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HOUSE BILL NO. 2022

Offered January 11, 2017

Prefiled January 10, 2017

A BILL to amend and reenact §§ 46.2-808.1, 46.2-888, 46.2-920.1, 46.2-1210, and 46.2-1212.1 of the Code of Virginia, relating to Department of Transportation; traffic incident response and management.

Patrons—Villanueva, Holcomb, O'Quinn, Rasoul and Wilt

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-808.1, 46.2-888, 46.2-920.1, 46.2-1210, and 46.2-1212.1 of the Code of Virginia are amended and reenacted as follows:

§ 46.2-808.1. Use of crossovers on controlled access highways; penalty.

It shall be unlawful for the driver of any vehicle other than an authorized vehicle to use or attempt to use any crossover posted for authorized vehicles only on any controlled access highway.

For the purposes of this section, "authorized vehicle" means (i) Department of Transportation vehicles; (ii) law-enforcement vehicles; (iii) emergency vehicles as defined in § 46.2-920; (iv) towing and recovery vehicles operating under the direction of a law-enforcement agency; or the Department of Transportation; (v) vehicles for which permits authorizing use of such crossovers have been issued by the Department of Transportation; (vi) vehicles operated pursuant to a Department of Transportation safety service patrol program as defined in subsection B of § 46.2-920.1 when engaged in providing services under such program; (vii) vehicles operated pursuant to a contract with the Department of Transportation for, or that includes, traffic incident management services as defined in subsection B of § 46.2-920.1 when providing such traffic incident management services; and (viii) other vehicles operating in medical emergency situations.

Violation of any provision of this section shall constitute a traffic infraction punishable by a fine of no more than \$250.

§ 46.2-888. Stopping on highways; general rule.

No person shall stop a vehicle in such manner as to impede or render dangerous the use of the highway by others, except in the case of an emergency, an accident, or a mechanical breakdown. In the event of such an emergency, accident, or breakdown, the emergency flashing lights of such vehicle shall be turned on if the vehicle is equipped with such lights and such lights are in working order. If the driver is capable of safely doing so and the vehicle is movable, and there are no injuries or deaths resulting from the emergency, accident, or breakdown, the driver may shall move the vehicle from the roadway to prevent obstructing the regular flow of traffic; provided, however, that the movement of the vehicle to prevent the obstruction of traffic shall not relieve the law-enforcement officer of his duty pursuant to § 46.2-373. A report of the vehicle's location shall be made to the nearest law-enforcement officer as soon as practicable, and the vehicle shall be moved from the roadway to the shoulder as soon as possible and removed from the shoulder without unnecessary delay. If the vehicle is not promptly removed, such removal may be ordered by a law-enforcement officer at the expense of the owner if the disabled vehicle creates a traffic hazard.

§ 46.2-920.1. Operation of tow trucks or vehicles owned or controlled by the Department of Transportation under certain circumstances; incident management.

A. When operating at or en route to or from the scene of a traffic accident or similar emergency and when specifically directed by a law-enforcement officer present at the scene of a motor vehicle crash or similar incident, tow truck operators or vehicles owned or controlled by the Virginia Department of Transportation may:

- 1. Operate on a highway in a direction opposite that otherwise permitted for traffic;
2. Cross medians of divided highways;
3. Use cross-overs and turn-arounds otherwise reserved for use only by authorized vehicles;
4. Drive on a portion of the highway other than the roadway;
5. Stop or stand on any portion of the highway; and
6. Operate in any other manner as directed by a law-enforcement officer at the scene.

B. When operating at, en route to, or from the scene of a traffic accident or similar emergency, a vehicle operated pursuant to a Virginia Department of Transportation safety service patrol program or pursuant to a contract with the Department of Transportation for, or that includes, traffic incident management services as defined in subsection B of § 46.2-920.1, with due regard to the safety of

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59 persons and property and without direction of law enforcement, may overtake and pass stopped or
60 slow-moving vehicles by going off the paved or main traveled portion of the highway on the right or on
61 the left. For purposes of this ~~subsection~~ *chapter and Chapter 12 (§ 46.2-1200 et seq.)*, "safety service
62 patrol program" means a program *or service* sponsored or operated by the ~~Virginia~~ Department of
63 Transportation that assists stranded motorists and provides traffic control during traffic incidents,
64 including traffic accidents and road work, and *"traffic incident management services" means services*
65 *provided in response to any event or situation on or affecting the Department of Transportation*
66 *right-of-way that impedes traffic or creates a temporary safety hazard.*

