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## SENATE BILL NO. 1536

Offered January 20, 2017

A BILL to amend and reenact §§ 33.2-503, 46.2-819.1, and 46.2-819.3:1 of the Code of Virginia, relating to toll facility operators in Planning District 8.

Patron—McPike

Referred to Committee on Transportation

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

1. That §§ 33.2-503, 46.2-819.1, 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 operator 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 a 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 operator 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 a violation of this section may be executed 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 2. 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 2 may be executed as provided in § 19.2-76.2. Such form shall contain the option for the owner or operator to prepay the unpaid toll and all penalties, administrative fees, and costs. 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 this section 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 subdivision e, 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.

d. No summons may be issued by a HOT lanes operator for a violation of this section unless the HOT lanes operator can demonstrate that (i) there was an attempt to collect the unpaid tolls and applicable administrative fees through debt collection not less than 30 days prior to issuance of the summons and (ii) 120 days have elapsed since the unpaid toll or, in a summons for multiple violations, 120 days have elapsed since the most recent unpaid toll noticed on the summons. For purposes of this subdivision, "debt collection" means the collection of unpaid tolls and applicable administrative fees by (a) retention of a third-party debt collector or (b) collection practices undertaken by employees of a HOT lanes operator that are materially similar to a third-party debt collector.

e. The owner of such vehicle shall be given reasonable notice by way of a summons as provided in

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59 this subdivision 2 that his vehicle had been used in violation of this section, and such owner shall be  
60 given notice of the time and place of the hearing and notice of the civil penalty and costs for such  
61 offense.

62 It shall be prima facie evidence that the vehicle described in the summons issued pursuant to  
63 subdivision 2 was operated in violation of this section. Records obtained from the Department of Motor  
64 Vehicles pursuant to § 33.2-504 and certified in accordance with § 46.2-215 or from the equivalent  
65 agency in another state and certified as true and correct copies by the head of such agency or his  
66 designee identifying the owner of such vehicle shall give rise to a rebuttable presumption that the owner  
67 of the vehicle is the person named in the summons.

68 Upon the filing of an affidavit with the court at least 14 days prior to the hearing date by the owner  
69 of the vehicle stating that he was not the operator of the vehicle on the date of the violation and  
70 providing the legal name and address of the operator of the vehicle at the time of the violation, a  
71 summons will also be issued to the alleged operator of the vehicle at the time of the offense. The  
72 affidavit shall constitute prima facie evidence that the person named in the affidavit was driving the  
73 vehicle at all the relevant times relating to the matter named in the affidavit.

74 If the owner of the vehicle produces a certified copy of a police report showing that the vehicle had  
75 been reported to the police as stolen prior to the time of the alleged offense and remained stolen at the  
76 time of the alleged offense, then the court shall dismiss the summons issued to the owner of the vehicle.

77 3. a. The HOT lanes operator may impose and collect an administrative fee in addition to the unpaid  
78 toll so as to recover the expenses of collecting the unpaid toll, which administrative fee shall be  
79 reasonably related to the actual cost of collecting the unpaid toll and not exceed \$100 per violation. The  
80 operator of the vehicle shall pay the unpaid tolls and any administrative fee detailed in a notice or  
81 invoice issued by a HOT lanes operator. If paid within 60 days of notification, the administrative fee  
82 shall not exceed \$25. The HOT lanes operator shall notify the owner of the vehicle of any unpaid tolls  
83 and administrative fees by mailing an invoice pursuant to § 46.2-819.6.

