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SENATE BILL NO. 588

Senate Amendments in [] — February 10, 1998

A *BILL to amend and reenact §§ 46.2-208 and 46.2-819 of the Code of Virginia and to amend the Code of Virginia by adding in Article 1 of Chapter 8 of Title 46.2 a section numbered 46.2-819.1, relating to records of the Department of Motor Vehicles; use of toll facility without payment of required toll; enforcement of toll payments through use of photo-monitoring equipment; penalty.*

Patrons—Forbes and Quayle

Referred to the Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-208 and 46.2-819 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Article 1 of Chapter 8 of Title 46.2 a section numbered 46.2-819.1 as follows:

§ 46.2-208. Records of Department; when open for inspection; release of privileged information.

A. All records in the office of the Department containing the specific classes of information outlined below shall be considered privileged records:

1. Personal information, including all data defined as "personal information" in § 2.1-379;

2. Driver information, including all data that relates to driver's license status and driver activity; and

3. Vehicle information, including all descriptive vehicle data and title, registration, and vehicle activity data.

B. The Commissioner shall release such information only under the following conditions:

1. Notwithstanding other provisions of this section, medical data included in personal data shall be released only to a physician as provided in § 46.2-322.

2. Insurance data may be released as specified in §§ 46.2-372, 46.2-380, and 46.2-706.

3. Notwithstanding other provisions of this section, information disclosed or furnished shall be assessed a fee as specified in § 46.2-214.

4. When the person requesting the information is (i) the subject of the information, (ii) the parent or guardian of the subject of the information, (iii) the authorized representative of the subject of the information, or (iv) the owner of the vehicle that is the subject of the information, the Commissioner shall provide him with the requested information and a complete explanation of it. Requests for such information need not be made in writing or in person and may be made orally or by telephone, provided that the Department is satisfied that there is adequate verification of the requester's identity. When so requested in writing by (i) the subject of the information, (ii) the parent or guardian of the subject of the information, (iii) the authorized representative of the subject of the information, or (iv) the owner of the vehicle that is the subject of the information, the Commissioner shall verify and, if necessary, correct the personal information provided and furnish driver and vehicle information in the form of an abstract of the record.

5. On the written request of any insurance carrier, surety, or representative of an insurance carrier or surety, the Commissioner shall furnish such insurance carrier, surety, or representative an abstract of the record of any person subject to the provisions of this title. The abstract shall include any record of any conviction of a violation of any provision of any statute or ordinance relating to the operation or ownership of a motor vehicle or of any injury or damage in which he was involved and a report of which is required by § 46.2-372. No such report of any conviction or accident shall be made after sixty months from the date of the conviction or accident unless the Commissioner or court used the conviction or accident as a reason for the suspension or revocation of a driver's license or driving privilege, in which case the revocation or suspension and any conviction or accident pertaining thereto shall not be reported after sixty months from the date that the driver's license or driving privilege has been reinstated. This abstract shall not be admissible in evidence in any court proceedings.

6. On the written request of any business organization or its agent, in the conduct of its business, the Commissioner shall compare personal information supplied by the business organization or agent with that contained in the Department's records and, when the information supplied by the business organization or agent is different from that contained in the Department's records, provide the business organization or agent with correct information as contained in the Department's records. Personal information provided under this subdivision shall be used solely for the purpose of pursuing remedies which require locating an individual.

7. The Commissioner shall provide vehicle information to any business organization or agent on such business' or agent's written request. Disclosures made under this subdivision shall not include any

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60 personal information and shall not be subject to the limitations contained in subdivision 6 of this
61 subsection.

