

**REPORT OF THE
JOINT SUBCOMMITTEE STUDYING**

**PHOTO ENFORCEMENT OF
TOLL COLLECTIONS**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



HOUSE DOCUMENT NO. 84

**COMMONWEALTH OF VIRGINIA
RICHMOND
1998**

Members of the Joint Subcommittee

Del. J. Randy Forbes, Chairman
Sen. W. Henry Maxwell, Vice Chairman
Del. Shirley F. Cooper
Del. Dwight Clinton Jones
Del. James M. Scott
Sen. Frederick MacD. Quayle
Sen. Mary Margaret Whipple

Staff

Division of Legislative Services
Alan B. Wambold, Research Associate
Kenneth W. Gibson, Staff Attorney

Office of the Clerk of the House of Delegates
Barbara L. Regen, Committee Coordinator

Report of the Joint Subcommittee to Study Photo Enforcement of Toll Collections to the Governor and the General Assembly of Virginia January 1998

I. INTRODUCTION AND BACKGROUND.

Observing that construction and operation of some of the Commonwealth's transportation facilities depend upon the financing of those facilities, at least in part, by tolls paid by the users of those facilities, the 1997 Session of the Virginia General Assembly, through the passage of House Joint Resolution No. 628 (HJR 628, see Appendix A), established the Joint Subcommittee to Study Photo Enforcement of Toll Collections, to consider whether use of a "photo toll" system would allow increased use of automated toll collection devices that would permit

- reduced numbers of toll facility personnel, leading to
- reduced facility operating costs and
- increased traffic speed through automated toll collection lanes, contributing to
- increased convenience to facility users and
- increased facility capacity, while
- minimizing toll avoidance through the
- identification and punishment of motorists who use toll facilities without paying the required toll.

II. JOINT SUBCOMMITTEE ACTIVITIES.

The Joint Subcommittee held two meetings, August 14 and October 8, 1997, taking testimony principally from spokesmen for the City of Chesapeake (relating to the proposed Virginia Route 168/Battlefield Boulevard Bypass), the firm of FD/MK LLC (relating to the proposed Interstate 895 project, linking Interstate Route 95 in Chesterfield County to Interstate Route 64 in Henrico County, east of the City of Richmond), and the Virginia Department of Transportation. Additional information was supplied by Parsons-Brinkerhoff (consultants involved with the Chesapeake project), the City of Fairfax, the Department of Motor Vehicles, and the Joint Subcommittee's staff.

The members learned that photo enforcement works by (i) photographing the license plates of vehicles that use toll facilities without payment of the toll and (ii) recovering the unpaid toll and/or a penalty from the registered owner of the vehicle, the key to the system being a presumption that the registered owner of the vehicle was the person driving the vehicle when the toll was not paid. Where such a presumption is provided for by law, collections of unpaid tolls and penalties can be pursued either administratively or through the courts; otherwise, toll facility operators are limited to not much more than sending "nasty letters" to offenders. Statutes providing for this form of presumption generally include a mechanism whereby the presumption

may be overcome. In states where some form of “photo enforcement” is in operation (such as New York, New Jersey, and Florida), the details of the presumption, methods of overcoming it, and the form and amount of penalty vary considerably.

Although no form of photo enforcement of toll collections is presently in use in Virginia, it could easily be integrated with automatic vehicle identification technology, already being used by the Virginia Department of Transportation on the Dulles Toll Road (Virginia Route 627 in Fairfax and Loudoun Counties) and the Coleman Bridge (U. S. Route 17 across the York River at Yorktown), that enables users of the facilities to establish prepaid accounts that are automatically debited each time their vehicle uses the facility. This allows the use of these facilities without stopping to pay tolls, thus reducing travel time and congestion while improving safety and reducing the number of required facility employees.

Subcommittee staff from the Division of Legislative Services reviewed for the members examples of existing Virginia law that contain a presumption that the owner of a vehicle was the operator of the vehicle when an offense was committed, most familiar being the presumption that a vehicle’s registered owner was responsible when the vehicle was illegally parked. While use of this presumption is infrequent in Virginia law, it is by no means unprecedented. Staff also alerted the Subcommittee to the possibility that, depending on the other details of any proposed photo toll legislation, it might be necessary to provide explicit statutory authorization for disclosure of vehicle owner data by the Department of Motor Vehicles to toll facility operators.

