

16102120D

**SENATE BILL NO. 431**

Offered January 13, 2016

Prefiled January 12, 2016

*A BILL to amend and reenact § 33.2-503 of the Code of Virginia, relating to unpaid tolls and civil penalties on HOT lanes.*

Patrons—Ebbin and Surovell

Referred to Committee on Transportation

**Be it enacted by the General Assembly of Virginia:****1. That § 33.2-503 of the Code of Virginia is amended and reenacted as follows:****§ 33.2-503. HOT lanes enforcement.**

Any person operating a motor vehicle on designated HOT lanes shall make arrangements with the HOT lanes operator for payment of the required toll prior to entering such HOT lanes. The driver of a vehicle who enters the HOT lanes in an unauthorized vehicle, in violation of the conditions for use of such HOT lanes established pursuant to § 33.2-502, without payment of the required toll or without having made arrangements with the HOT lanes operator for payment of the required toll shall have committed a violation of this section, which may be enforced in the following manner:

1. On a form prescribed by the Supreme Court, a summons for civil violation of this section may be executed by a law-enforcement officer, when such violation is observed by such officer. The form shall contain the option for the driver of the vehicle to prepay the unpaid toll and all penalties, administrative fees, and costs.

2. a. A HOT lanes operator shall install and operate, or cause to be installed or operated, a photo-enforcement system at locations where tolls are collected for the use of such HOT lanes.

b. A summons for civil violation of this section may be executed pursuant to this subdivision, when such violation is evidenced by information obtained from a photo-enforcement system as defined in this chapter. A certificate, sworn to or affirmed by a technician employed or authorized by the HOT lanes operator, or a facsimile of such a certificate, based on inspection of photographs, microphotographs, videotapes, or other recorded images produced by a photo-enforcement 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 under this subdivision. Any vehicle rental or vehicle leasing company, if named in a summons, shall be released as a party to the action if it provides to the HOT lanes operator a copy of the vehicle rental agreement or lease or an affidavit identifying the renter or lessee prior to the date of hearing set forth in the summons. Upon receipt of such rental agreement, lease, or affidavit, a summons shall be issued for the renter or lessee identified therein. Release of this information shall not be deemed a violation of any provision of the Government Data Collection and Dissemination Practices Act (§ 2.2-3800 et seq.) or the Insurance Information and Privacy Protection Act (§ 38.2-600 et seq.).

c. On a form prescribed by the Supreme Court, a summons issued under this subdivision may be executed pursuant to § 19.2-76.2. Such form shall contain the option for the driver or registered owner to prepay the unpaid toll and all penalties, administrative fees, and costs. HOT lanes operator personnel or their agents mailing such summons shall be considered conservators of the peace for the sole and limited purpose of mailing such summons. Notwithstanding the provisions of § 19.2-76, a summons for a violation of this section may be executed by mailing by first-class mail a copy thereof to the address of the owner of the vehicle as shown on the records of the Department of Motor Vehicles or, if the registered owner has named and provided a valid address for the operator of the vehicle at the time of the violation in an affidavit executed pursuant to this subdivision, such named operator of the vehicle. If the summoned person fails to appear on the date of return set out in the summons mailed pursuant to this section, the summons shall be executed in the manner set out in § 19.2-76.3.

d. The registered owner of such vehicle shall be given reasonable notice by way of a summons as provided in this subdivision that his vehicle had been used in violation of this section, and such owner shall be given notice of the time and place of the hearing and notice of the civil penalty and costs for such offense.

Upon the filing of an affidavit with the court at least 14 days prior to the hearing date by the registered owner of the vehicle stating that he was not the driver of the vehicle on the date of the violation and providing the legal name and address of the driver of the vehicle at the time of the violation, a summons will also be issued to the alleged driver of the vehicle at the time of the offense.

INTRODUCED

SB431

59 The affidavit shall constitute prima facie evidence that the person named in the affidavit was driving the  
60 vehicle at all the relevant times relating to the matter named in the affidavit.

61 If the registered owner of the vehicle produces a certified copy of a police report showing that the  
62 vehicle had been reported to the police as stolen prior to the time of the alleged offense and remained  
63 stolen at the time of the alleged offense, then the court shall dismiss the summons issued to the  
64 registered owner of the vehicle.

65 3. a. The HOT lanes operator may impose and collect an administrative fee in addition to the unpaid  
66 toll so as to recover the expenses of collecting the unpaid toll, which administrative fee shall be  
67 reasonably related to the actual cost of collecting the unpaid toll and not exceed \$100 per violation. The  
68 operator of the vehicle shall pay the unpaid tolls and any administrative fee detailed in a notice or  
69 invoice issued by a HOT lanes operator. If paid within ~~30~~ 45 days of notification, the administrative fee  
70 shall not exceed \$25.