67 C. Nothing in this section, however, shall (i) immunize the driver of any such vehicle from criminal
68 prosecution for conduct constituting reckless disregard of the safety of persons and property or (ii)
69 release the driver of any such vehicle from any civil liability for failure to use reasonable care in
70 operations permitted in this section. However, drivers of vehicles owned or operated by the ~~Virginia~~
71 Department of Transportation and employees of the Commonwealth of ~~Virginia~~ are immune for acts of
72 simple negligence for claims of civil liability arising from the operation of such vehicles pursuant to this
73 section.

74 **§ 46.2-1210. Motor vehicles immobilized by weather conditions, accidents, or emergencies.**

75 Whenever any motor vehicle, trailer, semitrailer, or combination or part of a motor vehicle, trailer, or
76 semitrailer is immobilized on any roadway by weather conditions, *due to an accident that does not*
77 *result in injury or death*, or by other emergency situations, the Department of Transportation,
78 *individuals, or entities acting on behalf of a Department of Transportation safety service patrol program*
79 *as defined in subsection B of § 46.2-920.1 or individuals or entities acting pursuant to a contract with*
80 *the Department of Transportation for, or that includes, traffic incident management services as defined*
81 *in subsection B of § 46.2-920.1* may move or have the vehicle removed to some reasonably accessible
82 portion of the ~~adjacent~~ right-of-way *off the roadway*. Disposition thereafter shall be effected as provided
83 by § 46.2-1209.

84 **§ 46.2-1212.1. Authority to provide for removal and disposition of vehicles and cargoes of**
85 **vehicles involved in accidents.**

86 A. As a result of a motor vehicle accident or incident, the Department of State Police and/or local
87 law-enforcement agency in conjunction with other public safety agencies may, without the consent of the
88 owner or carrier, remove:

89 1. A vehicle, cargo, or other personal property that has been (i) damaged or spilled within the
90 right-of-way or any portion of a roadway in the primary state highway system and (ii) is blocking the
91 roadway or may otherwise be endangering public safety; or

92 2. Cargo or personal property that the Department of Transportation, *the* Department of Emergency
93 Management, or the fire officer in charge has reason to believe is a hazardous material, hazardous waste,
94 or regulated substance as defined by the Virginia Waste Management Act (§ 10.1-1400 et seq.), the
95 Hazardous Materials Transportation Act (49 U.S.C. § 1808 et seq.), or the State Water Control Law
96 (§ 62.1-44.2 et seq.), if the Department of Transportation or applicable person complies with the
97 applicable procedures and instructions defined either by the Department of Emergency Management or
98 the fire officer in charge.

99 B. The Department of Transportation, *individuals or entities acting on behalf of a Department of*
100 *Transportation safety service patrol program as defined in subsection B of § 46.2-920.1, individuals or*
101 *entities acting pursuant to a contract with the Department of Transportation for, or that includes, traffic*
102 *incident management services as defined in subsection B of § 46.2-920.1, the* Department of State
103 Police, *the* Department of Emergency Management, local law-enforcement ~~agency~~ agencies and other
104 local public safety agencies and their officers, employees, and agents, *and towing and recovery*
105 *operators operating under the lawful direction of a law-enforcement officer or the Department of*
106 *Transportation* shall not be held responsible for any damages or claims that may result from the failure
107 to exercise any authority granted under this section provided they are acting in good faith.

108 C. The owner and carrier, if any, of the vehicle, cargo, or personal property removed or disposed of
109 under the authority of this section shall reimburse the Department of Transportation, *individuals or*
110 *entities acting on behalf of a Department of Transportation safety service patrol program as defined in*
111 *subsection B of § 46.2-920.1, individuals or entities acting pursuant to a contract with the Department*
112 *of Transportation for, or that includes, traffic incident management services as defined in 46.2-920.1,*
113 *the* Department of State Police, *the* Department of Emergency Management, local law-enforcement
114 ~~agency~~ agencies, and local public safety agencies for all costs incurred in the removal and subsequent
115 disposition of such property.