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HOUSE BILL NO. 1236

Offered January 19, 2016

A *BILL to amend and reenact §§ 33.2-503, 46.2-819.1, 46.2-819.3, and 46.2-819.3:1 of the Code of Virginia, relating to administrative fees for collecting unpaid tolls.*

Patron—Dudenhefer

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That §§ 33.2-503, 46.2-819.1, 46.2-819.3, and 46.2-819.3:1 of the Code of Virginia are amended and reenacted as follows:

§ 33.2-503. 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 § 33.2-502, 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, which may be enforced in the following manner:

1. 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 the unpaid toll and all penalties, administrative fees, and costs.

2. a. 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.

b. A summons for civil violation of this section may be executed pursuant to this subdivision, when such violation is evidenced by information obtained from a photo-enforcement system as defined in this chapter. 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 subdivision. Any vehicle rental or vehicle leasing company, if named in a summons, shall be released as a party to the action if it provides to 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.).

c. On a form prescribed by the Supreme Court, a summons issued under this subdivision may be executed pursuant to § 19.2-76.2. Such form shall contain the option for the driver or registered owner to prepay the unpaid toll and all penalties, 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 subdivision, 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.

d. The registered owner of such vehicle shall be given reasonable notice by way of a summons as provided in this subdivision 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 3. a. 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~~ *the amount of the*
68 *unpaid toll* per violation. The operator of the vehicle shall pay the unpaid tolls and any administrative
69 fee detailed in a notice or invoice issued by a HOT lanes operator. ~~If paid within 30 days of~~
70 ~~notification, the administrative fee shall not exceed \$25.~~

71 b. Upon a finding by a court of competent jurisdiction that the driver of the vehicle observed by a
72 law-enforcement officer under subdivision 1 or the vehicle described in the summons for civil violation
73 issued pursuant to evidence obtained by a photo-enforcement system under subdivision 2 was in
74 violation of this section, the court shall impose a civil penalty upon the driver of such vehicle issued a
75 summons under subdivision 1, or upon the driver or registered owner of such vehicle issued a summons
76 under subdivision 2, 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, the unpaid toll,
81 and 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 subdivisions 1 and 2 for actions arising out of the same transaction or occurrence.

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

98 d. Except as provided in subdivisions 4 and 5, imposition of a civil penalty pursuant to this section
99 shall not be deemed a conviction as an operator of a motor vehicle under Title 46.2 and shall not be
100 made part of the driving record of the person upon whom such civil penalty is imposed, nor shall it be
101 used for insurance purposes in the provision of motor vehicle insurance coverage.

102 4. a. The HOT lanes operator may restrict the usage of the HOT lanes to designated vehicle
103 classifications pursuant to an interim or final comprehensive agreement executed pursuant to § 33.2-1808
104 or 33.2-1809. Notice of any such vehicle classification restrictions shall be provided through the
105 placement of signs or other markers prior to and at all HOT lanes entrances.

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

111 Upon a conviction under this subdivision, 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, which 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 subdivision, 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 5. 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 is guilty of a violation of § 46.2-852, unless
119 the vehicle is a state or local law-enforcement vehicle, firefighting truck, or emergency medical services
120 vehicle used in the performance of its official duties. No person shall be subject to prosecution both

under this subdivision and under subdivision 1, 2, or 4 for actions arising out of the same transaction or occurrence.

Upon a conviction under this subdivision, 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.

6. No person shall be subject to prosecution both under this section and under § 33.2-501, 46.2-819, or 46.2-819.1 for actions arising out of the same transaction or occurrence.

7. Any action under this section shall be brought in the general district court of the county or city in which the violation occurred.

§ 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 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.

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~~ *the amount of the unpaid toll* per violation. Such fee may be levied upon the operator of the vehicle after the first unpaid toll has been documented. The operator of the vehicle shall pay the unpaid toll and any administrative fee detailed in an invoice for the 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, 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. Such action shall be considered a traffic infraction but shall be tried as a civil case. The attorney for the Commonwealth may represent the interests of the toll facility operator. Any authorized agent or employee of a toll facility operator acting on behalf of a governmental entity shall be allowed the privileges accorded by § 16.1-88.03 in such cases.

