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SENATE BILL NO. 5029

Offered August 18, 2020

Prefiled August 13, 2020

A *BILL to amend and reenact §§ 15.2-919, 18.2-250.1, 46.2-1013, 46.2-1049, 46.2-1052, 46.2-1053, and 46.2-1054 of the Code of Virginia, relating to issuing citations; possession of marijuana and certain traffic infractions.*

Patrons—Lucas, Boysko, Deeds, Ebbin, Favola, Hashmi, Howell, Locke, McClellan, McPike, Morrissey and Surovell; Delegates: Adams, D.M., Aird, Ayala, Bagby, Bourne, Carr, Cole, J.G., Hayes, Herring, Hope, Hurst, Jenkins, Kory, McQuinn, Price, Rasoul, Samirah, Scott, Simonds and Tyler

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-919, 18.2-250.1, 46.2-1013, 46.2-1049, 46.2-1052, 46.2-1053, and 46.2-1054 of the Code of Virginia are amended and reenacted as follows:

§ 15.2-919. Regulation of motorcycle, moped, or motorized skateboard or scooter noise.

Any locality may, by ordinance, regulate noise from a motorcycle, moped, or motorized skateboard or scooter, as defined in § 46.2-100, which is not equipped with a muffler and exhaust system conforming to §§ 46.2-1047 and 46.2-1049, if such noise may be hazardous to the health and well-being of its citizens.

No citation for a violation of any ordinance enacted pursuant to this section shall be issued unless the officer issuing such citation has cause to stop or arrest the driver of such motor vehicle for the violation of some other provision of this Code or local ordinance relating to the operation, ownership, or maintenance of a motor vehicle or any criminal statute.

§ 18.2-250.1. Possession of marijuana unlawful.

A. It is unlawful for any person knowingly or intentionally to possess marijuana unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by the Drug Control Act (§ 54.1-3400 et seq.). The attorney for the Commonwealth or the county, city, or town attorney may prosecute such a case.

Upon the prosecution of a person for violation of this section, ownership or occupancy of the premises or vehicle upon or in which marijuana was found shall not create a presumption that such person either knowingly or intentionally possessed such marijuana.

Any person who violates this section is subject to a civil penalty of no more than \$25. A violation of this section is a civil offense. Any civil penalties collected pursuant to this section shall be deposited into the Drug Offender Assessment and Treatment Fund established pursuant to § 18.2-251.02.

B. Any violation of this section shall be charged by summons. 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 summons used by a law-enforcement officer pursuant to this section shall be in form the same as the uniform summons for motor vehicle law violations as prescribed pursuant to § 46.2-388. No court costs shall be assessed for violations of this section. A person's criminal history record information as defined in § 9.1-101 shall not include records of any charges or judgments for a violation of this section, and records of such charges or judgments shall not be reported to the Central Criminal Records Exchange. However, if a violation of this section occurs while an individual is operating a commercial motor vehicle as defined in § 46.2-341.4, such violation shall be reported to the Department of Motor Vehicles and shall be included on such individual's driving record.

C. The procedure for appeal and trial of any violation of this section shall be the same as provided by law for misdemeanors; if requested by either party on appeal to the circuit court, trial by jury shall be as provided in Article 4 (§ 19.2-260 et seq.) of Chapter 15 of Title 19.2, and the Commonwealth shall be required to prove its case beyond a reasonable doubt.

D. The provisions of this section shall not apply to members of state, federal, county, city, or town law-enforcement agencies, jail officers, or correctional officers, as defined in § 53.1-1, certified as handlers of dogs trained in the detection of controlled substances when possession of marijuana is necessary for the performance of their duties.

E. The provisions of this section involving marijuana in the form of cannabis oil as that term is defined in § 54.1-3408.3 shall not apply to any person who possesses such oil pursuant to a valid written certification issued by a practitioner in the course of his professional practice pursuant to § 54.1-3408.3 for treatment or to alleviate the symptoms of (i) the person's diagnosed condition or

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57 disease, (ii) if such person is the parent or legal guardian of a minor or of an incapacitated adult as
58 defined in § 18.2-369, such minor's or incapacitated adult's diagnosed condition or disease, or (iii) if
59 such person has been designated as a registered agent pursuant to § 54.1-3408.3, the diagnosed
60 condition or disease of his principal or, if the principal is the parent or legal guardian of a minor or of
61 an incapacitated adult as defined in § 18.2-369, such minor's or incapacitated adult's diagnosed condition
62 or disease.

