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HOUSE BILL NO. 446

Offered January 8, 2014

Prefiled January 5, 2014

A BILL to amend and reenact § 15.2-968.1 of the Code of Virginia, relating to traffic signal photo-monitoring systems; criminal investigation.

 Patron—Bulova

 Referred to Committee on Militia, Police and Public Safety

Be it enacted by the General Assembly of Virginia:**1. That § 15.2-968.1 of the Code of Virginia is amended and reenacted as follows:****§ 15.2-968.1. Use of photo-monitoring systems to enforce traffic light signals.**

A. The governing body of any county, city, or town may provide by ordinance for the establishment of a traffic signal enforcement program imposing monetary liability on the operator 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 one intersection for every 10,000 residents within each county, city, or town at any one time, provided, however, that within planning District 8, each such locality may install and operate traffic light signal photo-monitoring systems at no more than 10 intersections, or at no more than one intersection for every 10,000 residents within each county, city, or town, whichever is greater, at any one time.

B. The operator 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 law-enforcement officer 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 for a violation of any local ordinance adopted as provided in this section, prima facie evidence that the vehicle described in the summons issued pursuant to this section was operated in violation of such ordinance, together with proof that the defendant was at the time of such violation the owner, lessee, or renter of the vehicle, shall constitute in evidence a rebuttable presumption that such owner, lessee, or renter of the vehicle was the person who committed the violation. Such presumption shall be rebutted if the owner, lessee, or renter of the vehicle (i) files an affidavit by regular mail with the clerk of the general district court that he was not the operator of the vehicle at the time of the alleged violation or (ii) testifies in open court under oath that he 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.

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, "traffic light signal violation monitoring system" means a vehicle sensor installed to work in conjunction with a traffic light that automatically produces two or more photographs, two or more microphotographs, video, or other recorded images of each vehicle at the time it is used or operated in violation of § 46.2-833, 46.2-835, or 46.2-836. For each such vehicle, at least one recorded image shall be of the vehicle before it has illegally entered the intersection, and at least one recorded image shall be of the same vehicle after it has illegally entered that intersection.

F. Imposition of a penalty pursuant to this section shall not be deemed a conviction as an operator and shall not be made part of the operating record of the person upon whom such liability is imposed, nor shall it be used for insurance purposes in the provision of motor vehicle insurance coverage. No monetary penalty imposed under this section shall exceed \$50, nor shall it include court costs.

G. A summons for a violation of this section may be executed pursuant to § 19.2-76.2. Notwithstanding the provisions of § 19.2-76, a summons for a violation of this section may be executed

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59 by mailing by first class mail a copy thereof to the owner, lessee, or renter of the vehicle. In the case of
60 a vehicle owner, the copy shall be mailed to the address contained in the records of the Department of
61 Motor Vehicles; in the case of a vehicle lessee or renter, the copy shall be mailed to the address
62 contained in the records of the lessor or renter. Every such mailing shall include, in addition to the
63 summons, a notice of (i) the summoned person's ability to rebut the presumption that he was the
64 operator of the vehicle at the time of the alleged violation through the filing of an affidavit as provided
65 in subsection D and (ii) instructions for filing such affidavit, including the address to which the affidavit
66 is to be sent. If the summoned person fails to appear on the date of return set out in the summons
67 mailed pursuant to this section, the summons shall be executed in the manner set out in § 19.2-76.3. No
68 proceedings for contempt or arrest of a person summoned by mailing shall be instituted for failure to
69 appear on the return date of the summons. Any summons executed for a violation of this section shall
70 provide to the person summoned at least 30 business days from the mailing of the summons to inspect
71 information collected by a traffic light signal violation monitoring system in connection with the
72 violation.