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,

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

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

191 Upon a finding by a court of competent jurisdiction that the vehicle described in the summons issued
192 pursuant to subsection K was in violation of this section, the court shall impose a civil penalty upon the
193 registered owner or operator of such vehicle in accordance with the amounts specified in subsection C,
194 together with applicable court costs, the operator's administrative fee and the toll due. Penalties assessed
195 as the result of action initiated by the Virginia Department of Transportation shall be remanded by the
196 clerk of the court which adjudicated the action to the Virginia Department of Transportation's Toll
197 Facilities Revolving Account. Penalties assessed as the result of action initiated by an operator of a toll
198 facility other than the Virginia Department of Transportation shall be remanded by the clerk of the court
199 which adjudicated the action to the treasurer or director of finance of the county or city in which the
200 violation occurred for payment to the toll facility operator.

201 The registered owner of such vehicle shall be given reasonable notice by way of a summons as
202 provided in subsection K that his vehicle had been used in violation of this section and such owner shall
203 be given notice of the time and place of the hearing as well as the civil penalty and costs for such
204 offense. The toll facility operator may offer to the owner an option to pay the unpaid toll and fees plus
205 a reduced civil penalty of \$25 for a first or second offense or \$50 for a third, fourth, or subsequent
206 offense, as specified on the summons, provided the owner actually pays to the toll facility operator the
207 entire amount so calculated at least 14 days prior to the hearing date specified on the summons. If the
208 owner accepts such offer and such amount is actually received by the toll facility operator at least 14
209 days prior to the hearing date specified on the summons, the toll facility operator shall move the court
210 at least five business days prior to the date set for trial to dismiss the summons issued to the registered
211 owner of the vehicle, and the court shall dismiss upon such motion.

212 Upon either (i) the filing of an affidavit with the toll facility operator within 14 days of receipt of an
213 invoice for an unpaid toll from the toll facility operator or (ii) the filing of an affidavit with the court at
214 least 14 days prior to the hearing date by the registered owner of the vehicle stating that he was not the
215 driver of the vehicle on the date of the violation and providing the legal name and address of the
216 operator of the vehicle at the time of the violation, an invoice and/or summons, as appropriate, will also
217 be issued to the alleged operator of the vehicle at the time of the offense.

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

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

227 G. Upon a finding by a court that a person has two or more unpaid tolls and such person fails to pay
228 the required penalties, fees, and unpaid tolls, the court shall notify the Commissioner of the Department
229 of Motor Vehicles, who shall refuse to issue or renew any vehicle registration certificate of any
230 applicant or the license plate issued for the vehicle driven in the commission of the offense until the
231 court has notified the Commissioner that such penalties, fees, and unpaid tolls have been paid. If it is
232 proven that the vehicle owner was not the operator at the time of the offense and upon a finding by a
233 court that the person identified in an affidavit pursuant to subsection F as the operator violated this
234 section and such person fails to pay the required penalties, fees, and unpaid tolls, the court shall notify
235 the Commissioner, who shall refuse to issue or renew any vehicle registration certificate of any applicant
236 or the license plate issued for any vehicle owned or co-owned by such person until the court has
237 notified the Commissioner that such penalties, fees, and unpaid tolls have been paid. Such funds
238 representing payment of unpaid tolls and all administrative fees of the toll facility operator shall be
239 transferred from the court to the Virginia Department of Transportation's Toll Facilities Revolving
240 Account or, in the case of an action initiated by an operator of a toll facility other than the Virginia
241 Department of Transportation, to the treasurer or director of finance of the county or city in which the
242 violation occurred for payment to the toll facility operator. The Commissioner shall collect a \$40
243 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.

H. For purposes of this section, "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. 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 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. Use of toll facility without payment of toll; enforcement; penalty.

A. 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~~ *the amount of the unpaid toll* per violation. Such fee shall not be levied on a first unpaid toll unless the written promise to pay executed pursuant to subsection C remains unpaid after 30 days. The person who executed the written promise to pay pursuant to subsection C shall pay the unpaid toll 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.~~

B. If the matter proceeds to court, the owner or operator of the vehicle shall be liable for a civil

305 penalty as follows: for a first offense, \$50; for a second offense within one year from the first offense,
306 \$100; for a third offense within two years from the second offense, \$250; and for a fourth and any
307 subsequent offense within three years from the second offense, \$500 plus, in each case, the unpaid toll,
308 all accrued administrative fees imposed by the toll facility operator and applicable court costs if the
309 vehicle operator is found, as evidenced by information obtained from the toll facility operator, to have
310 used such a toll facility without payment of the required toll.