84 b. Upon a finding by a court of competent jurisdiction that the operator of the vehicle observed by a  
85 law-enforcement officer under subdivision 1 or the vehicle described in the summons for a violation  
86 issued pursuant to evidence obtained by a photo-enforcement system under subdivision 2 was in  
87 violation of this section, the court shall impose a civil penalty upon the operator of such vehicle issued  
88 a summons under subdivision 1, or upon the operator or owner of such vehicle issued a summons under  
89 subdivision 2, payable to the HOT lanes operator as follows: for a first offense, \$50; for a second  
90 offense, \$100; for a third offense within a period of two years of the second offense, \$250; and for a  
91 fourth and subsequent offense within a period of three years of the second offense, \$500, together with,  
92 in each case, the unpaid toll, all accrued administrative fees imposed by the HOT lanes operator as  
93 authorized by this section, and applicable court costs. The court shall remand penalties, the unpaid toll,  
94 and administrative fees assessed for violation of this section to the treasurer or director of finance of the  
95 county or city in which the violation occurred for payment to the HOT lanes operator for expenses  
96 associated with operation of the HOT lanes and payments against any bonds or other liens issued as a  
97 result of the construction of the HOT lanes. No person shall be subject to prosecution under both  
98 subdivisions 1 and 2 for actions arising out of the same transaction or occurrence.

99 c. Notwithstanding subdivisions a and b, for a first conviction of an operator or owner of a vehicle  
100 under this section, the total amount for the first conviction shall not exceed \$2,200, including civil  
101 penalties and administrative fees regardless of the total number of offenses the operator or owner of a  
102 vehicle is convicted of on that date.

103 d. Upon a finding by a court that a resident of the Commonwealth has violated this section, in the  
104 event such person fails to pay the required penalties, fees, and costs, the court shall notify the  
105 Commissioner of the Department of Motor Vehicles, who shall suspend all of the registration certificates  
106 and license plates issued for any motor vehicles registered solely in the name of such person and shall  
107 not issue any registration certificate or license plate for any other vehicle that such person seeks to  
108 register solely in his name until the court has notified the Commissioner of the Department of Motor  
109 Vehicles that such penalties, fees, and costs have been paid. Upon a finding by a court that a  
110 nonresident of the Commonwealth has violated this section, in the event that such person fails to pay the  
111 required penalties, fees, and costs, the court shall notify the Commissioner of the Department of Motor  
112 Vehicles, who shall, when the vehicle is registered in a state with which the Commonwealth has entered  
113 into an agreement to enforce tolling violations pursuant to § 46.2-819.9, provide to the entity authorized  
114 to issue vehicle registration certificates or license plates in the state in which the vehicle is registered  
115 sufficient evidence of the court's finding to take action against the vehicle registration certificate or  
116 license plates in accordance with the terms of the agreement, until the court has notified the  
117 Commissioner of the Department of Motor Vehicles that such penalties, fees, and costs have been paid.  
118 Upon receipt of such notification from the court, the Commissioner of the Department of Motor  
119 Vehicles shall notify the state where the vehicle is registered of such payment. The HOT lanes operator  
120 and the Commissioner of the Department of Motor Vehicles may enter into an agreement whereby the

HOT lanes operator may reimburse the Department of Motor Vehicles for its reasonable costs to develop, implement, and maintain this enforcement mechanism, and that specifies that the Commissioner of the Department of Motor Vehicles shall have an obligation to suspend such registration certificates or to provide notice to such entities in other states so long as the HOT lanes operator makes the required reimbursements in a timely manner in accordance with the agreement.

e. An action brought under subdivision 1 or 2 shall be commenced within two years of the commission of the offense and shall be considered a traffic infraction. Except as provided in subdivisions 4 and 5, imposition of a civil penalty pursuant to this section shall not be deemed a conviction as an operator of a motor vehicle under Title 46.2 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 subdivision 1 or 2.

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

b. Any person driving an unauthorized vehicle on the designated HOT lanes is guilty of a traffic infraction, which shall not be a moving violation, and shall be punishable as follows: for a first offense, by a fine of \$125; for a second offense within a period of five years from a first offense, by a fine of \$250; for a third offense within a period of five years from a first offense, by a fine of \$500; and for a fourth and subsequent offense within a period of five years from a first offense, by a fine of \$1,000. No person shall be subject to prosecution under both this subdivision and subdivision 1 or 2 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 person's driving record. Notwithstanding the provisions of § 46.2-492, no driver demerit points shall be assessed for any violation of this subdivision, except that persons convicted of a second, third, fourth, or subsequent violation within five years of a first offense shall be assessed three demerit points for each such violation.

