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SENATE BILL NO. 958

Offered January 19, 2018

A *BILL to amend and reenact § 46.2-819.3:1 of the Code of Virginia, relating to invoice for unpaid tolls; mail.*

Patron—DeSteph

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:**1. That § 46.2-819.3:1 of the Code of Virginia is amended and reenacted as follows:****§ 46.2-819.3:1. Installation and use of video-monitoring system and automatic vehicle identification system in conjunction with all-electronic toll facilities; penalty.**

A. For purposes of this section:

"Automatic vehicle identification device" means an electronic device that communicates by wireless transmission with an automatic vehicle identification system.

"Automatic vehicle identification system" means an electronic vehicle identification system installed to work in conjunction with a toll collection device that automatically produces an electronic record of each vehicle equipped with an automatic vehicle identification device that uses a toll facility.

"Debt collection" means the collection of unpaid tolls and applicable administrative fees by (i) retention of a third-party debt collector or (ii) collection practices undertaken by employees of a toll facility operator that are materially similar to a third-party debt collector.

"Operator" means a person who was driving a vehicle that was the subject of a toll violation but who is not the owner of the vehicle.

"Operator of a toll facility other than the Department of Transportation" means any agency, political subdivision, authority, or other entity that operates a toll facility.

"Owner" means the registered owner of a vehicle on record with the Department of Motor Vehicles or with the equivalent agency in another state. "Owner" does not mean a vehicle rental or vehicle leasing company.

"Video-monitoring system" means a vehicle sensor installed to work in conjunction with a toll collection device that automatically produces one or more photographs, one or more microphotographs, a videotape, or other recorded images of each vehicle at the time it is used or operated in violation of this section.

B. The operator of any toll facility or the locality within which such toll facility is located may install and operate or cause to be installed and operated a video-monitoring system in conjunction with an automatic vehicle identification system on facilities for which tolls are collected for the use of such toll facility and that do not offer manual toll collection. A video-monitoring system shall include, but not be limited to, electronic systems that monitor and capture images of vehicles using a toll facility to enable toll collection for vehicles that do not pay using a toll collection device. The operator of a toll facility shall send an invoice for unpaid tolls in accordance with the requirements of § 46.2-819.6 to the owner of a vehicle as part of a video-monitoring toll collection process, prior to seeking remedies under this section.

C. Information collected by a video-monitoring system in conjunction with an automatic vehicle identification system installed and operated pursuant to subsection B shall be limited exclusively to that information that is necessary for the collection of unpaid tolls and establishing when violations occur, including use in any proceeding to determine whether a violation occurred. Notwithstanding any other provision of law, all images or other data collected by a video-monitoring system in conjunction with an automatic vehicle identification system shall be protected in a database with security comparable to that of the Department of Motor Vehicles' system and used exclusively for the collection of unpaid tolls and for efforts to pursue violators of this section and shall not (i) be open to the public; (ii) be sold and/or used for sales, solicitation, or marketing purposes other than those of the toll facility operator to facilitate toll payment; (iii) be disclosed to any other entity except as may be necessary for the collection of unpaid tolls or to a vehicle owner or operator as part of a challenge to the imposition of a toll; and/or (iv) be used in a court in a pending action or proceeding unless the action or proceeding relates to a violation of this section or upon order from a court of competent jurisdiction. Except as provided above, information collected under this section shall be purged and not retained later than 30 days after the collection and reconciliation of any unpaid tolls, administrative fees, and/or civil penalties. Any entity operating a video-monitoring system in conjunction with an automatic vehicle identification system shall annually certify compliance with this section and make all records pertaining to such

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59 system available for inspection and audit by the Commissioner of Highways or the Commissioner of the
60 Department of Motor Vehicles or their designee. Any violation of this subsection shall constitute a Class
61 1 misdemeanor. In addition to any fines or other penalties provided for by law, any money or other
62 thing of value obtained as a result of a violation of this section shall be forfeited to the Commonwealth.

