

23107136D

HOUSE BILL NO. 1437

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Transportation
on February 16, 2023)

(Patron Prior to Substitute—Delegate Wiley)

A BILL to amend and reenact § 33.2-210 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 33.2-216.1, relating to installation, maintenance, and operation of devices in highway right-of-way for law-enforcement purposes; regulation authority; civil penalty; report.

Be it enacted by the General Assembly of Virginia:

1. That § 33.2-210 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 33.2-216.1 as follows:

§ 33.2-210. Traffic regulations; penalty.

A. The Board shall have the power and duty to make regulations that are not in conflict with the laws of the Commonwealth for the protection of and covering traffic on and for the use of systems of state highways and shall have the authority to add to, amend, or repeal such regulations. *The use of systems of state highways shall include the use of devices in the right-of-way of such highways for law-enforcement purposes as provided in § 33.2-216.1.*

B. The regulations, together with any additions or amendments thereto, prescribed by the Board under the authority of this section shall have the force and effect of law, and any person, firm, or corporation violating any such regulation or any addition or amendment thereto is guilty of a misdemeanor punishable by a fine of not less than \$5 nor more than \$100 for each offense. Such person shall be civilly liable to the Commonwealth for the actual damage sustained by the Commonwealth by reason of his wrongful act. Such damages may be recovered at the suit of the Board and, when collected, paid into the state treasury to the credit of the Department. Any regulations promulgated by the Board shall be developed in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) except when specifically exempted by law.

§ 33.2-216.1. Installation, maintenance, and operation of devices in highway right-of-way; civil penalty.

A. As used in this section, "law-enforcement purposes" means an active felony investigation, an effort to prevent a targeted act of violence, or an attempt to locate missing, endangered, or wanted persons by law enforcement through the identification of a motor vehicle but shall not include the enforcement of speed limits, traffic regulations, tolling requirements, or high-occupancy vehicle requirements.

B. The Department of State Police or the chief law-enforcement officer of a locality may install, maintain, and operate devices for law-enforcement purposes in the right-of-way of only those highways under the jurisdiction of the Board or the Department, in accordance with the provisions of this section and upon compliance with the regulations of the Board governing activities in the right-of-way as authorized by § 33.2-210.

C. Notwithstanding subsection B, the Department of State Police shall have sole and exclusive authority to install, maintain, and operate devices for law-enforcement purposes in the right-of-way of any limited access highway or any bridge, tunnel, or special structure under the jurisdiction of the Board or the Department, in accordance with the provisions of this section and upon compliance with the regulations of the Board governing activities in the right-of-way as authorized by § 33.2-210.

D. The Department of State Police and the chief law-enforcement officer of a locality, on behalf of a locality's law-enforcement agency, may enter into agreements with private vendors for the installation and maintenance of devices, including all related support services such as operations and administration.

E. The data collected by the devices set forth in subsections B and C shall be maintained for no more than 30 days following its collection and shall be deleted unless such data is being used in an active law-enforcement investigation or another provision of law establishes a different data retention requirement or limitation. Notwithstanding any other provision of law, all videos, images, or other data or information collected by such devices shall be used exclusively for law-enforcement purposes and shall not be (i) open to the public; (ii) sold or used for sales, solicitation, or marketing purposes; (iii) disclosed to any other entity except as may be necessary for law-enforcement purposes and consistent with the requirements of this section; or (iv) used in a court in a pending action or proceeding unless the action or proceeding relates to a criminal violation or such data or information is requested upon order from a court of competent jurisdiction. All data collected shall be confidential and for law-enforcement purposes only. Such data may be shared only with state, local, and federal law-enforcement agencies for investigative purposes pursuant to a written agreement with the agency or department collecting that data. Data and information collected shall be limited exclusively to data and

60 information about (a) the make, model, condition, location, and color of a vehicle and the information
61 on the vehicle's license plate and (b) the date and time the data and information was collected.

62 F. In addition to any other penalty under law, any person or private entity that violates the data and
63 information collection and destruction requirements of this section or discloses personal information in
64 violation of this section shall be subject to a civil penalty of \$1,000 per disclosure, and such violation
65 shall be grounds for revocation by the Board and the Department of all permits for devices issued to
66 such person or private entity.

67 G. The provisions of this section shall not prevent or limit the use of any device that is authorized
68 for use by any other provision of law.

69 **2. That the Department of Transportation shall convene a work group to examine and develop**
70 **recommendations related to the proper use of devices and systems authorized by the Code of**
71 **Virginia to produce photographs, microphotographs, videotapes, or other recorded images of**
72 **vehicles used or operated on the highways of the Commonwealth for traffic enforcement or**
73 **law-enforcement purposes. The work group shall review policies and requirements for government**
74 **entities and third-party vendors regarding the protection and retention of data produced by such**
75 **devices and systems and identify appropriate protections for such data, retention schedules for**
76 **such data, enforcement mechanisms for such data protections, and agencies or entities to provide**
77 **oversight for such data collection and use. The members of the work group shall include**
78 **representatives of the Department of Criminal Justice Services, the Department of State Police,**
79 **and any other relevant stakeholders. The work group shall complete its meetings and submit its**
80 **findings and recommendations, if any, to the Chairmen of the Senate and House Committees on**
81 **Transportation by December 1, 2023.**