

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Committee Substitute

For

House Bill 4595

BY DELEGATES BOOTH, REED, STATLER, RILEY, HAYNES,

ZATEZALO, FAST AND GARCIA

[Introduced February 09, 2022; referred to the

Committee on the Judiciary then Finance]

1 A BILL to amend and reenact §17C-6-1 and §17C-6-7a of the Code of West Virginia, 1931, as
2 amended; and to amend said code by adding thereto a new section, designated §17C-6-
3 7b, all relating to establishing a program for camera assisted speed enforcement in active
4 work zones in this state; authorizing the Commissioner of Highways to set speed limits in
5 work zones on public highways; establishing use of work zone speed control systems as
6 an exception to the prohibition against photo monitoring devices for traffic law
7 enforcement; establishing duty of vehicle owners to ensure lawful operation of their
8 vehicles on public highways; defining terms; authorizing the use of work zone speed
9 control systems for enforcement of speed restrictions in active work zones; specifying
10 lawful uses of equipment and setting conditions upon their operation; specifying
11 qualifications of system operators; establishing specification and restrictions for machine
12 functions; providing for administration of enforcement program by contractor; requiring
13 written notice of violations to be provided to vehicle owners, with specification for contents
14 and manner of delivery; establishing civil penalties for violations and limiting the effect and
15 use of admissions and assessments; establishing response options for owner and the
16 owner's obligation to respond; providing for default for owner's failure to respond and
17 suspension of vehicle registration; authorizing collection of delinquent penalties; providing
18 for administrative hearing, notice of hearing, and judicial review of decisions; restricting
19 the use of images and providing an exception from the Freedom of Information Act;
20 requiring the proposal and acceptance of legislative rules; correcting references to other
21 sections; and requiring the submission of annual reports.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. SPEED RESTRICTIONS.

§17C-6-1. Speed limitations generally; penalty.

1 (a) No person may drive a vehicle on a highway at a speed greater than is reasonable and
2 prudent under the existing conditions and the actual and potential hazards. In every event speed

3 shall be controlled as necessary to avoid colliding with any person, vehicle or other conveyance
4 on or entering the highways in compliance with legal requirements and the duty of all persons to
5 use due care.

6 (b) Where no special hazard exists that requires lower speed for compliance with
7 subsection (a) of this section, the speed of any vehicle not in excess of the limits specified in this
8 section or established as authorized in this ~~section~~ article is lawful, but any speed in excess of
9 the limits specified in this subsection or established as authorized in this ~~section~~ article is unlawful.

10 The following speed limits apply:

11 (1) Fifteen miles per hour in a school zone during school recess or while children are going
12 to or leaving school during opening or closing hours. A school zone is all school property, including
13 school grounds and any street or highway abutting the school grounds and extending one
14 hundred twenty-five feet along the street or highway from the school grounds and, in the case of
15 school property not abutting a street or highway but accessed through a right-of-way granted for
16 entrance to school property, a school zone established by an engineering study conducted by the
17 Division of Highways is all school property, including school grounds and any property within the
18 access right-of-way, and extending one hundred twenty-five feet along the street or highway from
19 the entrance to the access right-of-way. The West Virginia Division of Highways shall erect
20 signage indicating the place of entry and exit of each school zone. Upon a formal vote and a
21 written request by a county board of education to expand a school zone to a road that is adjacent
22 to school property or from the entrance to an access right-of-way, the West Virginia Division of
23 Highways shall expand the school zone by erecting new signage indicating the expanded school
24 zone's location and speed limit within ninety days of receiving the request: *Provided*, That the
25 school zone may not be expanded more than one hundred twenty-five feet along an adjacent
26 road unless the division determines that the additional extension is needed and necessary for the
27 safety of the school children. The speed restriction does not apply to vehicles traveling on a
28 controlled-access highway which is separated from the school or school grounds by a fence or

29 barrier approved by the Division of Highways;

30 (2) Twenty-five miles per hour in any business or residence district; and

31 (3) Fifty-five miles per hour on open country highways, except as otherwise provided by
32 this chapter.

33 The speeds set forth in this section may be altered as authorized in §17C-6-2, ~~and~~ §17C-
34 6-3, and §17C-6-7b of this code.