63 If a vehicle uses a toll facility without paying the toll, the owner or operator shall be in violation of
64 this section if he refuses to pay the toll within 30 days of notification. The toll facility operator may
65 impose and collect an administrative fee in addition to the unpaid toll so as to recover the expenses of
66 collecting the unpaid toll, which administrative fee shall be reasonably related to the actual cost of
67 collecting the unpaid toll and not exceed \$100 per violation. Such fee shall not be levied upon the
68 owner or operator of the vehicle unless the toll has not been paid by the owner or operator within 30
69 days after receipt of the invoice for the unpaid toll, which nonpayment for 30 days shall constitute the
70 violation of this section. Once such a violation has occurred, the owner or operator of the vehicle shall
71 pay the unpaid tolls and any administrative fee detailed in the invoice for the unpaid toll issued by a toll
72 facility operator. If paid within 60 days of the toll violation, the administrative fee shall not exceed \$25.

73 The toll facility operator may levy charges for the direct cost of use of and processing for a
74 video-monitoring system and to cover the cost of the invoice, which are in addition to the toll and may
75 not exceed double the amount of the base toll, provided that potential toll facility users are provided
76 notice before entering the facility by conspicuous signs that clearly indicate that the toll for use of the
77 facility could be tripled for any vehicle that does not have an active, functioning automatic vehicle
78 identification device registered for and in use in the vehicle using the toll facility, and such signs are
79 posted at a location where the operator can still choose to avoid the use of the toll facility if he chooses
80 not to pay the toll.

81 A person receiving an invoice for an unpaid toll under this section may (a) pay the toll and
82 administrative fees directly to the toll facility operator or (b) file with the toll facility operator a notice,
83 on a form provided by the toll facility operator as required under subsection B of § 46.2-819.6, to
84 contest liability for a toll violation. The notice to contest liability for a toll violation may be filed by
85 any person receiving an invoice for an unpaid toll by mailing or delivering the notice to the toll facility
86 operator within 60 days of receiving such invoice for an unpaid toll. Upon receipt of such notice, the
87 toll facility operator may issue a summons pursuant to subsection I and may not seek withholding of
88 registration or renewal thereof under subsection L until a court of competent jurisdiction has found the
89 alleged violator liable for tolls under this section.

90 D. If the matter proceeds to court, the owner or operator of a vehicle shall be liable for a civil
91 penalty as follows: for a first offense, \$50; for a second offense within one year from the first offense,
92 \$100; for a third offense within two years from the second offense, \$250; and for a fourth and any
93 subsequent offense within three years from the second offense, \$500; plus, in each case, the unpaid toll,
94 all accrued administrative fees imposed by the toll facility operator, and applicable court costs if the
95 vehicle is found, as evidenced by information obtained from a video-monitoring system in conjunction
96 with an automatic vehicle identification system as provided in this section, to have used such a toll
97 facility without payment of the required toll within 30 days of receipt of the invoice for the toll.

98 E. Notwithstanding subsections C and D, for a first conviction of an operator or owner of a vehicle
99 under this section the total amount for the first conviction shall not exceed \$2,200, including civil
100 penalties and administrative fees regardless of the total number of offenses the operator or owner of a
101 vehicle is convicted of on that date.

102 F. No summons may be issued by a toll facility operator for a violation of this section unless the toll
103 facility operator can demonstrate that (i) there was an attempt to collect the unpaid tolls and applicable
104 administrative fees through debt collection not less than 30 days prior to issuance of the summons and
105 (ii) 120 days have elapsed since the unpaid toll or, in a summons for multiple violations, 120 days have
106 elapsed since the most recent unpaid toll noticed on the summons.

107 G. Any action under this section shall be brought in the general district court of the county or city in
108 which the toll facility is located and shall be commenced within two years of the commission of the
109 offense. Such action shall be considered a traffic infraction. The attorney for the Commonwealth may
110 represent the interests of the toll facility operator. Any authorized agent or employee of a toll facility
111 operator acting on behalf of a governmental entity shall be allowed the privileges accorded by
112 § 16.1-88.03 in such cases.

