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SENATE BILL NO. 1536

Offered January 20, 2017

A BILL to amend and reenact §§ 33.2-503, 46.2-819.1, and 46.2-819.3:1 of the Code of Virginia, relating to toll facility operators in Planning District 8.

Patron—McPike

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That §§ 33.2-503, 46.2-819.1, and 46.2-819.3:1 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, \$50; for a second
90 offense, \$100; for a third offense within a period of two years of the second offense, \$250; and for a
91 fourth and subsequent offense within a period of three years of the second offense, \$500, together with,
92 in each case, the unpaid toll, all accrued administrative fees imposed by the HOT lanes operator as
93 authorized by this section, and applicable court costs. The court shall remand penalties, the unpaid toll,
94 and administrative fees assessed for violation of this section to the treasurer or director of finance of the
95 county or city in which the violation occurred for payment to the HOT lanes operator for expenses
96 associated with operation of the HOT lanes and payments against any bonds or other liens issued as a
97 result of the construction of the HOT lanes. No person shall be subject to prosecution under both
98 subdivisions 1 and 2 for actions arising out of the same transaction or occurrence.

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

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

121 HOT lanes operator may reimburse the Department of Motor Vehicles for its reasonable costs to
 122 develop, implement, and maintain this enforcement mechanism, and that specifies that the Commissioner
 123 of the Department of Motor Vehicles shall have an obligation to suspend such registration certificates or
 124 to provide notice to such entities in other states so long as the HOT lanes operator makes the required
 125 reimbursements in a timely manner in accordance with the agreement.

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

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

138 b. Any person driving an unauthorized vehicle on the designated HOT lanes is guilty of a traffic
 139 infraction, which shall not be a moving violation, and shall be punishable as follows: for a first offense,
 140 by a fine of \$125; for a second offense within a period of five years from a first offense, by a fine of
 141 \$250; for a third offense within a period of five years from a first offense, by a fine of \$500; and for a
 142 fourth and subsequent offense within a period of five years from a first offense, by a fine of \$1,000. No
 143 person shall be subject to prosecution under both this subdivision and subdivision 1 or 2 for actions
 144 arising out of the same transaction or occurrence.

145 Upon a conviction under this subdivision, the court shall furnish to the Commissioner of the
 146 Department of Motor Vehicles, in accordance with § 46.2-383, an abstract of the record of such
 147 conviction, which shall become a part of the person's driving record. Notwithstanding the provisions of
 148 § 46.2-492, no driver demerit points shall be assessed for any violation of this subdivision, except that
 149 persons convicted of a second, third, fourth, or subsequent violation within five years of a first offense
 150 shall be assessed three demerit points for each such violation.

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

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

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

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

164 *The operator of a toll facility located in Planning District 8 that uses dynamic pricing shall notify*
 165 *motorists using smart roadway technologies of the toll price and estimated travel time for each posted*
 166 *destination.*

167 **§ 46.2-819.1. Installation and use of photo-monitoring system or automatic vehicle identification**
 168 **system in conjunction with electronic or manual toll facilities; penalty.**

169 A. For purposes of this section:

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

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

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

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

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

182 leasing company.

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

187 B. The operator of any toll facility or the locality within which such toll facility is located may
188 install and operate or cause to be installed and operated a photo-monitoring system or automatic vehicle
189 identification system, or both, at locations where tolls are collected for the use of such toll facility. The
190 operator of a toll facility shall send an invoice or bill for unpaid tolls to the owner of a vehicle as part
191 of an electronic or manual toll collection process pursuant to § 46.2-819.6 prior to seeking remedies
192 under this section. *The operator of a toll facility located in Planning District 8 that uses dynamic*
193 *pricing shall notify motorists using smart roadway technologies of the toll price and estimated travel*
194 *time for each posted destination.*

