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## HOUSE BILL NO. 1071

Offered January 13, 2016

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A *BILL to amend and reenact § 46.2-819.3:1 of the Code of Virginia, relating to civil actions for nonpayment of electronic tolls.*

Patrons—Heretick, Boysko, Carr, Cole, Hester, James, Kory, Lindsey, Mason, McQuinn, Simon, Spruill and Ward

Referred to Committee on Transportation

**Be it enacted by the General Assembly of Virginia:**

**1. That § 46.2-819.3:1 of the Code of Virginia is amended and reenacted as follows:**

**§ 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 *provided that tolls may be paid in cash at a specified physical location or online by emailing a designated email address within 72 hours of incurring the toll obligation. Payment within 72 hours of incurring the toll obligation shall not be assessed any further penalty, administrative fee, or fine exceeding the amount of the unpaid toll. The toll operator shall prominently display conspicuous signs at a location where the driver can still choose to avoid the use of the toll facility prior to entering the toll facility that notify the driver (i) of alternate routes that are not subject to tolling and (ii) that tolls may be paid in cash at a specified physical location or online by emailing a designated email address within 72 hours of incurring the toll obligation.* 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 for unpaid tolls in accordance with the requirements 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 Commissioner of Highways 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 *within 72 hours of the violation*, the owner or operator shall be in violation of this section if he refuses to pay the toll within 30 days of notification. *Such notification shall be issued not sooner than 72 hours but not more than 14 days after the toll obligation is incurred. Notification shall be provided by priority, registered, or certified mail or similar form of correspondence through which delivery may be tracked and verified to the registered address of the vehicle. Proof of the issuance of such notification in the time frame required and its delivery to the address of record shall be required to sustain a claim of payment of tolls, administrative fees, or fines*

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58 *that are permitted under this section.* The toll facility operator may impose and collect an administrative  
59 fee in addition to the unpaid toll so as to recover the expenses of collecting the unpaid toll, which  
60 administrative fee shall be reasonably related to the actual cost of collecting the unpaid toll and not  
61 exceed ~~\$100~~ *five times the amount of the unpaid toll* per violation. Such fee shall not be levied upon the  
62 owner or operator of the vehicle unless the toll has not been paid by the owner or operator within 30  
63 days after receipt of the invoice for the unpaid toll, which nonpayment for 30 days shall constitute the  
64 violation of this section. Once such a violation has occurred, the owner or operator of the vehicle shall  
65 pay the unpaid tolls and any administrative fee detailed in the invoice for the unpaid toll issued by a toll  
66 facility operator. If paid within 30 days of the toll violation, the administrative fee shall not exceed ~~\$25~~  
67 *twice the amount of the unpaid toll per violation.*

68 The toll facility operator may levy charges for the direct cost of use of and processing for a  
69 video-monitoring system and to cover the cost of the invoice, which are in addition to the toll and may  
70 not exceed double the amount of the base toll, provided that potential toll facility users are provided  
71 notice before entering the facility by conspicuous signs that clearly indicate that the toll for use of the  
72 facility could be tripled for any vehicle that does not have an active, functioning automatic vehicle  
73 identification device registered for and in use in the vehicle using the toll facility, and such signs are  
74 posted at a location where the driver can still choose to avoid the use of the toll facility if he chooses  
75 not to pay the toll. *However, such charges shall not be applied to an owner or operator that pays the*  
76 *toll within 72 hours as provided in subsection A.*

77 A person receiving an invoice for an unpaid toll under this section may (a) pay the toll and  
78 administrative fees directly to the toll facility operator or (b) file with the toll facility operator a notice,  
79 on a form provided by the toll facility operator as required under subsection B of § 46.2-819.6, to  
80 contest liability for a toll violation. The notice to contest liability for a toll violation may be filed by  
81 any person receiving an invoice for an unpaid toll by mailing or delivering the notice to the toll facility  
82 operator within 60 days of receiving such invoice for unpaid toll. Upon receipt of such notice, the toll  
83 facility operator may issue a summons pursuant to subsection K and may not seek withholding of  
84 registration or renewal thereof under subsection G until a court of competent jurisdiction has found the  
85 alleged violator liable for tolls under this section.

86 C. If the matter proceeds to court, the *court may impose upon the* registered owner or operator of a  
87 vehicle ~~shall be liable for~~ a civil penalty as follows: for a first offense, ~~\$50~~ \$25; for a second offense  
88 within ~~one year~~ *three months* from the first offense, ~~\$100~~ \$50; for a third offense within ~~two years~~ *six*  
89 *months* from the second offense, ~~\$250~~ \$75; and for a fourth and any subsequent offense within ~~three~~  
90 *years one year* from the second offense, ~~\$500~~ \$150; plus, in each case, the unpaid toll, all accrued  
91 administrative fees imposed by the toll facility operator, and applicable court costs if the vehicle is  
92 found, as evidenced by information obtained from a video-monitoring system in conjunction with an  
93 automatic vehicle identification system as provided in this section, to have used such a toll facility  
94 without payment of the required toll within 30 days of receipt of the invoice for the toll. *The court may*  
95 *consider whether imposing such penalty will substantially impair the registered owner or operator's*  
96 *access to employment, medical care, or education before imposing such penalty.*