73 H. Information collected by a traffic light signal violation monitoring system installed and operated
74 pursuant to subsection A shall be limited exclusively to that information that is necessary for the
75 enforcement of traffic light violations *or the investigation of any crime*. On behalf of a locality, a private
76 entity that operates a traffic light signal violation monitoring system may enter into an agreement with
77 the Department of Motor Vehicles, in accordance with the provisions of subdivision B 21 of §
78 46.2-208, to obtain vehicle owner information regarding the registered owners of vehicles that fail to
79 comply with a traffic light signal. Information provided to the operator of a traffic light signal violation
80 monitoring system shall be protected in a database with security comparable to that of the Department
81 of Motor Vehicles' system, and used only for enforcement against individuals who violate the provisions
82 of this section. Notwithstanding any other provision of law, all photographs, microphotographs,
83 electronic images, or other personal information collected by a traffic light signal violation monitoring
84 system shall be used exclusively for enforcing traffic light violations *or the investigation of any crime*
85 and shall not (i) be open to the public; (ii) be sold or used for sales, solicitation, or marketing purposes;
86 (iii) be disclosed to any other entity except as may be necessary for the enforcement of a traffic light
87 violation, *the investigation of any crime*, or to a vehicle owner or operator as part of a challenge to the
88 violation; or (iv) be used in a court in a pending action or proceeding unless the action or proceeding
89 relates to a violation of § 46.2-833, 46.2-835, or 46.2-836, *the prosecution of any crime*, or is requested
90 upon order from a court of competent jurisdiction. Information collected under this section pertaining to
91 a specific violation *of § 46.2-833, 46.2-835, or 46.2-836* shall be purged and not retained later than 60
92 days after the collection of any civil penalties. If a locality does not execute a summons for a violation
93 of this section within 10 business days, all *vehicle owner* information collected pertaining to that
94 suspected violation shall be purged within two business days. Any locality operating a traffic light signal
95 violation monitoring system shall annually certify compliance with this section and make all records
96 pertaining to such system available for inspection and audit by the Commissioner of Highways or the
97 Commissioner of the Department of Motor Vehicles or his designee. Any person who discloses personal
98 information in violation of the provisions of this subsection shall be subject to a civil penalty of \$1,000
99 per disclosure. Any unauthorized use or disclosure of such personal information shall be grounds for
100 termination of the agreement between the Department of Motor Vehicles and the private entity.

101 I. A private entity may enter into an agreement with a locality to be compensated for providing the
102 traffic light signal violation monitoring system or equipment, and all related support services, to include
103 consulting, operations and administration. However, only a law-enforcement officer employed by a
104 locality may swear to or affirm the certificate required by subsection C. No locality shall enter into an
105 agreement for compensation based on the number of violations or monetary penalties imposed.

106 J. When selecting potential intersections for a traffic light signal violation monitoring system, a
107 locality shall consider factors such as (i) the accident rate for the intersection, (ii) the rate of red light
108 violations occurring at the intersection (number of violations per number of vehicles), (iii) the difficulty
109 experienced by law-enforcement officers in patrol cars or on foot in apprehending violators, and (iv) the
110 ability of law-enforcement officers to apprehend violators safely within a reasonable distance from the
111 violation. Localities may consider the risk to pedestrians as a factor, if applicable.

112 K. Before the implementation of a traffic light signal violation monitoring system at an intersection,
113 the locality shall complete an engineering safety analysis that addresses signal timing and other
114 location-specific safety features. The length of the yellow phase shall be established based on the
115 recommended methodology of the Institute of Transportation Engineers. All traffic light signal violation
116 monitoring systems shall provide a minimum 0.5-second grace period between the time the signal turns
117 red and the time the first violation is recorded. If recommended by the engineering safety analysis, the
118 locality shall make reasonable location-specific safety improvements, including signs and pavement
119 markings.

120 L. Any locality that uses a traffic light signal violation monitoring system shall evaluate the system

on a monthly basis to ensure all cameras and traffic signals are functioning properly. Evaluation results shall be made available to the public.

M. Any locality that uses a traffic light signal violation monitoring system to enforce traffic light signals shall place conspicuous signs within 500 feet of the intersection approach at which a traffic light signal violation monitoring system is used. There shall be a rebuttable presumption that such signs were in place at the time of the commission of the traffic light signal violation.

N. Prior to or coincident with the implementation or expansion of a traffic light signal violation monitoring system, a locality shall conduct a public awareness program, advising the public that the locality is implementing or expanding a traffic light signal violation monitoring system.

O. Notwithstanding any other provision of this section, if a vehicle depicted in images recorded by a traffic light signal photo-monitoring system is owned, leased, or rented by a county, city, or town, then the county, city, or town may access and use the recorded images and associated information for employee disciplinary purposes.