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'Move-over law' is trap for drivers

By Peter Vieth
July 6, 2009

Motorists who carefully follow the instructions printed on a state highway sign still could end up facing traffic charges under Virginia's so-called "move-over law."

The signs tell motorists to "move over or reduce speed" for stopped emergency vehicles. As Arlington lawyer Chris Leibig explained, however, the law itself does not say anything about slowing down. Instead, Virginia Code § 46.2-921.1 requires drivers to change lanes if possible, unless it would be "unreasonable or unsafe." In such a case, the motorist must "proceed with due caution" and "maintain a safe speed for highway conditions." Violation carries a possible jail sentence.

The discrepancy in the sign language might not matter if it were not for recent enforcement efforts that, according to Leibig, target drivers who fail to change lanes, regardless of whether they slow down.

In a recent published essay, Leibig described his representation of a Fairfax County man who was ticketed in a state police operation specifically targeting violators of the 2002 move-over law. Leibig said his client was driving in the right lane of Interstate 95 on a Sunday morning when he spotted a trooper on the shoulder with lights flashing. Concerned about traffic in the left lane, the driver did not move over. Instead he slowed down and cautiously passed the stopped police car, according to Leibig.

The client was stopped and charged with violation of the move-over law, which carries a possible 12-month jail sentence and a \$2,500 fine. There was no courtroom showdown over the sign language, however. Leibig said his client, with a clean record, was allowed to take a driver safety class to avoid a conviction.

Nevertheless, Leibig said, the case signals that slowing down is not enough to avoid a ticket, despite the language on the 14 highway signs around the state suggesting that reducing speed is all that's required.

"The trooper did not disagree that the sign was wrong," Leibig said.

Asked to comment on the apparent discrepancy, a Virginia State Police spokesman said the signs, posted by the Virginia Department of Transportation, are "advisories to the motoring public

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posted by the Virginia Department of Transportation, are advisories to the motoring public warning drivers that there is such a law in the Commonwealth.”

The VSP’s written response also notes that the “headline” of the code section reads, “Drivers to yield right-of-way or reduce speed when approaching stationary emergency vehicles on highways.” The state code, however, states that headlines of code sections are mere catchwords and “do not constitute part of the act of the General Assembly.”

Leibig readily acknowledges that the move-over law addresses a real problem for law enforcement and others who use emergency vehicles. “Anyone who has stood beside a broken down car on a 55-mile-an-hour interstate highway understands the danger police must confront to enforce traffic laws on the highways,” Leibig wrote. “We all know most of the cars are doing at least seventy, and half of the drivers are paying attention to something other than driving.”

A Roanoke police officer described a recent experience helping a trooper on a highway. “While with him, several cars came buzzing down the fog line at highway speed, inches from our cars,” the officer wrote in his blog, The Roanoke Cop. “Despite having two other empty lanes, in the middle of the night, people will disregard our emergency lights and see how close they can come to hitting us.”

The next night, the officer wrote, he and a trooper each stopped a driver who buzzed them without moving over. “We could have leap frogged each other all night up and down that highway if we had the time,” he wrote.

According to a Mar. 29 state police news release, 18 law enforcement personnel were struck and killed nationwide in 2008 while standing outside of their vehicles. Virginia is one of 40 states with a move-over law, according to the release.

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