The Joint Subcommittee explored similarities between so-called “photo red” programs, where photographs are automatically taken of the license plates of vehicles that violate traffic light signals, and a possible photo toll program. Although the 1995 Session of the General Assembly (see Chapter 492, *Acts of Assembly of 1995*) authorized several localities to establish photo red programs, only the City of Fairfax has one in operation, and, at the time of the Joint Subcommittee’s deliberations, even this system had been in use only about one month. While cautioning that their experience was very limited, representatives of Fairfax City reported that the system worked well, that it did not interfere with or detract from other police department operations, and required no additional funding or personnel. City spokesmen expected, based on admittedly limited data, that about half of all identified violators would pay the \$50 civil penalty imposed by local ordinance without the issuance of a summons or any court appearance, and that the penalties would approximately cover the system’s operating costs.

In attempting to estimate the amount of toll revenue that might go uncollected, were the General Assembly to fail to enact photo toll legislation, the Joint Subcommittee found it very difficult to obtain concrete, reliable data. Many toll facility operators are either reluctant to confront “leakage” problems or are unwilling to provide the data for fear that its disclosure might lead to still greater toll avoidance by users of their facilities. The Virginia Department of Transportation reported between 1.43 percent and 5.85 percent of the vehicles using the Dulles Toll Road and the Coleman Bridge, varying from day to day and from one facility to another, do so without paying the required toll. The members discovered that, although the Department did not use photo toll in the manner being contemplated by the Subcommittee, it did use license numbers and vehicle owner data obtained from the Department of Motor Vehicles to identify frequent and chronic violators and send them warning letters. The Subcommittee was surprised

to learn that 228,181 toll violations occurred on the Dulles Toll Road during July, 1997, alone and that toll violations at the Coleman Bridge are costing about \$90,000 per year in lost revenues.

Based on the limited data available, the Joint Subcommittee found that, while manned toll collection systems may have little if any “leakage,” they tend to be slow; and, although, completely unattended, fully automated systems handle more traffic and do so more speedily, tend to “leak” badly. An optimal solution, it appeared, would be (i) an automatic vehicle identification system (similar to that already in use on the Dulles Toll road and the Coleman Bridge) that identifies vehicles electronically and automatically debits prepaid user accounts for tolls coupled with (ii) a photo toll system that identifies violators and reduces “leakage.”

III. LEGISLATIVE RECOMMENDATIONS.

Based on information presented at its meetings, the Joint Subcommittee instructed its staff, in consultation with representatives of the City of Chesapeake and FD/MK LLC, to prepare draft photo toll legislation, modeled generally on existing photo red legislation (*Code of Virginia* § 46.2-833.01), that would

- provide for identification of violating vehicles through photographs of their license plates;
- authorize operators of photo toll facilities to obtain vehicle owner data from the Department of Motor Vehicles;
- establish a rebuttable presumption that the registered owner of the vehicle was the operator of the vehicle at the time of the violation;
- exempt facilities using automatic vehicle identification systems from existing law relating to failure to pay tolls (*Code of Virginia* § 46.2-819); and
- impose \$50 monetary penalties for first-time photo toll violations and \$100 monetary penalties for subsequent violations.

A copy of this draft legislation is attached (see Appendix B).

Respectfully submitted,

J. Randy Forbes, Chairman
W. Henry Maxwell, Vice Chairman
Shirley F. Cooper
Dwight Clinton Jones
James M. Scott
Frederick MacD. Quayle
Mary Margaret Whipple

IV. APPENDICES.

Appendix A: House Joint Resolution No. 628 (1997)

Appendix B: Proposed legislation

Appendix A

HOUSE JOINT RESOLUTION NO. 628

Establishing a joint subcommittee to study the desirability and feasibility of photo enforcement of toll collections.

