

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 46.2-882.1 of the Code of Virginia, relating to photo speed monitoring*
 3 *devices; highway work zones; workers present.*

4 [S 436]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That § 46.2-882.1 of the Code of Virginia is amended and reenacted as follows:**8 **§ 46.2-882.1. Use of photo speed monitoring devices in highway work zones, school crossing zones,**
 9 **and high-risk intersection segments; civil penalty.**

10 A. For the purposes of this section:

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

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

16 "Photo speed monitoring device" means equipment that uses radar or LIDAR-based speed detection and
 17 produces one or more photographs, microphotographs, videotapes, or other recorded images of vehicles.18 "Retired sworn law-enforcement officer" means any officer of the United States, or of a state or political
 19 subdivision thereof, who was empowered by law to conduct investigations and make arrests and any attorney
 20 authorized by law to prosecute or participate in the prosecution of such offenses, who at the time of
 21 retirement kept an up-to-date certification and retired honorably in good standing. A retired sworn law-
 22 enforcement officer shall not be required to keep an up-to-date certification after the date of his retirement.

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

24 "Vehicle speed violation" means a violation of this title resulting from the operation of a vehicle in excess
 25 of the speed limit, including a violation of § 46.2-873 or 46.2-878.1.26 "*Workers are present*" means one or more individuals are physically present and providing highway
 27 maintenance or construction services pursuant to a contract with the Department of Transportation or a
 28 political subdivision of the Commonwealth.29 B. A state or local law-enforcement agency may place and operate a photo speed monitoring device in
 30 school crossing zones for the purposes of recording violations of § 46.2-873 and, *when workers are present*,
 31 in highway work zones for the purposes of recording violations of § 46.2-878.1.32 A state or local law-enforcement agency may place and operate a photo speed monitoring device at a
 33 high-risk intersection segment located within the locality for the purpose of recording vehicle speed
 34 violations, provided that such law-enforcement agency certifies that a traffic fatality has occurred since
 35 January 1, 2014, in such segment.36 C. The operator of a vehicle shall be liable for a monetary civil penalty imposed pursuant to this section if
 37 such vehicle is found, as evidenced by information obtained from a photo speed monitoring device, to be
 38 traveling at speeds of at least 10 miles per hour above the posted speed limit in the zone monitored by the
 39 photo speed monitoring device, *provided that if such zone is a highway work zone, workers are present*. Such
 40 civil penalty shall not exceed \$100, and any prosecution shall be instituted and conducted in the same manner
 41 as prosecution for traffic infractions. Civil penalties collected under this section resulting from a summons
 42 issued by a local law-enforcement officer or retired sworn law-enforcement officer employed by a locality
 43 shall be paid to the locality in which such violation occurred. Civil penalties collected under this section
 44 resulting from a summons issued by a law-enforcement officer or retired sworn law-enforcement officer
 45 employed by the Department of State Police shall be paid into the Literary Fund. However, all civil penalties
 46 collected under this section resulting from a summons issued based on evidence obtained from a photo speed
 47 monitoring device placed and operated at a high-risk intersection segment shall be paid to the Commonwealth
 48 Transportation Board to be used for the Virginia Highway Safety Improvement Program established pursuant
 49 to § 33.2-373.50 D. If a photo speed monitoring device is used, proof of a vehicle speed violation shall be evidenced by
 51 information obtained from such device. A certificate, or a facsimile thereof, sworn to or affirmed by a
 52 law-enforcement officer or a retired sworn law-enforcement officer, based upon inspection of photographs,
 53 microphotographs, videotapes, or other recorded images produced by a photo speed monitoring device, shall
 54 be prima facie evidence of the facts contained therein. However, for any photo speed monitoring device
 55 placed in a school crossing zone, such sworn certificate or facsimile thereof shall not be prima facie evidence
 56 of the facts contained therein unless such photographs, microphotographs, videotapes, or other recorded

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57 images, or documentation, depict or confirm a portable sign or tilt-over sign that is in position or blinking
58 sign that is activated, indicating the school crossing zone pursuant to § 46.2-873, at the time of such vehicle
59 speed violation. *However, for any photo speed monitoring device placed in a highway work zone, such sworn*
60 *certificate or facsimile thereof shall not be prima facie evidence of the facts contained therein unless the*
61 *operator of the photo speed monitoring device provides a sworn certification verifying that workers were*
62 *present at the time of such violation.* Any photographs, microphotographs, videotapes, or other recorded
63 images evidencing such a violation shall be available for inspection in any proceeding to adjudicate the
64 liability for such vehicle speed violation.

65 E. In the prosecution for a vehicle speed violation in which a summons was issued by mail, prima facie
66 evidence that the vehicle described in the summons issued pursuant to this section was operated in a manner
67 constituting a vehicle speed violation, together with proof that the defendant was at the time of such violation
68 the owner, lessee, or renter of the vehicle, shall constitute in evidence a rebuttable presumption that such
69 owner, lessee, or renter of the vehicle was the person who committed the violation. Such presumption shall
70 be rebutted if the owner, lessee, or renter of the vehicle (i) files an affidavit by regular mail with the clerk of
71 the general district court that he was not the operator of the vehicle at the time of the alleged violation and
72 provides the name and address of the person who was operating the vehicle at the time of the alleged
73 violation or (ii) testifies in open court under oath that he was not the operator of the vehicle at the time of the
74 alleged violation and provides the name and address of the person who was operating the vehicle at the time
75 of the alleged violation. Such presumption shall also be rebutted if a certified copy of a police report,
76 showing that the vehicle had been reported to the police as stolen prior to the time of the alleged vehicle
77 speed violation, is presented, prior to the return date established on the summons issued pursuant to this
78 section, to the court adjudicating the alleged violation.

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

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

107 H. A private vendor may enter into an agreement with a law-enforcement agency to be compensated for
108 providing a photo speed monitoring device and all related support services, including consulting, operations,
109 and administration. However, only a law-enforcement officer or retired sworn law-enforcement officer may
110 swear to or affirm the certificate required by this section. Any such agreement for compensation shall be
111 based on the value of the goods and services provided, not on the number of violations paid or monetary
112 penalties imposed. Any private vendor contracting with a law-enforcement agency pursuant to this section
113 may enter into an agreement with the Department, in accordance with the provisions of subdivision B 31 of
114 § 46.2-208, to obtain vehicle owner information regarding the registered owners of vehicles that committed a
115 vehicle speed violation. Any such information provided to such private vendor shall be protected in a
116 database.

117 I. Information collected by a photo speed monitoring device operated pursuant to this section shall be
118 limited exclusively to that information that is necessary for the enforcement of vehicle speed violations.

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

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

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