63 *F. No citation for a violation of this section shall be issued unless the officer issuing such citation*
64 *has cause to stop or arrest the person for the violation of some other provision of this Code.*

65 *G. No law-enforcement officer, as defined in § 9.1-101, may lawfully search or seize any person,*
66 *place, or thing solely on the basis of the odor of marijuana, and no evidence discovered or obtained as*
67 *a result of such unlawful search or seizure shall be admissible in any trial, hearing, or other*
68 *proceeding.*

69 **§ 46.2-1013. Tail lights.**

70 Every motor vehicle and every trailer or semitrailer being drawn at the end of one or more other
71 vehicles shall carry at the rear two red lights plainly visible in clear weather from a distance of 500 feet
72 to the rear of such vehicle. Such tail lights shall be constructed and so mounted in their relation to the
73 rear license plate as to illuminate the license plate with a white light so that the same may be read from
74 a distance of 50 feet to the rear of such vehicle. Alternatively, a separate white light shall be so
75 mounted as to illuminate the rear license plate from a distance of 50 feet to the rear of such vehicle.
76 Any such tail lights or special white light shall be of a type approved by the Superintendent.

77 *No citation for a violation of the provisions of this section requiring the illumination of a license*
78 *plate with a white light shall be issued unless the officer issuing such citation has cause to stop or*
79 *arrest the driver of such motor vehicle for the violation of some other provision of this Code or local*
80 *ordinance relating to the operation, ownership, or maintenance of a motor vehicle or any criminal*
81 *statute.*

82 In any instance where the tail light is to be installed on a boat trailer and the boat extends beyond
83 the end of the trailer or to the end of the trailer, an approved portable light assembly or assemblies may
84 be attached to the exposed rear of the boat, provided such installation complies with the visibility
85 requirements of this section. The provisions of this section shall not apply to motorcycles.

86 **§ 46.2-1049. Exhaust system in good working order.**

87 No person shall drive and no owner of a vehicle shall permit or allow the operation of any such
88 vehicle on a highway unless it is equipped with an exhaust system in good working order and in
89 constant operation to prevent excessive or unusual levels of noise; provided however, that for motor
90 vehicles, such exhaust system shall be of a type installed as standard factory equipment, or comparable
91 to that designed for use on the particular vehicle as standard factory equipment. An exhaust system shall
92 not be deemed to prevent excessive or unusual noise if it permits the escape of noise in excess of that
93 permitted by the standard factory equipment exhaust system of private passenger motor vehicles or
94 trucks of standard make.

95 The term "exhaust system," as used in this section, means all the parts of a vehicle through which
96 the exhaust passes after leaving the engine block, including mufflers and other sound dissipative devices.

97 Chambered pipes are not an effective muffling device to prevent excessive or unusual noise, and any
98 vehicle equipped with chambered pipes shall be deemed in violation of this section.

99 The provisions of this section shall not apply to (i) any antique motor vehicle licensed pursuant to
100 § 46.2-730, provided that the engine is comparable to that designed as standard factory equipment for
101 use on that particular vehicle, and the exhaust system is in good working order, or (ii) converted electric
102 vehicles.

103 *No citation for a violation of the provisions of this section requiring the prevention of excessive or*
104 *unusual levels of noise shall be issued unless the officer issuing such citation has cause to stop or arrest*
105 *the driver of such motor vehicle for the violation of some other provision of this Code or local*
106 *ordinance relating to the operation, ownership, or maintenance of a motor vehicle or any criminal*
107 *statute.*

108 **§ 46.2-1052. Tinting films, signs, decals, and stickers on windshields, etc.; penalties.**

109 A. As used in this article, unless the context requires a different meaning:

110 "Front side windows" means those windows located adjacent to and forward of the driver's seat;

111 "Holographic effect" means a picture or image that may remain constant or change as the viewing
112 angle is changed;

113 "Multipurpose passenger vehicle" means any motor vehicle that is (i) designed to carry no more than
114 10 persons and (ii) constructed either on a truck chassis or with special features for occasional off-road
115 use;

116 "Prism effect" means a visual, iridescent, or rainbow-like effect that separates light into various
117 colored components that may change depending on viewing angle;

118 "Rear side windows" means those windows located to the rear of the driver's seat;

"Rear window" or "rear windows" means those windows that are located to the rear of the passenger compartment of a motor vehicle and that are approximately parallel to the windshield.

B. Except as otherwise provided in this article or permitted by federal law, it shall be unlawful for any person to operate any motor vehicle on a highway with any sign, poster, colored or tinted film, sun-shading material, or other colored material on the windshield, front or rear side windows, or rear windows of such motor vehicle. This provision, however, shall not apply to any certificate or other paper required by law or permitted by the Superintendent to be placed on a motor vehicle's windshield or window.