97 D. ~~Any~~ No action under this section shall be brought against the registered owner or operator of a  
98 vehicle until at least 120 days have elapsed since the date of the toll violation. For vehicles registered  
99 within the Commonwealth, any action under this section shall be brought in the general district court of  
100 the locality in which the vehicle is registered. For vehicles registered outside the Commonwealth, any  
101 action under this section shall be brought in the general district court of the city or county in which the  
102 toll facility is located. Such action shall be considered a traffic infraction but shall be tried as a civil  
103 case and shall be commenced within one year of the commission of the offense. The attorney for the  
104 Commonwealth may represent the interests of the toll facility operator. Any authorized agent or  
105 employee of a toll facility operator acting on behalf of a governmental entity shall be allowed the  
106 privileges accorded by § 16.1-88.03 in such cases. *No judgment for unpaid tolls, including any penalties*  
107 *or administrative fees associated with the collection of the toll, shall exceed five times the amount of*  
108 *the unpaid toll, exclusive of court filing fees and charges associated with service of process.*

109 E. Proof of a violation of this section shall be evidenced by information obtained from a  
110 video-monitoring system or automatic vehicle identification system as provided in this section. A  
111 certificate, sworn to or affirmed by a technician employed or authorized by the operator of a toll facility  
112 or by the locality wherein the toll facility is located, or a facsimile of such a certificate, based on  
113 inspection of photographs, microphotographs, videotapes, or other recorded images produced by a  
114 video-monitoring system or of electronic data collected by an automatic vehicle identification system,  
115 shall be prima facie evidence of the facts contained therein. Any photographs, microphotographs,  
116 videotape, or other recorded images or electronic data evidencing such a violation shall be available for  
117 inspection in any proceeding to adjudicate the liability for such violation under this section. A record of  
118 communication by an automatic vehicle identification device with the automatic vehicle identification  
119 system at the time of a violation of this section shall be prima facie evidence that the automatic vehicle

identification device was located in the vehicle registered to use such device in the records of the Virginia Department of Transportation.

F. It shall be prima facie evidence that the vehicle described in the summons issued pursuant to subsection K 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 was in violation of this section, the court ~~shall~~ *may* impose a civil penalty upon the registered owner or operator of such vehicle in accordance with the amounts specified in subsection C, together with applicable court costs, the operator's administrative fee, and the 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 that adjudicated the action to the Virginia Department of Transportation's Toll Facilities Revolving Account. 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 that 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 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 by the registered owner of the vehicle with the toll facility operator within 14 days of receipt of an invoice for unpaid toll or a summons stating that such owner 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, an invoice for unpaid toll or summons, whichever the case may be, will also be issued to the alleged operator of the vehicle at the time of the offense.

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 registered owner of the vehicle produces for the toll facility operator or the court 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 toll facility operator shall not pursue the owner for the unpaid toll contained in the invoice for unpaid toll or the court shall dismiss the summons issued to the registered owner of the vehicle.

G. 1. Upon a finding by a court that a person has two or more unpaid tolls and such person fails to pay the required penalties, fees, and unpaid tolls, then the court or toll facility operator shall notify the Commissioner of the Department of Motor Vehicles, who shall refuse to issue or renew any 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 that such penalties, fees, and unpaid tolls have been paid. 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 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 penalties, fees, and unpaid tolls, the court shall notify the Commissioner, who 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 until the court has notified the Commissioner that such penalties, fees, and unpaid tolls have been paid. Such funds representing payment of unpaid tolls and all administrative fees of the toll facility operator shall be transferred from the court to the Virginia Department of Transportation's Toll Facilities Revolving Account or, in the case of 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.

2. If an owner of a vehicle has received at least one invoice for two or more unpaid tolls in accordance with § 46.2-819.6 by certified mail and has (i) failed to pay the unpaid tolls and administrative fees and (ii) failed to file a notice to contest liability for a toll violation, then the toll facility operator may notify the Commissioner, who shall, if no form contesting liability has been timely filed with the toll facility operator pursuant to this section, refuse to issue or renew the vehicle registration certificate of any applicant therefor or the license plate issued for any vehicle driven in the commission of the offense until the toll facility operator has notified the Commissioner that such fees and unpaid tolls have been paid.

If the vehicle owner was not the operator at the time of the offense and the person identified in an affidavit pursuant to subsection F as the operator has received at least one invoice for two or more unpaid tolls in accordance with § 46.2-819.6 by certified mail and such person has (i) failed to pay the

181 unpaid tolls and administrative fees and (ii) failed to file a notice to contest liability for a toll violation,  
182 then the toll facility operator may notify the Commissioner, who shall, if no form contesting liability has  
183 been timely filed with the toll facility operator pursuant to this section, refuse to issue or renew any  
184 vehicle registration certificate of any applicant therefor or the license plate issued for any vehicle owned  
185 or co-owned by such person until the toll facility operator has notified the Commissioner that such fees  
186 and unpaid tolls have been paid.