195 C. Information collected by a photo-monitoring system or automatic vehicle identification system
196 installed and operated pursuant to subsection B shall be limited exclusively to that information that is
197 necessary for the collection of unpaid tolls. Notwithstanding any other provision of law, all photographs,
198 microphotographs, electronic images, or other data collected by a photo-monitoring system or automatic
199 vehicle identification system shall be used exclusively for the collection of unpaid tolls and shall not (i)
200 be open to the public; (ii) be sold and/or used for sales, solicitation, or marketing purposes; (iii) be
201 disclosed to any other entity except as may be necessary for the collection of unpaid tolls or to a vehicle
202 owner or operator as part of a challenge to the imposition of a toll; and (iv) be used in a court in a
203 pending action or proceeding unless the action or proceeding relates to a violation of this section or
204 upon order from a court of competent jurisdiction. Information collected under this section shall be
205 purged and not retained later than 30 days after the collection and reconciliation of any unpaid tolls,
206 administrative fees, and/or civil penalties. Any entity operating a photo-monitoring system or automatic
207 vehicle identification system shall annually certify compliance with this section and make all records
208 pertaining to such system available for inspection and audit by the Commissioner of Highways or the
209 Commissioner of the Department of Motor Vehicles or their designee. Any violation of this subsection
210 shall constitute a Class 1 misdemeanor. In addition to any fines or other penalties provided for by law,
211 any money or other thing of value obtained as a result of a violation of this section shall be forfeited to
212 the Commonwealth.

213 The toll facility operator may impose and collect an administrative fee in addition to the unpaid toll
214 so as to recover the expenses of collecting the unpaid toll, which administrative fee shall be reasonably
215 related to the actual cost of collecting the unpaid toll and not exceed \$100 per violation. Such fee may
216 be levied upon the operator of the vehicle after the first unpaid toll has been documented. The operator
217 of the vehicle shall pay the unpaid toll and any administrative fee detailed in an invoice for the unpaid
218 toll issued by a toll facility operator. If paid within 60 days of notification, the administrative fee shall
219 not exceed \$25.

220 D. If the matter proceeds to court, the owner or operator of a vehicle shall be liable for a civil
221 penalty as follows: for a first offense, \$50; for a second offense within one year from the first offense,
222 \$100; for a third offense within two years from the second offense, \$250; and for a fourth and any
223 subsequent offense within three years from the second offense, \$500 plus, in each case, the unpaid toll,
224 all accrued administrative fees imposed by the toll facility operator, and applicable court costs if the
225 vehicle is found, as evidenced by information obtained from a photo-monitoring system or automatic
226 vehicle identification system as provided in this section, to have used such a toll facility without
227 payment of the required toll.

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

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

237 G. Any action under this section shall be brought in the general district court of the county or city in
238 which the toll facility is located and shall be commenced within two years of the commission of the
239 offense. Such action shall be considered a traffic infraction. The attorney for the Commonwealth may
240 represent the interests of the toll facility operator. Any authorized agent or employee of a toll facility
241 operator acting on behalf of a governmental entity shall be allowed the privileges accorded by
242 § 16.1-88.03 in such cases.

243 H. Proof of a violation of this section shall be evidenced by information obtained from a

244 photo-monitoring system or automatic vehicle identification system as provided in this section. A
 245 certificate, sworn to or affirmed by a technician employed or authorized by the operator of a toll facility
 246 or by the locality wherein the toll facility is located, or a facsimile of such a certificate, based on
 247 inspection of photographs, microphotographs, videotapes, or other recorded images produced by a
 248 photo-monitoring system, or of electronic data collected by an automatic vehicle identification system,
 249 shall be prima facie evidence of the facts contained therein. Any photographs, microphotographs,
 250 videotape, or other recorded images or electronic data evidencing such a violation shall be available for
 251 inspection in any proceeding to adjudicate the liability for such violation under this section. A record of
 252 communication by an automatic vehicle identification device with the automatic vehicle identification
 253 system at the time of a violation of this section shall be prima facie evidence that the automatic vehicle
 254 identification device was located in the vehicle registered to use such device in the records of the
 255 Department of Transportation.

256 I. On a form prescribed by the Supreme Court, a summons for a violation of this section may be
 257 executed as provided in § 19.2-76.2. A summons for a violation of this section may set forth multiple
 258 violations occurring within one jurisdiction. Notwithstanding the provisions of § 19.2-76, a summons for
 259 a violation of this section may be executed by mailing by first-class mail a copy thereof to the address
 260 of the owner or, if the owner has named and provided a valid address for the operator of the vehicle at
 261 the time of the violation in an affidavit executed pursuant to this subsection, such named operator of the
 262 vehicle. Such summons shall be signed either originally or by electronic signature. If the summoned
 263 person fails to appear on the date of return set out in the summons mailed pursuant to this section, the
 264 summons shall be executed in the manner set out in § 19.2-76.3.