5. The operator of a vehicle who enters the HOT lanes by crossing through any barrier, buffer, or other area separating the HOT lanes from other lanes of travel is guilty of a violation of § 46.2-852, unless the vehicle is a state or local law-enforcement vehicle, firefighting truck, or emergency medical services 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.

*The operator of a toll facility located in Planning District 8 that uses dynamic pricing shall notify motorists using smart roadway technologies of the toll price and estimated travel time for each posted destination.*

**§ 46.2-819.1. Installation and use of photo-monitoring system or automatic vehicle identification system in conjunction with electronic or manual 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 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 include a vehicle rental or vehicle

182 leasing company.

183 "Photo-monitoring system" means a vehicle sensor installed to work in conjunction with a toll  
184 collection device that automatically produces one or more photographs, one or more microphotographs, a  
185 videotape, or other recorded images of each vehicle at the time it is used or operated in violation of this  
186 section.

187 B. The operator of any toll facility or the locality within which such toll facility is located may  
188 install and operate or cause to be installed and operated a photo-monitoring system or automatic vehicle  
189 identification system, or both, at locations where tolls are collected for the use of such toll facility. The  
190 operator of a toll facility shall send an invoice or bill for unpaid tolls to the owner of a vehicle as part  
191 of an electronic or manual toll collection process pursuant to § 46.2-819.6 prior to seeking remedies  
192 under this section. *The operator of a toll facility located in Planning District 8 that uses dynamic*  
193 *pricing shall notify motorists using smart roadway technologies of the toll price and estimated travel*  
194 *time for each posted destination.*

195 C. Information collected by a photo-monitoring system or automatic vehicle identification system  
196 installed and operated pursuant to subsection B shall be limited exclusively to that information that is  
197 necessary for the collection of unpaid tolls. Notwithstanding any other provision of law, all photographs,  
198 microphotographs, electronic images, or other data collected by a photo-monitoring system or automatic  
199 vehicle identification system shall be used exclusively for the collection of unpaid tolls and shall not (i)  
200 be open to the public; (ii) be sold and/or used for sales, solicitation, or marketing purposes; (iii) be  
201 disclosed to any other entity except as may be necessary for the collection of unpaid tolls or to a vehicle  
202 owner or operator as part of a challenge to the imposition of a toll; and (iv) be used in a court in a  
203 pending action or proceeding unless the action or proceeding relates to a violation of this section or  
204 upon order from a court of competent jurisdiction. Information collected under this section shall be  
205 purged and not retained later than 30 days after the collection and reconciliation of any unpaid tolls,  
206 administrative fees, and/or civil penalties. Any entity operating a photo-monitoring system or automatic  
207 vehicle identification system shall annually certify compliance with this section and make all records  
208 pertaining to such system available for inspection and audit by the Commissioner of Highways or the  
209 Commissioner of the Department of Motor Vehicles or their designee. Any violation of this subsection  
210 shall constitute a Class 1 misdemeanor. In addition to any fines or other penalties provided for by law,  
211 any money or other thing of value obtained as a result of a violation of this section shall be forfeited to  
212 the Commonwealth.

213 The toll facility operator may impose and collect an administrative fee in addition to the unpaid toll  
214 so as to recover the expenses of collecting the unpaid toll, which administrative fee shall be reasonably  
215 related to the actual cost of collecting the unpaid toll and not exceed \$100 per violation. Such fee may  
216 be levied upon the operator of the vehicle after the first unpaid toll has been documented. The operator  
217 of the vehicle shall pay the unpaid toll and any administrative fee detailed in an invoice for the unpaid  
218 toll issued by a toll facility operator. If paid within 60 days of notification, the administrative fee shall  
219 not exceed \$25.