Agreed to by the House of Delegates, February 4, 1997

Agreed to by the Senate, February 19, 1997

WHEREAS, paying for the construction and operation of some transportation facilities depends upon tolls paid by users of such facilities; and

WHEREAS, both because of personnel costs and because of concern for the safety of toll collectors, not all toll facilities are manned by toll-takers at all hours; and

WHEREAS, absence of toll-takers increases the opportunity for users of toll facilities to avoid paying the toll; and

WHEREAS, existing technology permits the identification of vehicles that use toll facilities without payment of tolls by photographing the license plates of such vehicles; and

WHEREAS, through reliance upon a rebuttable presumption that the registered owner of the vehicle is the person who committed the offense, it is possible to prosecute persons who seek to use toll facilities without payment of toll and to deter others from attempting to do so; and

WHEREAS, such a rebuttable presumption is already used in issuing citations for parking and HOV violations, littering, and passing stopped school buses; and

WHEREAS, Virginia law provides for photo enforcement of certain statutes and local ordinances relating to traffic lights; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That a joint subcommittee be established to study the desirability and feasibility of photo enforcement of toll collections. The joint subcommittee shall be composed of 7 members as follows: 4 members of the House of Delegates to be appointed by the

Speaker of the House; and 3 members of the Senate to be appointed by the Senate Committee on Privileges and Elections.

The direct costs of this study shall not exceed \$5,250.

The joint subcommittee shall complete its work in time to submit its findings and recommendations to the Governor and the 1998 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

Implementation of this resolution is subject to subsequent approval and certification by the Joint Rules Committee. The Committee may withhold expenditures or delay the period for the conduct of the study.

Appendix B

A BILL to amend and reenact §§ 46.2-208 and 46.2-819 of the Code of Virginia and to amend the Code of Virginia by adding in Article 1 of Chapter 8 of Title 46.2 a section numbered 46.2-819.1, relating to records of the Department of Motor Vehicles; use of toll facility without payment of required toll; enforcement of toll payments through use of photo-monitoring equipment; penalty.

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-208 and 46.2-819 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Article 1 of Chapter 8 of Title 46.2 a section numbered 46.2-819.1 as follows:

§ 46.2-208. Records of Department; when open for inspection; release of privileged information.

A. All records in the office of the Department containing the specific classes of information outlined below shall be considered privileged records:

1. Personal information, including all data defined as "personal information" in § 2.1-379;

2. Driver information, including all data that relates to driver's license status and driver activity; and

3. Vehicle information, including all descriptive vehicle data and title, registration, and vehicle activity data.

B. The Commissioner shall release such information only under the following conditions:

1. Notwithstanding other provisions of this section, medical data included in personal data shall be released only to a physician as provided in § 46.2-322.

2. Insurance data may be released as specified in §§ 46.2-372, 46.2-380, and 46.2-706.

3. Notwithstanding other provisions of this section, information disclosed or furnished shall be assessed a fee as specified in § 46.2-214.

4. When the person requesting the information is (i) the subject of the information, (ii) the parent or guardian of the subject of the information, (iii) the authorized representative of the subject of the information, or (iv) the owner of the

vehicle that is the subject of the information, the Commissioner shall provide him with the requested information and a complete explanation of it. Requests for such information need not be made in writing or in person and may be made orally or by telephone, provided that the Department is satisfied that there is adequate verification of the requester's identity. When so requested in writing by (i) the subject of the information, (ii) the parent or guardian of the subject of the information, (iii) the authorized representative of the subject of the information, or (iv) the owner of the vehicle that is the subject of the information, the Commissioner shall verify and, if necessary, correct the personal information provided and furnish driver and vehicle information in the form of an abstract of the record.