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

275 The owner of such vehicle shall be given reasonable notice by way of a summons as provided in this
 276 subsection that his vehicle had been used in violation of this section, and such owner shall be given
 277 notice of the time and place of the hearing as well as the civil penalty and costs for such offense. The
 278 toll facility operator may offer to the owner an option to pay the unpaid toll and fees plus a reduced
 279 civil penalty of \$25 for a first or second offense or \$50 for a third, fourth, or subsequent offense, as
 280 specified on the summons, provided the owner actually pays to the toll facility operator the entire
 281 amount so calculated at least 14 days prior to the hearing date specified on the summons. If the owner
 282 accepts such offer and such amount is actually received by the toll facility operator at least 14 days
 283 prior to the hearing date specified on the summons, the toll facility operator shall move the court at least
 284 five business days prior to the date set for trial to dismiss the summons issued to the owner of the
 285 vehicle, and the court shall dismiss upon such motion.

286 It shall be prima facie evidence that the vehicle described in the summons issued pursuant to this
 287 subsection was operated in violation of this section. Records obtained from the Department of Motor
 288 Vehicles pursuant to § 46.2-208 and certified in accordance with § 46.2-215 or from the equivalent
 289 agency in another state and certified as true and correct copies by the head of such agency or his
 290 designee identifying the owner of such vehicle shall give rise to a rebuttable presumption that the owner
 291 of the vehicle is the person named in the summons.

292 Upon either (i) the filing of an affidavit with the toll facility operator within 14 days of receipt of an
 293 invoice for an unpaid toll from the toll facility operator or (ii) the filing of an affidavit with the court at
 294 least 14 days prior to the hearing date by the owner of the vehicle stating that he was not the operator
 295 of the vehicle on the date of the violation and providing the legal name and address of the operator of
 296 the vehicle at the time of the violation, an invoice and/or summons, as appropriate, will also be issued
 297 to the alleged operator of the vehicle at the time of the offense.

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

302 If the owner of the vehicle produces for the toll facility operator or the court a certified copy of a
 303 police report showing that the vehicle had been reported to the police as stolen prior to the time of the
 304 alleged offense and remained stolen at the time of the alleged offense, then the toll facility operator

305 shall not pursue the owner for the unpaid toll and, if a summons has been issued, the court shall dismiss
306 the summons issued to the owner of the vehicle.

307 J. Upon a finding by a court that a person has two or more unpaid tolls and such person fails to pay
308 the required penalties, fees, and unpaid tolls, the court shall notify the Commissioner of the Department
309 of Motor Vehicles, who shall refuse to issue or renew any vehicle registration certificate of any
310 applicant or the license plate issued for the vehicle driven in the commission of the offense or, when the
311 vehicle is registered in a state with which the Commonwealth has entered into an agreement to enforce
312 tolling violations pursuant to § 46.2-819.9, who shall provide to the entity authorized to issue vehicle
313 registration certificates or license plates in the state in which the vehicle is registered sufficient evidence
314 of the court's finding to take action against the vehicle registration certificate or license plates in
315 accordance with the terms of the agreement, until the court has notified the Commissioner that such
316 penalties, fees, and unpaid tolls have been paid. Upon receipt of such notification from the court, the
317 Commissioner of the Department of Motor Vehicles shall notify the state where the vehicle is registered
318 of such payment. If it is proven that the vehicle owner was not the operator at the time of the offense
319 and upon a finding by a court that the person identified in an affidavit pursuant to subsection I as the
320 operator violated this section and such person fails to pay the required penalties, fees, and unpaid tolls,
321 the court shall notify the Commissioner, who shall refuse to issue or renew any vehicle registration
322 certificate of any applicant or the license plate issued for any vehicle owned or co-owned by such
323 person or, when such vehicle is registered in a state with which the Commonwealth has entered into an
324 agreement to enforce tolling violations pursuant to § 46.2-819.9, who shall provide to the entity
325 authorized to issue vehicle registration certificates or license plates in the state in which the vehicle is
326 registered sufficient evidence of the court's finding to take action against the vehicle registration
327 certificate or license plates in accordance with the terms of the agreement, until the court has notified
328 the Commissioner that such penalties, fees, and unpaid tolls have been paid. Upon receipt of such
329 notification from the court, the Commissioner of the Department of Motor Vehicles shall notify the state
330 where the vehicle is registered of such payment. Such funds representing payment of unpaid tolls and all
331 administrative fees of the toll facility operator shall be transferred from the court to the Department of
332 Transportation's Toll Facilities Revolving Account or, in the case of an action initiated by an operator of
333 a toll facility other than the Department of Transportation, to the treasurer or director of finance of the
334 county or city in which the violation occurred for payment to the toll facility operator. The
335 Commissioner shall collect a \$40 administrative fee from the owner or operator of the vehicle to defray
336 the cost of processing and removing an order to deny registration or registration renewal.

