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SENATE BILL NO. 1209

Offered January 8, 2025

Prefiled January 8, 2025

A BILL to amend and reenact § 46.2-882.1 of the Code of Virginia, relating to photo speed monitoring devices; vendors; calibration; civil penalty.

Patrons—Obenshain and Suetterlein

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That § 46.2-882.1 of the Code of Virginia is amended and reenacted as follows:

§ 46.2-882.1. Use of photo speed monitoring devices in highway work zones, school crossing zones, and high-risk intersection segments; civil penalty.

A. For the purposes of this section:

"High-risk intersection segment" means any highway or portion thereof located not more than 1,000 feet from the limits of the property of a school that is part of or adjacent to an intersection containing a marked crosswalk that is identified in the manner provided in this section as one in which a traffic fatality has occurred since January 1, 2014.

"Highway work zone" has the same meaning ascribed to it in § 46.2-878.1.

"Photo speed monitoring device" means equipment that uses radar or LIDAR-based speed detection and produces one or more photographs, microphotographs, videotapes, or other recorded images of vehicles.

"School crossing zone" has the same meaning ascribed to it in § 46.2-873.

"Vehicle speed violation" means a violation of this title resulting from the operation of a vehicle in excess of the speed limit, including a violation of § 46.2-873 or 46.2-878.1.

B. A state or local law-enforcement agency may place and operate a photo speed monitoring device in school crossing zones for the purposes of recording violations of § 46.2-873 and in highway work zones for the purposes of recording violations of § 46.2-878.1.

A state or local law-enforcement agency may place and operate a photo speed monitoring device at a high-risk intersection segment located within the locality for the purpose of recording vehicle speed violations, provided that such law-enforcement agency certifies that a traffic fatality has occurred since January 1, 2014, in such segment.

C. The operator of a vehicle shall be liable for a monetary civil penalty imposed pursuant to this section if such vehicle is found, as evidenced by information obtained from a photo speed monitoring device, to be traveling at speeds of at least 10 miles per hour above the posted speed limit in the zone monitored by the photo speed monitoring device. Such civil penalty shall not exceed \$100, and any prosecution shall be instituted and conducted in the same manner as prosecution for traffic infractions. Civil penalties collected under this section resulting from a summons issued by a local law-enforcement officer shall be paid to the locality in which such violation occurred. Civil penalties collected under this section resulting from a summons issued by a law-enforcement officer employed by the Department of State Police shall be paid into the Literary Fund. However, all civil penalties collected under this section resulting from a summons issued based on evidence obtained from a photo speed monitoring device placed and operated at a high-risk intersection segment shall be paid to the Commonwealth Transportation Board to be used for the Virginia Highway Safety Improvement Program established pursuant to § 33.2-373.

D. If a photo speed monitoring device is used, proof of a vehicle speed violation shall be evidenced by information obtained from such device. A certificate, or a facsimile thereof, sworn to or affirmed by a law-enforcement officer, based upon inspection of photographs, microphotographs, videotapes, or other recorded images produced by a photo speed monitoring device, shall be prima facie evidence of the facts contained therein. Any photographs, microphotographs, videotapes, or other recorded images evidencing such a violation shall be available for inspection in any proceeding to adjudicate the liability for such vehicle speed violation.

E. In the prosecution for a vehicle speed violation in which a summons was issued by mail, prima facie evidence that the vehicle described in the summons issued pursuant to this section was operated in a manner constituting a vehicle speed violation, together with proof that the defendant was at the time of such violation the owner, lessee, or renter of the vehicle, shall constitute in evidence a rebuttable presumption that such owner, lessee, or renter of the vehicle was the person who committed the violation. Such presumption shall be rebutted if the owner, lessee, or renter of the vehicle (i) files an affidavit by regular mail with the clerk of the general district court that he was not the operator of the vehicle at the time of the alleged violation and provides the name and address of the person who was operating the vehicle at the time of the alleged

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SB1209

59 violation or (ii) testifies in open court under oath that he was not the operator of the vehicle at the time of the  
60 alleged violation and provides the name and address of the person who was operating the vehicle at the time  
61 of the alleged violation. Such presumption shall also be rebutted if a certified copy of a police report,  
62 showing that the vehicle had been reported to the police as stolen prior to the time of the alleged vehicle  
63 speed violation, is presented, prior to the return date established on the summons issued pursuant to this  
64 section, to the court adjudicating the alleged violation.

65 F. Imposition of a penalty pursuant to this section by mailing a summons shall not be deemed a conviction  
66 as an operator and shall not be made part of the operating record of the person upon whom such liability is  
67 imposed, nor shall it be used for insurance purposes in the provision of motor vehicle insurance coverage.  
68 However, if a law-enforcement officer uses a photo speed monitoring device to record a vehicle speed  
69 violation and personally issues a summons at the time of the violation, the conviction that results shall be  
70 made a part of such driver's driving record and used for insurance purposes in the provision of motor vehicle  
71 insurance coverage.

