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SENATE BILL NO. 1209
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee for Courts of Justice
on _____)
(Patron Prior to Substitute—Senator Obenshain)

A BILL to amend and reenact §§ 46.2-882 and 46.2-882.1 of the Code of Virginia, relating to photo speed monitoring devices; vendors; calibration; civil penalty.

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-882 and 46.2-882.1 of the Code of Virginia are amended and reenacted as follows:

§ 46.2-882. Determining speed with various devices; certificate as to accuracy of device; arrest without warrant.

The speed of any motor vehicle may be determined by the use of (i) a laser speed determination device, (ii) radar, (iii) a microcomputer device that is physically connected to an odometer cable and both measures and records distance traveled and elapsed time to determine the average speed of a motor vehicle, or (iv) a microcomputer device that is located aboard an airplane or helicopter and measures and records distance traveled and elapsed time to determine the average speed of a motor vehicle being operated on highways within the Interstate System of highways as defined in § 33.2-100. The speed of motor vehicles may be determined by the use of a photo speed monitoring device as authorized in § 46.2-882.1. The results of such determinations shall be accepted as prima facie evidence of the speed of such motor vehicle in any court or legal proceeding where the speed of the motor vehicle is at issue.

In any court or legal proceeding in which any question arises about the calibration or accuracy of any laser speed determination device, radar, microcomputer device, or photo speed monitoring device as described in this section used to determine the speed of any motor vehicle, a certificate, or a true copy thereof, showing the calibration or accuracy of (a) the speedometer of any vehicle, (b) any tuning fork employed in calibrating or testing the radar or other speed determination device, or (c) any other method employed in calibrating or testing any laser speed determination device or photo speed monitoring device, and when and by whom the calibration was made, shall be admissible as evidence of the facts therein stated. No calibration or testing of any device ~~other than a photo speed monitoring device~~, *including daily testing as required by subsection L of § 46.2-882.1*, shall be valid for longer than six months. ~~No calibration or testing of a photo speed monitoring device shall be valid for longer than 12 months.~~

31 The driver of any such motor vehicle may be arrested without a warrant under this section if the arresting
32 officer is in uniform and displays his badge of authority and if the officer has observed the registration of the
33 speed of such motor vehicle by the laser speed determination device, radar, or microcomputer device as
34 described in this section, or has received a radio message from the officer who observed the speed of the
35 motor vehicle registered by the laser speed determination device, radar, or microcomputer device as described
36 in this section. However, in case of an arrest based on such a message, such radio message shall have been
37 dispatched immediately after the speed of the motor vehicle was registered and furnished the license number
38 or other positive identification of the vehicle and the registered speed to the arresting officer.

39 Neither State Police officers nor local law-enforcement officers shall use laser speed determination
40 devices or radar, as described herein in airplanes or helicopters for the purpose of determining the speed of
41 motor vehicles.

42 State Police officers may use laser speed determination devices, radar, and/or microcomputer devices as
43 described in this section. All localities may use radar and laser speed determination devices to measure speed.
44 State Police officers and local law-enforcement may use photo speed monitoring devices to measure speed as
45 authorized in § 46.2-882.1. The Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park
46 and the Counties of Arlington, Fairfax, Loudoun, and Prince William and towns within such counties may
47 use microcomputer devices as described in this section.

48 The Division of Purchases and Supply, pursuant to § 2.2-1112, shall determine the proper equipment used
49 to determine the speed of motor vehicles and shall advise the respective law-enforcement officials of the
50 same. Police chiefs and sheriffs shall ensure that all such equipment and devices purchased on or after July 1,
51 1986, meet or exceed the standards established by the Division.

52 **§ 46.2-882.1. Use of photo speed monitoring devices in highway work zones, school crossing zones,**
53 **and high-risk intersection segments; civil penalty.**

54 A. For the purposes of this section:

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

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

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

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

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

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

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

72 C. The operator of a vehicle shall be liable for a monetary civil penalty imposed pursuant to this section if
73 such vehicle is found, as evidenced by information obtained from a photo speed monitoring device, to be
74 traveling at speeds of at least 10 miles per hour above the posted speed limit in the zone monitored by the
75 photo speed monitoring device. Such civil penalty shall not exceed \$100, and any prosecution shall be
76 instituted and conducted in the same manner as prosecution for traffic infractions. Civil penalties collected
77 under this section resulting from a summons issued by a local law-enforcement officer shall be paid to the
78 locality in which such violation occurred *to be deposited in a fund used solely for the operating costs of such*
79 *photo speed monitoring device, which shall not exceed the amount of operating costs reported to the*
80 *Department of State Police pursuant to subsection K, except that any excess moneys in such fund shall be*
81 *paid to the Commonwealth Transportation Board to be used for the Virginia Highway Safety Improvement*
82 *Program established pursuant to § 33.2-373. Civil penalties collected under this section resulting from a*
83 *summons issued by a law-enforcement officer employed by the Department of State Police shall be paid into*
84 *the Literary Fund. However, all civil penalties collected under this section resulting from a summons issued*
85 *based on evidence obtained from a photo speed monitoring device placed and operated at a high-risk*
86 *intersection segment shall be paid to the Commonwealth Transportation Board to be used for the Virginia*
87 *Highway Safety Improvement Program established pursuant to § 33.2-373.*

