

2017 SESSION

LEGISLATION NOT PREPARED BY DLS
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17104403D

SENATE BILL NO. 1510

Offered January 18, 2017

A *BILL to amend and reenact §§ 46.2-878.1 and 46.2-882 of the Code of Virginia, relating to handheld photo speed monitoring devices.*

Patron—Carrico

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That §§ 46.2-878.1 of the Code of Virginia are amended and reenacted as follows:

§ 46.2-878.1. Maximum speed limits in highway work zones; civil penalty; speed monitoring devices.

A. Operation of any motor vehicle in excess of a maximum speed limit established specifically for a highway work zone, when workers are present and when such highway work zone is indicated by appropriately placed signs displaying the maximum speed limit and the penalty for violations, shall be unlawful and constitute a traffic infraction punishable by a fine of not more than \$500. The operator of such motor vehicle shall be subject to a civil penalty not to exceed \$100. Any prosecution shall be instituted and conducted in the same manner as prosecutions for traffic infractions. All funds collected from the penalty shall be paid into the state treasury and set allocated to the Department of State Police.

For the purposes of this section;

"Handheld photo speed monitoring device" means handheld equipment which uses LIDAR-based speed detection and automatically produces one or more photographs, microphotographs, videotapes, or other recorded images of vehicles in violation of this subsection.

"~~highway~~ Highway work zone" means a construction or maintenance area that is located on or beside a highway and marked by appropriate warning signs and, for projects covered by contracts entered into on or after July 1, 2012, with attached flashing lights or other traffic control devices indicating that work is in progress.

B. The Department of State Police may operate a handheld photo speed monitoring device in or around highway work zones on the highways of the Commonwealth for the purposes of recording violations under subsection A. 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 handheld photo speed monitoring device, to have failed to comply with the maximum speed limit of a highway work zone.

C. If a handheld photo speed monitoring device is used, proof of a violation of this section shall be evidenced by information obtained from such device. A certificate, sworn to or affirmed by an officer of the Department of State Police, or a facsimile thereof, based upon inspection of photographs, microphotographs, videotape, or other recorded images produced by a handheld photo speed monitoring device, 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 section.

D. In the prosecution for a violation as provided in this section, prima facie evidence that the vehicle described in the summons issued pursuant to this section was operated in violation subsection A, 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 within 14 days of receipt of the summons 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 section, 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 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.

G. A summons for a violation of this section may be executed by mailing by first class mail a copy

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59 *thereof to the owner, lessee, or renter of the vehicle. In the case of a vehicle owner, the copy shall be*
60 *mailed to the address contained in the records of the Department of Motor Vehicles; in the case of a*
61 *vehicle lessee or renter, the copy shall be mailed to the address contained in the records of the lessor*
62 *or renter. Every such mailing shall include, in addition to the summons, a notice of (i) the summoned*
63 *person's ability to rebut the presumption that he was the operator of the vehicle at the time of the*
64 *alleged violation through the filing of an affidavit as provided in subsection D and (ii) instructions for*
65 *filing such affidavit, including the address to which the affidavit is to be sent. No proceedings for*
66 *contempt or arrest of a person summoned by mailing shall be instituted for failure to appear on the*
67 *return date of the summons. Any summons executed for a violation of this section shall provide to the*
68 *person summoned at least 30 business days from the mailing of the summons to inspect information*
69 *collected by a handheld photo speed monitoring device in connection with the violation.*