337 K. Any vehicle rental or vehicle leasing company, if it receives an invoice or is named in a
338 summons, shall be released as a party to the action if it provides the operator of the toll facility a copy
339 of the vehicle rental agreement or lease or an affidavit identifying the renter or lessee within 30 days of
340 receipt of the invoice or at least 14 days prior to the date of hearing set forth in the summons. Upon
341 receipt of such rental agreement, lease, or affidavit, a notice shall be mailed to the renter or lessee
342 identified therein. Release of this information shall not be deemed a violation of any provision of the
343 Government Data Collection and Dissemination Practices Act (§ 2.2-3800 et seq.) or the Insurance
344 Information and Privacy Protection Act (§ 38.2-600 et seq.). The toll facility operator shall allow at least
345 30 days from the date of such mailing before pursuing other remedies under this section. In any action
346 against the vehicle operator, a copy of the vehicle rental agreement, lease, or affidavit identifying the
347 renter or lessee of the vehicle at the time of the violation is prima facie evidence that the person named
348 in the rental agreement, lease, or affidavit was operating the vehicle at all the relevant times relating to
349 the matter named in the summons.

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

355 M. The operator of a toll facility may enter into an agreement with the Department of Motor
356 Vehicles, in accordance with the provisions of subdivision B 21 of § 46.2-208, to obtain vehicle owner
357 information regarding the owners of vehicles that fail to pay tolls required for the use of toll facilities
358 and with the Department of Transportation to obtain any information that is necessary to conduct
359 electronic toll collection. Such agreement may include any information that may be obtained by the
360 Department of Motor Vehicles in accordance with any agreement entered into pursuant to § 46.2-819.9.
361 Information provided to the operator of a toll facility shall only be used for the collection of unpaid tolls
362 and the operator of the toll facility shall be subject to the same conditions and penalties regarding
363 release of the information as contained in subsection C.

364 N. No person shall be subject to both the provisions of this section and to prosecution under
365 § 46.2-819 for actions arising out of the same transaction or occurrence.

366 **§ 46.2-819.3:1. Installation and use of video-monitoring system and automatic vehicle**

367 **identification system in conjunction with all-electronic toll facilities; penalty.**

368 A. For purposes of this section:

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

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

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

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

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

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

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

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

397 C. Information collected by a video-monitoring system in conjunction with an automatic vehicle
398 identification system installed and operated pursuant to subsection B shall be limited exclusively to that
399 information that is necessary for the collection of unpaid tolls and establishing when violations occur,
400 including use in any proceeding to determine whether a violation occurred. Notwithstanding any other
401 provision of law, all images or other data collected by a video-monitoring system in conjunction with an
402 automatic vehicle identification system shall be protected in a database with security comparable to that
403 of the Department of Motor Vehicles' system and used exclusively for the collection of unpaid tolls and
404 for efforts to pursue violators of this section and shall not (i) be open to the public; (ii) be sold and/or
405 used for sales, solicitation, or marketing purposes other than those of the toll facility operator to
406 facilitate toll payment; (iii) be disclosed to any other entity except as may be necessary for the
407 collection of unpaid tolls or to a vehicle owner or operator as part of a challenge to the imposition of a
408 toll; and/or (iv) be used in a court in a pending action or proceeding unless the action or proceeding
409 relates to a violation of this section or upon order from a court of competent jurisdiction. Except as
410 provided above, information collected under this section shall be purged and not retained later than 30
411 days after the collection and reconciliation of any unpaid tolls, administrative fees, and/or civil penalties.
412 Any entity operating a video-monitoring system in conjunction with an automatic vehicle identification
413 system shall annually certify compliance with this section and make all records pertaining to such
414 system available for inspection and audit by the Commissioner of Highways or the Commissioner of the
415 Department of Motor Vehicles or their designee. Any violation of this subsection shall constitute a Class
416 1 misdemeanor. In addition to any fines or other penalties provided for by law, any money or other
417 thing of value obtained as a result of a violation of this section shall be forfeited to the Commonwealth.

