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SENATE BILL NO. 946

Offered January 12, 2011

Prefiled January 10, 2011

A BILL to amend and reenact §§ 46.2-208 and 46.2-844 of the Code of Virginia and to amend the Code of Virginia by adding in Article 4 of Chapter 8 of Title 46.2 a section numbered 46.2-844.1, relating to use of a video-monitoring system to enforce passing stopped school bus violations.

Patron—Howell

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-208 and 46.2-844 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 4 of Chapter 8 of Title 46.2 a section numbered 46.2-844.1 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 § 2.2-3801;

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, physician assistant, or nurse practitioner 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 (a) the subject of the information, (b) the parent or guardian of the subject of the information, (c) the authorized representative of the subject of the information, or (d) 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 60 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 60 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 that 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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SB946

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

61 8. On the written request of any motor vehicle rental or leasing company or its designated agent, the
62 Commissioner shall (i) compare personal information supplied by the company or agent with that
63 contained in the Department's records and, when the information supplied by the company or agent is
64 different from that contained in the Department's records, provide the company or agent with correct
65 information as contained in the Department's records and (ii) provide the company or agent with driver
66 information in the form of an abstract of any person subject to the provisions of this title. Such abstract
67 shall include any record of any conviction of a violation of any provision of any statute or ordinance
68 relating to the operation or ownership of a motor vehicle or of any injury or damage in which the
69 subject of the abstract was involved and a report of which is required by § 46.2-372. No such abstract
70 shall include any record of any conviction or accident more than 60 months after the date of such
71 conviction or accident unless the Commissioner or court used the conviction or accident as a reason for
72 the suspension or revocation of a driver's license or driving privilege, in which case the revocation or
73 suspension and any conviction or accident pertaining thereto shall cease to be included in such abstract
74 after 60 months from the date on which the driver's license or driving privilege was reinstated. No
75 abstract released under this subdivision shall be admissible in evidence in any court proceedings.

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

92 10. On request of the driver licensing authority in any other state or foreign country, the
93 Commissioner shall provide whatever classes of information the requesting authority shall require in
94 order to carry out its official functions. The information shall be provided free of charge.

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

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

118 13. On the written request of any person who has applied to be a volunteer with a Virginia affiliate
119 of Big Brothers/Big Sisters of America, the Commissioner shall (i) compare personal information
120 supplied by a Virginia affiliate of Big Brothers/Big Sisters of America with that contained in the

Department's records and, when the information supplied by a Virginia affiliate of Big Brothers/Big Sisters of America is different from that contained in the Department's records, provide the Virginia affiliate of Big Brothers/Big Sisters of America with correct information as contained in the Department's records and (ii) provide driver information in the form of 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 at a fee that is one-half the normal 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 § 9.1-153, 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 § 9.1-153.

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, or perform rating and underwriting activities, the Commissioner shall provide to such person (i) all vehicle information, including the owner's name and address, descriptive data and title, registration, and vehicle activity data as requested or (ii) all driver information including name, license number and classification, date of birth, and address information for each driver under the age of 22 licensed in the Commonwealth of Virginia meeting the request criteria designated by such person, with such request criteria consisting of driver's license number or address information. No such information shall be used for solicitation of sales, marketing, or other commercial purposes.

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 § 9.1-138, 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 traffic light photo-monitoring system acting on behalf of a government entity, or of the Dulles Access Highway, or an authorized agent or employee of a toll facility operator or traffic light photo-monitoring system operator acting on behalf of a government entity or the Dulles Access Highway, for the purpose of obtaining vehicle owner data under subsection L of § 46.2-819.1 or subsection H of § 15.2-968.1 or subsection N of § 46.2-819.5. Information released pursuant to this subdivision shall be limited to the name and address of the registered owner of the vehicle having failed to pay a toll or having failed to comply with a traffic light signal or having improperly used the Dulles Access Highway and the vehicle information, including all descriptive vehicle data and title and registration data of the same vehicle.