71 b. Upon a finding by a court of competent jurisdiction that the driver of the vehicle observed by a  
72 law-enforcement officer under subdivision 1 or the vehicle described in the summons for civil violation  
73 issued pursuant to evidence obtained by a photo-enforcement system under subdivision 2 was in  
74 violation of this section, the court shall impose a civil penalty upon the driver of such vehicle issued a  
75 summons under subdivision 1, or upon the driver or registered owner of such vehicle issued a summons  
76 under subdivision 2, payable to the HOT lanes operator as follows: for a first offense, *not more than*  
77 \$50; for a second offense *occurring within a period of one year after a conviction of a first offense*,  
78 ~~\$250~~ *not more than \$100*; for a third offense *occurring within a period of two years of after the second*  
79 ~~offense, \$500 not more than \$250~~; and for a fourth and subsequent offense *occurring within a period of*  
80 ~~three years of after the second offense, \$1,000 not more than \$500~~, together with, in each case, the  
81 unpaid toll, all accrued administrative fees imposed by the HOT lanes operator as authorized by this  
82 section, and applicable court costs. *In fixing punishment, the court may consider extenuating*  
83 *circumstances including the failure to receive notification of the offense by mail, technical errors with*  
84 *an electronic toll collection device or account, or offenses occurring within such close proximity as to*  
85 *not allow for receipt of notification.* The court shall remand penalties, the unpaid toll, and administrative  
86 fees assessed for violation of this section to the treasurer or director of finance of the county or city in  
87 which the violation occurred for payment to the HOT lanes operator for expenses associated with  
88 operation of the HOT lanes and payments against any bonds or other liens issued as a result of the  
89 construction of the HOT lanes. No person shall be subject to prosecution under both subdivisions 1 and  
90 2 for actions arising out of the same transaction or occurrence.

91 c. *Notwithstanding subdivisions a and b, the total amount for a first court appearance by a driver or*  
92 *registered owner of a vehicle under this section shall not exceed \$2,200, including civil penalties and*  
93 *administrative fees but excluding unpaid tolls.*

94 d. Upon a finding by a court that a person has violated this section, in the event such person fails to  
95 pay the required penalties, fees, and costs, the court shall notify the Commissioner of the Department of  
96 Motor Vehicles, who shall suspend all of the registration certificates and license plates issued for any  
97 motor vehicles registered solely in the name of such person and shall not issue any registration  
98 certificate or license plate for any other vehicle that such person seeks to register solely in his name  
99 until the court has notified the Commissioner of the Department of Motor Vehicles that such penalties,  
100 fees, and costs have been paid. The HOT lanes operator and the Commissioner of the Department of  
101 Motor Vehicles may enter into an agreement whereby the HOT lanes operator may reimburse the  
102 Department of Motor Vehicles for its reasonable costs to develop, implement, and maintain this  
103 enforcement mechanism, and that specifies that the Commissioner of the Department of Motor Vehicles  
104 shall have an obligation to suspend such registration certificates so long as the HOT lanes operator  
105 makes the required reimbursements in a timely manner in accordance with the agreement.

106 ~~d. e.~~ Except as provided in subdivisions 4 and 5, imposition of a civil penalty pursuant to this  
107 section shall not be deemed a conviction as an operator of a motor vehicle under Title 46.2 and shall  
108 not be made part of the driving record of the person upon whom such civil penalty is imposed, nor shall  
109 it be used for insurance purposes in the provision of motor vehicle insurance coverage.

110 4. a. The HOT lanes operator may restrict the usage of the HOT lanes to designated vehicle  
111 classifications pursuant to an interim or final comprehensive agreement executed pursuant to § 33.2-1808  
112 or 33.2-1809. Notice of any such vehicle classification restrictions shall be provided through the  
113 placement of signs or other markers prior to and at all HOT lanes entrances.

114 b. Any person driving an unauthorized vehicle on the designated HOT lanes is guilty of a traffic  
115 infraction, which shall not be a moving violation, and shall be punishable as follows: for a first offense,  
116 by a fine of \$125; for a second offense within a period of five years from a first offense, by a fine of  
117 \$250; for a third offense within a period of five years from a first offense, by a fine of \$500; and for a  
118 fourth and subsequent offense within a period of five years from a first offense, by a fine of \$1,000.

119 Upon a conviction under this subdivision, the court shall furnish to the Commissioner of the  
120 Department of Motor Vehicles, in accordance with § 46.2-383, an abstract of the record of such

conviction, which shall become a part of the person's driving record. Notwithstanding the provisions of § 46.2-492, no driver demerit points shall be assessed for any violation of this subdivision, except that persons convicted of a second, third, fourth, or subsequent violation within five years of a first offense shall be assessed three demerit points for each such violation.

5. The driver of a vehicle who enters the HOT lanes by crossing through any barrier, buffer, or other area separating the HOT lanes from other lanes of travel is guilty of a violation of § 46.2-852, unless the vehicle is a state or local law-enforcement vehicle, firefighting truck, or emergency medical services vehicle used in the performance of its official duties. No person shall be subject to prosecution both under this subdivision and under subdivision 1, 2, or 4 for actions arising out of the same transaction or occurrence.

Upon a conviction under this subdivision, the court shall furnish to the Commissioner of the Department of Motor Vehicles in accordance with § 46.2-383 an abstract of the record of such conviction, which shall become a part of the convicted person's driving record.

6. No person shall be subject to prosecution both under this section and under § 33.2-501, 46.2-819, or 46.2-819.1 for actions arising out of the same transaction or occurrence.

7. Any action under this section shall be brought in the general district court of the county or city in which the violation occurred.

**2. That annual data on toll violations, civil penalties, and administrative fees shall be reported by toll operators and HOT lanes operators and compiled by the Department of Transportation and submitted to the Chairmen of the House and Senate Committees on Transportation by December 1.**