62 8. On the written request of any motor vehicle rental or leasing company or its designated agent, the
63 Commissioner shall (i) compare personal information supplied by the company or agent with that
64 contained in the Department's records and, when the information supplied by the company or agent is
65 different from that contained in the Department's records, provide the company or agent with correct
66 information as contained in the Department's records and (ii) provide the company or agent with driver
67 information in the form of an abstract of any person subject to the provisions of this title. Such abstract
68 shall include any record of any conviction of a violation of any provision of any statute or ordinance
69 relating to the operation or ownership of a motor vehicle or of any injury or damage in which the
70 subject of the abstract was involved and a report of which is required by § 46.2-372. No such abstract
71 shall include any record of any conviction or accident more than sixty months after the date of such
72 conviction or accident unless the Commissioner or court used the conviction or accident as a reason for
73 the suspension or revocation of a driver's license or driving privilege, in which case the revocation or
74 suspension and any conviction or accident pertaining thereto shall cease to be included in such abstract
75 after sixty months from the date on which the driver's license or driving privilege was reinstated. No
76 abstract released under this subdivision shall be admissible in evidence in any court proceedings.

77 9. On the request of any federal, state, or local governmental entity, law-enforcement officer, attorney
78 for the Commonwealth, or court, the Commissioner shall (i) compare personal information supplied by
79 the governmental entity, officer, attorney for the Commonwealth, or court with that contained in the
80 Department's records and, when the information supplied by the governmental entity, officer, attorney
81 for the Commonwealth, or court is different from that contained in the Department's records, provide the
82 governmental entity, officer, attorney for the Commonwealth, or court with correct information as
83 contained in the Department's records and (ii) provide driver and vehicle information in the form of an
84 abstract of the record showing all convictions, accidents, driver's license suspensions or revocations, and
85 other appropriate information as the governmental entity, officer, attorney for the Commonwealth, or
86 court may require in order to carry out its official functions.

87 10. On request of the driver licensing authority in any other state or foreign country, the
88 Commissioner shall provide whatever classes of information the requesting authority shall require in
89 order to carry out its official functions.

90 11. On the written request of any employer, prospective employer, or authorized agent of either, and
91 with the written consent of the individual concerned, the Commissioner shall (i) compare personal
92 information supplied by the employer, prospective employer, or agent with that contained in the
93 Department's records and, when the information supplied by the employer, prospective employer, or
94 agent is different from that contained in the Department's records, provide the employer, prospective
95 employer, or agent with correct information as contained in the Department's records and (ii) provide the
96 employer, prospective employer, or agent with driver information in the form of an abstract of an
97 individual's record showing all convictions, accidents, driver's license suspensions or revocations, and
98 any type of driver's license that the individual currently possesses, provided that the individual's position
99 or the position that the individual is being considered for involves the operation of a motor vehicle.

100 12. On the written request of any member of or applicant for membership in a volunteer fire
101 company or volunteer rescue squad, the Commissioner shall (i) compare personal information supplied
102 by the volunteer fire company or volunteer rescue squad with that contained in the Department's records
103 and, when the information supplied by the volunteer fire company or volunteer rescue squad is different
104 from that contained in the Department's records, provide the volunteer fire company or volunteer rescue
105 squad with correct information as contained in the Department's records and (ii) provide driver
106 information in the form of an abstract of the member's or applicant's record showing all convictions,
107 accidents, license suspensions or revocations, and any type of driver's license that the individual
108 currently possesses. Such abstract shall be provided free of charge if the request is accompanied by
109 appropriate written evidence that the person is a member of or applicant for membership in a volunteer
110 fire company or volunteer rescue squad and the abstract is needed by a volunteer fire company or
111 volunteer rescue squad to establish the qualifications of the member or applicant to operate equipment
112 owned by the volunteer fire company or volunteer rescue squad.

113 13. On the written request of any person who has applied to be a volunteer with a Virginia affiliate
114 of Big Brothers/Big Sisters of America, the Commissioner shall (i) compare personal information
115 supplied by a Virginia affiliate of Big Brothers/Big Sisters of America with that contained in the
116 Department's records and, when the information supplied by a Virginia affiliate of Big Brothers/Big
117 Sisters of America is different from that contained in the Department's records, provide the Virginia
118 affiliate of Big Brothers/Big Sisters of America with correct information as contained in the
119 Department's records and (ii) provide driver information in the form of an abstract of the applicant's
120 record showing all convictions, accidents, license suspensions or revocations, and any type of driver's
121 license that the individual currently possesses. Such abstract shall be provided free of charge if the

request is accompanied by appropriate written evidence that the person has applied to be a volunteer with a Virginia affiliate of Big Brothers/Big Sisters of America.

