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SENATE BILL NO. 391

Offered January 13, 2010

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A BILL to amend and reenact §§ 46.2-819.1 and 46.2-819.3 of the Code of Virginia, relating to toll facilities; civil penalties.

Patron—McDougle

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-819.1 and 46.2-819.3 of the Code of Virginia are amended and reenacted 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. No civil penalty shall be imposed for a second or subsequent offense unless the person was found liable for a civil penalty for an offense preceding the instant offense. The registered owner or operator of a vehicle shall not be liable for more than \$2,500 in civil penalties in one calendar day in one court and shall not be liable for more than \$10,000 in civil penalties in one calendar year in one court.

D. Any action under this section shall be brought in the General District Court of the city or county

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59 in which the toll facility is located.

60 E. Proof of a violation of this section shall be evidenced by information obtained from a  
61 photo-monitoring system or automatic vehicle identification system as provided in this section. A  
62 certificate, sworn to or affirmed by a technician employed or authorized by the operator of a toll facility  
63 or by the locality wherein the toll facility is located, or a facsimile of such a certificate, based on  
64 inspection of photographs, microphotographs, videotapes, or other recorded images produced by a  
65 photo-monitoring system, or of electronic data collected by an automatic vehicle identification system,  
66 shall be prima facie evidence of the facts contained therein. Any photographs, microphotographs,  
67 videotape, or other recorded images or electronic data evidencing such a violation shall be available for  
68 inspection in any proceeding to adjudicate the liability for such violation under this section. A record of  
69 communication by an automatic vehicle identification device with the automatic vehicle identification  
70 system at the time of a violation of this section shall be prima facie evidence that the automatic vehicle  
71 identification device was located in the vehicle registered to use such device in the records of the  
72 Virginia Department of Transportation.

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

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

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

89 Upon the filing of an affidavit with the court at least 14 days prior to the hearing date by the  
90 registered owner of the vehicle stating that he was not the driver of the vehicle on the date of the  
91 violation and providing the legal name and address of the operator of the vehicle at the time of the  
92 violation, a summons will also be issued to the alleged operator of the vehicle at the time of the offense.

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

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

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

119 H. For purposes of this section, "operator of a toll facility other than the Virginia Department of  
120 Transportation" means any agency, political subdivision, authority, or other entity that operates a toll

121 facility; "owner" means the registered owner of a vehicle on record with the Department of Motor  
 122 Vehicles. For purposes of this section, "owner" does not mean a vehicle rental or vehicle leasing  
 123 company; "photo-monitoring system" means a vehicle sensor installed to work in conjunction with a toll  
 124 collection device that automatically produces one or more photographs, one or more microphotographs, a  
 125 videotape, or other recorded images of each vehicle at the time it is used or operated in violation of this  
 126 section; "automatic vehicle identification system" means an electronic vehicle identification system  
 127 installed to work in conjunction with a toll collection device that automatically produces an electronic  
 128 record of each vehicle equipped with an automatic vehicle identification device that uses a toll facility;  
 129 and "automatic vehicle identification device" means an electronic device that communicates by wireless  
 130 transmission with an automatic vehicle identification system.

131 I. Any vehicle rental or vehicle leasing company, if named in a summons, shall be released as a  
 132 party to the action if it provides the operator of the toll facility a copy of the vehicle rental agreement  
 133 or lease or an affidavit identifying the renter or lessee prior to the date of hearing set forth in the  
 134 summons. Upon receipt of such rental agreement, lease, or affidavit, a notice shall be mailed to the  
 135 renter or lessee identified therein. Release of this information shall not be deemed a violation of any  
 136 provision of the Government Data Collection and Dissemination Practices Act (§ 2.2-3800 et seq.) or the  
 137 Insurance Information and Privacy Protection Act (§ 38.2-600 et seq.). The toll facility operator shall  
 138 allow at least 30 days from the date of such mailing before pursuing other remedies under this section.  
 139 In any action against the vehicle operator, a copy of the vehicle rental agreement, lease, or affidavit  
 140 identifying the renter or lessee of the vehicle at the time of the violation is prima facie evidence that the  
 141 person named in the rental agreement, lease, or affidavit was operating the vehicle at all the relevant  
 142 times relating to the matter named in the summons.

143 J. Imposition of a civil penalty pursuant to this section shall not be deemed a conviction as an  
 144 operator and shall not be made part of the driving record of the person upon whom such civil penalty is  
 145 imposed nor shall it be used for insurance purposes in the provision of motor vehicle insurance  
 146 coverage. The provisions of § 46.2-395 shall not be applicable to any civil penalty, fee, unpaid toll, fine  
 147 or cost imposed or ordered paid under this section for a violation of this section.

148 K. On a form prescribed by the Supreme Court, a summons for a violation of this section may be  
 149 executed pursuant to § 19.2-76.2. Toll facility personnel or their agents mailing such summons shall be  
 150 considered conservators of the peace for the sole and limited purpose of mailing such summons.  
 151 Notwithstanding the provisions of § 19.2-76, a summons for a violation of this section may be executed  
 152 by mailing by first-class mail a copy thereof to the address of the owner of the vehicle as shown on the  
 153 records of the Department of Motor Vehicles or, if the registered owner has named and provided a valid  
 154 address for the operator of the vehicle at the time of the violation in an affidavit executed pursuant to  
 155 subsection F, such named operator of the vehicle. If the summoned person fails to appear on the date of  
 156 return set out in the summons mailed pursuant to this section, the summons shall be executed in the  
 157 manner set out in § 19.2-76.3.