418 If a vehicle uses a toll facility without paying the toll, the owner or operator shall be in violation of
419 this section if he refuses to pay the toll within 30 days of notification. The toll facility operator may
420 impose and collect an administrative fee in addition to the unpaid toll so as to recover the expenses of
421 collecting the unpaid toll, which administrative fee shall be reasonably related to the actual cost of
422 collecting the unpaid toll and not exceed \$100 per violation. Such fee shall not be levied upon the
423 owner or operator of the vehicle unless the toll has not been paid by the owner or operator within 30
424 days after receipt of the invoice for the unpaid toll, which nonpayment for 30 days shall constitute the
425 violation of this section. Once such a violation has occurred, the owner or operator of the vehicle shall
426 pay the unpaid tolls and any administrative fee detailed in the invoice for the unpaid toll issued by a toll
427 facility operator. If paid within 60 days of the toll violation, the administrative fee shall not exceed \$25.

428 The toll facility operator may levy charges for the direct cost of use of and processing for a
429 video-monitoring system and to cover the cost of the invoice, which are in addition to the toll and may
430 not exceed double the amount of the base toll, provided that potential toll facility users are provided
431 notice before entering the facility by conspicuous signs that clearly indicate that the toll for use of the
432 facility could be tripled for any vehicle that does not have an active, functioning automatic vehicle
433 identification device registered for and in use in the vehicle using the toll facility, and such signs are
434 posted at a location where the operator can still choose to avoid the use of the toll facility if he chooses
435 not to pay the toll. *The operator of a toll facility located in Planning District 8 that uses dynamic*
436 *pricing shall notify motorists using smart roadway technologies of the toll price and estimated travel*
437 *time for each posted destination.*

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

447 D. If the matter proceeds to court, the owner or operator of a vehicle shall be liable for a civil
448 penalty as follows: for a first offense, \$50; for a second offense within one year from the first offense,
449 \$100; for a third offense within two years from the second offense, \$250; and for a fourth and any
450 subsequent offense within three years from the second offense, \$500; plus, in each case, the unpaid toll,
451 all accrued administrative fees imposed by the toll facility operator, and applicable court costs if the
452 vehicle is found, as evidenced by information obtained from a video-monitoring system in conjunction
453 with an automatic vehicle identification system as provided in this section, to have used such a toll
454 facility without payment of the required toll within 30 days of receipt of the invoice for the toll.

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

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

464 G. Any action under this section shall be brought in the general district court of the county or city in
465 which the toll facility is located and shall be commenced within two years of the commission of the
466 offense. Such action shall be considered a traffic infraction. The attorney for the Commonwealth may
467 represent the interests of the toll facility operator. Any authorized agent or employee of a toll facility
468 operator acting on behalf of a governmental entity shall be allowed the privileges accorded by
469 § 16.1-88.03 in such cases.

470 H. Proof of a violation of this section shall be evidenced by information obtained from a
471 video-monitoring system or automatic vehicle identification system as provided in this section. A
472 certificate, sworn to or affirmed by a technician employed or authorized by the operator of a toll facility
473 or by the locality wherein the toll facility is located, or a facsimile of such a certificate, based on
474 inspection of photographs, microphotographs, videotapes, or other recorded images produced by a
475 video-monitoring system or of electronic data collected by an automatic vehicle identification system,
476 shall be prima facie evidence of the facts contained therein. Any photographs, microphotographs,
477 videotape, or other recorded images or electronic data evidencing such a violation shall be available for
478 inspection in any proceeding to adjudicate the liability for such violation under this section. A record of
479 communication by an automatic vehicle identification device with the automatic vehicle identification
480 system at the time of a violation of this section shall be prima facie evidence that the automatic vehicle
481 identification device was located in the vehicle registered to use such device in the records of the
482 Department of Transportation.