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

315 D. The operator of a toll facility may send an invoice or bill to the driver of a motor vehicle using a
316 toll facility without payment of the specified toll as part of an electronic or manual toll collection
317 process prior to seeking remedies under this section. Any action under this section shall be brought in
318 the general district court of the city or county in which the toll facility is located. Such an action shall
319 be considered a traffic infraction but shall be tried as a civil case. The attorney for the Commonwealth
320 may represent the interests of the toll facility operator. Any authorized agent or employee of a toll
321 facility operator acting on behalf of a governmental entity shall be allowed the privileges accorded by
322 § 16.1-88.03 in such cases.

323 E. Upon a finding by a court of competent jurisdiction that the driver of a motor vehicle identified in
324 the summons issued pursuant to subsection I was in violation of this section, the court shall impose a
325 civil penalty upon the driver of a motor vehicle in accordance with the amounts specified in subsection
326 B, together with applicable court costs, the operator's administrative fee, and the toll due. Penalties
327 assessed as the result of action initiated by the Virginia Department of Transportation shall be remanded
328 by the clerk of the court which adjudicated the action to the Virginia Department of Transportation's
329 Toll Facilities Revolving Account. Penalties assessed as the result of action initiated by an operator of a
330 toll facility other than the Virginia Department of Transportation shall be remanded by the clerk of the
331 court which adjudicated the action to the treasurer or director of finance of the county or city in which
332 the violation occurred for payment to the toll facility operator.

333 F. The toll facility operator may offer to the owner an option to pay the unpaid toll and fees plus a
334 reduced civil penalty of \$25 for a first or second offense or \$50 for a third, fourth, or subsequent
335 offense, as specified on the summons, provided the owner actually pays to the toll facility operator the
336 entire amount so calculated at least 14 days prior to the hearing date specified on the summons. If the
337 owner accepts such offer and such amount is actually received by the toll facility operator at least 14
338 days prior to the hearing date specified on the summons, the toll facility operator shall move the court
339 at least five business days prior to the date set for trial to dismiss the summons issued to the registered
340 owner of the vehicle, and the court shall dismiss upon such motion.

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

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

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

355 J. A summons for a violation of this section may be executed pursuant to § 19.2-76.2. Toll facility
356 personnel or their agents mailing such summons shall be considered conservators of the peace for the
357 sole and limited purpose of mailing such summons. Notwithstanding the provisions of § 19.2-76, a
358 summons for a violation of this section may be executed by mailing by first-class mail a copy thereof to
359 the address of the driver of a motor vehicle as shown on the written promise to pay executed pursuant
360 to subsection C or records of the Department of Motor Vehicles. If the summoned person fails to appear
361 on the date of return set out in the summons mailed pursuant to this section, the summons shall be
362 executed in the manner set out in § 19.2-76.3.

363 K. No person shall be subject to both the provisions of this section and to prosecution under
364 § 46.2-819 for actions arising out of the same transaction or occurrence.

365 **§ 46.2-819.3:1. Installation and use of video-monitoring system and automatic vehicle**
366 **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 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, 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~~ *the amount of the unpaid toll* 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 toll, 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 for the 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.

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

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 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. Such action shall be considered a traffic infraction but shall be tried as a civil case. The attorney for the Commonwealth may represent the interests of the toll facility operator. Any authorized agent or employee of a toll facility operator acting on behalf of a governmental entity shall be allowed the privileges accorded by § 16.1-88.03 in such cases.

E. Proof of a violation of this section shall be evidenced by information obtained from a video-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 video-monitoring system or of electronic data collected by an automatic vehicle identification system, shall be prima facie evidence of the facts contained therein. Any photographs, microphotographs, videotape, or other recorded images or electronic data evidencing such a violation shall be available for inspection in any proceeding to adjudicate the liability for such violation under this section. A record of communication by an automatic vehicle identification device with the automatic vehicle identification 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 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 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 any vehicle registration certificate of any applicant therefor or the license plate issued for any vehicle owned or co-owned by such person until the toll facility operator has notified the Commissioner that such fees and unpaid tolls have been paid.