158 L. The operator of a toll facility may enter into an agreement with the Department of Motor  
 159 Vehicles, in accordance with the provisions of subdivision 21 of subsection B of § 46.2-208, to obtain  
 160 vehicle owner information regarding the registered owners of vehicles that fail to pay tolls required for  
 161 the use of toll facilities and with the Virginia Department of Transportation to obtain any information  
 162 that is necessary to conduct electronic toll collection. Information provided to the operator of a toll  
 163 facility shall only be used for the collection of unpaid tolls and the operator of the toll facility shall be  
 164 subject to the same conditions and penalties regarding release of the information as contained in  
 165 subsection B.

166 M. No person shall be subject to both the provisions of this section and to prosecution under  
 167 § 46.2-819 for actions arising out of the same transaction or occurrence.

168 § 46.2-819.3. Use of toll facility without payment of toll; enforcement; penalty.

169 A. The toll facility operator may impose and collect an administrative fee in addition to the unpaid  
 170 toll so as to recover the expenses of collecting the unpaid toll, which administrative fee shall be  
 171 reasonably related to the actual cost of collecting the unpaid toll and not exceed \$100 per violation.  
 172 Such fee shall not be levied upon the operator of the vehicle until the second unpaid toll has been  
 173 documented. The owner or operator of the vehicle shall pay the unpaid tolls and any administrative fee  
 174 detailed in an invoice or bill issued by a toll facility operator. If paid within 30 days of notification, the  
 175 administrative fee shall not exceed \$25.

176 B. If the matter proceeds to court, the owner or operator of the vehicle shall be liable for a civil  
 177 penalty as follows: for a first offense, \$50; for a second offense within one year from the first offense,  
 178 \$100; for a third offense within two years from the second offense, \$250; and for a fourth and any  
 179 subsequent offense within three years from the second offense, \$500 plus, in each case, the unpaid toll,  
 180 all accrued administrative fees imposed by the toll facility operator and applicable court costs if the  
 181 vehicle operator is found, as evidenced by information obtained from the toll facility operator, to have

182 used such a toll facility without payment of the required toll. *No civil penalty shall be imposed for a*  
183 *second or subsequent offense unless the person was found liable for a civil penalty for an offense*  
184 *preceding the instant offense. The registered owner or operator of a vehicle shall not be liable for more*  
185 *than \$2,500 in civil penalties in one calendar day in one court and shall not be liable for more than*  
186 *\$10,000 in civil penalties in one calendar year in one court.*

187 C. A written promise to pay an unpaid toll within a specified period of time executed by the driver  
188 of a motor vehicle, accompanied by a certificate sworn to or affirmed by an authorized agent of the toll  
189 facility that the unpaid toll was not paid within such specified period, shall be prima facie evidence of  
190 the facts contained therein.

191 D. The operator of a toll facility may send an invoice or bill to the driver of a motor vehicle using a  
192 toll facility without payment of the specified toll as part of an electronic or manual toll collection  
193 process prior to seeking remedies under this section. Any action under this section shall be brought in  
194 the general district court of the city or county in which the toll facility is located.

195 E. Upon a finding by a court of competent jurisdiction that the driver of a motor vehicle identified in  
196 the summons issued pursuant to subsection I was in violation of this section, the court shall impose a  
197 civil penalty upon the driver of a motor vehicle in accordance with the amounts specified in subsection  
198 B, together with applicable court costs, the operator's administrative fee, and the toll due. Penalties  
199 assessed as the result of action initiated by the Virginia Department of Transportation shall be remanded  
200 by the clerk of the court which adjudicated the action to the Virginia Department of Transportation's  
201 Toll Facilities Revolving Fund. Penalties assessed as the result of action initiated by an operator of a toll  
202 facility other than the Virginia Department of Transportation shall be remanded by the clerk of the court  
203 which adjudicated the action to the treasurer or director of finance of the county or city in which the  
204 violation occurred for payment to the toll facility operator.

205 F. Upon a finding by a court that a person has three or more unpaid tolls and such person fails to  
206 pay the required penalties, fees, and unpaid tolls, the court shall notify the Commissioner of the  
207 Department of Motor Vehicles, who shall refuse to issue or renew any vehicle registration certificate of  
208 any applicant or the license plate issued for any vehicle owned or co-owned by the offender. The  
209 Commissioner shall collect a \$40 administrative fee from the owner or operator of the vehicle to defray  
210 the cost of processing and removing an order to deny registration or registration renewal.

211 G. For purposes of this section, "operator of a toll facility other than the Virginia Department of  
212 Transportation" means any agency, political subdivision, authority, or other entity that operates a toll  
213 facility.

214 H. Imposition of a civil penalty pursuant to this section shall not be deemed a conviction as an  
215 operator and shall not be made part of the driving record of the person upon whom such civil penalty is  
216 imposed nor shall it be used for insurance purposes in the provision of motor vehicle insurance  
217 coverage. The provisions of § 46.2-395 shall not be applicable to any civil penalty, fee, unpaid toll, fine  
218 or cost imposed or ordered paid under this section for a violation of this section.

219 I. A summons for a violation of this section may be executed pursuant to § 19.2-76.2. Toll facility  
220 personnel or their agents mailing such summons shall be considered conservators of the peace for the  
221 sole and limited purpose of mailing such summons. Notwithstanding the provisions of § 19.2-76, a  
222 summons for a violation of this section may be executed by mailing by first-class mail a copy thereof to  
223 the address of the driver of a motor vehicle as shown on the records of the Department of Motor  
224 Vehicles. If the summoned person fails to appear on the date of return set out in the summons mailed  
225 pursuant to this section, the summons shall be executed in the manner set out in § 19.2-76.3.

226 J. No person shall be subject to both the provisions of this section and to prosecution under  
227 § 46.2-819 for actions arising out of the same transaction or occurrence.