5. On the written request of any insurance carrier, surety, or representative of an insurance carrier or surety, the Commissioner shall furnish such insurance carrier, surety, or representative an abstract of the record of any person subject to the provisions of this title. The abstract shall include any record of any conviction of a violation of any provision of any statute or ordinance relating to the operation or ownership of a motor vehicle or of any injury or damage in which he was involved and a report of which is required by § 46.2-372. No such report of any conviction or accident shall be made after sixty months from the date of the conviction or accident unless the Commissioner or court used the conviction or accident as a reason for the suspension or revocation of a driver's license or driving privilege, in which case the revocation or suspension and any conviction or accident pertaining thereto shall not be reported after sixty months from the date that the driver's license or driving privilege has been reinstated. This abstract shall not be admissible in evidence in any court proceedings.

6. On the written request of any business organization or its agent, in the conduct of its business, the Commissioner shall compare personal information supplied by the business organization or agent with that contained in the Department's records and, when the information supplied by the business organization or agent is different

from that contained in the Department's records, provide the business organization or agent with correct information as contained in the Department's records. Personal information provided under this subdivision shall be used solely for the purpose of pursuing remedies which require locating an individual.

7. The Commissioner shall provide vehicle information to any business organization or agent on such business' or agent's written request. Disclosures made under this subdivision shall not include any personal information and shall not be subject to the limitations contained in subdivision 6 of this subsection.

8. On the written request of any motor vehicle rental or leasing company or its designated agent, the Commissioner shall (i) compare personal information supplied by the company or agent with that contained in the Department's records and, when the information supplied by the company or agent is different from that contained in the Department's records, provide the company or agent with correct information as contained in the Department's records and (ii) provide the company or agent with driver information in the form of an abstract of any person subject to the provisions of this title. Such abstract shall include any record of any conviction of a violation of any provision of any statute or ordinance relating to the operation or ownership of a motor vehicle or of any injury or damage in which the subject of the abstract was involved and a report of which is required by § 46.2-372. No such abstract shall include any record of any conviction or accident more than sixty months after the date of such conviction or accident unless the Commissioner or court used the conviction or accident as a reason for the suspension or revocation of a driver's license or driving privilege, in which case the revocation or suspension and any conviction or accident pertaining thereto shall cease to be included in such abstract after sixty months from the date on which the driver's license or driving privilege was reinstated. No abstract released under this subdivision shall be admissible in evidence in any court proceedings.

9. On the request of any federal, state, or local governmental entity, law-enforcement officer, attorney for the Commonwealth, or court, the Commissioner shall (i) compare personal information supplied by the governmental entity, officer, attorney for the Commonwealth, or court with that contained in the Department's records and, when the information supplied by the governmental entity, officer, attorney for the Commonwealth, or court is different from that contained in the Department's records, provide the governmental entity, officer, attorney for the Commonwealth, or court with correct information as contained in the Department's records and (ii) provide driver and vehicle information in the form of an abstract of the record showing all convictions, accidents, driver's license suspensions or revocations, and other appropriate information as the governmental entity, officer, attorney for the Commonwealth, or court may require in order to carry out its official functions.

10. On request of the driver licensing authority in any other state or foreign country, the Commissioner shall provide whatever classes of information the requesting authority shall require in order to carry out its official functions.

11. On the written request of any employer, prospective employer, or authorized agent of either, and with the written consent of the individual concerned, the Commissioner shall (i) compare personal information supplied by the employer, prospective employer, or agent with that contained in the Department's records and, when the information supplied by the employer, prospective employer, or agent is different from that contained in the Department's records, provide the employer, prospective employer, or agent with correct information as contained in the Department's records and (ii) provide the employer, prospective employer, or agent with driver information in the form of an abstract of an individual's record showing all convictions, accidents, driver's license suspensions or revocations, and any type of driver's license that the individual currently possesses, provided that the individual's

position or the position that the individual is being considered for involves the operation of a motor vehicle.

12. On the written request of any member of or applicant for membership in a volunteer fire company or volunteer rescue squad, the Commissioner shall (i) compare personal information supplied by the volunteer fire company or volunteer rescue squad with that contained in the Department's records and, when the information supplied by the volunteer fire company or volunteer rescue squad is different from that contained in the Department's records, provide the volunteer fire company or volunteer rescue squad with correct information as contained in the Department's records and (ii) provide driver information in the form of an abstract of the member's or applicant's record showing all convictions, accidents, license suspensions or revocations, and any type of driver's license that the individual currently possesses. Such abstract shall be provided free of charge if the request is accompanied by appropriate written evidence that the person is a member of or applicant for membership in a volunteer fire company or volunteer rescue squad and the abstract is needed by a volunteer fire company or volunteer rescue squad to establish the qualifications of the member or applicant to operate equipment owned by the volunteer fire company or volunteer rescue squad.