483 I. On a form prescribed by the Supreme Court, a summons for a violation of this section may be
484 executed as provided in § 19.2-76.2. A summons for a violation of this section may set forth multiple
485 violations occurring within one jurisdiction. Notwithstanding the provisions of § 19.2-76, a summons for
486 a violation of unpaid tolls may be executed by mailing by first-class mail a copy thereof to the address
487 of the owner or, if the owner has named and provided a valid address for the operator of the vehicle at
488 the time of the violation in an affidavit executed pursuant to subsection J, such named operator of the
489 vehicle. Such summons shall be signed either originally or by electronic signature. If the summoned

490 person fails to appear on the date of return set out in the summons mailed pursuant to this section, the
491 summons shall be executed in the manner set out in § 19.2-76.3.

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

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

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

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

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

520 If the owner of the vehicle produces for the toll facility operator or the court a certified copy of a
521 police report showing that the vehicle had been reported to the police as stolen prior to the time of the
522 alleged offense and remained stolen at the time of the alleged offense, then the toll facility operator
523 shall not pursue the owner for the unpaid toll contained in the invoice for unpaid toll or the court shall
524 dismiss the summons issued to the owner of the vehicle.

525 K. Upon a finding by a court that a person has two or more unpaid tolls and such person fails to pay
526 the required penalties, fees, and unpaid tolls, then the court or toll facility operator shall notify the
527 Commissioner of the Department of Motor Vehicles, who shall refuse to issue or renew any vehicle
528 registration certificate of any applicant or the license plate issued for the vehicle driven in the
529 commission of the offense or, when the vehicle is registered in a state with which the Commonwealth
530 has entered into an agreement to enforce tolling violations pursuant to § 46.2-819.9, who shall provide
531 to the entity authorized to issue vehicle registration certificates or license plates in the state in which the
532 vehicle is registered sufficient evidence of the court's finding to take action against the vehicle
533 registration certificate or license plates in accordance with the terms of the agreement, until the court has
534 notified the Commissioner that such penalties, fees, and unpaid tolls have been paid. Upon receipt of
535 such notification from the court, the Commissioner of the Department of Motor Vehicles shall notify the
536 state where the vehicle is registered of such payment. If it is proven that the vehicle owner was not the
537 operator at the time of the offense and upon a finding by a court that the person identified in an
538 affidavit pursuant to subsection J as the operator violated this section and such person fails to pay the
539 required penalties, fees, and unpaid tolls, the court shall notify the Commissioner, who shall refuse to
540 issue or renew any vehicle registration certificate of any applicant or the license plate issued for any
541 vehicle owned or co-owned by such person or, when such vehicle is registered in a state with which the
542 Commonwealth has entered into an agreement to enforce tolling violations pursuant to § 46.2-819.9, who
543 shall provide to the entity authorized to issue vehicle registration certificates or license plates in the state
544 in which the vehicle is registered sufficient evidence of the court's finding to take action against the
545 vehicle registration certificate or license plates in accordance with the terms of the agreement, until the
546 court has notified the Commissioner that such penalties, fees, and unpaid tolls have been paid. Upon
547 receipt of such notification from the court, the Commissioner of the Department of Motor Vehicles shall
548 notify the state where the vehicle is registered of such payment. Such funds representing payment of
549 unpaid tolls and all administrative fees of the toll facility operator shall be transferred from the court to
550 the Department of Transportation's Toll Facilities Revolving Account or, in the case of an action

551 initiated by an operator of a toll facility other than the Department of Transportation, to the treasurer or
552 director of finance of the county or city in which the violation occurred for payment to the toll facility
553 operator. The Commissioner shall collect a \$40 administrative fee from the owner or operator of the
554 vehicle to defray the cost of processing and removing an order to deny registration or registration
555 renewal.

556 L. If an owner of a vehicle has received at least one invoice for two or more unpaid tolls in
557 accordance with § 46.2-819.6 by certified mail and has (i) failed to pay the unpaid tolls and
558 administrative fees and (ii) failed to file a notice to contest liability for a toll violation, then the toll
559 facility operator may notify the Commissioner, who shall, if no form contesting liability has been timely
560 filed with the toll facility operator pursuant to this section, refuse to issue or renew the vehicle
561 registration certificate of any applicant therefor or the license plate issued for any vehicle driven in the
562 commission of the offense until the toll facility operator has notified the Commissioner that such fees
563 and unpaid tolls have been paid.