72 G. A summons for a vehicle speed violation issued by mail pursuant to this section may be executed  
73 pursuant to § 19.2-76.2. Notwithstanding the provisions of § 19.2-76, a summons issued by mail pursuant to  
74 this section may be executed by mailing by first-class mail a copy thereof to the owner, lessee, or renter of  
75 the vehicle. In the case of a vehicle owner, the copy shall be mailed to the address contained in the records of  
76 or accessible to the Department. In the case of a vehicle lessee or renter, the copy shall be mailed to the  
77 address contained in the records of the lessor or renter. Every such mailing shall include, in addition to the  
78 summons, a notice of (i) the summoned person's ability to rebut the presumption that he was the operator of  
79 the vehicle at the time of the alleged violation through the filing of an affidavit as provided in subsection E  
80 and (ii) instructions for filing such affidavit, including the address to which the affidavit is to be sent. If the  
81 summoned person fails to appear on the date of return set out in the summons mailed pursuant to this section,  
82 the summons shall be executed in the manner set out in § 19.2-76.3. No proceedings for contempt or arrest of  
83 a person summoned by mailing shall be instituted for failure to appear on the return date of the summons. If  
84 the summons is issued to an owner, lessee, or renter of a vehicle with a registration outside the  
85 Commonwealth and such person fails to appear on the date of return set out in the summons mailed pursuant  
86 to this section, the summons will be eligible for all legal collections activities. Any summons executed for a  
87 vehicle speed violation issued pursuant to this section shall provide to the person summoned at least 30 days  
88 from the mailing of the summons to inspect information collected by a photo speed monitoring device in  
89 connection with the violation, *including proof of calibration of the photo speed monitoring device used to*  
90 *record the alleged vehicle speed violation.* If the law-enforcement agency that was operating the photo speed  
91 monitoring device does not execute a summons for a vehicle speed violation issued pursuant to this section  
92 within 30 days from the date of the violation, all information collected pertaining to that suspected violation  
93 shall be purged within 60 days from the date of the violation.

94 H. A private vendor may enter into an agreement with a law-enforcement agency to be compensated for  
95 providing a photo speed monitoring device and all related support services, including consulting, operations,  
96 and administration. However, only a law-enforcement officer may swear to or affirm the certificate required  
97 by this section. Any such agreement for compensation shall be based on the value of the goods and services  
98 provided, not on the number of violations paid or monetary penalties imposed. Any private vendor  
99 contracting with a law-enforcement agency pursuant to this section may enter into an agreement with the  
100 Department, in accordance with the provisions of subdivision B 31 of § 46.2-208, to obtain vehicle owner  
101 information regarding the registered owners of vehicles that committed a vehicle speed violation. Any such  
102 information provided to such private vendor shall be protected in a database. *Any such private vendor*  
103 *providing a photo speed monitoring device that is also compensated for the calibration of such device shall*  
104 *calibrate such device in the same manner and to the same specifications as all other devices determining*  
105 *speed, to the extent that such devices utilize the same method of speed detection as such photo speed*  
106 *monitoring device, that are used by the law-enforcement agency with which such vendor has entered into an*  
107 *agreement. Upon request of any person receiving a summons by mail for a vehicle speed violation recorded*  
108 *by a photo speed monitoring device provided by such a private vendor, such private vendor shall within 10*  
109 *days of such request provide to such person proof of calibration of such photo speed monitoring device for*  
110 *the time period in which the alleged violation was recorded. Such summons shall include notice of such*  
111 *person's right to request such proof of calibration. Any private vendor who fails to provide such proof of*  
112 *calibration within the time specified shall be subject to a civil penalty of \$1,000. All civil penalties received*  
113 *pursuant to this subsection shall be paid to the Commonwealth Transportation Board to be used for the*  
114 *Virginia Highway Safety Improvement Program established pursuant to § 33.2-373.*

115 I. Information collected by a photo speed monitoring device operated pursuant to this section shall be  
116 limited exclusively to that information that is necessary for the enforcement of vehicle speed violations.  
117 Information provided to the operator of a photo speed monitoring device shall be protected in a database and  
118 used only for enforcement of vehicle speed violations and enforcement against individuals who violate the  
119 provisions of this section. Notwithstanding any other provision of law, all photographs, microphotographs,

120 videotapes, or other recorded images collected by a photo speed monitoring device shall be used exclusively  
121 for enforcing vehicle speed violations and shall not be (i) open to the public; (ii) sold or used for sales,  
122 solicitation, or marketing purposes; (iii) disclosed to any other entity except as may be necessary for the  
123 enforcement of a vehicle speed violation or to a vehicle owner or operator as part of a challenge to the  
124 violation; or (iv) used in a court in a pending action or proceeding unless the action or proceeding relates to a  
125 vehicle speed violation or a violation of this section, or such information is requested upon order from a court  
126 of competent jurisdiction. Information collected under this section pertaining to a specific violation shall be  
127 purged and not retained later than 60 days after the collection of any civil penalties. Any law-enforcement  
128 agency using photo speed monitoring devices shall annually certify compliance with this section and make all  
129 records pertaining to such system available for inspection and audit by the Commissioner of Highways or the  
130 Commissioner of the Department of Motor Vehicles or his designee. Any person who discloses personal  
131 information in violation of the provisions of this subsection shall be subject to a civil penalty of \$1,000 per  
132 disclosure.

133 J. A conspicuous sign shall be placed within 1,000 feet of any school crossing zone, highway work zone,  
134 or high-risk intersection segment at which a photo speed monitoring device is used, indicating the use of the  
135 device. There shall be a rebuttable presumption that such sign was in place at the time of the commission of  
136 the speed limit violation.

137 K. Any state or local law-enforcement agency that places and operates a photo speed monitoring device  
138 pursuant to the provisions of this section shall report to the Department of State Police, in a format to be  
139 determined by the Department of State Police, by January 15 of each year on the number of traffic violations  
140 prosecuted, the number of successful prosecutions, and the total amount of monetary civil penalties collected.  
141 The Department of State Police shall aggregate such information and report it to the General Assembly by  
142 February 15 of each year.