13. On the written request of any person who has applied to be a volunteer with a Virginia affiliate of Big Brothers/Big Sisters of America, the Commissioner shall (i) compare personal information supplied by a Virginia affiliate of Big Brothers/Big Sisters of America with that contained in the Department's records and, when the information supplied by a Virginia affiliate of Big Brothers/Big Sisters of America is different from that contained in the Department's records, provide the Virginia affiliate of Big Brothers/Big Sisters of America with correct information as contained in the Department's records and (ii) provide driver information in the form of an abstract of the applicant's record showing all convictions, accidents, license suspensions or revocations, and any type of driver's license that the individual currently possesses.

Such abstract shall be provided free of charge if the request is accompanied by appropriate written evidence that the person has applied to be a volunteer with a Virginia affiliate of Big Brothers/Big Sisters of America.

14. On the written request of any person who has applied to be a volunteer with a court-appointed special advocate program pursuant to § 9-173.8, the Commissioner shall provide an abstract of the applicant's record showing all convictions, accidents, license suspensions or revocations, and any type of driver's license that the individual currently possesses. Such abstract shall be provided free of charge if the request is accompanied by appropriate written evidence that the person has applied to be a volunteer with a court-appointed special advocate program pursuant to § 9-173.8.

15. Upon the request of any employer, prospective employer, or authorized representative of either, the Commissioner shall (i) compare personal information supplied by the employer, prospective employer, or agent with that contained in the Department's records and, when the information supplied by the employer, prospective employer, or agent is different from that contained in the Department's records, provide the employer, prospective employer, or agent with correct information as contained in the Department's records and (ii) provide driver information in the form of an abstract of the driving record of any individual who has been issued a commercial driver's license, provided that the individual's position or the position that the individual is being considered for involves the operation of a commercial motor vehicle. Such abstract shall show all convictions, accidents, license suspensions, revocations, or disqualifications, and any type of driver's license that the individual currently possesses.

16. Upon the receipt of a completed application and payment of applicable processing fees, the Commissioner may enter into an agreement with any governmental authority or business to exchange information specified in this section by electronic or other means.

17. Upon the request of an attorney representing a person in a motor vehicle accident, the Commissioner shall provide vehicle information, including the owner's name and address, to the attorney.

18. Upon the request, in the course of business, of any authorized representative of an insurance company or of any not-for-profit entity organized to prevent and detect insurance fraud, the Commissioner shall provide all vehicle information, including the owner's name and address, descriptive data and title, registration, and vehicle activity data to such person.

19. Upon the request of an officer authorized to issue criminal warrants, for the purpose of issuing a warrant for arrest for unlawful disposal of trash or refuse in violation of § 33.1-346, the Commissioner shall provide vehicle information, including the owner's name and address.

20. Upon written request of the compliance agent of a private security services business, as defined in § 9-183.1, which is licensed by the Department of Criminal Justice Services, the Commissioner shall provide the name and address of the owner of the vehicle under procedures determined by the Commissioner.

21. Upon the request of the operator of a toll facility, or an authorized agent or employee of a toll facility operator, for the purpose of obtaining vehicle owner data under subsection H of § 46.2-819.1.

C. Whenever the Commissioner issues an order to suspend or revoke the driver's license or driving privilege of any individual, he may notify the National Driver Register Service operated by the United States Department of Transportation and any similar national driver information system and provide whatever classes of information the authority may require.

D. Accident reports may be inspected under the provisions of §§ 46.2-379 and 46.2-380.

E. Whenever the Commissioner takes any licensing action pursuant to the provisions of the Virginia Commercial Driver's License Act (§ 46.2-341.1 et seq.), he may provide information to the Commercial Driver License Information System, or any similar national commercial driver information system, regarding such action.