88 D. If a photo speed monitoring device is used, proof of a vehicle speed violation shall be evidenced by

89 information obtained from such device. A certificate, or a facsimile thereof, sworn to or affirmed by a
90 law-enforcement officer, based upon inspection of photographs, microphotographs, videotapes, or other
91 recorded images produced by a photo speed monitoring device, shall be prima facie evidence of the facts
92 contained therein, *provided that such certificate or facsimile thereof includes accompanying documentation*
93 *that confirms daily testing was conducted on such device as required by subsection L.* Any photographs,
94 microphotographs, videotapes, or other recorded images *and the accompanying documentation of such*
95 *required daily testing* evidencing such a violation shall be available for inspection in any proceeding to
96 adjudicate the liability for such vehicle speed violation.

97 E. In the prosecution for a vehicle speed violation in which a summons was issued by mail, prima facie
98 evidence that the vehicle described in the summons issued pursuant to this section was operated in a manner
99 constituting a vehicle speed violation, together with proof that the defendant was at the time of such violation
100 the owner, lessee, or renter of the vehicle, shall constitute in evidence a rebuttable presumption that such
101 owner, lessee, or renter of the vehicle was the person who committed the violation. Such presumption shall
102 be rebutted if the owner, lessee, or renter of the vehicle (i) files an affidavit by regular mail with the clerk of
103 the general district court that he was not the operator of the vehicle at the time of the alleged violation and
104 provides the name and address of the person who was operating the vehicle at the time of the alleged
105 violation or (ii) testifies in open court under oath that he was not the operator of the vehicle at the time of the
106 alleged violation and provides the name and address of the person who was operating the vehicle at the time
107 of the alleged violation. Such presumption shall also be rebutted if a certified copy of a police report,
108 showing that the vehicle had been reported to the police as stolen prior to the time of the alleged vehicle
109 speed violation, is presented, prior to the return date established on the summons issued pursuant to this
110 section, to the court adjudicating the alleged violation.

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

118 G. A summons for a vehicle speed violation issued by mail pursuant to this section may be executed
119 pursuant to § 19.2-76.2. Notwithstanding the provisions of § 19.2-76, a summons issued by mail pursuant to
120 this section may be executed by mailing by first-class mail a copy thereof to the owner, lessee, or renter of
121 the vehicle. In the case of a vehicle owner, the copy shall be mailed to the address contained in the records of
122 or accessible to the Department. In the case of a vehicle lessee or renter, the copy shall be mailed to the
123 address contained in the records of the lessor or renter. Every such mailing shall include, in addition to the
124 summons, a notice of (i) the summoned person's ability to rebut the presumption that he was the operator of
125 the vehicle at the time of the alleged violation through the filing of an affidavit as provided in subsection E
126 and (ii) instructions for filing such affidavit, including the address to which the affidavit is to be sent. If the
127 summoned person fails to appear on the date of return set out in the summons mailed pursuant to this section,
128 the summons shall be executed in the manner set out in § 19.2-76.3. No proceedings for contempt or arrest of
129 a person summoned by mailing shall be instituted for failure to appear on the return date of the summons. If
130 the summons is issued to an owner, lessee, or renter of a vehicle with a registration outside the
131 Commonwealth and such person fails to appear on the date of return set out in the summons mailed pursuant
132 to this section, the summons will be eligible for all legal collections activities. Any summons executed for a
133 vehicle speed violation issued pursuant to this section shall provide to the person summoned at least 30 days
134 from the mailing of the summons to inspect information collected by a photo speed monitoring device in
135 connection with the violation, *including proof of calibration of the photo speed monitoring device used to*
136 *record the alleged vehicle speed violation.* If the law-enforcement agency that was operating the photo speed
137 monitoring device does not execute a summons for a vehicle speed violation issued pursuant to this section
138 within 30 days from the date of the violation, all information collected pertaining to that suspected violation
139 shall be purged within 60 days from the date of the violation.