564 If the vehicle owner was not the operator at the time of the offense and the person identified in an
565 affidavit pursuant to subsection J as the operator has received at least one invoice for two or more
566 unpaid tolls in accordance with § 46.2-819.6 by certified mail and such person has (a) failed to pay the
567 unpaid tolls and administrative fees and (b) failed to file a notice to contest liability for a toll violation,
568 then the toll facility operator may notify the Commissioner, who shall, if no form contesting liability has
569 been timely filed with the toll facility operator pursuant to this section, refuse to issue or renew any
570 vehicle registration certificate of any applicant therefor or the license plate issued for any vehicle owned
571 or co-owned by such person until the toll facility operator has notified the Commissioner that such fees
572 and unpaid tolls have been paid.

573 The Commissioner may only refuse to issue or renew any vehicle registration pursuant to this
574 subsection upon the request of a toll facility operator if such toll facility operator has entered into an
575 agreement with the Commissioner whereby the Commissioner will refuse to issue or renew any vehicle
576 registration of any applicant therefor who owes unpaid tolls and administrative fees to the toll facility
577 operator. The toll facility operator seeking to collect unpaid tolls and administrative fees through the
578 withholding of registration or renewal thereof by the Commissioner as provided for in this subsection
579 shall notify the Commissioner in the manner provided for in his agreement with the Commissioner and
580 supply to the Commissioner information necessary to identify the violator whose registration or renewal
581 is to be denied. The Commissioner shall charge a \$40 fee to defray the cost of processing and
582 withholding the registration or registration renewal, and the toll facility operator may add this fee to the
583 amount of the unpaid tolls and administrative fees. Any agreement entered into pursuant to the
584 provisions of this subsection shall provide for the Department to send the violator notice of the intent to
585 deny renewal of registration at least 30 days prior to the expiration date of a current vehicle registration
586 and such notice shall include a form, as required under subsection B of § 46.2-819.6, to contest liability
587 of the underlying toll violation. The notice provided by the Commissioner shall include instructions for
588 filing the form to contest liability with the toll facility operator within 21 days after the date of mailing
589 of the Commissioner's notice. Upon timely receipt of the form, the toll facility operator shall notify the
590 Commissioner, who shall refrain from withholding the registration or renewal thereof, after which the
591 toll facility operator may proceed to issue a summons for unpaid toll. For the purposes of this
592 subsection, notice by first-class mail to the registrant's address as maintained in the records of the
593 Department shall be deemed sufficient.

594 M. Any vehicle rental or vehicle leasing company, if it receives an invoice for unpaid toll or is
595 named in a summons, shall be released as a party to the action if it provides the operator of the toll
596 facility a copy of the vehicle rental agreement or lease or an affidavit identifying the renter or lessee
597 within 30 days of receipt of the invoice or summons. Upon receipt of such rental agreement, lease, or
598 affidavit, an invoice for unpaid toll shall be mailed to the renter or lessee identified therein. Release of
599 this information shall not be deemed a violation of any provision of the Government Data Collection
600 and Dissemination Practices Act (§ 2.2-3800 et seq.) or the Insurance Information and Privacy Protection
601 Act (§ 38.2-600 et seq.). The toll facility operator shall allow at least 30 days from the date of such
602 mailing before pursuing other remedies under this section. In any action against the vehicle operator, a
603 copy of the vehicle rental agreement, lease, or affidavit identifying the renter or lessee of the vehicle at
604 the time of the violation is prima facie evidence that the person named in the rental agreement, lease, or
605 affidavit was operating the vehicle at all the relevant times relating to the matter named in the summons.

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

611 O. The toll facility operator may offer to the owner an option to pay the unpaid toll and fees plus a
612 reduced civil penalty of \$25 for a first or second offense or \$50 for a third, fourth, or subsequent

613 offense, as specified on the summons, provided the owner actually pays to the toll facility operator the
614 entire amount so calculated at least 14 days prior to the hearing date specified on the summons. If the
615 owner accepts such offer and such amount is actually received by the toll facility operator at least 14
616 days prior to the hearing date specified on the summons, the toll facility operator shall move the court
617 at least five business days prior to the date set for trial to dismiss the summons issued to the owner of
618 the vehicle, and the court shall dismiss upon such motion.

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

628 Q. No person shall be subject to both the provisions of this section and to prosecution under
629 § 46.2-819 for actions arising out of the same transaction or occurrence.