22. On the written request of any person who has applied to be a volunteer with a Virginia affiliate of Compeer, the Commissioner shall (i) compare personal information supplied by a Virginia affiliate of Compeer with that contained in the Department's records and, when the information supplied by a Virginia affiliate of Compeer is different from that contained in the Department's records, provide the Virginia affiliate of Compeer with correct information as contained in the Department's records and (ii) provide driver information in the form of an abstract of the applicant's record showing all convictions,

182 accidents, license suspensions or revocations, and any type of driver's license that the individual
183 currently possesses. Such abstract shall be provided at a fee that is one-half the normal charge if the
184 request is accompanied by appropriate written evidence that the person has applied to be a volunteer
185 with a Virginia affiliate of Compeer.

186 23. Upon the request of the Department of Environmental Quality for the purpose of obtaining
187 vehicle owner data in connection with enforcement actions involving on-road testing of motor vehicles,
188 pursuant to § 46.2-1178.1.

189 24. On the written request of any person who has applied to be a volunteer vehicle operator with a
190 Virginia chapter of the American Red Cross, the Commissioner shall (i) compare personal information
191 supplied by a Virginia chapter of the American Red Cross with that contained in the Department's
192 records and, when the information supplied by a Virginia chapter of the American Red Cross is different
193 from that contained in the Department's records, provide the Virginia chapter of the American Red Cross
194 with correct information as contained in the Department's records and (ii) provide driver information in
195 the form of an abstract of the applicant's record showing all convictions, accidents, license suspensions
196 or revocations, and any type of driver's license that the individual currently possesses. Such abstract
197 shall be provided at a fee that is one-half the normal charge if the request is accompanied by
198 appropriate written evidence that the person has applied to be a volunteer vehicle operator with a
199 Virginia chapter of the American Red Cross.

200 25. On the written request of any person who has applied to be a volunteer vehicle operator with a
201 Virginia chapter of the Civil Air Patrol, the Commissioner shall (i) compare personal information
202 supplied by a Virginia chapter of the Civil Air Patrol with that contained in the Department's records
203 and, when the information supplied by a Virginia chapter of the Civil Air Patrol is different from that
204 contained in the Department's records, provide the Virginia chapter of the Civil Air Patrol with correct
205 information as contained in the Department's records and (ii) provide driver information in the form of
206 an abstract of the applicant's record showing all convictions, accidents, license suspensions or
207 revocations, and any type of driver's license that the individual currently possesses. Such abstract shall
208 be provided at a fee that is one-half the normal charge if the request is accompanied by appropriate
209 written evidence that the person has applied to be a volunteer vehicle operator with a Virginia chapter of
210 the Civil Air Patrol.

211 26. On the written request of any person who has applied to be a volunteer vehicle operator with
212 Faith in Action, the Commissioner shall (i) compare personal information supplied by Faith in Action
213 with that contained in the Department's records and, when the information supplied by Faith in Action is
214 different from that contained in the Department's records, provide Faith in Action with correct
215 information as contained in the Department's records and (ii) provide driver information in the form of
216 an abstract of the applicant's record showing all convictions, accidents, license suspensions or
217 revocations, and any type of driver's license that the individual currently possesses. Such abstract shall
218 be provided at a fee that is one-half the normal charge if the request is accompanied by appropriate
219 written evidence that the person has applied to be a volunteer vehicle operator with Faith in Action.

220 27. On the written request of the surviving spouse or child of a deceased person or the executor or
221 administrator of a deceased person's estate, the Department shall, if the deceased person had been issued
222 a driver's license or special identification card by the Department, supply the requestor with a hard copy
223 image of any photograph of the deceased person kept in the Department's records.

224 28. *Upon the request of the operator of a video-monitoring system acting on behalf of a local school*
225 *division for the purpose of obtaining vehicle owner data under subsection B of § 46.2-844.1. Information*
226 *released pursuant to this subdivision shall be limited to the name and address of the registered owner of*
227 *the vehicle being operated in a manner that is prohibited by § 46.2-859 and the vehicle information,*
228 *including all descriptive vehicle data and title and registration data of the same vehicle.*

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

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

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

238 F. In addition to the foregoing provisions of this section, vehicle information may also be inspected
239 under the provisions of §§ 46.2-633, 46.2-644.02, 46.2-644.03, and §§ 46.2-1200.1 through 46.2-1237.

