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HOUSE BILL NO. 807

Offered January 9, 2002

Prefiled January 9, 2002

A BILL to amend and reenact § 46.2-862 of the Code of Virginia, relating to reckless driving by speed; use of photo-radar technology for enforcement; penalty.

Patron—Almand

Referred to Committee on Militia, Police and Public Safety

Be it enacted by the General Assembly of Virginia:**1. That § 46.2-862 of the Code of Virginia is amended and reenacted as follows:**

§ 46.2-862. Exceeding speed limit; penalty.

A. A person shall be guilty of reckless driving who drives a motor vehicle on the highways in the Commonwealth (i) at a speed of twenty miles per hour or more in excess of the applicable maximum speed limit where the applicable speed limit is thirty miles per hour or less, (ii) at a speed of sixty miles per hour or more where the applicable maximum speed limit is thirty-five miles per hour, (iii) at a speed of twenty miles per hour or more in excess of the applicable maximum speed limits where the applicable maximum speed limit is forty miles per hour or more, or (iv) in excess of eighty miles per hour regardless of the applicable maximum speed limit.

B. The governing body of any county, city, or town may provide by ordinance for the establishment of a program using photo-radar technology to detect and identify on the operators of motor vehicles operated at speeds in excess of the lawful speed limit as provided in this subsection.

For the purposes of this subsection, "photo-radar technology" means a technological process whereby radar is used to determine the speed of a motor vehicle that is simultaneously photographed or of which an image is recorded as a microphotograph, video tape or other image, providing evidence of the speed of the vehicle, the license number of the vehicle, and the date and time of the occurrence.

The operator of a vehicle shall be liable for a civil penalty imposed pursuant to this subsection if such vehicle is found, as evidenced by information obtained from photo-radar technology, to have operated his vehicle at a speed of twenty miles per hour or more in excess of the applicable maximum speed limits where the applicable maximum speed limit is forty miles per hour or more, or in excess of eighty miles per hour regardless of the applicable maximum speed limit.

Proof of a violation of this subsection shall be evidenced by information obtained from photo-radar technology authorized pursuant to this subsection. A certificate, sworn to or affirmed by a technician employed by a locality authorized to impose penalties pursuant to this subsection, or a facsimile thereof, based upon inspection of photographs, microphotographs, videotape, or other recorded images produced by photo-radar technology, shall be prima facie evidence of the facts contained therein. Any photographs, microphotographs, videotape, or other recorded images evidencing such a violation shall be available for inspection in any proceeding to adjudicate the liability for such violation pursuant to an ordinance adopted pursuant to this subsection.

In the prosecution of an offense established under this subsection, prima facie evidence that the vehicle described in the summons issued pursuant to this subsection was operated in violation of this subsection, 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 or (ii) testifies in open court under oath that he was not the operator of 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 violation of this subsection, is presented, prior to the return date established on the summons issued pursuant to this subsection, to the court adjudicating the alleged violation.

For purposes of this subsection "owner" means the registered owner of such vehicle on record with the Department of Motor Vehicles.

Imposition of a penalty pursuant to this subsection 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. No monetary penalty imposed under this subsection shall exceed fifty dollars nor shall it include court costs.

INTRODUCED

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59 A summons for a violation of this subsection may be executed pursuant to § 19.2-76.2.
60 Notwithstanding the provisions of § 19.2-76, a summons for a violation of this subsection may be
61 executed by mailing by first-class mail a copy thereof to the address of the owner, lessee, or renter of
62 the vehicle as shown, in the case of vehicle owners, in the records of the Department of Motor Vehicles
63 or, in the case of vehicle lessees or renters, in the records of the lessor or rentor. Every such mailing
64 shall include, in addition to the summons, a notice of (i) the summoned person's ability to rebut the
65 presumption that he was the operator of the vehicle at the time of the alleged violation through the
66 filing of an affidavit as provided in this subsection and (ii) instructions for filing such affidavit,
67 including the address to which the affidavit is to be sent. If the summoned person fails to appear on the
68 date of return set out in the summons mailed pursuant to this subsection, the summons shall be executed
69 in the manner set out in § 19.2-76.3. No proceedings for contempt or arrest of a person summoned by
70 mailing shall be instituted for failure to appear on the return date of the summons.

71 On behalf of a locality, a private entity may not obtain records regarding the registered owners of
72 vehicles identified by photo-radar technology as provided for in this subsection. A private entity may
73 enter into an agreement with a locality to be compensated for providing the photo-radar technology
74 system or equipment, and all related support services, to include consultation, operation, and
75 administration. However, only an employee of the locality may swear to or affirm the certificate
76 required by this subsection.

77 The provisions of this subsection shall expire on July 1, 2005.