

SENATE BILL NO. 428
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Transportation
on _____)
(Patron Prior to Substitute—Senator Babgy)

A BILL to amend and reenact §§ 46.2-873 and 46.2-882.1 of the Code of Virginia, relating to school crossing zones; institutions of higher education.

SENATE BILL NO. 435

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-873 and 46.2-882.1 of the Code of Virginia are amended and reenacted as follows:

§ 46.2-873. Maximum speed limits at school crossings; penalty.

A. For the purposes of this section, ~~"school:~~

"School" includes public institutions of higher education and nonprofit private institutions of higher education, as those terms are defined in § 23.1-100.

"School crossing zone" means an area located within the vicinity of a school at or near a highway where the presence of children or students on such school property or going to and from school reasonably requires a special warning to motorists. Such zones are marked and operated in accordance with the requirements of this section with appropriate warning signs or other traffic control devices indicating that a school crossing is in progress.

B. The maximum speed limit shall be 25 miles per hour between portable signs, tilt-over signs, or fixed blinking signs placed in or along any highway and bearing the word "school" or "school crossing." Any signs erected under this section shall be placed not more than 750 feet from the limits of the school property or crossing in the vicinity of the school. However, "school crossing" signs may be placed in any location if the Department of Transportation or the council of the city or town or the board of supervisors of a county maintaining its own system of secondary roads approves the crossing for such signs. If the portion of the highway to be posted is within the limits of a city or town, such portable signs shall be furnished and delivered by such city or town. If the portion of highway to be posted is outside the limits of a city or town, such portable signs shall be furnished and delivered by the Department of Transportation. The principal or chief administrative officer of each school or a school board designee, preferably not a classroom teacher, shall place such portable signs in the highway at a point not more than 750 feet from the limits of the school

property and remove such signs when their presence is no longer required by this section. Such portable signs, tilt-over signs, or fixed blinking signs shall be placed in a position plainly visible to vehicular traffic approaching from either direction, but shall not be placed so as to obstruct the roadway.

C. Such portable signs, tilt-over signs, or blinking signs shall be in a position, or be turned on, for 30 minutes preceding regular school hours, for 30 minutes thereafter, and during such other times as the presence of children *or students* on such school property or going to and from school reasonably requires a special warning to motorists. The governing body of any county, city, or town may, however, decrease the period of time preceding and following regular school hours during which such portable signs, tilt-over signs, or blinking signs shall be in position or ~~be~~ *turned on* if it determines that no children *or students* will be going to or from school during the period of time that it subtracts from the 30-minute period.

Notwithstanding the provisions of this section, the governing body of a public institution of higher education or nonprofit private institution of higher education shall pay all costs associated with the establishment, installation, maintenance, and operation of school crossing zones within or surrounding such institution's property limits and may (i) decline to establish a posted school crossing zone as authorized in this section or (ii) set hours for such portable signs, tilt-over signs, or blinking signs to be in position or turned on that reflect the class schedule at such institution of higher education, provided that such hours are when the presence of children or students on such institution's property or going to and from such school reasonably requires a special warning to motorists.

D. The governing body of any city or town may, if the portion of the highway to be posted is within the limits of such city or town, increase or decrease the speed limit provided in this section only after justification for such increase or decrease has been shown by an engineering and traffic investigation, and no such increase or decrease in speed limit shall be effective unless such increased or decreased speed limit is conspicuously posted on the portable signs, tilt-over signs, or fixed blinking signs required by this section.

E. The governing body of a county within Planning District 8 may, if the portion of the highway to be posted is within the limits of such county, increase or decrease the speed limit provided in this section only after justification for such increase or decrease has been shown by an engineering and traffic investigation, and no such increase or decrease in speed limit shall be effective unless such increased or decreased speed limit is conspicuously posted on the portable signs, tilt-over signs, or fixed blinking signs required by this section.

F. The City of Virginia Beach may establish school zones as provided in this section and mark such zones

with flashing warning lights as provided in this section on and along all highways adjacent to Route 58.

G. Any person operating any motor vehicle in excess of a maximum speed limit established specifically for a school crossing zone when such school crossing zone is (i) indicated by appropriately placed signs displaying the maximum speed limit and (ii) in operation pursuant to subsection B ~~shall be~~ is guilty of a traffic infraction punishable by a fine of not more than \$250, in addition to other penalties provided by law.

H. Notwithstanding the foregoing provisions of this section, the maximum speed limit in school zones in residential areas may be decreased to 15 miles per hour if (i) the school board having jurisdiction over the school nearest to the affected school zone passes a resolution requesting the reduction of the maximum speed limit for such school zone from 25 miles per hour to 15 miles per hour and (ii) the local governing body of the jurisdiction in which such school is located enacts an ordinance establishing the speed-limit reduction requested by the school board.

§ 46.2-882.1. Use of photo speed monitoring devices in highway work zones, certain 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.

"Retired sworn law-enforcement officer" means any officer of the United States, or of a state or political subdivision thereof, who was empowered by law to conduct investigations and make arrests and any attorney authorized by law to prosecute or participate in the prosecution of such offenses, who at the time of retirement kept an up-to-date certification and retired honorably in good standing. A retired sworn law-enforcement officer shall not be required to keep an up-to-date certification after the date of his retirement.

"School crossing zone" has the same meaning ascribed to it in § 46.2-873, *excluding any such zones within the vicinity of a public institution of higher education and nonprofit private institution of higher education, as those terms are defined in § 23.1-100, and no other eligible school.*

"Vehicle speed violation" means a violation of this title resulting from the operation of a vehicle in excess

91 of the speed limit, including a violation of § 46.2-873 or 46.2-878.1.

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

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

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

112 D. If a photo speed monitoring device is used, proof of a vehicle speed violation shall be evidenced by
113 information obtained from such device. A certificate, or a facsimile thereof, sworn to or affirmed by a
114 law-enforcement officer or a retired sworn law-enforcement officer, based upon inspection of photographs,
115 microphotographs, videotapes, or other recorded images produced by a photo speed monitoring device, shall
116 be prima facie evidence of the facts contained therein. However, for any photo speed monitoring device
117 placed in a school crossing zone, such sworn certificate or facsimile thereof shall not be prima facie evidence
118 of the facts contained therein unless such photographs, microphotographs, videotapes, or other recorded
119 images, or documentation, depict or confirm a portable sign or tilt-over sign that is in position or blinking
120 sign that is activated, indicating the school crossing zone pursuant to § 46.2-873, at the time of such vehicle
121 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 or retired sworn 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 disclosure.

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

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