113 H. Proof of a violation of this section shall be evidenced by information obtained from a
114 video-monitoring system or automatic vehicle identification system as provided in this section. A
115 certificate, sworn to or affirmed by a technician employed or authorized by the operator of a toll facility
116 or by the locality wherein the toll facility is located, or a facsimile of such a certificate, based on
117 inspection of photographs, microphotographs, videotapes, or other recorded images produced by a
118 video-monitoring system or of electronic data collected by an automatic vehicle identification system,
119 shall be prima facie evidence of the facts contained therein. Any photographs, microphotographs,
120 videotape, or other recorded images or electronic data evidencing such a violation shall be available for

inspection in any proceeding to adjudicate the liability for such violation under this section. A record of communication by an automatic vehicle identification device with the automatic vehicle identification system at the time of a violation of this section shall be prima facie evidence that the automatic vehicle identification device was located in the vehicle registered to use such device in the records of the Department of Transportation.

I. On a form prescribed by the Supreme Court, a summons for a violation of this section may be executed as provided in § 19.2-76.2. 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 unpaid tolls 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 subsection J, 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.

J. Upon a finding by a court of competent jurisdiction that the vehicle described in the summons issued pursuant to subsection I was in violation of this section, the court shall impose a civil penalty upon the owner or operator of such vehicle in accordance with the amounts specified in subsection D, together with applicable court costs, the operator's administrative fee, and the toll due. Penalties assessed as the result of action initiated by the Department of Transportation shall be remanded by the clerk of the court that adjudicated the action to the Department of Transportation's Toll Facilities Revolving Account. Penalties assessed as the result of action initiated by an operator of a toll facility other than the Department of Transportation shall be remanded by the clerk of the court that adjudicated the action to the treasurer or director of finance of the county or city in which the violation occurred for payment to the toll facility operator.

The owner of such vehicle shall be given reasonable notice by way of a summons as provided in subsection I 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 as well as the civil penalty and costs for such offense.

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

Upon the filing of an affidavit by the owner of the vehicle with the toll facility operator within 14 days of receipt of an invoice for unpaid toll or a summons stating that such owner was not the operator of the vehicle on the date of the violation and providing the legal name and address of the operator of the vehicle at the time of the violation, an invoice for unpaid toll or summons, whichever the case may be, will also be issued to the alleged operator of the vehicle at the time of the offense.

In any action against a vehicle operator, an affidavit made by the owner providing the name and address of the vehicle operator at the time of the violation shall constitute prima facie evidence that the person named in the affidavit was operating the vehicle at all the relevant times relating to the matter named in the affidavit.

If the owner of the vehicle produces for the toll facility operator or the court 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 offense and remained stolen at the time of the alleged offense, then the toll facility operator shall not pursue the owner for the unpaid toll contained in the invoice for unpaid toll or the court shall dismiss the summons issued to the owner of the vehicle.

K. Upon a finding by a court that a person has two or more unpaid tolls and such person fails to pay the required penalties, fees, and unpaid tolls, then the court or toll facility operator shall notify the Commissioner of the Department of Motor Vehicles, who shall refuse to issue or renew any vehicle registration certificate of any applicant or the license plate issued for the vehicle driven in the commission of the offense or, when the vehicle is registered in a state with which the Commonwealth has entered into an agreement to enforce tolling violations pursuant to § 46.2-819.9, who shall provide to the entity authorized to issue vehicle registration certificates or license plates in the state in which the vehicle is registered sufficient evidence of the court's finding to take action against the vehicle registration certificate or license plates in accordance with the terms of the agreement, until the court has notified the Commissioner that such penalties, fees, and unpaid tolls 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. If it is proven that the vehicle owner was not the operator at the time of the offense and upon a finding by a court that the person identified in an affidavit pursuant to subsection J as the operator violated this section and such person fails to pay the