35 (c) The driver of every vehicle shall, consistent with the requirements of subsection (a) of
36 this section, drive at an appropriate reduced speed when approaching and crossing an
37 intersection or railway grade crossing, when approaching and going around a curve, when
38 approaching a hill crest, when traveling upon any narrow or winding roadway, and when a special
39 hazard exists with respect to pedestrians or other traffic or by reason of weather or highway
40 conditions.

41 (d) The speed limit on controlled access highways and interstate highways, where no
42 special hazard exists that requires a lower speed, shall be not less than 55 miles per hour and
43 the speed limits specified in subsection (b) of this section do not apply.

44 (e) Unless otherwise provided in this section, any person who violates the provisions of
45 this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than
46 \$100; upon a second conviction within one year thereafter, shall be fined not more than \$200;
47 and, upon a third or subsequent conviction within two years thereafter, shall be fined not more
48 than \$500: *Provided*, That if the third or subsequent conviction is based upon a violation of the
49 provisions of this section where the offender exceeded the speed limit by 15 miles per hour or
50 more, then upon conviction, shall be fined not more than \$500 or confined in jail for not more than
51 six months, or both fined and confined.

52 (f) Any person who violates the provisions of subdivision (1), subsection (b) of this section
53 is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor
54 more than \$500: *Provided*, That if the conviction is based upon a violation of the provisions of

55 subdivision (1), subsection (b) of this section where the offender exceeded the speed limit by 15
56 miles per hour or more in the presence of one or more children, then upon conviction, shall be
57 fined not less than \$100 nor more than \$500 or confined in jail for not more than six months, or
58 both fined and confined: *Provided, however,* That if the signage required by subdivision (1) is not
59 present in the school zone at the time of the violation, then any person who violates said provision
60 is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$25.

61 (g) If an owner or driver is arrested under the provisions of this section for the offense of
62 driving above the posted speed limit on a controlled access highway or interstate highway and if
63 the evidence shows that the motor vehicle was being operated at 10 miles per hour or less above
64 the speed limit, then, upon conviction thereof, that person shall be fined not more than \$5, plus
65 court costs.

66 (h) Any person operating a commercial motor vehicle engaged in the transportation of coal
67 on the coal resource transportation road system who violates subsection (a), (b), or (c) of this
68 section shall, upon conviction, be subject to fines in triple the amount otherwise provided in
69 subsection (e) of this section.

70 (i) If an owner or driver is convicted under the provisions of this section for the offense of
71 driving above the speed limit on a controlled access highway or interstate highway of this state
72 and if the evidence shows that the motor vehicle was being operated at 10 miles per hour or less
73 above the speed limit, then notwithstanding the provisions of §17B-3-4 of this code, a certified
74 abstract of the judgment on the conviction shall not be transmitted to the Division of Motor
75 Vehicles: *Provided,* That the provisions of this subsection do not apply to conviction of owners or
76 drivers who have been issued a commercial driver's license as defined in Chapter 17E of this
77 code, if the offense was committed while operating a commercial vehicle.

78 (j) If an owner or driver is convicted in another state for the offense of driving above the
79 maximum speed limit on a controlled access highway or interstate highway and if the maximum
80 speed limit in the other state is less than the maximum speed limit for a comparable controlled

81 access highway or interstate highway in this state, and if the evidence shows that the motor
82 vehicle was being operated at 10 miles per hour or less above what would be the maximum speed
83 limit for a comparable controlled access highway or interstate highway in this state, then
84 notwithstanding the provisions of §17B-3-4 of this code, a certified abstract of the judgment on
85 the conviction shall not be transmitted to the Division of Motor Vehicles or, if transmitted, shall not
86 be recorded by the division, unless within a reasonable time after conviction, the person convicted
87 has failed to pay all fines and costs imposed by the other state: *Provided*, That the provisions of
88 this subsection do not apply to conviction of owners or drivers who have been issued a
89 commercial driver's license as defined in Chapter 17E of this code, if the offense was committed
90 while operating a commercial vehicle.

**§17C-6-7a. Prohibition of the use of traffic law photo-monitoring devices to detect or prove
traffic law violations.**

1 (a) As used in this section "traffic law photo-monitoring device" means an electronic
2 system consisting of a photographic, video, or electronic camera and a means of sensing the
3 presence of a motor vehicle that automatically produces photographs, videotape, or digital images
4 of the vehicle, its operator, or its license plate.