70 *H. Information collected by a handheld photo speed monitoring device operated pursuant to this*
71 *section shall be limited exclusively to that information that is necessary for the enforcement of highway*
72 *work zone speeding violations. Information provided to the operator of a handheld photo speed*
73 *monitoring devices shall be protected in a database with security comparable to that of the Department*
74 *of Motor Vehicles' system, and used only for enforcement against individuals who violate the provisions*
75 *of this section. Notwithstanding any other provision of law, all photographs, microphotographs,*
76 *electronic images, or other personal information collected by a handheld photo speed monitoring device*
77 *shall be used exclusively for enforcing highway work zone speeding violations and shall not (i) be open*
78 *to the public; (ii) be sold or used for sales, solicitation, or marketing purposes; (iii) be disclosed to any*
79 *other entity except as may be necessary for the enforcement highway work zone speeding violations or*
80 *to a vehicle owner or operator as part of a challenge to the violation; or (iv) be used in a court in a*
81 *pending action or proceeding unless the action or proceeding relates to a violation of this section or*
82 *requested upon order from a court of competent jurisdiction. Information collected under this section*
83 *pertaining to a specific violation shall be purged and not retained later than 60 days after the collection*
84 *of any civil penalties. Any division of the Department of State Police using handheld photo speed*
85 *monitoring device shall annually certify compliance with this section and make all records pertaining to*
86 *such system available for inspection and audit by the Commissioner of Highways or the Commissioner*
87 *of the Department of Motor Vehicles. Any person who discloses personal information in violation of the*
88 *provisions of this subsection shall be subject to a civil penalty of \$1,000 per disclosure.*

89 *I. Nothing in this section shall preclude the prosecution or conviction for reckless driving of any*
90 *motor vehicle operator whose operation of any motor vehicle in a highway work zone, apart from speed,*
91 *demonstrates a reckless disregard for life, limb, or property.*

92 **§ 46.2-882. Determining speed with various devices; certificate as to accuracy of device; arrest**
93 **without warrant.**

94 *The speed of any motor vehicle may be determined by the use of (i) a laser speed determination*
95 *device, (ii) radar, (iii) a microcomputer device that is physically connected to an odometer cable and*
96 *both measures and records distance traveled and elapsed time to determine the average speed of a motor*
97 *vehicle, or (iv) a microcomputer device that is located aboard an airplane or helicopter and measures*
98 *and records distance traveled and elapsed time to determine the average speed of a motor vehicle being*
99 *operated on highways within the Interstate System of highways as defined in § 33.2-100. The results of*
100 *such determinations shall be accepted as prima facie evidence of the speed of such motor vehicle in any*
101 *court or legal proceeding where the speed of the motor vehicle is at issue.*

102 *In any court or legal proceeding in which any question arises about the calibration or accuracy of*
103 *any laser speed determination device, radar, or microcomputer device as described in this section used to*
104 *determine the speed of any motor vehicle, a certificate, or a true copy thereof, showing the calibration*
105 *or accuracy of (i) the speedometer of any vehicle, (ii) any tuning fork employed in calibrating or testing*
106 *the radar or other speed determination device or (iii) any other method employed in calibrating or*
107 *testing any laser speed determination device, and when and by whom the calibration was made, shall be*
108 *admissible as evidence of the facts therein stated. No calibration or testing of such device shall be valid*
109 *for longer than six months.*

110 *The driver of any such motor vehicle may be arrested without a warrant under this section if the*
111 *arresting officer is in uniform and displays his badge of authority and if the officer has observed the*
112 *registration of the speed of such motor vehicle by the laser speed determination device, radar, or*
113 *microcomputer device as described in this section, or has received a radio message from the officer who*
114 *observed the speed of the motor vehicle registered by the laser speed determination device, radar, or*
115 *microcomputer device as described in this section. However, in case of an arrest based on such a*
116 *message, such radio message shall have been dispatched immediately after the speed of the motor*
117 *vehicle was registered and furnished the license number or other positive identification of the vehicle*
118 *and the registered speed to the arresting officer.*

119 *Neither State Police officers nor local law-enforcement officers shall use laser speed determination*
120 *devices or radar, as described herein in airplanes or helicopters for the purpose of determining the speed*

121 of motor vehicles.

122 State Police officers may use laser speed determination devices, radar, and/or microcomputer devices
123 as described in this section *or handheld photo speed monitoring devices*. All localities may use radar
124 and laser speed determination devices to measure speed. The Cities of Alexandria, Fairfax, Falls Church,
125 Manassas, and Manassas Park and the Counties of Arlington, Fairfax, Loudoun, and Prince William and
126 towns within such counties may use microcomputer devices as described in this section.

127 The Division of Purchases and Supply, pursuant to § 2.2-1112, shall determine the proper equipment
128 used to determine the speed of motor vehicles and shall advise the respective law-enforcement officials
129 of the same. Police chiefs and sheriffs shall ensure that all such equipment and devices purchased on or
130 after July 1, 1986, meet or exceed the standards established by the Division.