The size of stickers or decals used by counties, cities, and towns in lieu of license plates shall be in compliance with regulations promulgated by the Superintendent. Such stickers shall be affixed on the windshield at a location designated by the Superintendent.

C. Notwithstanding the foregoing provisions of this section, whenever a motor vehicle is equipped with a mirror on each side of such vehicle, so located as to reflect to the driver of such vehicle a view of the highway for at least 200 feet to the rear of such vehicle, any or all of the following shall be lawful:

1. To drive a motor vehicle equipped with one optically grooved clear plastic right-angle rear view lens attached to one rear window of such motor vehicle, not exceeding 18 inches in diameter in the case of a circular lens or not exceeding 11 inches by 14 inches in the case of a rectangular lens, which enables the driver of the motor vehicle to view below the line of sight as viewed through the rear window;

2. To have affixed to the rear side windows, rear window or windows of a motor vehicle any sticker or stickers, regardless of size; or

3. To drive a motor vehicle when the driver's clear view of the highway through the rear window or windows is otherwise obstructed.

D. Except as provided in § 46.2-1053, but notwithstanding the foregoing provisions of this section, no sun-shading or tinting film may be applied or affixed to any window of a motor vehicle unless such motor vehicle is equipped with a mirror on each side of such motor vehicle, so located as to reflect to the driver of the vehicle a view of the highway for at least 200 feet to the rear of such vehicle, and the sun-shading or tinting film is applied or affixed in accordance with the following:

1. No sun-shading or tinting films may be applied or affixed to the rear side windows or rear window or windows of any motor vehicle operated on the highways of the Commonwealth that reduce the total light transmittance of such window to less than 35 percent;

2. No sun-shading or tinting films may be applied or affixed to the front side windows of any motor vehicle operated on the highways of the Commonwealth that reduce total light transmittance of such window to less than 50 percent;

3. No sun-shading or tinting films shall be applied or affixed to any window of a motor vehicle that (i) have a reflectance of light exceeding 20 percent or (ii) produce a holographic or prism effect.

Any person who operates a motor vehicle on the highways of the Commonwealth with sun-shading or tinting films that (i) have a total light transmittance less than that required by subdivisions 1 and 2, (ii) have a reflectance of light exceeding 20 percent, or (iii) produce holographic or prism effects is guilty of a traffic infraction but shall not be awarded any demerit points by the Commissioner for the violation.

Any person or firm who applies or affixes to the windows of any motor vehicle in Virginia sun-shading or tinting films that (i) reduce the light transmittance to levels less than that allowed in subdivisions 1 and 2, (ii) have a reflectance of light exceeding 20 percent, or (iii) produce holographic or prism effects is guilty of a Class 3 misdemeanor for the first offense and of a Class 2 misdemeanor for any subsequent offense.

E. The Division of Purchases and Supply, pursuant to § 2.2-1112, shall determine the proper standards for equipment or devices used to measure light transmittance through windows of motor vehicles. Law-enforcement officers shall use only such equipment or devices to measure light transmittance through windows that meet the standards established by the Division. Such measurements made by law-enforcement officers shall be given a tolerance of minus seven percentage points.

F. No film or darkening material may be applied on the windshield except to replace the sunshield in the uppermost area as installed by the manufacturer of the vehicle.

G. Nothing in this section shall prohibit the affixing to the rear window of a motor vehicle of a single sticker no larger than 20 square inches if such sticker is totally contained within the lower five inches of the glass of the rear window, nor shall subsection C apply to a motor vehicle to which but one such sticker is so affixed.

H. Nothing in this section shall prohibit applying to the rear side windows or rear window of any multipurpose passenger vehicle or pickup truck sun-shading or tinting films that reduce the total light transmittance of such window or windows below 35 percent.

I. Notwithstanding the foregoing provisions of this section, sun-shading material which was applied or installed prior to July 1, 1987, in a manner and on which windows not then in violation of Virginia law, shall continue to be lawful, provided that it can be shown by appropriate receipts that such material was installed prior to July 1, 1987.

J. Where a person is convicted within one year of a second or subsequent violation of this section involving the operation of the same vehicle having a tinted or smoked windshield, the court, in addition to any other penalty, may order the person so convicted to remove such tinted or smoked windshield from the vehicle.

K. The provisions of this section shall not apply to law-enforcement vehicles.

L. The provisions of this section shall not apply to the rear windows or rear side windows of any emergency medical services vehicle used to transport patients.