5 (b) ~~No~~ Except as provided in §17C-6-7b of this code, no police officer may utilize a traffic
6 law photo-monitoring device to determine compliance with, or to detect a violation of, a municipal
7 or county ordinance or any provision of this code that governs or regulates the operation of motor
8 vehicles.

9 (c) A violation of a municipal or county ordinance or any provision of this code that governs
10 or regulates the operation of motor vehicles may not be proved by evidence obtained by the use
11 of a traffic law photo-monitoring device.

12 (d) The provisions of this section do not prohibit the use of any device designed to measure
13 and indicate the speed of a moving object by means of microwaves or reflected light to obtain
14 evidence to prove the speed of a motor vehicle pursuant to §17C-6-7 of this code.

15 (e) The provisions of this section do not prohibit use of a traffic law photo-monitoring device
16 for any other lawful purposes other than to obtain evidence to prove violations of municipal or
17 county ordinances or any provision of this code governing or regulating the operation of motor
18 vehicles.

§17C-6-7b. Speed monitoring in construction and work zones.

1 (a) Definitions. — As used in this section:

2 “Active work zone” means a work zone, as defined in this section, in which construction,
3 repair, maintenance, or traffic control personnel are present;

4 “Multi-lane, high-speed highway” means any highway with more than one vehicle lane in
5 each direction of travel, with or without a physical separation between the lanes in opposite
6 directions, and with a posted speed limit of 55 miles per hour or greater for ordinary conditions;

7 “Owner” means the registered owner of a motor vehicle or a lessee of a motor vehicle
8 under a lease of six months or longer, but “owner” does not include a motor vehicle rental or
9 leasing company;

10 “Recorded image” means a still or video image recorded by a work zone speed control
11 system on a photographic, film, electronic, videotape, or any other medium;

12 “System administrator” means the entity, either the Division of Highways or a business
13 contracted by the division, authorized to maintain records of speed limit violations in active work
14 zones, to notify vehicle owners of their violations, and to receive responses submitted by the
15 vehicle owners;

16 “Work zone” means a segment of a highway where highway construction, repair,
17 maintenance, utility work, or a related activity, including the placement, installation, maintenance,
18 or removal of a work zone traffic control device, is being performed, regardless of whether workers
19 are present, and that is identified as a temporary traffic control zone by traffic control devices that
20 are placed or installed in general conformance with the state manual and specifications adopted
21 for a uniform system of traffic control devices;

22 “Work zone speed control system” means a device having one or more motor vehicle
23 sensors connected to a camera system capable of producing recorded images of motor vehicles
24 traveling at or above a predetermined speed in or approaching a work zone.

25 “Work zone speed control system operator” means an individual who has been trained
26 and certified to operate a work zone speed control system.

27 (b) Work zone speed restrictions. — The commissioner of highways may determine and
28 declare a reasonable and safe speed limit for vehicles transiting a work zone on any highway that
29 is lower than the lawful speed limit on the unobstructed portions of the highway.

30 (c) Owner’s duty and enforcement. —

31 (1) The owner of every motor vehicle has a duty to ensure that his or her vehicle is not
32 driven above the posted speed limit in an active work zone. If a vehicle is driven on a public
33 highway in an active work zone more than 10 miles per hour above the posted speed limit for that
34 work zone, the owner of the vehicle shall be subject to a civil penalty as provided in this section.

35 (2) The Department of Transportation is authorized to utilize a work zone speed control
36 system to monitor vehicle speeds work in work zones and to enforce speed limit restrictions in
37 active work zones on multi-lane, high-speed highways: *Provided*, That no work zone speed
38 control system shall be set up and no enforcement action may be taken until the Department of
39 Transportation has proposed, and the Legislature has approved, rules to implement the provisions
40 of this section.

41 (d) Active and inactive work zones. —

42 (1) An automated work zone speed control system may be used to collect vehicle speed
43 data in highway work zones for research and statistical purposes, but may not be used to record
44 vehicle identification or speed information to be used as evidence in a speed limit violation
45 proceeding or as probable cause to pursue or stop a vehicle for a speed limit violation.

46 (2) A work zone speed control system may be used to enforce speed limit restrictions in
47 active work zones on multilane, high-speed highways under the following conditions:

48 (A) The system is operated by a qualified work zone speed control system operator who
49 is present at the control system location;

50 (B) At least two conspicuous road signs are placed at a reasonable distance in accordance
51 with the state manual on uniform traffic control devices before the work zone alerting drivers that
52 a speed monitoring system may be in operation in the work zone; and

53 (3) A notice identifying the location of the work zone speed control system is posted on
54 the West Virginia 511 traffic information website and the notice on the website shall remain
55 throughout the period of use.