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

242 H. Driving records of any person accused of an offense involving the operation of a motor vehicle
243 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.

I. The Department shall maintain the records of persons convicted of violations of § 18.2-36.2, subsection B of § 29.1-738, and §§ 29.1-738.02, 29.1-738.2, and 29.1-738.4 which shall be forwarded by every general district court or circuit court or the clerk thereof, pursuant to § 46.2-383. Such records shall be electronically available to any law-enforcement officer as provided for under clause (ii) of subdivision B 9.

§ 46.2-844. Passing stopped school buses; penalty; prima facie evidence.

The driver of a motor vehicle approaching from any direction a clearly marked school bus which is stopped on any highway, private road or school driveway for the purpose of taking on or discharging children, the elderly, or mentally or physically handicapped persons, who, in violation of § 46.2-859, fails to stop and remain stopped until all such persons are clear of the highway, private road or school driveway, is subject to a civil penalty of \$250 and any prosecution shall be instituted and conducted in the same manner as prosecutions for traffic infractions.

A prosecution or proceeding under § 46.2-859 or 46.2-844.1 is a bar to a prosecution or proceeding under this section for the same act and a prosecution or proceeding under this section is a bar to a prosecution or proceeding under § 46.2-859 or 46.2-844.1 for the same act.

In any prosecution for which a summons charging a violation of this section was issued within ten days of the alleged violation, proof that the motor vehicle described in the summons 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, as required by Chapter 6 (§ 46.2-600 et seq.) of this title shall give rise to a rebuttable presumption that the registered owner of the vehicle was the person who operated the vehicle at the place where, and for the time during which, the violation occurred.

The testimony of the school bus driver, the supervisor of school buses or a law-enforcement officer that the vehicle was yellow, conspicuously marked as a school bus, and equipped with warning devices as prescribed in § 46.2-1090 is prima facie evidence that the vehicle is a school bus.

§ 46.2-844.1. *Passing stopped school buses; video-monitoring system.*

A. *As used in this section, unless the context requires a different meaning:*

"Owner" means the registered owner of such vehicle on record with the Department.

"Video-monitoring system" means a system with one or more camera sensors and computers that produce live digital and recorded video of motor vehicles being operated in violation of this section. All systems installed for use under this section shall, at a minimum, produce a live visual image viewable remotely, a recorded image of the license plate, and be able to record the time, date, and location of the vehicle.

B. *A local school division may install and operate a video-monitoring system on school buses in order to detect drivers who operate a vehicle in a manner that is prohibited under § 46.2-859 provided that a warning sign indicating the use of such system is posted on such buses during operation.*

A private entity that operates a video-monitoring system may, on behalf of a local school division, enter into an agreement with the Department, in accordance with the provisions of subdivision B 28 of § 46.2-208, to obtain vehicle owner information regarding the registered owners of vehicles that are operated in a manner that is prohibited under § 46.2-859. A private entity may enter into an agreement with a local school division to be compensated for providing a video-monitoring system and any related support service, including administration, consulting, and operations. No local school division shall enter into an agreement for compensation based on the number of summons issued or civil penalties imposed.

C. A person is subject to a civil penalty of \$250, payable to the applicable local school division, which shall exclude all applicable court costs and any administrative fees, if he is found, as evidenced by information obtained from a video-monitoring system, to have operated a vehicle in a manner that is prohibited under § 46.2-859; however, imposition of such civil penalty shall not be (i) deemed a conviction as an operator; (ii) made part of the operating record of the person upon whom such liability is imposed; or (iii) used for insurance purposes in the provision of motor vehicle insurance coverage. A prosecution or proceeding under § 46.2-844 or 46.2-859 is a bar to a prosecution or proceeding under this section for the same act and a prosecution or proceeding under this section is a bar to a prosecution or proceeding under § 46.2-844 or 46.2-859 for the same act.