220 D. If the matter proceeds to court, the owner or operator of a vehicle shall be liable for a civil  
221 penalty as follows: for a first offense, \$50; for a second offense within one year from the first offense,  
222 \$100; for a third offense within two years from the second offense, \$250; and for a fourth and any  
223 subsequent offense within three years from the second offense, \$500 plus, in each case, the unpaid toll,  
224 all accrued administrative fees imposed by the toll facility operator, and applicable court costs if the  
225 vehicle is found, as evidenced by information obtained from a photo-monitoring system or automatic  
226 vehicle identification system as provided in this section, to have used such a toll facility without  
227 payment of the required toll.

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

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

237 G. Any action under this section shall be brought in the general district court of the county or city in  
238 which the toll facility is located and shall be commenced within two years of the commission of the  
239 offense. Such action shall be considered a traffic infraction. The attorney for the Commonwealth may  
240 represent the interests of the toll facility operator. Any authorized agent or employee of a toll facility  
241 operator acting on behalf of a governmental entity shall be allowed the privileges accorded by  
242 § 16.1-88.03 in such cases.

243 H. 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, 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 this section 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 this subsection, 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.

Upon a finding by a court of competent jurisdiction that the vehicle described in the summons issued pursuant to this subsection 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. 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 this subsection 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. 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.

It shall be prima facie evidence that the vehicle described in the summons issued pursuant to this subsection was operated in violation of this section. Records obtained from the Department of Motor Vehicles pursuant to § 46.2-208 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 either (i) the filing of an affidavit with the toll facility operator within 14 days of receipt of an invoice for an unpaid toll from the toll facility operator or (ii) the filing of an affidavit with the court at least 14 days prior to the hearing date by the owner of the vehicle stating that he 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 and/or summons, as appropriate, 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 and, if a summons has been issued, the court shall dismiss the summons issued to the owner of the vehicle.

J. 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, the court 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 vehicle is registered sufficient evidence of the court's finding to take action against the vehicle registration certificate or license plates in accordance with the terms of the agreement, until the court has notified the Commissioner that such penalties, fees, and unpaid tolls have been paid. Upon receipt of such notification from the court, the Commissioner of the Department of Motor Vehicles shall notify the state where the vehicle is registered of such payment. 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 I 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 or, when such 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 vehicle is registered sufficient evidence of the court's finding to take action against the vehicle registration certificate or license plates in accordance with the terms of the agreement, until the court has notified the Commissioner that such penalties, fees, and unpaid tolls have been paid. Upon receipt of such notification from the court, the Commissioner of the Department of Motor Vehicles shall notify the state where the vehicle is registered of such payment. Such funds representing payment of unpaid tolls and all administrative fees of the toll facility operator shall be transferred from the court to the 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 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 owner or operator of the vehicle to defray the cost of processing and removing an order to deny registration or registration renewal.

K. 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.

L. 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.

M. The operator of a toll facility may enter into an agreement with the Department of Motor Vehicles, in accordance with the provisions of subdivision B 21 of § 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 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 C.

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

**§ 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 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 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 60 days of the toll violation, the administrative fee shall not exceed \$25.

428 The toll facility operator may levy charges for the direct cost of use of and processing for a  
429 video-monitoring system and to cover the cost of the invoice, which are in addition to the toll and may  
430 not exceed double the amount of the base toll, provided that potential toll facility users are provided  
431 notice before entering the facility by conspicuous signs that clearly indicate that the toll for use of the  
432 facility could be tripled for any vehicle that does not have an active, functioning automatic vehicle  
433 identification device registered for and in use in the vehicle using the toll facility, and such signs are  
434 posted at a location where the operator can still choose to avoid the use of the toll facility if he chooses  
435 not to pay the toll. *The operator of a toll facility located in Planning District 8 that uses dynamic*  
436 *pricing shall notify motorists using smart roadway technologies of the toll price and estimated travel*  
437 *time for each posted destination.*

