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HOUSE BILL NO. 1442

Offered January 8, 2020

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A *BILL 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; civil penalty.*

Patrons—Jones and Willett

Referred to Committee on Transportation

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. *The speed of motor vehicles may be determined by the use of a handheld photo speed monitoring device as authorized 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)~~ (a) the speedometer of any vehicle, ~~(ii)~~ (b) any tuning fork employed in calibrating or testing the radar or other speed determination device, or ~~(iii)~~ (c) 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 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 as described in this section. All localities may use radar and laser speed determination devices to measure speed. *State Police officers and any locality may use handheld photo speed monitoring devices to measure speed as authorized in § 46.2-882.1.* 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 and school crossing zones; civil penalty.

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59 A. For the purposes of this section:

60 "Handheld photo speed monitoring device" means handheld equipment that uses LIDAR-based speed
61 detection and, when activated by a person, produces one or more photographs, microphotographs,
62 videotapes, or other recorded images of vehicles.

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

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

65 B. A law-enforcement officer may operate a handheld photo speed monitoring device in school
66 crossing zones from the purposes of recording violations of § 46.2-873 and in highway work zones for
67 the purposes of recording violations of § 46.2-878.1.

68 1. A handheld photo speed monitoring device may only be used:

69 a. By a law-enforcement officer who is physically present in or around the school crossing zone to
70 record images of vehicles that are traveling at speeds of at least 12 miles per hour above the posted
71 speed limit within such school crossing zone; or

72 b. By a law-enforcement officer who is physically present in or around the highway work zone where
73 a law-enforcement vehicle is present and displaying lighted blue or blue combination lights to record
74 images of vehicles that are traveling at speeds of at least 12 miles per hour above the posted highway
75 work zone speed limit within such highway work zone.

76 2. The operator of a vehicle shall be liable for a monetary civil penalty imposed pursuant to this
77 section if such vehicle is found, as evidenced by information obtained from a handheld photo speed
78 monitoring device, to be traveling at speeds of at least 12 miles per hour above the posted school
79 crossing zone or highway work zone speed limit within such school crossing zone or highway work
80 zone. Such civil penalty shall not exceed \$125, and any prosecution shall be instituted and conducted in
81 the same manner as prosecution for traffic infractions. Civil penalties collected under this section shall
82 be paid to the locality in which such violation occurred.

83 3. If a handheld photo speed monitoring device is used, proof of a violation of § 46.2-873 or
84 46.2-878.1 shall be evidenced by information obtained from such device. A certificate, or a facsimile
85 thereof, sworn to or affirmed by a law-enforcement officer, based upon inspection of photographs,
86 microphotographs, videotapes, or other recorded images produced by a handheld photo speed
87 monitoring device, shall be prima facie evidence of the facts contained therein. Any photographs,
88 microphotographs, videotapes, or other recorded images evidencing such a violation shall be available
89 for inspection in any proceeding to adjudicate the liability for such violation of § 46.2-873 or
90 46.2-878.1.

91 4. In the prosecution for a violation of § 46.2-873 or 46.2-878.1 in which a summons was issued by
92 mail, prima facie evidence that the vehicle described in the summons issued pursuant to this section was
93 operated in violation of § 46.2-873 or 46.2-878.1, together with proof that the defendant was at the
94 time of such violation the owner, lessee, or renter of the vehicle, shall constitute in evidence a
95 rebuttable presumption that such owner, lessee, or renter of the vehicle was the person who committed
96 the violation. Such presumption shall be rebutted if the owner, lessee, or renter of the vehicle (i) files an
97 affidavit by regular mail with the clerk of the general district court that he was not the operator of the
98 vehicle at the time of the alleged violation or (ii) testifies in open court under oath that he was not the
99 operator of the vehicle at the time of the alleged violation. Such presumption shall also be rebutted if a
100 certified copy of a police report, showing that the vehicle had been reported to the police as stolen
101 prior to the time of the alleged violation of § 46.2-873 or 46.2-878.1, is presented, prior to the return
102 date established on the summons issued pursuant to this section, to the court adjudicating the alleged
103 violation.

104 5. Imposition of a penalty pursuant to this section by mailing a summons shall not be deemed a
105 conviction as an operator and shall not be made part of the operating record of the person upon whom
106 such liability is imposed, nor shall it be used for insurance purposes in the provision of motor vehicle
107 insurance coverage. However, if a law-enforcement officer uses a handheld photo speed monitoring
108 device to record a violation of § 46.2-873 or 46.2-878.1 and personally issues a summons at the time of
109 the violation, the conviction that results shall be made a part of such driver's driving record and used
110 for insurance purposes in the provision of motor vehicle insurance coverage.

111 6. A summons for a violation of § 46.2-873 or 46.2-878.1 issued by mail pursuant to this section
112 shall be executed by mailing by first-class mail a copy thereof to the owner, lessee, or renter of the
113 vehicle. In the case of a vehicle owner, the copy shall be mailed to the address contained in the records
114 of or accessible to the Department. In the case of a vehicle lessee or renter, the copy shall be mailed to
115 the address contained in the records of the lessor or renter. Every such mailing shall include, in
116 addition to the summons, a notice of (i) the summoned person's ability to rebut the presumption that he
117 was the operator of the vehicle at the time of the alleged violation through the filing of an affidavit as
118 provided in subdivision 4 and (ii) instructions for filing such affidavit, including the address to which
119 the affidavit is to be sent. If the summoned person fails to appear on the date of return set out in the
120 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 § 46.2-873 or 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 law-enforcement agency that was operating the handheld speed monitoring device does not execute a summons for a violation of § 46.2-873 or 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 school crossing zone and 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 § 46.2-873 or 46.2-878.1. Notwithstanding any other provision of law, all photographs, microphotographs, videotapes, or other recorded images collected by a handheld photo speed monitoring device shall be used exclusively for enforcing school crossing zone and 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 school crossing zone and 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 § 46.2-873 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 law-enforcement agency 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 school crossing zone or 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 a law-enforcement agency 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 may operate a handheld photo speed monitoring device and only a law-enforcement officer 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. Such law-enforcement agency 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.