182 required penalties, fees, and unpaid tolls, the court shall notify the Commissioner, who shall refuse to
183 issue or renew any vehicle registration certificate of any applicant or the license plate issued for any
184 vehicle owned or co-owned by such person or, when such vehicle is registered in a state with which the
185 Commonwealth has entered into an agreement to enforce tolling violations pursuant to § 46.2-819.9, who
186 shall provide to the entity authorized to issue vehicle registration certificates or license plates in the state
187 in which the vehicle is registered sufficient evidence of the court's finding to take action against the
188 vehicle registration certificate or license plates in accordance with the terms of the agreement, until the
189 court has notified the Commissioner that such penalties, fees, and unpaid tolls have been paid. Upon
190 receipt of such notification from the court, the Commissioner of the Department of Motor Vehicles shall
191 notify the state where the vehicle is registered of such payment. Such funds representing payment of
192 unpaid tolls and all administrative fees of the toll facility operator shall be transferred from the court to
193 the Department of Transportation's Toll Facilities Revolving Account or, in the case of an action
194 initiated by an operator of a toll facility other than the Department of Transportation, to the treasurer or
195 director of finance of the county or city in which the violation occurred for payment to the toll facility
196 operator. The Commissioner shall collect a \$40 administrative fee from the owner or operator of the
197 vehicle to defray the cost of processing and removing an order to deny registration or registration
198 renewal.

199 L. If an owner of a vehicle has received at least one invoice for two or more unpaid tolls in
200 accordance with § 46.2-819.6 by ~~certified~~ *first-class* mail and has (i) failed to pay the unpaid tolls and
201 administrative fees and (ii) failed to file a notice to contest liability for a toll violation, then the toll
202 facility operator may notify the Commissioner, who shall, if no form contesting liability has been timely
203 filed with the toll facility operator pursuant to this section, refuse to issue or renew the vehicle
204 registration certificate of any applicant therefor or the license plate issued for any vehicle driven in the
205 commission of the offense until the toll facility operator has notified the Commissioner that such fees
206 and unpaid tolls have been paid. *A rebuttable presumption that the owner has received the invoice is*
207 *created if the toll facility operator presents either a United States postal certificate of mailing or a*
208 *certificate of service confirming such mailing.*

209 If the vehicle owner was not the operator at the time of the offense and the person identified in an
210 affidavit pursuant to subsection J as the operator has received at least one invoice for two or more
211 unpaid tolls in accordance with § 46.2-819.6 by ~~certified~~ *first-class* mail and such person has (a) failed
212 to pay the unpaid tolls and administrative fees and (b) failed to file a notice to contest liability for a toll
213 violation, then the toll facility operator may notify the Commissioner, who shall, if no form contesting
214 liability has been timely filed with the toll facility operator pursuant to this section, refuse to issue or
215 renew any vehicle registration certificate of any applicant therefor or the license plate issued for any
216 vehicle owned or co-owned by such person until the toll facility operator has notified the Commissioner
217 that such fees and unpaid tolls have been paid. *A rebuttable presumption that the operator has received*
218 *the invoice is created if the toll facility operator presents either a United States postal certificate of*
219 *mailing or a certificate of service confirming such mailing.*