14. On the written request of any person who has applied to be a volunteer with a court-appointed special advocate program pursuant to § 9-173.8, the Commissioner shall provide an abstract of the applicant's record showing all convictions, accidents, license suspensions or revocations, and any type of driver's license that the individual currently possesses. Such abstract shall be provided free of charge if the request is accompanied by appropriate written evidence that the person has applied to be a volunteer with a court-appointed special advocate program pursuant to § 9-173.8.

15. Upon the request of any employer, prospective employer, or authorized representative of either, the Commissioner shall (i) compare personal information supplied by the employer, prospective employer, or agent with that contained in the Department's records and, when the information supplied by the employer, prospective employer, or agent is different from that contained in the Department's records, provide the employer, prospective employer, or agent with correct information as contained in the Department's records and (ii) provide driver information in the form of an abstract of the driving record of any individual who has been issued a commercial driver's license, provided that the individual's position or the position that the individual is being considered for involves the operation of a commercial motor vehicle. Such abstract shall show all convictions, accidents, license suspensions, revocations, or disqualifications, and any type of driver's license that the individual currently possesses.

16. Upon the receipt of a completed application and payment of applicable processing fees, the Commissioner may enter into an agreement with any governmental authority or business to exchange information specified in this section by electronic or other means.

17. Upon the request of an attorney representing a person in a motor vehicle accident, the Commissioner shall provide vehicle information, including the owner's name and address, to the attorney.

18. Upon the request, in the course of business, of any authorized representative of an insurance company or of any not-for-profit entity organized to prevent and detect insurance fraud, the Commissioner shall provide all vehicle information, including the owner's name and address, descriptive data and title, registration, and vehicle activity data to such person.

19. Upon the request of an officer authorized to issue criminal warrants, for the purpose of issuing a warrant for arrest for unlawful disposal of trash or refuse in violation of § 33.1-346, the Commissioner shall provide vehicle information, including the owner's name and address.

20. Upon written request of the compliance agent of a private security services business, as defined in § 9-183.1, which is licensed by the Department of Criminal Justice Services, the Commissioner shall provide the name and address of the owner of the vehicle under procedures determined by the Commissioner.

21. Upon the request of the operator of a toll facility, or an authorized agent or employee of a toll facility operator, for the purpose of obtaining vehicle owner data under subsection H of § 46.2-819.1.

C. Whenever the Commissioner issues an order to suspend or revoke the driver's license or driving privilege of any individual, he may notify the National Driver Register Service operated by the United States Department of Transportation and any similar national driver information system and provide whatever classes of information the authority may require.

D. Accident reports may be inspected under the provisions of §§ 46.2-379 and 46.2-380.

E. Whenever the Commissioner takes any licensing action pursuant to the provisions of the Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.), he may provide information to the Commercial Driver License Information System, or any similar national commercial driver information system, regarding such action.

F. In addition to the foregoing provisions of this section, vehicle information may also be inspected under the provisions of §§ 43-33, 43-34, 46.2-633, and 46.2-1200.1 through 46.2-1237.

G. The Department may promulgate regulations to govern the means by which personal, vehicle, and driver information is requested and disseminated.

H. Driving records of any person accused of an offense involving the operation of a motor vehicle shall be provided by the Commissioner upon request to any person acting as counsel for the accused. If such counsel is from the public defender's office or has been appointed by the court, such records shall be provided free of charge.

§ 46.2-819. Use of toll facility without payment of toll; circumstances to be considered in assessing penalty.

Except for those permitted free use of toll facilities under § 33.1-252, it shall be unlawful for the driver of a motor vehicle to use a toll facility without payment of the specified toll.

However, in considering the case of anyone accused of violating this section, the court shall take into consideration (i) *except for lanes equipped for payment of tolls through an automatic vehicle identification system*, whether the toll booth or collection facility at which the defendant failed to pay

183 the toll was manned at the time, (ii) whether the defendant was required to pay the toll with the exact
184 amount in change, (iii) whether the defendant had change to make the payment, and (iv) whether the
185 defendant had been afforded appropriate advance notice, by signs or other means, that he would be
186 required to pay a toll and pay it with the exact change.

