

17102004D

HOUSE BILL NO. 1905

Offered January 11, 2017

Prefiled January 10, 2017

A BILL to amend and reenact § 46.2-819.3:1 of the Code of Virginia, relating to all-electronic toll facilities; penalty.

Patrons—Heretick, Bell, John J., Boysko, Cole, Hester, Levine, Plum and Simon; Senator: Surovell

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 all-electronic toll facilities; penalty.

A. For purposes of this section:

"Automatic vehicle identification device" means an electronic device that communicates by wireless transmission with an automatic vehicle identification system.

"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.

"Debt collection" means the collection of unpaid tolls and applicable administrative fees by (i) retention of a third-party debt collector or (ii) collection practices undertaken by employees of a toll facility operator that are materially similar to a third-party debt collector.

"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 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 with the equivalent agency in another state. "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.

B. 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 owner of a vehicle as part of a video-monitoring toll collection process, prior to seeking remedies under this section.

C. Information collected by a video-monitoring system in conjunction with an automatic vehicle identification system installed and operated pursuant to subsection B 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

INTRODUCED

HB1905

59 system shall annually certify compliance with this section and make all records pertaining to such
60 system available for inspection and audit by the Commissioner of Highways or the Commissioner of the
61 Department of Motor Vehicles or their designee. Any violation of this subsection shall constitute a Class
62 1 misdemeanor. In addition to any fines or other penalties provided for by law, any money or other
63 thing of value obtained as a result of a violation of this section shall be forfeited to the Commonwealth.

64 If a vehicle uses a toll facility without paying the toll, the owner or operator shall be in violation of
65 this section if he refuses to pay the toll within 30 days of notification. The toll facility operator may
66 impose and collect an administrative fee in addition to the unpaid toll so as to recover the expenses of
67 collecting the unpaid toll, which administrative fee shall be reasonably related to the actual cost of
68 collecting the unpaid toll and not exceed \$100 per violation. Such fee shall not be levied upon the
69 owner or operator of the vehicle unless the toll has not been paid by the owner or operator within 30
70 days after receipt of the invoice for the unpaid toll, which nonpayment for 30 days shall constitute the
71 violation of this section. Once such a violation has occurred, the owner or operator of the vehicle shall
72 pay the unpaid tolls and any administrative fee detailed in the invoice for the unpaid toll issued by a toll
73 facility operator. If paid within 60 days of the toll violation, the administrative fee shall not exceed \$25.

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

82 A person receiving an invoice for an unpaid toll under this section may (a) pay the toll and
83 administrative fees directly to the toll facility operator or (b) file with the toll facility operator a notice,
84 on a form provided by the toll facility operator as required under subsection B of § 46.2-819.6, to
85 contest liability for a toll violation. The notice to contest liability for a toll violation may be filed by
86 any person receiving an invoice for an unpaid toll by mailing or delivering the notice to the toll facility
87 operator within 60 days of receiving such invoice for an unpaid toll. ~~Upon~~ *Within 30 days of receipt of*
88 *such notice, the toll facility operator shall provide such person contesting liability all evidence*
89 *supporting an invoice for an unpaid toll and* may issue a summons pursuant to subsection I and may
90 not seek withholding of registration or renewal thereof under subsection L until a court of competent
91 jurisdiction has found the alleged violator liable for tolls under this section. *Failure to provide such*
92 *evidence within 30 days of receipt of notice to contest liability shall invalidate any such claim for*
93 *unpaid tolls and any associated fees.*

94 D. If the matter proceeds to court, the owner or operator of a vehicle shall be liable for a civil
95 penalty as follows: for a first offense, \$50; for a second offense within one year from the first offense,
96 \$100; for a third offense within two years from the second offense, \$250; and for a fourth and any
97 subsequent offense within three years from the second offense, \$500; plus, in each case, the unpaid toll,
98 all accrued administrative fees imposed by the toll facility operator, and applicable court costs if the
99 vehicle is found, as evidenced by information obtained from a video-monitoring system in conjunction
100 with an automatic vehicle identification system as provided in this section, to have used such a toll
101 facility without payment of the required toll within 30 days of receipt of the invoice for the toll.

