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**HOUSE BILL NO. 968**

Offered January 13, 2010

Prefiled January 13, 2010

*A BILL to amend and reenact § 33.1-56.3 of the Code of Virginia, relating to high-occupancy toll lane enforcement; penalties.*

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Patron—Englin

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Referred to Committee on Transportation

**Be it enacted by the General Assembly of Virginia:****1. That § 33.1-56.3 of the Code of Virginia is amended and reenacted as follows:****§ 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~~ *traffic infraction*, which may be enforced in the following manner:

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.

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 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.).

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.

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59 The affidavit shall constitute prima facie evidence that the person named in the affidavit was driving the  
60 vehicle at all the relevant times relating to the matter named in the affidavit.

61 If the registered owner of the vehicle produces a certified copy of a police report showing that the  
62 vehicle had been reported to the police as stolen prior to the time of the alleged offense and remained  
63 stolen at the time of the alleged offense, then the court shall dismiss the summons issued to the  
64 registered owner of the vehicle.

65 C. 1. The HOT lanes operator may impose and collect an administrative fee in addition to the unpaid  
66 toll so as to recover the expenses of collecting the unpaid toll, which administrative fee shall be  
67 reasonably related to the actual cost of collecting the unpaid toll and not exceed \$100 per violation. The  
68 operator of the vehicle shall pay the unpaid tolls and any administrative fee detailed in a notice or  
69 invoice issued by a HOT lanes operator. If paid within 30 days of notification, the administrative fee  
70 shall not exceed \$25.

71 2. Upon a finding by a court of competent jurisdiction that the driver of the vehicle observed by a  
72 law-enforcement officer under subsection A, or the vehicle described in the summons for ~~civil~~ violation  
73 issued pursuant to evidence obtained by a photo-enforcement system under subsection B was in violation  
74 of this section, the court shall impose a ~~civil~~ penalty upon the driver of such vehicle issued a summons  
75 under subsection A, or upon the driver or registered owner of such vehicle issued a summons under  
76 subsection B, payable to the HOT lanes operator as follows: for a first offense, \$50; for a second  
77 offense, \$250; for a third offense within a period of two years of the second offense, \$500; and for a  
78 fourth and subsequent offense within a period of three years of the second offense, \$1,000, together  
79 with, in each case, the unpaid toll, all accrued administrative fees imposed by the HOT lanes operator as  
80 authorized by this section, and applicable court costs. The court shall remand ~~penalties~~, unpaid toll, and  
81 administrative fees assessed for violation of this section to the treasurer or director of finance of the  
82 county or city in which the violation occurred for payment to the HOT lanes operator for expenses  
83 associated with operation of the HOT lanes and payments against any bonds or other liens issued as a  
84 result of the construction of the HOT lanes. No person shall be subject to prosecution under both  
85 subsections A and B for actions arising out of the same transaction or occurrence.

86 3. Upon a finding by a court that a person has violated this section, in the event such person fails to  
87 pay the required penalties, fees, and costs, the court shall notify the Commissioner of Motor Vehicles,  
88 who shall suspend all of the registration certificates and license plates issued for any motor vehicles  
89 registered solely in the name of such person and shall not issue any registration certificate or license  
90 plate for any other vehicle that such person seeks to register solely in his name until the court has  
91 notified the Commissioner that such penalties, fees, and costs have been paid. The HOT lanes operator  
92 and the Commissioner may enter into an agreement whereby the HOT lanes operator may reimburse the  
93 Department of Motor Vehicles for their reasonable costs to develop, implement, and maintain this  
94 enforcement mechanism, and that specifies that the Commissioner shall have an obligation to suspend  
95 such registration certificates so long as the HOT lanes operator makes the required reimbursements in a  
96 timely manner in accordance with the agreement.

97 4. Except as provided in subsections D and E, imposition of a ~~civil~~ penalty pursuant to this section  
98 shall not be deemed a conviction as an operator of a motor vehicle under Title 46.2 and shall not be  
99 made part of the driving record of the person upon whom such ~~civil~~ penalty is imposed, nor shall it be  
100 used for insurance purposes in the provision of motor vehicle insurance coverage.

101 D. 1. The HOT lanes operator may restrict the usage of the HOT lanes to designated vehicle  
102 classifications pursuant to an interim or final comprehensive agreement executed pursuant to § 56-566 or  
103 56-566.1. Notice of any such vehicle classification restrictions shall be provided through the placement  
104 of signs or other markers prior to and at all HOT lanes entrances.

105 2. Any person driving an unauthorized vehicle on the designated HOT lanes shall be guilty of a  
106 traffic infraction, which shall not be a moving violation, and shall be punishable as follows: for a first  
107 offense, by a fine of \$125; for a second offense within a period of five years from a first offense, by a  
108 fine of \$250; for a third offense within a period of five years from a first offense, by a fine of \$500;  
109 and for a fourth and subsequent offense within a period of five years from a first offense, by a fine of  
110 \$1,000.

111 Upon a conviction under this subsection, the court shall furnish to the Commissioner of the  
112 Department of Motor Vehicles, in accordance with § 46.2-383, an abstract of the record of such  
113 conviction that shall become a part of the person's driving record. Notwithstanding the provisions of  
114 § 46.2-492, no driver demerit points shall be assessed for any violation of this subsection, except that  
115 persons convicted of a second, third, fourth, or subsequent violation within five years of a first offense  
116 shall be assessed three demerit points for each such violation.

117 E. The driver of a vehicle who enters the HOT lanes by crossing through any barrier, buffer or other  
118 area separating the HOT lanes from other lanes of travel shall have committed a violation of § 46.2-852.  
119 No person shall be subject to both prosecution under this subsection and under subsection A, B, or D  
120 for actions arising out of the same transaction or occurrence.

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, 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.

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