56 (e) Operator qualifications. —

57 (1) A work zone speed control systems operator may be a police officer, Division of
58 Highways employee, or an employee of a business with which the Division of Highways has
59 contracted to operate work zone speed control systems.

60 (2) A work zone speed control system operator shall complete training by the manufacturer
61 of the work zone speed control system in the procedures for setting up, testing, and operating the
62 work zone speed control system and is required to have a signed certificate of having satisfactorily
63 completed the training. The certificate of training may be admitted as evidence in any hearing or
64 other legal proceeding for a violation of this section.

65 (f) System specifications. —

66 (1) A work zone speed control system shall undergo an annual calibration check
67 performed by an independent calibration laboratory. Documentation of the calibration checks shall
68 be maintained by the agency, division, or company that operates that work zone speed control
69 system and this documentation may be admitted as evidence in any hearing or other legal
70 proceeding for a violation of this section.

71 (2) No work zone speed control system shall be utilized in such a manner as to take a
72 frontal view recorded image of the vehicle as evidence of having committed a violation.

73 (3) Notwithstanding any other provision of law, camera equipment deployed as part of a

74 work zone speed control system shall be incapable of automated or user-controlled remote
75 surveillance by means of recorded video images. Recorded images collected as part of the work
76 zone speed control system enforcement system shall only record speed violations and may not
77 be used for any other surveillance purposes, but may include video of the area enforced when
78 triggered by a violation.

79 (4) A work zone speed control system may also be capable of recording vehicle speeds,
80 when operator is not present, solely for statistical and research purposes.

81 (g) Administration of enforcement program. —

82 The Division of Highways may directly administer the enforcement program or it may
83 contract with a business to administer a program to notify owners of vehicles of alleged violations,
84 to receive and process penalty payments, and to notify the Division of Motor Vehicles when
85 vehicle owners fail to respond to notices of violations.

86 (h) Notice of violation. —

87 (1) An action to enforce this section shall be initiated sending a notice of violation to the
88 registered owner of a vehicle identified by a work zone speed control system as violating this
89 section. A notice of violation based upon inspection of recorded images and the speed
90 measurement produced by a work zone speed control system and sworn or affirmed by a qualified
91 system operator shall be prima facie evidence of the facts contained in the notice.

92 (2) The following shall be attached to the notice of violation:

93 (A) Specification of the date, time, and location of the violation;

94 (B) A copy of the recorded image or images showing the vehicle with its license plate
95 visible;

96 (C) The registration number and state of issuance of the vehicle registration;

97 (D) Whether this is a first time, second, or subsequent violation;

98 (E) Verification that the speed control system was operating correctly at the time of the
99 alleged violation and the date of the most recent inspection of the system; and

100 (F) The address to which the vehicle owner shall respond to the notice.

101 (3) The notice shall explain how the owner may admit the violation and submit payment,
102 if required for the violation, and shall explain how the vehicle owner may request a hearing. The
103 notice shall also explain the consequences for failing to respond to the notice and include the
104 following text in a large, bold font:

Your response must be returned by mail within 30
days of receipt of this notice.

Failure to respond to this notice may result in the
suspension of this vehicle's registration.

105 (4) The notice of violation shall be mailed by the enforcement program system
106 administrator within 30 days after the commission of the violation or within 30 days after the
107 discovery of the identity of the registered owner, whichever is later, to the address of the registered
108 owner as listed in the records of the motor vehicle registration authority of the state in which the
109 vehicle is registered.

110 (5) Notice of violation shall be sent by first class mail and the provisions of §17A-2-19 of
111 this code shall apply as to the effect of mailing.

112 (i) Response to notice, payment of penalty. —

113 (1) A vehicle owner may admit responsibility for the violation and pay the penalty provided
114 in the notice either electronically or by mailing both payment and the notice of violation to the
115 system administrator.

116 (2) Payment by mail must be made only by money order, credit card or check made
117 payable to the state, as applicable.

118 (3) Payment of the penalty shall operate as a final disposition of the case.