102 E. Notwithstanding subsections C and D, for a first conviction of an operator or owner of a vehicle
103 under this section the total amount for the first conviction shall not exceed \$2,200, including civil
104 penalties and administrative fees regardless of the total number of offenses the operator or owner of a
105 vehicle is convicted of on that date.

106 F. No summons may be issued by a toll facility operator for a violation of this section unless the toll
107 facility operator can demonstrate that (i) there was an attempt to collect the unpaid tolls and applicable
108 administrative fees through debt collection not less than 30 days prior to issuance of the summons and
109 (ii) 120 days have elapsed since the unpaid toll or, in a summons for multiple violations, 120 days have
110 elapsed since the most recent unpaid toll noticed on the summons.

111 G. Any action under this section shall be brought in the general district court of the county or city in
112 which the toll facility is located and shall be commenced within two years of the commission of the
113 offense. Such action shall be considered a traffic infraction. The attorney for the Commonwealth may
114 represent the interests of the toll facility operator. Any authorized agent or employee of a toll facility
115 operator acting on behalf of a governmental entity shall be allowed the privileges accorded by
116 § 16.1-88.03 in such cases.

117 H. Proof of a violation of this section shall be evidenced by information obtained from a
118 video-monitoring system or automatic vehicle identification system as provided in this section. A
119 certificate, sworn to or affirmed by a technician employed or authorized by the operator of a toll facility
120 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 Department of Transportation.

I. On a form prescribed by the Supreme Court, a summons for a violation of this section may be executed as provided in § 19.2-76.2. A summons for a violation of this section may set forth multiple violations occurring within one jurisdiction. Notwithstanding the provisions of § 19.2-76, a summons for a violation of unpaid tolls may be executed by mailing by first-class mail a copy thereof to the address of the owner or, if the 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 J, such named operator of the vehicle. Such summons shall be signed either originally or by electronic signature. 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.

J. Upon a finding by a court of competent jurisdiction that the vehicle described in the summons issued pursuant to subsection I was in violation of this section, the court shall impose a civil penalty upon the owner or operator of such vehicle in accordance with the amounts specified in subsection D, together with applicable court costs, the operator's administrative fee, and the toll due. *However, upon a finding by a court of competent jurisdiction that the vehicle described in the summons was not in violation of this section, the owner or operator of such vehicle may seek and obtain from the toll facility operator reasonable attorney fees and costs associated with defending the action.* Penalties assessed as the result of action initiated by the Department of Transportation shall be remanded by the clerk of the court that adjudicated the action to the 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 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 owner of such vehicle shall be given reasonable notice by way of a summons as provided in subsection I 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.

It shall be prima facie evidence that the vehicle described in the summons issued pursuant to subsection I was operated in violation of this section. Records obtained from the Department of Motor Vehicles pursuant to subsection P and certified in accordance with § 46.2-215 or from the equivalent agency in another state and certified as true and correct copies by the head of such agency or his designee identifying the owner of such vehicle shall give rise to a rebuttable presumption that the owner of the vehicle is the person named in the summons.

Upon the filing of an affidavit by the 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 operator 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 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 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 owner of the vehicle.

K. 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 or, when the vehicle is registered in a state with which the Commonwealth has entered into an agreement to enforce tolling violations pursuant to § 46.2-819.9, who shall provide to the entity authorized to issue vehicle registration certificates or license plates in the state in which the

182 vehicle is registered sufficient evidence of the court's finding to take action against the vehicle
183 registration certificate or license plates in accordance with the terms of the agreement, until the court has
184 notified the Commissioner that such penalties, fees, and unpaid tolls have been paid. Upon receipt of
185 such notification from the court, the Commissioner of the Department of Motor Vehicles shall notify the
186 state where the vehicle is registered of such payment. If it is proven that the vehicle owner was not the
187 operator at the time of the offense and upon a finding by a court that the person identified in an
188 affidavit pursuant to subsection J as the operator violated this section and such person fails to pay the
189 required penalties, fees, and unpaid tolls, the court shall notify the Commissioner, who shall refuse to
190 issue or renew any vehicle registration certificate of any applicant or the license plate issued for any
191 vehicle owned or co-owned by such person or, when such vehicle is registered in a state with which the
192 Commonwealth has entered into an agreement to enforce tolling violations pursuant to § 46.2-819.9, who
193 shall provide to the entity authorized to issue vehicle registration certificates or license plates in the state
194 in which the vehicle is registered sufficient evidence of the court's finding to take action against the
195 vehicle registration certificate or license plates in accordance with the terms of the agreement, until the
196 court has notified the Commissioner that such penalties, fees, and unpaid tolls have been paid. Upon
197 receipt of such notification from the court, the Commissioner of the Department of Motor Vehicles shall
198 notify the state where the vehicle is registered of such payment. Such funds representing payment of
199 unpaid tolls and all administrative fees of the toll facility operator shall be transferred from the court to
200 the Department of Transportation's Toll Facilities Revolving Account or, in the case of an action
201 initiated by an operator of a toll facility other than the Department of Transportation, to the treasurer or
202 director of finance of the county or city in which the violation occurred for payment to the toll facility
203 operator. The Commissioner shall collect a \$40 administrative fee from the owner or operator of the
204 vehicle to defray the cost of processing and removing an order to deny registration or registration
205 renewal.