187 § 46.2-819.1. *Installation and use of photo-monitoring system in conjunction with certain toll*
188 *facilities; penalty.*

189 A. *The operator of any toll facility or the locality within which such toll facility is located may*
190 *install and operate or cause to be installed and operated a photo-monitoring system at locations where*
191 *tolls are collected for the use of such toll facility.*

192 B. *The operator of a vehicle shall be liable for a monetary penalty of no more than fifty dollars for*
193 *a first offense or more than \$100 for any subsequent offense if the vehicle is found, as evidenced by*
194 *information obtained from a photo-monitoring system as provided in this section, to have used such a*
195 *toll facility without payment of the required toll.*

196 C. *Proof of a violation of this section shall be evidenced by information obtained from a*
197 *photo-monitoring system as provided in this section. A certificate, sworn to or affirmed by a technician*
198 *employed or authorized by the operator of a toll facility or by the locality wherein the toll facility is*
199 *located, or a facsimile of such a certificate, based on inspection of photographs, microphotographs,*
200 *videotapes, or other recorded images produced by a photo-monitoring system, shall be prima facie*
201 *evidence of the facts contained therein. Any photographs, microphotographs, videotape, or other*
202 *recorded images evidencing such a violation shall be available for inspection in any proceeding to*
203 *adjudicate the liability for such violation under this section.*

204 D. *In the prosecution of an offense under this section, prima facie evidence that the vehicle described*
205 *in the summons issued pursuant to this section was operated in violation of this section, together with*
206 *proof that the defendant was at the time of such violation the registered owner of the vehicle, shall*
207 *constitute in evidence a rebuttable presumption that such registered owner of the vehicle was the person*
208 *who committed the violation. Such presumption shall be rebutted [and the summons shall be dismissed*
209 *] if the registered owner of the vehicle (i) files an affidavit by regular mail with the clerk of the general*
210 *district court that he or she was not the operator of the vehicle at the time of the alleged violation or*
211 *(ii) testifies in open court under oath that he or she was not the operator of the vehicle at the time of*
212 *the alleged violation. Such presumption shall also be rebutted if a certified copy of a police report,*
213 *showing that the vehicle had been reported to the police as stolen prior to the time of the alleged*
214 *violation of this section, is presented, prior to the return date established on the summons issued*
215 *pursuant to this section, to the court adjudicating the alleged violation.*

216 E. *For purposes of this section, "owner" means the registered owner of such vehicle on record with*
217 *the Department of Motor Vehicles. For purposes of this section, "owner" does not mean a vehicle rental*
218 *or vehicle leasing company. For purposes of this section, "photo-monitoring system" means a vehicle*
219 *sensor installed to work in conjunction with a toll collection device that automatically produces one or*
220 *more photographs, one or more microphotographs, a videotape, or other recorded images of each*
221 *vehicle at the time it is used or operated in violation of this section.*

222 F. *Imposition of a penalty pursuant to this section shall not be deemed a conviction as an operator*
223 *and shall not be made part of the operating record of the person upon whom such penalty is imposed*
224 *nor shall it be used for insurance purposes in the provision of motor vehicle insurance coverage.*

225 G. *A summons for a violation of this section may be executed pursuant to § 19.2-76.2.*
226 *Notwithstanding the provisions of § 19.2-76, a summons for a violation of this section may be executed*
227 *by mailing by first-class mail a copy thereof to the address of the owner of the vehicle as shown on the*
228 *records of the Department of Motor Vehicles. If the summoned person fails to appear on the date of*
229 *return set out in the summons mailed pursuant to this section, the summons shall be executed in the*
230 *manner set out in § 19.2-76.3. No proceedings for contempt or arrest of a person summoned by mailing*
231 *shall be instituted for failure to appear on the return date of the summons.*

232 H. *The operator of a toll facility may enter into an agreement with the Department of Motor*
233 *Vehicles, in accordance with the provisions of subdivision 21 of subsection B of § 46.2-208, to obtain*
234 *vehicle owner information regarding the registered owners of vehicles that fail to pay tolls required for*
235 *the use of toll facilities.*