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HOUSE BILL NO. 428**AMENDMENT IN THE NATURE OF A SUBSTITUTE**

Proposed by the House Committee for Courts of Justice

on February 2, 1996)

(Patron Prior to Substitute—Delegate Mims)

A BILL to amend and reenact § 46.2-833.01 of the Code of Virginia and the second enactment of Chapter 492 of the Acts of Assembly of 1995, relating to failing to comply with traffic light signals; penalties.

Be it enacted by the General Assembly of Virginia:

1. That § 46.2-833.01 of the Code of Virginia is amended and reenacted as follows:

§ 46.2-833.01. Liability for failure of operator to comply with traffic light signals; pilot program in certain localities.

A. The governing body of any city having a population of more than 390,000, any city having a population of at least 200,000 but less than 225,000, any county having the urban county executive form of government, any county adjacent to such county, and any city or town adjacent to or surrounded by such county except any county having the county executive form of government and the cities surrounded by such county may provide by ordinance for the establishment of a demonstration program imposing monetary liability on the ~~operator~~ owner of a motor vehicle for failure to comply with traffic light signals in such locality in accordance with the provisions of this section. Each such locality may install and operate traffic light signal photo-monitoring systems at no more than twenty-five intersections within each locality at any one time.

B. The ~~operator~~ owner of a vehicle shall be liable for a monetary penalty imposed pursuant to this section if such vehicle is found, as evidenced by information obtained from a traffic light signal violation monitoring system, to have failed to comply with a traffic light signal within such locality.

C. Proof of a violation of this section shall be evidenced by information obtained from a traffic light signal violation monitoring system authorized pursuant to this section. A certificate, sworn to or affirmed by a technician employed by a locality authorized to impose penalties pursuant to this section, or a facsimile thereof, based upon inspection of photographs, microphotographs, videotape, or other recorded images produced by a traffic light signal violation monitoring 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 pursuant to an ordinance adopted pursuant to this section.

D. In the prosecution of an offense established under this section, prima facie evidence that the vehicle described in the summons issued pursuant to this section was operated in violation of this section, together with proof that the defendant was at the time of such violation the registered owner of the vehicle, shall constitute in evidence a rebuttable presumption that such registered owner of the vehicle was the person who committed the violation. Such presumption shall be rebutted if the registered owner of the vehicle (i) files an affidavit by regular mail with the clerk of the general district court that he or she was not the operator of the vehicle at the time of the alleged violation or (ii) testifies in open court under oath that he or she was not the operator of the vehicle at the time of the alleged violation. Such presumption shall also be rebutted if 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 violation of this section, is presented, prior to the return date established on the summons issued pursuant to this section, to the court adjudicating the alleged violation. *The owner of a vehicle who is issued a notice of violation is responsible and liable for payment of the fine assessed pursuant to this section, unless the owner can furnish evidence that the vehicle was, at the time of the violation, in the care, custody, or control of another person. In such instances, the owner of the vehicle shall, by the date of return listed on the notice of violation, provide such evidence in a sworn affidavit setting forth the name and address of the person who leased, rented, or otherwise had the care, such custody, or control of the vehicle. Unless privileged, the affidavit submitted pursuant to this subsection shall be admissible in a proceeding adjudicating the alleged violation and shall raise a rebuttable presumption that the person identified in the affidavit was in actual control of the vehicle, in which case such person may be issued a notice for such violation.*

If the vehicle was alleged to have been stolen, the owner of the vehicle shall not submit an affidavit containing the name and address of the driver, but shall submit proof that a police report was filed indicating that the vehicle was stolen the time of the alleged violation.

E. For purposes of this section "owner" means the registered owner of such vehicle on record with the Department of Motor Vehicles. For purposes of this section "owner" does not mean a vehicle rental or vehicle leasing company. For purposes of this section, "traffic light signal violation-monitoring

60 system" means a vehicle sensor installed to work in conjunction with a traffic light that automatically
61 produces two or more photographs, two or more microphotographs, a videotape, or other recorded
62 images of each vehicle at the time it is used or operated in violation of this section.

63 F. Imposition of a penalty pursuant to this section shall not be deemed a conviction as an operator
64 and shall not be made part of the operating record of the person upon whom such liability is imposed
65 nor shall it be used for insurance purposes in the provision of motor vehicle insurance coverage. No
66 monetary penalty imposed under this section shall exceed fifty dollars and shall not include court costs.

67 *Should the owner of a vehicle found in violation of this section fail to comply with the provisions of*
68 *subsection D, the locality may impose civil penalties as set forth in § 46.2-1216, with each violation of*
69 *this section being considered as an unpaid parking violation notice.*

70 G. A notice of violation shall be mailed in an envelope on which the words "LAW-ENFORCEMENT
71 NOTICE" appear in type of at least one-half inch, by first-class mail to the owner of the vehicle, or to
72 the driver identified in accordance with subsection D, to the address shown on the records of the
73 Department or on the affidavit submitted pursuant to subsection D. The notice of violation shall notify
74 the owner or driver that the monetary penalty imposed may be paid within 21 days of the mailing of the
75 notice of violation. If the owner or driver fails to pay the monetary penalty or to submit an affidavit
76 pursuant to subsection D within the 21-day period, a summons for a violation of this section may be
77 executed pursuant to § 19.2-76.2. Notwithstanding the provisions of § 19.2-76, a summons for a
78 violation of this section may be executed by mailing by first-class mail a copy thereof to the address of
79 the owner of the vehicle as shown on the records of the Department of Motor Vehicles. If the
80 summoned person fails to appear on the date of return set out in the summons mailed pursuant to this
81 section, the summons shall be executed in the manner set out in § 19.2-76.3. No proceedings for
82 contempt or arrest of a person summoned by mailing shall be instituted for failure to appear on the
83 return date of the summons.

84 H. In any action at law brought by any person or entity as the result of personal injury or death or
85 damage to property, such evidence derived from a photo-monitoring system shall be admissible in the
86 same method prescribed as required in the prosecution of an offense established under this section
87 without the requirements of authentication as otherwise required by law.

88 I. At the discretion of the locality, warning notifications may be issued in lieu of notices of violation.

89 J. On behalf of a law-enforcement agency engaged in traffic light signal violation monitoring, a
90 private entity may enter into an agreement with the Department of Motor Vehicles in order to obtain
91 records regarding the registered owner of the vehicle operated in violation of the traffic lights signal.
92 The private entity may also enter into an agreement with a locality to be compensated for providing the
93 traffic light signal violation monitor system or equipment, and all related support services, to include
94 consulting, operations, administration, and the issuance and mailing of notices of violation on behalf of
95 a locality.

96 **2. That the second enactment of Chapter 492 of the Acts of Assembly of 1995 is amended and**
97 **reenacted as follows:**

98 2. That the provisions of this act shall expire on July 1, ~~1998~~ 2000.