A certificate sworn to or affirmed only by a law-enforcement officer employed by a locality embraced by the school division authorized to impose penalties pursuant to this section based upon inspection of photographs, microphotographs, videotape, or other recorded images produced by a video-monitoring system, shall be prima facie evidence of the facts contained therein.

There is a rebuttable presumption that the person who operated a vehicle in a manner that is prohibited under § 46.2-859 is the person who owned, leased, or rented the vehicle at the time of such conduct. Such presumption shall be rebutted if (a) the owner, lessee, or renter of the vehicle files an

305 affidavit by regular mail with the clerk of the general district court that he was not the operator of the
306 vehicle at the time of the alleged violation; (b) the owner, lessee, or renter of the vehicle testifies in
307 open court under oath that he was not the operator of the vehicle at the time of the alleged violation;
308 or (c) a certified copy of a police report, showing that the vehicle had been reported to the police as
309 stolen prior to the time of the alleged violation of this section, is presented prior to the return date
310 established on the summons to the court adjudicating the alleged violation.

311 D. Notwithstanding the provisions of § 19.2-76, a summons for a violation of this section may be
312 executed by mailing via first-class mail a copy thereof to the owner, lessee, or renter of the vehicle. In
313 the case of a vehicle owner, the copy shall be mailed to the address contained in the records of the
314 Department; in the case of a vehicle lessee or renter, the copy shall be mailed to the address contained
315 in the records of the lessor or renter. Every such mailing shall include, in addition to the summons, a
316 notice of (i) the summoned person's ability to rebut the presumption that he was the operator of the
317 vehicle at the time of the violation through the filing of an affidavit as provided in subsection C and (ii)
318 instructions for filing such affidavit, including the address to which the affidavit is to be sent. If the
319 summoned person fails to appear on the date of return set out in the summons mailed pursuant to this
320 section, the summons shall be executed in the manner set out in § 19.2-76.3. No proceedings for
321 contempt or arrest of a person summoned by mailing shall be instituted for failure to appear on the
322 return date of the summons. Any summons executed pursuant to this section shall provide to the person
323 summoned at least 30 business days from the mailing of the summons to inspect information collected
324 by a video-monitoring system in connection with the violation.

325 E. Information collected by a video-monitoring system installed and operated pursuant to subsection
326 B shall be limited exclusively to that information that is necessary for the enforcement of violations of
327 this section. Information provided to the operator of a video-monitoring system shall be protected in a
328 database with security comparable to that of the Department's system, and used only for enforcement
329 against individuals who violate the provisions of this section. Notwithstanding any other provision of
330 law, all photographs, microphotographs, electronic images, or other personal information collected by a
331 video-monitoring system shall be used exclusively for enforcing violations of this section and shall not
332 (i) be open to the public; (ii) be sold or used for sales, solicitation, or marketing purposes; (iii) be
333 disclosed to any other entity except as may be necessary for the enforcement of a violation of this
334 section or to a vehicle owner or operator as part of a challenge to the violation; or (iv) be used in a
335 court in a pending action or proceeding unless the action or proceeding relates to a violation of
336 § 46.2-844 upon order from a court of competent jurisdiction. Information collected under this section
337 pertaining to a specific violation shall be purged and not retained later than 60 days after the collection
338 of any civil penalties. If a local school division does not execute a summons for a violation of this
339 section within 10 business days, all information collected pertaining to that suspected violation shall be
340 purged within two business days. Any local school division operating a video-monitoring system shall
341 annually certify compliance with this section and make all records pertaining to such system available
342 for inspection and audit by the Commonwealth Transportation Commissioner or the Commissioner of
343 the Department of Motor Vehicles or his designee. Any person who discloses personal information in
344 violation of the provisions of this subsection shall be subject to a civil penalty of \$1,000 per disclosure.
345 Any unauthorized use or disclosure of such personal information shall be grounds for termination of the
346 agreement between the Department and the private entity.