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## HOUSE BILL NO. 428

## FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Delegate Mims

on February 8, 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 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 or other person having the care, custody or control 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~~ In accordance with subsection D, the owner or other person having the care, custody or control 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, *digitally recorded images*, 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, *digitally recorded images*, 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 penalty assessed pursuant to this section, unless the owner (i) furnishes evidence that the vehicle was, at the time of the violation, in the care, custody, or control of another person or (ii) certifies that after making reasonable inquiry, the identity of the person having the care, custody or control of the vehicle is not known. In such instances, the owner of the vehicle shall, by the date of return listed on the notice of violation, provide such evidence or certification in a sworn affidavit. Such affidavit shall set forth the name and address of the person who had the care, custody, or control of the vehicle, unless after reasonable inquiry that information is not known. Unless the information furnished is privileged, the affidavit submitted pursuant to this subsection shall be admissible in a proceeding adjudicating the alleged violation and shall be evidence that the person identified in the affidavit was in actual care, custody or control of the vehicle. The person named in such affidavit may be issued a notice of violation in accordance with subsection G.~~

If the vehicle was alleged to have been stolen, the owner of the vehicle shall not submit such an affidavit, but shall submit proof that a police report was filed indicating that the vehicle was stolen at

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60 *the time of the alleged violation.*

61 E. For purposes of this section "owner" means the registered owner of such vehicle on record with  
62 the Department of Motor Vehicles. For purposes of this section "owner" does not mean a vehicle rental  
63 or vehicle leasing company. For purposes of this section, "traffic light signal violation-monitoring  
64 system" means a vehicle sensor installed to work in conjunction with a traffic light that automatically  
65 produces two or more photographs, two or more microphotographs, a videotape, or other recorded  
66 images of each vehicle at the time it is used or operated in violation of this section.

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

71 G. *A notice of violation shall be mailed in an envelope on which the words "LAW-ENFORCEMENT*  
72 *NOTICE" appear in type of at least one-half inch, by first-class mail to the owner of the vehicle, or to*  
73 *the person identified in an affidavit in accordance with subsection D, to the address shown on the*  
74 *records of the Department or on the affidavit. The notice of violation shall state that the monetary*  
75 *penalty imposed may be paid within 21 days of the mailing of the notice of violation. If the monetary*  
76 *penalty is not paid or an affidavit in accordance with subsection D is not submitted within the 21-day*  
77 *period, a summons for a violation of this section may be executed pursuant to § 19.2-76.2.*  
78 *Notwithstanding the provisions of § 19.2-76, a summons for a violation of this section may be executed*  
79 *by mailing by first-class mail a copy thereof to the address of the owner or person having the care,*  
80 *custody or control of the vehicle as shown on the records of the Department of Motor Vehicles or the*  
81 *affidavit. If the summoned person fails to appear on the date of return set out in the summons mailed*  
82 *pursuant to this section, the summons shall be executed in the manner set out in § 19.2-76.3. No*  
83 *proceedings for contempt or arrest of a person summoned by mailing shall be instituted for failure to*  
84 *appear on the return date of the summons.*

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

89 I. *A locality may provide, by ordinance, that warning notifications may be issued in lieu of notices of*  
90 *violation.*

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

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

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