187 The Commissioner may only refuse to issue or renew any vehicle registration pursuant to this  
188 subsection upon the request of a toll facility operator if such toll facility operator has entered into an  
189 agreement with the Commissioner whereby the Commissioner will refuse to issue or renew any vehicle  
190 registration of any applicant therefor who owes unpaid tolls and administrative fees to the toll facility  
191 operator. The toll facility operator seeking to collect unpaid tolls and administrative fees through the  
192 withholding of registration or renewal thereof by the Commissioner as provided for in this subsection  
193 shall notify the Commissioner in the manner provided for in his agreement with the Commissioner and  
194 supply to the Commissioner information necessary to identify the violator whose registration or renewal  
195 is to be denied. The Commissioner shall charge a \$40 fee to defray the cost of processing and  
196 withholding the registration or registration renewal, and the toll facility operator may add this fee to the  
197 amount of the unpaid tolls and administrative fees. Any agreement entered into pursuant to the  
198 provisions of this subsection shall provide for the Department to send the violator notice of the intent to  
199 deny renewal of registration at least 30 days prior to the expiration date of a current vehicle registration  
200 and such notice shall include a form, as required under subsection B of § 46.2-819.6, to contest liability  
201 of the underlying toll violation. The notice provided by the Commissioner shall include instructions for  
202 filing the form to contest liability with the toll facility operator within 21 days after the date of mailing  
203 of the Commissioner's notice. Upon timely receipt of the form, the toll facility operator shall notify the  
204 Commissioner, who shall refrain from withholding the registration or renewal thereof, after which the  
205 toll facility operator may proceed to issue a summons for unpaid toll. For the purposes of this  
206 subsection, notice by first-class mail to the registrant's address as maintained in the records of the  
207 Department shall be deemed sufficient.

208 H. For purposes of this section, "operator" means a person who was driving a vehicle that was the  
209 subject of a toll violation but who is not the owner of the vehicle; "operator of a toll facility other than  
210 the Virginia Department of Transportation" means any agency, political subdivision, authority, or other  
211 entity that operates a toll facility; "owner" means the registered owner of a vehicle on record with the  
212 Department or, in the case of a vehicle where the owner of the vehicle is a vehicle leasing entity, the  
213 lessee. For purposes of this section, "owner" does not mean a vehicle rental or vehicle leasing company;  
214 "video-monitoring system" means a vehicle sensor installed to work in conjunction with a toll collection  
215 device that automatically produces one or more photographs, one or more microphotographs, a  
216 videotape, or other recorded images of each vehicle at the time it is used or operated in violation of this  
217 section; "automatic vehicle identification system" means an electronic vehicle identification system  
218 installed to work in conjunction with a toll collection device that automatically produces an electronic  
219 record of each vehicle equipped with an automatic vehicle identification device that uses a toll facility;  
220 and "automatic vehicle identification device" means an electronic device that communicates by wireless  
221 transmission with an automatic vehicle identification system.

222 I. Any vehicle rental or vehicle leasing company, if it receives an invoice for unpaid toll or is named  
223 in a summons, shall be released as a party to the action if it provides the operator of the toll facility a  
224 copy of the vehicle rental agreement or lease or an affidavit identifying the renter or lessee within 30  
225 days of receipt of the invoice or summons. Upon receipt of such rental agreement, lease, or affidavit, an  
226 invoice for unpaid toll shall be mailed to the renter or lessee identified therein. Release of this  
227 information shall not be deemed a violation of any provision of the Government Data Collection and  
228 Dissemination Practices Act (§ 2.2-3800 et seq.) or the Insurance Information and Privacy Protection Act  
229 (§ 38.2-600 et seq.). The toll facility operator shall allow at least 30 days from the date of such mailing  
230 before pursuing other remedies under this section. In any action against the vehicle operator, a copy of  
231 the vehicle rental agreement, lease, or affidavit identifying the renter or lessee of the vehicle at the time  
232 of the violation is prima facie evidence that the person named in the rental agreement, lease, or affidavit  
233 was operating the vehicle at all the relevant times relating to the matter named in the summons.

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

239 K. On a form prescribed by the Supreme Court, a summons for a violation of this section may be  
240 executed pursuant to § 19.2-76.2. Toll facility personnel or their agents mailing such summons shall be  
241 considered conservators of the peace for the sole and limited purpose of mailing such summons.  
242 Notwithstanding the provisions of § 19.2-76, a summons or summonses for a violation of 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 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 toll facility operator may offer to the owner an option to pay the unpaid toll and fees plus a reduced civil penalty of \$25 for a first or second offense or \$50 for a third, fourth, or subsequent offense, as specified on the summons, provided the owner actually pays to the toll facility operator the entire amount so calculated at least 14 days prior to the hearing date specified on the summons. If the owner accepts such offer and such amount is actually received by the toll facility operator at least 14 days prior to the hearing date specified on the summons, the toll facility operator shall move the court at least five business days prior to the date set for trial to dismiss the summons issued to the registered owner of the vehicle, and the court shall dismiss upon such motion.

M. The operator of a toll facility may enter into an agreement with the Department, in accordance with the provisions of subdivision B 21 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 be used only 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.

N. 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.