M. The provisions of subdivisions D 1, 2, and 3 shall not apply to vehicles operated in the performance of private security duties by a security canine handler as defined in § 9.1-138 and licensed in accordance with § 9.1-139.

N. The provisions of subdivision D 1 shall not apply to sight-seeing carriers as defined in § 46.2-2000 and contract passenger carriers as defined in § 46.2-2000.

O. For any summons issued for a violation of this section, the court may, in its discretion, dismiss the summons, where proof of compliance with this section is provided to the court on or before the court date.

P. No citation for a violation of the provisions of this section prohibiting the application or affixing of sun-shading material or colored or tinting films shall be issued unless the officer issuing such citation has cause to stop or arrest the driver of such motor vehicle for the violation of some other provision of this Code or local ordinance relating to the operation, ownership, or maintenance of a motor vehicle or any criminal statute.

§ 46.2-1053. Equipping certain motor vehicles with sun-shading or tinting films or applications.

A. Notwithstanding the provisions of § 46.2-1052, a motor vehicle operated by or regularly used to transport any person with a medical condition which renders him susceptible to harm or injury from exposure to sunlight or bright artificial light may be equipped, on its windshield and any or all of its windows, with sun-shading or tinting films or applications which reduce the transmission of light into the vehicle to levels not less than 35 percent. Such sun-shading or tinting film when applied to the windshield of a motor vehicle shall not cause the total light transmittance to be reduced to any level less than 70 percent except for the upper five inches of such windshield or the AS-1 line, whichever is closer to the top of the windshield. Vehicles equipped with such sun-shading or tinting films shall not be operated on any highway unless, while being so operated, the driver or an occupant of the vehicle has in his possession a written authorization issued by the Commissioner of the Department of Motor Vehicles authorizing such operation. The Commissioner shall issue such written authorization only upon receipt of a signed statement from a licensed physician or licensed optometrist (i) identifying with reasonable specificity the person seeking the written authorization and (ii) stating that, in the physician's or optometrist's professional opinion, the equipping of a vehicle with sun-shading or tinting films or applications is necessary to safeguard the health of the person seeking the written authorization. Written authorizations issued by the Commissioner under this section shall be valid so long as the condition requiring the use of sun-shading or tinting films or applications persists or until the vehicle is sold, whichever first occurs. Such written authorizations shall permit the approval of any such vehicle upon its safety inspection as required by this chapter if such vehicle otherwise qualifies for inspection approval. In the discretion of the Commissioner, one or more written authorizations may be issued to an individual or a family. The Division of Purchases and Supply, pursuant to § 2.2-1112, shall determine the proper standards for equipment or devices used to measure light transmittance through windows of motor vehicles. Law-enforcement officers shall use only such equipment or devices to measure light transmittance through windows that meet the standards established by the Division. Such measurements made by law-enforcement officers shall be given a tolerance of minus seven percentage points.

B. No citation for a violation of this section shall be issued unless the officer issuing such citation has cause to stop or arrest the driver of such motor vehicle for the violation of some other provision of this Code or local ordinance relating to the operation, ownership, or maintenance of a motor vehicle or any criminal statute.

C. For any summons issued for a violation of this section, the court may, in its discretion, dismiss the summons, where proof of compliance with this section is provided to the court on or before the court date.

§ 46.2-1054. Suspension of objects or alteration of vehicle so as to obstruct driver's view.

A. It shall be unlawful for any person (i) to drive a motor vehicle on a highway in the Commonwealth with any object or objects, other than a rear view mirror, sun visor, or other equipment of the motor vehicle approved by the Superintendent, suspended from any part of the motor vehicle in such a manner as to obstruct the driver's clear view of the highway through the windshield, the front

side windows, or the rear window or (ii) to alter a passenger-carrying vehicle in such a manner as to obstruct the driver's view through the windshield. However, this section shall not apply (a) when the driver's clear view of the highway through the rear window is obstructed if such motor vehicle is equipped with a mirror on each side, so located as to reflect to the driver a view of the highway for at least 200 feet to the rear of such vehicle, (b) to safety devices installed on the windshields of vehicles owned by private waste haulers or local governments and used to transport solid waste, or (c) to bicycle racks installed on the front of any bus operated by any city, county, transit authority, or transit or transportation district. The provisions of clause (ii) shall not apply to the lawful immobilization of vehicles pursuant to § 46.2-1216 or 46.2-1231.

B. No citation for a violation of this section shall be issued unless the officer issuing such citation has cause to stop or arrest the driver of such motor vehicle for the violation of some other provision of this Code or local ordinance relating to the operation, ownership, or maintenance of a motor vehicle or any criminal statute.