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SENATE BILL NO. 1004

Offered January 11, 2017

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A BILL to amend and reenact §§ 33.2-503 and 46.2-819 of the Code of Virginia, relating to judicial discretion for toll violations.

 Patron—Ebbin

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That §§ 33.2-503 and 46.2-819 of the Code of Virginia are 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 operator 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 a 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 operator 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 a violation of this section may be executed 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 2. 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 2 may be executed as provided in § 19.2-76.2. Such form shall contain the option for the owner or operator to prepay the unpaid toll and all penalties, administrative fees, and costs. A summons for a violation of this section may set forth multiple violations occurring within one jurisdiction. 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 or, if the 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 subdivision e, such named operator of the vehicle. Such summons shall be signed either originally or by electronic signature. 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. No summons may be issued by a HOT lanes operator for a violation of this section unless the HOT lanes operator can demonstrate that (i) there was an attempt to collect the unpaid tolls and applicable administrative fees through debt collection not less than 30 days prior to issuance of the summons and (ii) 120 days have elapsed since the unpaid toll or, in a summons for multiple violations, 120 days have elapsed since the most recent unpaid toll noticed on the summons. For purposes of this subdivision, "debt collection" means the collection of unpaid tolls and applicable administrative fees by (a) retention of a third-party debt collector or (b) collection practices undertaken by employees of a HOT lanes operator that are materially similar to a third-party debt collector.

e. The owner of such vehicle shall be given reasonable notice by way of a summons as provided in

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59 this subdivision 2 that his vehicle had been used in violation of this section, and such owner shall be
60 given notice of the time and place of the hearing and notice of the civil penalty and costs for such
61 offense.

62 It shall be prima facie evidence that the vehicle described in the summons issued pursuant to
63 subdivision 2 was operated in violation of this section. Records obtained from the Department of Motor
64 Vehicles pursuant to § 33.2-504 and certified in accordance with § 46.2-215 or from the equivalent
65 agency in another state and certified as true and correct copies by the head of such agency or his
66 designee identifying the owner of such vehicle shall give rise to a rebuttable presumption that the owner
67 of the vehicle is the person named in the summons.

68 Upon the filing of an affidavit with the court at least 14 days prior to the hearing date by the owner
69 of the vehicle stating that he was not the operator of the vehicle on the date of the violation and
70 providing the legal name and address of the operator of the vehicle at the time of the violation, a
71 summons will also be issued to the alleged operator of the vehicle at the time of the offense. The
72 affidavit shall constitute prima facie evidence that the person named in the affidavit was driving the
73 vehicle at all the relevant times relating to the matter named in the affidavit.

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

77 3. a. The HOT lanes operator may impose and collect an administrative fee in addition to the unpaid
78 toll so as to recover the expenses of collecting the unpaid toll, which administrative fee shall be
79 reasonably related to the actual cost of collecting the unpaid toll and not exceed \$100 per violation. The
80 operator of the vehicle shall pay the unpaid tolls and any administrative fee detailed in a notice or
81 invoice issued by a HOT lanes operator. If paid within 60 days of notification, the administrative fee
82 shall not exceed \$25. The HOT lanes operator shall notify the owner of the vehicle of any unpaid tolls
83 and administrative fees by mailing an invoice pursuant to § 46.2-819.6.

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

103 c. Notwithstanding subdivisions a and b, for a first conviction of an operator or owner of a vehicle
104 under this section, the total amount for the first conviction shall not exceed \$2,200, including civil
105 penalties and administrative fees regardless of the total number of offenses the operator or owner of a
106 vehicle is convicted of on that date.

107 d. Upon a finding by a court that a resident of the Commonwealth has violated this section, in the
108 event such person fails to pay the required penalties, fees, and costs, the court shall notify the
109 Commissioner of the Department of Motor Vehicles, who shall suspend all of the registration certificates
110 and license plates issued for any motor vehicles registered solely in the name of such person and shall
111 not issue any registration certificate or license plate for any other vehicle that such person seeks to
112 register solely in his name until the court has notified the Commissioner of the Department of Motor
113 Vehicles that such penalties, fees, and costs have been paid. Upon a finding by a court that a
114 nonresident of the Commonwealth has violated this section, in the event that such person fails to pay the
115 required penalties, fees, and costs, the court shall notify the Commissioner of the Department of Motor
116 Vehicles, who shall, when the vehicle is registered in a state with which the Commonwealth has entered
117 into an agreement to enforce tolling violations pursuant to § 46.2-819.9, provide to the entity authorized
118 to issue vehicle registration certificates or license plates in the state in which the vehicle is registered
119 sufficient evidence of the court's finding to take action against the vehicle registration certificate or
120 license plates in accordance with the terms of the agreement, until the court has notified the

Commissioner of the Department of Motor Vehicles that such penalties, fees, and costs have been paid. Upon receipt of such notification from the court, the Commissioner of the Department of Motor Vehicles shall notify the state where the vehicle is registered of such payment. The HOT lanes operator and the Commissioner of the Department of Motor Vehicles may enter into an agreement whereby the HOT lanes operator may reimburse the Department of Motor Vehicles for its reasonable costs to develop, implement, and maintain this enforcement mechanism, and that specifies that the Commissioner of the Department of Motor Vehicles shall have an obligation to suspend such registration certificates or to provide notice to such entities in other states so long as the HOT lanes operator makes the required reimbursements in a timely manner in accordance with the agreement.

e. An action brought under subdivision 1 or 2 shall be commenced within two years of the commission of the offense and shall be considered a traffic infraction. Except as provided in subdivisions 4 and 5, imposition of a civil penalty pursuant to this section shall not be deemed a conviction as an operator of a motor vehicle under Title 46.2 and shall not be made part of the driving record of the person upon whom such civil penalty is imposed, nor shall it be used for insurance purposes in the provision of motor vehicle insurance coverage. The provisions of § 46.2-395 shall not be applicable to any civil penalty, fee, unpaid toll, fine, or cost imposed or ordered paid under this section for a violation of subdivision 1 or 2.

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

b. Any person driving an unauthorized vehicle on the designated HOT lanes is guilty of a traffic infraction, which shall not be a moving violation, and shall be punishable as follows: for a first offense, by a fine of \$125; for a second offense within a period of five years from a first offense, by a fine of \$250; for a third offense within a period of five years from a first offense, by a fine of \$500; and for a fourth and subsequent offense within a period of five years from a first offense, by a fine of \$1,000. No person shall be subject to prosecution under both this subdivision and subdivision 1 or 2 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 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 operator 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.

§ 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 § 33.2-613, it is unlawful for the operator 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~~ *article*, 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 the toll was manned at the time *except for lanes equipped for payment of tolls through an automatic vehicle identification system*; (ii) whether the defendant was required to pay the toll with the exact amount in change; (iii) whether the defendant had the exact change to make the payment; ~~and~~ (iv) whether the defendant had been afforded appropriate advance notice, by signs or other means, that he would be required to pay a toll and pay it with the exact change; ~~(v) the failure to receive notification of the offense by mail; (vi) technical errors with an electronic toll collection device or account; or (vii) offenses occurring within such close proximity as to not allow for receipt of notification.~~ No person

182 shall be subject to both prosecution under this section and to the provisions of § 46.2-819.1 or
183 46.2-819.3 for actions arising out of the same transaction or occurrence.