220 The Commissioner may only refuse to issue or renew any vehicle registration pursuant to this
221 subsection upon the request of a toll facility operator if such toll facility operator has entered into an
222 agreement with the Commissioner whereby the Commissioner will refuse to issue or renew any vehicle
223 registration of any applicant therefor who owes unpaid tolls and administrative fees to the toll facility
224 operator. The toll facility operator seeking to collect unpaid tolls and administrative fees through the
225 withholding of registration or renewal thereof by the Commissioner as provided for in this subsection
226 shall notify the Commissioner in the manner provided for in his agreement with the Commissioner and
227 supply to the Commissioner information necessary to identify the violator whose registration or renewal
228 is to be denied. The Commissioner shall charge a \$40 fee to defray the cost of processing and
229 withholding the registration or registration renewal, and the toll facility operator may add this fee to the
230 amount of the unpaid tolls and administrative fees. Any agreement entered into pursuant to the
231 provisions of this subsection shall provide for the Department to send the violator notice of the intent to
232 deny renewal of registration at least 30 days prior to the expiration date of a current vehicle registration
233 and such notice shall include a form, as required under subsection B of § 46.2-819.6, to contest liability
234 of the underlying toll violation. The notice provided by the Commissioner shall include instructions for
235 filing the form to contest liability with the toll facility operator within 21 days after the date of mailing
236 of the Commissioner's notice. Upon timely receipt of the form, the toll facility operator shall notify the
237 Commissioner, who shall refrain from withholding the registration or renewal thereof, after which the
238 toll facility operator may proceed to issue a summons for unpaid toll. For the purposes of this
239 subsection, notice by first-class mail to the registrant's address as maintained in the records of the
240 Department shall be deemed sufficient.

241 M. Any vehicle rental or vehicle leasing company, if it receives an invoice for unpaid toll or is
242 named in a summons, shall be released as a party to the action if it provides the operator of the toll
243 facility a copy of the vehicle rental agreement or lease or an affidavit identifying the renter or lessee

244 within 30 days of receipt of the invoice or summons. Upon receipt of such rental agreement, lease, or
245 affidavit, an invoice for unpaid toll shall be mailed to the renter or lessee identified therein. Release of
246 this information shall not be deemed a violation of any provision of the Government Data Collection
247 and Dissemination Practices Act (§ 2.2-3800 et seq.) or the Insurance Information and Privacy Protection
248 Act (§ 38.2-600 et seq.). The toll facility operator shall allow at least 30 days from the date of such
249 mailing before pursuing other remedies under this section. In any action against the vehicle operator, a
250 copy of the vehicle rental agreement, lease, or affidavit identifying the renter or lessee of the vehicle at
251 the time of the violation is prima facie evidence that the person named in the rental agreement, lease, or
252 affidavit was operating the vehicle at all the relevant times relating to the matter named in the summons.

253 N. Imposition of a civil penalty pursuant to this section shall not be deemed a conviction as an
254 operator and shall not be made part of the driving record of the person upon whom such civil penalty is
255 imposed, nor shall it be used for insurance purposes in the provision of motor vehicle insurance
256 coverage. The provisions of § 46.2-395 shall not be applicable to any civil penalty, fee, unpaid toll, fine,
257 or cost imposed or ordered paid under this section for a violation of this section.

258 O. The toll facility operator may offer to the owner an option to pay the unpaid toll and fees plus a
259 reduced civil penalty of \$25 for a first or second offense or \$50 for a third, fourth, or subsequent
260 offense, as specified on the summons, provided the owner actually pays to the toll facility operator the
261 entire amount so calculated at least 14 days prior to the hearing date specified on the summons. If the
262 owner accepts such offer and such amount is actually received by the toll facility operator at least 14
263 days prior to the hearing date specified on the summons, the toll facility operator shall move the court
264 at least five business days prior to the date set for trial to dismiss the summons issued to the owner of
265 the vehicle, and the court shall dismiss upon such motion.

266 P. The operator of a toll facility may enter into an agreement with the Department, in accordance
267 with the provisions of subdivision B 21 of § 46.2-208, to obtain vehicle owner information regarding
268 the owners of vehicles that fail to pay tolls required for the use of toll facilities and with the Department
269 of Transportation to obtain any information that is necessary to conduct electronic toll collection. Such
270 agreement may include any information that may be obtained by the Department of Motor Vehicles in
271 accordance with any agreement entered into pursuant to § 46.2-819.9. Information provided to the
272 operator of a toll facility shall be used only for the collection of unpaid tolls, and the operator of the
273 toll facility shall be subject to the same conditions and penalties regarding release of the information as
274 contained in subsection C.

275 Q. No person shall be subject to both the provisions of this section and to prosecution under
276 § 46.2-819 for actions arising out of the same transaction or occurrence.