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HOUSE BILL NO. 1962

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Transportation
on February 1, 2011)

(Patron Prior to Substitute—Delegate Rust)

A BILL to amend and reenact §§ 46.2-819.1 and 46.2-819.3:1 of the Code of Virginia and to amend the Code of Virginia by adding in Article 1 of Chapter 8 of Title 46.2 sections numbered 46.2-819.6 and 46.2-819.7, relating to toll violation notices.

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-819.1 and 46.2-819.3:1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 1 of Chapter 8 of Title 46.2 sections numbered 46.2-819.6 and 46.2-819.7 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~~ toll in accordance with the requirements of subsection A of § 46.2-819.6 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~~ may be levied upon the operator of the vehicle ~~until~~ after the ~~second~~ first 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~~ for unpaid toll 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 pursuant to subsection B of § 46.2-819.6, 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

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

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

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

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

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

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

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

102 G. Upon If (i) an owner of a vehicle has either received at least one invoice for two or more unpaid
103 tolls in accordance with subsection A of § 46.2-819.6 by certified mail and has failed to either (a) pay
104 the unpaid toll and administrative fee for the violation by the date specified in the invoice for unpaid
105 toll or (b) contest liability by sending a notice to request a hearing with the court to the toll facility
106 operator or (ii) there is a finding by a court that a such person has three two or more unpaid tolls and
107 such person fails to pay the required penalties, fees, and unpaid tolls, then the court or toll facility
108 operator, whichever the case may be, shall notify the Commissioner of the Department of Motor
109 Vehicles, who shall refuse to issue or renew any vehicle registration certificate of any applicant or the
110 license plate issued for the vehicle driven in the commission of the offense until the court or toll facility
111 operator, whichever the case may be, has notified the Commissioner that such penalties, fees, and
112 unpaid tolls have been paid. If it is proven that the vehicle owner was not the operator at the time of
113 the offense and upon a finding by a court that the person identified in an affidavit pursuant to
114 subsection F as the operator violated this section and such person fails to pay the required penalties,
115 fees, and unpaid tolls, the court or toll facility operator shall notify the Commissioner, who shall refuse
116 to issue or renew any vehicle registration certificate of any applicant or the license plate issued for any
117 vehicle owned or co-owned by such person until the court or toll facility operator has notified the
118 Commissioner that such penalties, fees, and unpaid tolls have been paid. Such funds representing
119 payment of unpaid tolls and all administrative fees of the toll facility operator shall be transferred from
120 the court to the Virginia Department of Transportation's Toll Facilities Revolving Fund or, in the case of
121 an 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.

The Commissioner may refuse to issue or renew any vehicle registration pursuant to this subsection upon the request of a toll facility operator only if such toll facility operator has entered into an agreement with the Commissioner whereby the Commissioner will refuse to issue or renew any vehicle registration of any applicant therefor who owes unpaid tolls to the toll facility operator. The toll facility operator seeking to collect unpaid tolls through the withholding of registration or renewal thereof by the Commissioner as provided in this subsection shall notify the Commissioner in the manner provided in his agreement with the Commissioner and supply to the Commissioner information necessary to identify the violator whose registration or renewal is to be denied. Any agreement entered into pursuant to the provisions of this subsection shall provide for the Department of Motor Vehicles to send the violator notice of the intent to deny renewal of registration at least 30 days prior to the expiration date of a current vehicle registration, and such notice shall include instructions for filing a notice to request a hearing with the court pursuant to subsection C of 46.2-819.6. For the purposes of this subsection, notice by first-class mail to the registrant's address as maintained in the records of the Department of Motor Vehicles shall be deemed sufficient.

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 entity that operates a toll facility; "owner" means the registered 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 system" means a vehicle sensor installed to work in conjunction with a toll 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 for unpaid toll 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 an invoice for unpaid toll 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. Each toll facility operator may develop a cover sheet to accompany a summons for a violation. Such cover sheet shall describe the option for the driver or registered owner to prepay to the toll facility operator an amount to be specified by the toll facility operator. This amount may be equal to or less than the aggregate of all penalties, unpaid tolls, administrative fees, and costs for the violations in each attached summons. If the full amount of the specified prepayment is received by the toll facility operator 10 days prior to trial, the toll facility operator shall notify the court in writing at least three business days prior to the date set for trial and the court shall dismiss the charge included in each summons for which the toll facility operator has received prepayment pursuant to this subsection. 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 *or summonses* for a ~~violation of this section~~ *unpaid tolls* 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 B 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 *in accordance with the requirements of subsection A of § 46.2-819.6* 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 protected in a database with security comparable to that of the Department of Motor Vehicles' system and 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/or (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. 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, administrative fees, and/or civil penalties. Any entity operating a video-monitoring system in conjunction with an 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.

