

# VIRGINIA ACTS OF ASSEMBLY -- 2019 RECONVENED SESSION

## CHAPTER 842

*An Act to amend and reenact § 46.2-882 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 46.2-882.1, relating to handheld photo speed monitoring devices.*

[S 1521]

Approved April 3, 2019

**Be it enacted by the General Assembly of Virginia:**

**1. That § 46.2-882 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 46.2-882.1 as follows:**

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

The speed of any motor vehicle may be determined by the use of (i) a laser speed determination device, (ii) radar, (iii) a microcomputer device that is physically connected to an odometer cable and both measures and records distance traveled and elapsed time to determine the average speed of a motor vehicle, ~~or~~ (iv) a microcomputer device that is located aboard an airplane or helicopter and measures and records distance traveled and elapsed time to determine the average speed of a motor vehicle being operated on highways within the Interstate System of highways as defined in § 33.2-100, *or (v) a handheld photo speed monitoring device as defined in § 46.2-882.1.* The results of such determinations shall be accepted as prima facie evidence of the speed of such motor vehicle in any court or legal proceeding where the speed of the motor vehicle is at issue.

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

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

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

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

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

**§ 46.2-882.1. Use of handheld photo speed monitoring devices in highway work zones; penalty.**

**A. For the purposes of this section:**

*"Handheld photo speed monitoring device" means handheld equipment that uses LIDAR-based speed detection that produces one or more photographs, microphotographs, videotapes, or other recorded images of vehicles.*

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

**B. The Department of State Police may operate a handheld photo speed monitoring device in highway work zones for the purposes of recording violations of § 46.2-878.1.**

**1. A handheld photo speed monitoring device may be used only by a law-enforcement officer**

employed by the Department of State Police who is physically present in or around the highway work zone where a law-enforcement vehicle is present and displaying lighted blue or blue combination lights to record images of vehicles that are traveling at speeds of at least 12 miles per hour above the posted highway work zone speed limit within such highway work zone.

2. 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 be traveling at speeds of at least 12 miles per hour above the posted highway work zone speed limit within such highway work zone. Such civil penalty shall not exceed \$125, and any prosecution shall be instituted and conducted in the same manner as prosecution for traffic infractions. Civil penalties collected under this section shall be paid into the state treasury and allocated to the Department of State Police. For any fiscal year, if the total amount collected from the penalties pursuant to this section is greater than 10 percent of the budget of the Department of State Police for the fiscal year after the costs of implementing and administering handheld photo speed monitoring devices are recovered, the state treasury shall allocate such moneys that exceed 10 percent of the total budget of the Department of State Police to the Literary Fund.

3. If a handheld photo speed monitoring device is used, proof of a violation of § 46.2-878.1 shall be evidenced by information obtained from such device. A certificate, or a facsimile thereof, sworn to or affirmed by a Virginia State Police officer, 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 of § 46.2-878.1.

4. In the prosecution for a violation of § 46.2-878.1 in which a summons was issued pursuant to this section, prima facie evidence that the vehicle described in the summons issued pursuant to this section was operated in violation of § 46.2-878.1, 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 § 46.2-878.1, is presented, prior to the return date established on the summons issued pursuant to this section, to the court adjudicating the alleged violation.

5. 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.

6. A summons for a violation of § 46.2-878.1 issued pursuant to this section shall 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 subdivision 4 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 violation of § 46.2-878.1 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 handheld photo speed monitoring device in connection with the violation. If the Department of State Police does not execute a summons for a violation of § 46.2-878.1 issued pursuant to this section within 14 days from the date of the violation, all information collected pertaining to that suspected violation shall be purged within 16 days from the date of the violation.

7. Information collected by a handheld photo speed monitoring device operated pursuant to this section shall be limited exclusively to that information that is necessary for the enforcement of highway work zone speeding violations. Information provided to the operator of a handheld photo speed monitoring device shall be protected in a database with security comparable to that of the Department's system and used only for enforcement against individuals who violate the provisions of this section or § 46.2-878.1. Notwithstanding any other provision of law, all photographs, microphotographs, electronic

*images, or other personal information collected by a handheld photo speed monitoring device shall be used exclusively for enforcing highway work zone speed limits 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 highway work zone speed limits 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 violation of this section or § 46.2-878.1, 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 Virginia State Police division using handheld 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 subdivision shall be subject to a civil penalty of \$1,000 per disclosure.*

*8. A conspicuous sign shall be placed within 1,000 feet of any highway work zone at which a handheld 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.*

**2. That a private entity may enter into an agreement with the Department of State Police to be compensated for providing a handheld photo speed monitoring device and all related support services, including consulting, operations, and administration. However, only a law-enforcement officer employed by the Department of State Police may operate a handheld photo speed monitoring device and only a law-enforcement officer employed by the Department of State Police may swear to or affirm the certificate required by subdivision B 3 of § 46.2-882.1 of the Code of Virginia, as created by this act. The Department of State Police shall enter into an agreement for compensation based on the value of the goods and services provided, not on the number of violations paid or monetary penalties imposed.**

**3. That the provisions of the first and second enactments of this act shall not become effective unless reenacted by the 2020 Session of the General Assembly.**

**4. The Secretary of Public Safety and Homeland Security, in consultation with the Virginia State Police, the Virginia Sheriffs' Association, and the Virginia Association of Chiefs of Police, shall review the proposed use of handheld photo speed monitoring devices and consider legal and constitutional implications of dedicating civil penalties to any fund other than the Literary Fund. The Secretary of Public Safety and Homeland Security shall report the results of such review to the Chairmen of the Senate Committee for Courts of Justice, the Senate Committee on Finance, the House Committee for Courts of Justice, and the House Committee on Appropriations by November 1, 2019.**