F. In addition to the foregoing provisions of this section, vehicle information may also be inspected under the provisions of §§ 43-33, 43-34, 46.2-633, and 46.2-1200.1 through 46.2-1237.

G. The Department may promulgate regulations to govern the means by which personal, vehicle, and driver information is requested and disseminated.

H. Driving records of any person accused of an offense involving the operation of a motor vehicle shall be provided by the Commissioner upon request to any person acting as counsel for the accused. If such counsel is from the public defender's office or has been appointed by the court, such records shall be provided free of charge.

§ 46.2-819. Use of toll facility without payment of toll; circumstances to be considered in assessing penalty.

Except for those permitted free use of toll facilities under § 33.1-252, it shall be unlawful for the driver of a motor vehicle to use a toll facility without payment of the specified toll.

However, in considering the case of anyone accused of violating this section, the court shall take into consideration (i) except for lanes equipped for payment of tolls through an automatic vehicle identification system, whether the toll booth or collection facility at which the defendant failed to pay the toll was manned at the time, (ii) whether the defendant was required to pay the toll with the exact amount in change, (iii) whether the defendant had change to make the payment, and (iv) whether the defendant had been afforded appropriate advance notice, by signs or other means, that he would be required to pay a toll and pay it with the exact change.

§ 46.2-819.1. Installation and use of photo-monitoring system in conjunction with certain toll facilities; penalty.

A. 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 photo-monitoring system at locations where tolls are collected for the use of such toll facility.

B. The operator of a vehicle shall be liable for a monetary penalty of no more than fifty dollars for a first offense or more than \$100 for any subsequent offense if the vehicle is found, as evidenced by information obtained from a photo-monitoring system as provided in this section, to have used such a toll facility without payment of the required toll.

C. Proof of a violation of this section shall be evidenced by information obtained from a photo-monitoring system as provided in this section. A certificate, sworn to or affirmed by a technician employed or authorized by the operator of a toll facility or by the locality wherein the toll facility is located, or a facsimile of such a certificate, based on inspection of photographs, microphotographs, videotapes, or other recorded images produced by a photo-monitoring 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 section.

D. In the prosecution of an offense under this section, prima facie evidence that the vehicle described in the summons issued pursuant to this section was operated in violation of this section, together with proof that the defendant was at the time of such violation the registered owner of the vehicle, shall constitute in evidence a rebuttable presumption that such registered owner of the vehicle was the person who committed the violation. Such presumption shall be rebutted if the registered owner of the vehicle (i) files an affidavit by regular mail with the clerk of the general district court that he or she was not the operator of the vehicle at the time of the alleged violation or (ii) testifies

in open court under oath that he or she was not the operator of the vehicle at the time of the alleged violation. Such presumption shall also be rebutted if 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 violation of this section, is presented, prior to the return date established on the summons issued pursuant to this section, to the court adjudicating the alleged violation.

E. For purposes of this section, "owner" means the registered owner of such vehicle on record with the Department of Motor Vehicles. For purposes of this section, "owner" does not mean a vehicle rental or vehicle leasing company. For purposes of this section, "photo-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.

F. Imposition of a penalty pursuant to this section shall not be deemed a conviction as an operator and shall not be made part of the operating record of the person upon whom such penalty is imposed nor shall it be used for insurance purposes in the provision of motor vehicle insurance coverage.

G. A summons for a violation of this section may be executed pursuant to § 19.2-76.2. Notwithstanding the provisions of § 19.2-76, a summons for a violation of this section may be executed by mailing by first-class mail a copy thereof to the address of the owner of the vehicle as shown on the records of the Department of Motor Vehicles. 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. No proceedings for contempt or arrest of a person summoned by mailing shall be instituted for failure to appear on the return date of the summons.

H. The operator of a toll facility may enter into an agreement with the Department of Motor Vehicles, in accordance with the provisions of subdivision 21 of subsection B

of § 46.2-208, to obtain vehicle owner information regarding the registered owners of vehicles that fail to pay tolls required for the use of toll facilities.