If a vehicle uses a toll facility without paying the toll, the owner or operator shall be in violation of this section if he refuses to pay the toll within 30 days of notification. 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 owner or operator of the vehicle unless the toll has not been paid by the owner or operator within 30 days after receipt of the invoice for the unpaid tolls, which nonpayment for 30 days shall constitute the violation of this section. Once such a violation has occurred, the owner or operator of the vehicle shall pay the unpaid tolls and any administrative fee detailed in the invoice ~~or bill~~ *for unpaid toll* issued by a toll facility operator. If paid within 30 days of the toll violation, the administrative fee shall not exceed \$25.

The toll facility operator may levy charges for the direct cost of use of and processing for a video-monitoring system and to cover the cost of the invoice, which are in addition to the toll and may not exceed double the amount of the base toll, provided that potential toll facility users are provided notice before entering the facility by conspicuous signs that clearly indicate that the toll for use of the facility could be tripled for any vehicle that does not have an active, functioning automatic vehicle identification device registered for and in use in the vehicle using the toll facility, and such signs are posted at a location where the driver can still choose to avoid the use of the toll facility if he chooses not to pay the toll.

C. If the matter proceeds to court, pursuant to subsection B of § 46.2-819.6, 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 video-monitoring system in conjunction with an automatic vehicle identification system as provided in this section, to have used such a toll facility without payment of the required toll within 30 days of receipt of the invoice for the 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, and the prerequisites for such action and the procedures and requirements for such action shall be as set out in subsections E through M of § 46.2-819.1, the provisions of which shall apply, mutatis mutandis.

§ 46.2-819.6. Invoice for unpaid toll.

A. The operator of a toll facility shall send an invoice for unpaid toll pursuant to § 46.2-819.7 to the registered owner of a vehicle. An invoice for unpaid toll shall contain the following:

1. The name and address of the registered owner alleged to be liable under this section;
2. The registration number of the motor vehicle involved in such violation or information obtained from an automatic vehicle identification system if the vehicle is identified by an automatic vehicle identification system for the purpose of violation detection;
3. The location where such violation took place;
4. The date and time of such violation;
5. The amount of the toll not paid;
6. The amount of the administrative fees;
7. The date by which the toll and administrative fee must be paid;
8. Information advising the person liable under this section of the manner and the time in which liability alleged in the invoice for unpaid toll may be contested;
9. The statutory defenses available under this chapter;
10. A warning describing the penalties for nonpayment of the invoice for unpaid toll or failure to file a notice to request a hearing with the court; and
11. The procedures and time limits for filing a notice to request a hearing with the court to contest liability for a toll violation as provided in subsection C.

B. Any person receiving the invoice for unpaid toll for a violation under this section may (i) pay the toll and the administrative fees directly to the toll facility operator or (ii) file a notice to request a hearing with the court to contest liability for a toll violation pursuant to subsection C.

C. A notice to request a hearing with the court to contest liability for a toll violation or a refusal to issue or renew any vehicle registration for unpaid tolls may be filed by any person receiving an invoice for unpaid toll or a notice of intent to deny the renewal of registration for unpaid tolls by sending a notice to request a hearing with the court to the operator of the facility within 60 days of receiving such invoice for unpaid toll or notice of intent to deny renewal of registration. After receipt of such a notice to request a court hearing, the toll facility operator may come to an agreement with the person for prepayment of any unpaid tolls. If the toll facility operator and the person do not come to such an agreement, then the toll facility operator may proceed to take the matter to court pursuant to subsection D.

D. If the registered owner of a vehicle who is liable under this section fails to pay the prescribed toll and administrative fee within 60 days after mailing of the first invoice for unpaid toll, the toll facility operator may:

1. Notify the Commissioner of the Department of Motor Vehicles of the failure to pay the toll and administrative fee in accordance with subsection G of § 46.2-819.1; or
2. Upon the second or more unpaid toll documented by the toll facility operator by the registered owner of a vehicle or the receipt of a notice to request a hearing, proceed to court by issuing a summons pursuant to § 19.2-76.2.

§ 46.2-819.7. Mailing of invoice for unpaid toll.

306 Whenever an invoice for unpaid toll for one or more violations for unpaid tolls is provided to any
307 person by the toll facility operator in any county, city, or town, it may be executed by mailing by
308 first-class mail a copy thereof to the address of the owner of the vehicle as shown on the records of the
309 Department of Motor Vehicles. If the person fails to pay the unpaid toll by the date set out in the
310 invoice for unpaid toll mailed pursuant to this section, then a summons may be executed in the manner
311 set out in § 19.2-76.2. Personal service upon the vehicle owner shall not be required, and a record of
312 mailing kept in the ordinary course of business shall be admissible evidence of the mailing of the
313 invoice for unpaid toll.