

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact § 46.2-882.1 of the Code of Virginia, relating to photo speed monitoring devices; school crossing zones.

[H 2718]

Approved

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. *However, for any photo speed monitoring device placed in a school crossing zone, such sworn certificate or facsimile thereof shall not be prima facie evidence of the facts contained therein unless such photographs, microphotographs, or other recorded images, or documentation, depicts or confirms a portable sign or tilt-over sign that is in position and blinking or otherwise activated, indicating the school crossing zone pursuant to § 46.2-873, at the time of such vehicle speed violation.* 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 violation or (ii) testifies in open court under oath 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 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 vehicle speed violation, is presented, prior to the return date established on the summons issued pursuant to this section, to the court adjudicating the alleged violation.

F. Imposition of a penalty pursuant to this section by mailing a summons 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 liability is imposed, nor shall it be used for insurance purposes in the provision of motor vehicle insurance coverage. However, if a law-enforcement officer uses a photo speed monitoring device to record a vehicle speed violation and personally issues a summons at the time of the violation, the conviction that results shall be made a part of such driver's driving record and used for insurance purposes in the provision of motor vehicle insurance coverage.

G. A summons for a vehicle speed violation issued by mail pursuant to this section may be executed pursuant to § 19.2-76.2. Notwithstanding the provisions of § 19.2-76, a summons issued by mail pursuant to this section may be executed by mailing by first-class mail a copy thereof to the owner, lessee, or renter of the vehicle. In the case of a vehicle owner, the copy shall be mailed to the address contained in the records of or accessible to the Department. In the case of a vehicle lessee or renter, the copy shall be mailed to the address contained in the records of the lessor or renter. Every such mailing shall include, in addition to the summons, a notice of (i) the summoned person's ability to rebut the presumption that he was the operator of the vehicle at the time of the alleged violation through the filing of an affidavit as provided in subsection E and (ii) instructions for filing such affidavit, including the address to which the affidavit is to be sent. 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. If the summons is issued to an owner, lessee, or renter of a vehicle with a registration outside the Commonwealth and such person fails to appear on the date of return set out in the summons mailed pursuant to this section, the summons will be eligible for all legal collections activities. Any summons executed for a vehicle speed violation issued pursuant to this section shall provide to the person summoned at least 30 days from the mailing of the summons to inspect information collected by a photo speed monitoring device in connection with the violation. If the law-enforcement agency that was operating the photo speed monitoring device does not execute a summons for a vehicle speed violation issued pursuant to this section within 30 days from the date of the violation, all information collected pertaining to that suspected violation shall be purged within 60 days from the date of the violation.

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

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

119 disclosure.

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

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