140 H. A private vendor may enter into an agreement with a law-enforcement agency to be compensated for
141 providing a photo speed monitoring device and all related support services, including consulting, operations,
142 and administration. However, only a law-enforcement officer may swear to or affirm the certificate required
143 by this section. Any such agreement for compensation shall be based on the value of the goods and services
144 provided, not on the number of violations paid or monetary penalties imposed. Any private vendor
145 contracting with a law-enforcement agency pursuant to this section may enter into an agreement with the
146 Department, in accordance with the provisions of subdivision B 31 of § 46.2-208, to obtain vehicle owner

147 information regarding the registered owners of vehicles that committed a vehicle speed violation. Any such
148 information provided to such private vendor shall be protected in a database. *Any such private vendor*
149 *providing a photo speed monitoring device that is also compensated for the calibration of such device shall*
150 *calibrate such device in the same manner and to the same specifications as all other devices determining*
151 *speed, to the extent that such devices utilize the same method of speed detection as such photo speed*
152 *monitoring device, that are used by the law-enforcement agency with which such vendor has entered into an*
153 *agreement. Upon request of any person receiving a summons by mail for a vehicle speed violation recorded*
154 *by a photo speed monitoring device provided by such a private vendor, such private vendor shall within 10*
155 *days of such request provide to such person proof of calibration of such photo speed monitoring device for*
156 *the time period in which the alleged violation was recorded. Such summons shall include notice of such*
157 *person's right to request such proof of calibration. Any private vendor that fails to provide such proof of*
158 *calibration within the time specified shall be subject to a civil penalty of \$1,000. All civil penalties received*
159 *pursuant to this subsection shall be paid to the Commonwealth Transportation Board to be used for the*
160 *Virginia Highway Safety Improvement Program established pursuant to § 33.2-373. Such private vendor*
161 *shall, in addition to the calibration for which proof is required pursuant to this subsection, conduct a daily*
162 *test of the accuracy of such device. Such private vendor shall each day transmit the results of the previous*
163 *day's test to the law-enforcement agency with which such private vendor has entered into an agreement.*

164 I. Information collected by a photo speed monitoring device operated pursuant to this section shall be
165 limited exclusively to that information that is necessary for the enforcement of vehicle speed violations.
166 Information provided to the operator of a photo speed monitoring device shall be protected in a database and
167 used only for enforcement of vehicle speed violations and enforcement against individuals who violate the
168 provisions of this section. Notwithstanding any other provision of law, all photographs, microphotographs,
169 videotapes, or other recorded images collected by a photo speed monitoring device shall be used exclusively
170 for enforcing vehicle speed violations and shall not be (i) open to the public; (ii) sold or used for sales,
171 solicitation, or marketing purposes; (iii) disclosed to any other entity except as may be necessary for the
172 enforcement of a vehicle speed violation or to a vehicle owner or operator as part of a challenge to the
173 violation; or (iv) used in a court in a pending action or proceeding unless the action or proceeding relates to a
174 vehicle speed violation or a violation of this section, or such information is requested upon order from a court
175 of competent jurisdiction. Information collected under this section pertaining to a specific violation shall be

176 purged and not retained later than 60 days after the collection of any civil penalties. Any law-enforcement
177 agency using photo speed monitoring devices shall annually certify compliance with this section and make all
178 records pertaining to such system available for inspection and audit by the Commissioner of Highways or the
179 Commissioner of the Department of Motor Vehicles or his designee. Any person who discloses personal
180 information in violation of the provisions of this subsection shall be subject to a civil penalty of \$1,000 per
181 disclosure.

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

186 K. Any state or local law-enforcement agency that places and operates a photo speed monitoring device
187 pursuant to the provisions of this section shall report to the Department of State Police, in a format to be
188 determined by the Department of State Police, by January 15 of each year on the number of traffic violations
189 prosecuted, the number of successful prosecutions, *the operating costs of the use of such photo speed*
190 *monitoring device*, and the total amount of monetary civil penalties collected. The Department of State Police
191 shall aggregate such information and report it to the General Assembly by February 15 of each year.

192 L. *Any state or local law-enforcement agency that places and operates a photo speed monitoring device*
193 *pursuant to the provisions of this section shall conduct, in addition to the periodic calibration conducted in*
194 *accordance with the requirements of § 46.2-822, a daily test of the accuracy of such device. Such law-*
195 *enforcement agency shall report to the Department of State Police, in a format to be determined by the*
196 *Department of State Police, by January 15 of each year the aggregate results of such daily tests conducted*
197 *during the previous 12 months. Such requirement shall be satisfied if the private vendor with which such*
198 *law-enforcement agency has entered into an agreement pursuant to subsection H completes the daily test of*
199 *accuracy and associated reporting requirements pursuant to subsection H.*