts to carry out the
227 provisions of this act, (ii) evaluate ways to improve processes for enforcing toll violation laws
228 across the Commonwealth, and (iii) examine opportunities for alternative toll violation resolution,
229 including the creation of an expedited hearing process. The Executive Secretary of the Supreme
230 Court of Virginia shall be included and consulted regarding any issues affecting court
231 administration or the judicial branch. All state agencies shall cooperate with the working group as
232 requested by the Commissioner. The Commissioner shall provide the report to the Chairs of the
233 House and Senate Committees on Transportation and Courts of Justice by December 15, 2010.