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

447 D. If the matter proceeds to court, the owner or operator of a vehicle shall be liable for a civil  
448 penalty as follows: for a first offense, \$50; for a second offense within one year from the first offense,  
449 \$100; for a third offense within two years from the second offense, \$250; and for a fourth and any  
450 subsequent offense within three years from the second offense, \$500; plus, in each case, the unpaid toll,  
451 all accrued administrative fees imposed by the toll facility operator, and applicable court costs if the  
452 vehicle is found, as evidenced by information obtained from a video-monitoring system in conjunction  
453 with an automatic vehicle identification system as provided in this section, to have used such a toll  
454 facility without payment of the required toll within 30 days of receipt of the invoice for the toll.

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

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

464 G. Any action under this section shall be brought in the general district court of the county or city in  
465 which the toll facility is located and shall be commenced within two years of the commission of the  
466 offense. Such action shall be considered a traffic infraction. The attorney for the Commonwealth may  
467 represent the interests of the toll facility operator. Any authorized agent or employee of a toll facility  
468 operator acting on behalf of a governmental entity shall be allowed the privileges accorded by  
469 § 16.1-88.03 in such cases.

470 H. Proof of a violation of this section shall be evidenced by information obtained from a  
471 video-monitoring system or automatic vehicle identification system as provided in this section. A  
472 certificate, sworn to or affirmed by a technician employed or authorized by the operator of a toll facility  
473 or by the locality wherein the toll facility is located, or a facsimile of such a certificate, based on  
474 inspection of photographs, microphotographs, videotapes, or other recorded images produced by a  
475 video-monitoring system or of electronic data collected by an automatic vehicle identification system,  
476 shall be prima facie evidence of the facts contained therein. Any photographs, microphotographs,  
477 videotape, or other recorded images or electronic data evidencing such a violation shall be available for  
478 inspection in any proceeding to adjudicate the liability for such violation under this section. A record of  
479 communication by an automatic vehicle identification device with the automatic vehicle identification  
480 system at the time of a violation of this section shall be prima facie evidence that the automatic vehicle  
481 identification device was located in the vehicle registered to use such device in the records of the  
482 Department of Transportation.

483 I. On a form prescribed by the Supreme Court, a summons for a violation of this section may be  
484 executed as provided in § 19.2-76.2. A summons for a violation of this section may set forth multiple  
485 violations occurring within one jurisdiction. Notwithstanding the provisions of § 19.2-76, a summons for  
486 a violation of unpaid tolls may be executed by mailing by first-class mail a copy thereof to the address  
487 of the owner or, if the owner has named and provided a valid address for the operator of the vehicle at  
488 the time of the violation in an affidavit executed pursuant to subsection J, such named operator of the  
489 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. 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 vehicle is registered sufficient evidence of the court's finding to take action against the vehicle registration certificate or license plates in accordance with the terms of the agreement, until the court has notified the Commissioner that such penalties, fees, and unpaid tolls have been paid. Upon receipt of such notification from the court, the Commissioner of the Department of Motor Vehicles shall notify the state where the vehicle is registered of such payment. 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 J 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 or, when such 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 vehicle is registered sufficient evidence of the court's finding to take action against the vehicle registration certificate or license plates in accordance with the terms of the agreement, until the court has notified the Commissioner that such penalties, fees, and unpaid tolls have been paid. Upon receipt of such notification from the court, the Commissioner of the Department of Motor Vehicles shall notify the state where the vehicle is registered of such payment. Such funds representing payment of unpaid tolls and all administrative fees of the toll facility operator shall be transferred from the court to the 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 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 owner or operator of the vehicle to defray the cost of processing and removing an order to deny registration or registration renewal.

L. 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 J 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 (a) failed to pay the unpaid tolls and administrative fees and (b) 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.

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.