119 (4) If a response is not received within 90 days of original notice, the owner has defaulted
120 and the violation is deemed to be admitted. The system administrator shall notify the Division of

121 Motor Vehicles of the default and may also refer claim for payment to the Secretary of Finance
122 and Administration for collection pursuant to §14-1-18a of this code.

123 (j) Civil Penalty.—

124 (1) If a person violates this section for a first time, the person shall receive a written
125 warning. The penalty for a second violation under this section shall be a fine of \$75 and \$150 for
126 the third and subsequent violations.

127 (2) The fine or warning is not authorized during times when the work zone speed control
128 system is not active or when no system operator is present.

129 (3) An admission of violation and a penalty imposed under this section shall not :

130 (A) Constitute a criminal conviction;

131 (B) Become part of the operating record of the individual upon whom the penalty is
132 imposed;

133 (C) Be used by any insurer operating in this state for a driver's or vehicle owner's merit
134 rating for insurance purposes; or

135 (D) Cause or result in the imposition of surcharge points in the provision of motor vehicle
136 insurance coverage issued in this state.

137 (4) There is a rebuttable presumption that the person who receives the notice of violation
138 of this section was the person operating the vehicle at the time of he alleged violation, which
139 presumption shall prevail unless the alleged violator proves by a preponderance of evidence one
140 of the defenses as set forth in subsection (k).

141 (k) Defenses.—

142 (1) It is a defense to a violation under this section that the vehicle was reported to a police
143 department as stolen prior to the time the violation occurred and was not recovered prior to that
144 time.

145 (2) It is a defense to a violation under this section that the person receiving the notice of
146 violation was not the driver or owner of the vehicle at the time of the offense.

147 (3) It is a defense to a violation under this section that the equipment being used to
148 determine speed was not in compliance with rules of the Division of Highways or the Division of
149 Motor Vehicles with respect to testing for accuracy, certification, or calibration of the device or
150 system.

151 (l) Contest and Hearing. —

152 (1) A vehicle owner may, within 30 days of the mailing of the notice, request a hearing to
153 contest liability by mailing a request in writing on a form provided with the notice of violation or by
154 any other writing that sufficiently identifies the date and location of the alleged violation and the
155 vehicle in question. The request for hearing shall be sent to the system administrator at the
156 address shown on the notice of violation.

157 (2) Upon receipt of a hearing request, the system administrator shall forthwith notify the
158 Division of Motor Vehicles of the request, together with the information that was provided to the
159 vehicle owner in the notice of violation. The Division of Motor Vehicles shall then schedule an
160 administrative hearing and shall in a timely manner schedule the matter before a hearing officer
161 designated by the division. Written notice of the date, time, and place of hearing shall be sent by
162 first class mail to the owner requesting the hearing and to the work zone speed control system
163 operator identified in the notice of violation.

164 (3) Hearings may be continued from time to time for good cause shown, but an excessive
165 number of continuances shall not be granted.

166 (4) The hearing shall be conducted pursuant to rules proposed by the Division of Motor
167 Vehicles and approved by the Legislature.

168 (5) Any final decision resulting from an administrative hearing shall be subject to judicial
169 review pursuant to §29A-5-4 of this code.

170 (m) Restricted use of images and data. — De-identified statistical or summary data
171 pertaining to vehicle speeds in active or inactive work zones, regardless of who operates the work
172 zone speed control system, are public records and may be obtained upon request pursuant to

173 §29B-1-1 et seq. of this code. Images of a sufficiently identified vehicle may be obtained in the
174 same manner; however, the provisions of §29B-1-1 et seq. of this code do not apply to requests
175 for bulk production of images from any work zone speed control system or systems and no police
176 agency, state agency, or contractor shall be required to produce recorded images in bulk or series.

177 (n) Reporting. —

178 The Secretary of Transportation shall prepare and submit an annual report to the
179 Governor, President of the Senate, and Speaker of the House of Delegates. The first such report
180 shall be submitted no later than one year after the installation of the first work zone speed control
181 system authorized by this section. Every report shall provide comprehensive review of the
182 program including, but not limited to, an evaluation of the program's effectiveness, the number of
183 vehicle accidents and related serious injuries and deaths in all work zones in which the program
184 was implemented, speed data, the number of notices of violation issued, the amount of penalties
185 imposed and collected, and all amounts paid under contracts authorized by this section.

NOTE: This purpose of this bill is to establish a program for camera assisted speed enforcement in active work zones in this state, to be implemented by the West Virginia Department of Transportation.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.