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

214 If the vehicle owner was not the operator at the time of the offense and the person identified in an
215 affidavit pursuant to subsection J as the operator has received at least one invoice for two or more
216 unpaid tolls in accordance with § 46.2-819.6 by certified mail and such person has (a) failed to pay the
217 unpaid tolls and administrative fees and (b) failed to file a notice to contest liability for a toll violation,
218 then the toll facility operator may notify the Commissioner, who shall, if no form contesting liability has
219 been timely filed with the toll facility operator pursuant to this section, refuse to issue or renew any
220 vehicle registration certificate of any applicant therefor or the license plate issued for any vehicle owned
221 or co-owned by such person until the toll facility operator has notified the Commissioner that such fees
222 and unpaid tolls have been paid.

223 The Commissioner may only refuse to issue or renew any vehicle registration pursuant to this
224 subsection upon the request of a toll facility operator if such toll facility operator has entered into an
225 agreement with the Commissioner whereby the Commissioner will refuse to issue or renew any vehicle
226 registration of any applicant therefor who owes unpaid tolls and administrative fees to the toll facility
227 operator. The toll facility operator seeking to collect unpaid tolls and administrative fees through the
228 withholding of registration or renewal thereof by the Commissioner as provided for in this subsection
229 shall notify the Commissioner in the manner provided for in his agreement with the Commissioner and
230 supply to the Commissioner information necessary to identify the violator whose registration or renewal
231 is to be denied. The Commissioner shall charge a \$40 fee to defray the cost of processing and
232 withholding the registration or registration renewal, and the toll facility operator may add this fee to the
233 amount of the unpaid tolls and administrative fees. Any agreement entered into pursuant to the
234 provisions of this subsection shall provide for the Department to send the violator notice of the intent to
235 deny renewal of registration at least 30 days prior to the expiration date of a current vehicle registration
236 and such notice shall include a form, as required under subsection B of § 46.2-819.6, to contest liability
237 of the underlying toll violation. The notice provided by the Commissioner shall include instructions for
238 filing the form to contest liability with the toll facility operator within 21 days after the date of mailing
239 of the Commissioner's notice. Upon timely receipt of the form, the toll facility operator shall notify the
240 Commissioner, who shall refrain from withholding the registration or renewal thereof, after which the
241 toll facility operator may proceed to issue a summons for unpaid toll. For the purposes of this
242 subsection, notice by first-class mail to the registrant's address as maintained in the records of the
243 Department shall be deemed sufficient.

M. 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 summons. Upon receipt of such rental agreement, lease, or affidavit, 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.

N. 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.

O. 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 owner of the vehicle, and the court shall dismiss upon such motion.

P. 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 owners of vehicles that fail to pay tolls required for the use of toll facilities and with the Department of Transportation to obtain any information that is necessary to conduct electronic toll collection. Such agreement may include any information that may be obtained by the Department of Motor Vehicles in accordance with any agreement entered into pursuant to § 46.2-819.9. 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 C.

Q. 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.

R. Any toll facility operator that operates within the Commonwealth pursuant to this section shall maintain its principal place of business for all collection activities at a physical location within the Commonwealth. Such location shall provide for in-person as well as telephonic and electronic payments and dispute resolution from 8:00 a.m. through 9:00 p.m., Monday through Saturday, except for legal holidays.