

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

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An Act to amend and reenact § 46.2-882.1 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 46.2-102.1, relating to enforcement of federal traffic infractions by state and local law-enforcement officers; photo speed monitoring devices; Planning District 8.

[S 81]

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 and that the Code of Virginia is amended by adding a section numbered 46.2-102.1 as follows:

§ 46.2-102.1. Enforcement of federal traffic infractions by state and local law-enforcement officers; Planning District 8.

A. Any person operating a motor vehicle on any highway within Planning District 8 who is guilty of any traffic infraction that, although not made punishable by any provisions of this title, or any regulation adopted pursuant to this title, or any local ordinances adopted pursuant to the authority granted in this title, is punishable by the federal laws and regulations in force at the time of such infraction if committed on any highway within Planning District 8, including any highway located on property where the Commonwealth has transferred such property to the federal government subject to concurrent jurisdiction pursuant to Chapter 4 (§ 1-400 et seq.) of Title 1 or Chapter 494 of the Acts of Assembly of 1926, is guilty of a like offense and subject to a like punishment.

B. Any state or local law-enforcement officer authorized to enforce the provisions of this title pursuant to § 46.2-102 may enforce the provisions of this section on any highway within Planning District 8.

C. A violation of this section may be charged on the uniform traffic summons form, which shall reference both this section and the incorporated state statute, local ordinance, or federal statute or regulation. Any action under this section shall be brought in the general district court of the city or county in which the violation occurred. The procedure for appeal and trial of any violation of this section shall be the same as provided by law for misdemeanors; if requested by either party on appeal to the circuit court, trial by jury shall be as provided in Article 4 (§ 19.2-260 et seq.) of Chapter 15 of Title 19.2, and the Commonwealth shall be required to prove its case beyond a reasonable doubt.

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

"National Park highway" means any highway within Planning District 8 that is located on property where the Commonwealth has transferred such property to the federal government subject to concurrent jurisdiction pursuant to Chapter 4 (§ 1-400 et seq.) of Title 1 or Chapter 494 of the Acts of Assembly of 1926 and such highway is maintained by the National Park Service.

"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.

"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 § 46.2-102.1, 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

57 January 1, 2014, in such segment.

58 *A state or local law-enforcement agency may place and operate a photo speed monitoring device on a*  
59 *National Park highway for the purpose of recording vehicle speed violations, pursuant to § 46.2-102.1,*  
60 *provided that such law-enforcement agency has been authorized by the federal government or the National*  
61 *Park Service to place such photo speed monitoring device on such National Park highway.*

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

75 D. If a photo speed monitoring device is used, proof of a vehicle speed violation shall be evidenced by  
76 information obtained from such device. A certificate, or a facsimile thereof, sworn to or affirmed by a  
77 law-enforcement officer or a retired sworn law-enforcement officer, based upon inspection of photographs,  
78 microphotographs, videotapes, or other recorded images produced by a photo speed monitoring device, shall  
79 be prima facie evidence of the facts contained therein. However, for any photo speed monitoring device  
80 placed in a school crossing zone, such sworn certificate or facsimile thereof shall not be prima facie evidence  
81 of the facts contained therein unless such photographs, microphotographs, videotapes, or other recorded  
82 images, or documentation, depict or confirm a portable sign or tilt-over sign that is in position or blinking  
83 sign that is activated, indicating the school crossing zone pursuant to § 46.2-873, at the time of such vehicle  
84 speed violation. Any photographs, microphotographs, videotapes, or other recorded images evidencing such a  
85 violation shall be available for inspection in any proceeding to adjudicate the liability for such vehicle speed  
86 violation.

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

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

108 G. A summons for a vehicle speed violation issued by mail pursuant to this section may be executed  
109 pursuant to § 19.2-76.2. Notwithstanding the provisions of § 19.2-76, a summons issued by mail pursuant to  
110 this section may be executed by mailing by first-class mail a copy thereof to the owner, lessee, or renter of  
111 the vehicle. In the case of a vehicle owner, the copy shall be mailed to the address contained in the records of  
112 or accessible to the Department. In the case of a vehicle lessee or renter, the copy shall be mailed to the  
113 address contained in the records of the lessor or renter. Every such mailing shall include, in addition to the  
114 summons, a notice of (i) the summoned person's ability to rebut the presumption that he was the operator of  
115 the vehicle at the time of the alleged violation through the filing of an affidavit as provided in subsection E  
116 and (ii) instructions for filing such affidavit, including the address to which the affidavit is to be sent. If the  
117 summoned person fails to appear on the date of return set out in the summons mailed pursuant to this section,  
118 the summons shall be executed in the manner set out in § 19.2-76.3. No proceedings for contempt or arrest of

119 a person summoned by mailing shall be instituted for failure to appear on the return date of the summons. If  
 120 the summons is issued to an owner, lessee, or renter of a vehicle with a registration outside the  
 121 Commonwealth and such person fails to appear on the date of return set out in the summons mailed pursuant  
 122 to this section, the summons will be eligible for all legal collections activities. Any summons executed for a  
 123 vehicle speed violation issued pursuant to this section shall provide to the person summoned at least 30 days  
 124 from the mailing of the summons to inspect information collected by a photo speed monitoring device in  
 125 connection with the violation. If the law-enforcement agency that was operating the photo speed monitoring  
 126 device does not execute a summons for a vehicle speed violation issued pursuant to this section within 30  
 127 days from the date of the violation, all information collected pertaining to that suspected violation shall be  
 128 purged within 60 days from the date of the violation.

129 H. A private vendor may enter into an agreement with a law-enforcement agency to be compensated for  
 130 providing a photo speed monitoring device and all related support services, including consulting, operations,  
 131 and administration. However, only a law-enforcement officer or retired sworn law-enforcement officer may  
 132 swear to or affirm the certificate required by this section. Any such agreement for compensation shall be  
 133 based on the value of the goods and services provided, not on the number of violations paid or monetary  
 134 penalties imposed. Any private vendor contracting with a law-enforcement agency pursuant to this section  
 135 may enter into an agreement with the Department, in accordance with the provisions of subdivision B 31 of  
 136 § 46.2-208, to obtain vehicle owner information regarding the registered owners of vehicles that committed a  
 137 vehicle speed violation. Any such information provided to such private vendor shall be protected in a  
 138 database.

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

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

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

167 **2. That the provisions of this act shall authorize any locality within Planning District 8 to seek**  
 168 **authorization from the federal government or the National Park Service for the purpose of such**  
 169 **locality's local law-enforcement agency placing a photo speed monitoring device on a National Park**  
 170 **highway.**