The Commissioner may only refuse to issue or renew any vehicle registration pursuant to this subsection upon the request of a toll facility operator 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 and administrative fees to the toll facility operator. The toll facility operator seeking to collect unpaid tolls and administrative fees through the withholding of registration or renewal thereof by the Commissioner as provided for in this subsection shall notify the Commissioner in the manner provided for 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. The Commissioner shall charge a \$40 fee to defray the cost of processing and withholding the registration or registration renewal, and the toll facility operator may add this fee to the amount of the unpaid tolls and administrative fees. Any agreement entered into pursuant to the provisions of this subsection shall provide for the Department 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 a form, as required under subsection B of § 46.2-819.6, to contest liability of the underlying toll violation. The notice provided by the Commissioner shall include instructions for filing the form to contest liability with the toll facility operator within 21 days after the date of mailing of the Commissioner's notice. Upon timely receipt of the form, the toll facility operator shall notify the Commissioner, who shall refrain from withholding the registration or renewal thereof, after which the toll facility operator may proceed to issue a summons for unpaid toll. For the purposes of this subsection, notice by first-class mail to the registrant's address as maintained in the records of the Department 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 or, in the case of a vehicle where the owner of the vehicle is a vehicle leasing entity, the lessee. For purposes of this section, "owner" does not mean a vehicle rental or vehicle leasing company; "video-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.

551 I. Any vehicle rental or vehicle leasing company, if it receives an invoice for unpaid toll or is named
552 in a summons, shall be released as a party to the action if it provides the operator of the toll facility a
553 copy of the vehicle rental agreement or lease or an affidavit identifying the renter or lessee within 30
554 days of receipt of the invoice or summons. Upon receipt of such rental agreement, lease, or affidavit, an
555 invoice for unpaid toll shall be mailed to the renter or lessee identified therein. Release of this
556 information shall not be deemed a violation of any provision of the Government Data Collection and
557 Dissemination Practices Act (§ 2.2-3800 et seq.) or the Insurance Information and Privacy Protection Act
558 (§ 38.2-600 et seq.). The toll facility operator shall allow at least 30 days from the date of such mailing
559 before pursuing other remedies under this section. In any action against the vehicle operator, a copy of
560 the vehicle rental agreement, lease, or affidavit identifying the renter or lessee of the vehicle at the time
561 of the violation is prima facie evidence that the person named in the rental agreement, lease, or affidavit
562 was operating the vehicle at all the relevant times relating to the matter named in the summons.

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

568 K. On a form prescribed by the Supreme Court, a summons for a violation of this section may be
569 executed pursuant to § 19.2-76.2. Toll facility personnel or their agents mailing such summons shall be
570 considered conservators of the peace for the sole and limited purpose of mailing such summons.
571 Notwithstanding the provisions of § 19.2-76, a summons or summonses for a violation of unpaid tolls
572 may be executed by mailing by first-class mail a copy thereof to the address of the owner of the vehicle
573 as shown on the records of the Department or, if the registered owner has named and provided a valid
574 address for the operator of the vehicle at the time of the violation in an affidavit executed pursuant to
575 subsection F, such named operator of the vehicle. If the summoned person fails to appear on the date of
576 return set out in the summons mailed pursuant to this section, the summons shall be executed in the
577 manner set out in § 19.2-76.3.

578 L. The toll facility operator may offer to the owner an option to pay the unpaid toll and fees plus a
579 reduced civil penalty of \$25 for a first or second offense or \$50 for a third, fourth, or subsequent
580 offense, as specified on the summons, provided the owner actually pays to the toll facility operator the
581 entire amount so calculated at least 14 days prior to the hearing date specified on the summons. If the
582 owner accepts such offer and such amount is actually received by the toll facility operator at least 14
583 days prior to the hearing date specified on the summons, the toll facility operator shall move the court
584 at least five business days prior to the date set for trial to dismiss the summons issued to the registered
585 owner of the vehicle, and the court shall dismiss upon such motion.

586 M. The operator of a toll facility may enter into an agreement with the Department, in accordance
587 with the provisions of subdivision B 21 of § 46.2-208, to obtain vehicle owner information regarding
588 the registered owners of vehicles that fail to pay tolls required for the use of toll facilities and with the
589 Virginia Department of Transportation to obtain any information that is necessary to conduct electronic
590 toll collection. Information provided to the operator of a toll facility shall be used only for the collection
591 of unpaid tolls, and the operator of the toll facility shall be subject to the same conditions and penalties
592 regarding release of the information as contained in subsection B.

593 N. No person shall be subject to both the provisions of this section and to prosecution under
594 § 46.2-819 for actions arising out of the same transaction or occurrence.