

LAWS OF DELAWARE
VOLUME 84
CHAPTER 74
152nd GENERAL ASSEMBLY
FORMERLY
HOUSE SUBSTITUTE NO. 1
FOR
HOUSE BILL NO. 94

AN ACT TO AMEND TITLE 21 OF THE DELAWARE CODE RELATING TO USE OF ELECTRONIC SPEED ENFORCEMENT DEVICES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4170A. Electronic Speed Monitoring System.

(a) Purpose and administration.

(1) This section establishes an electronic speed monitoring system to assist the State, counties and municipalities in the enforcement of speed limits under § 4169 and § 4170 of this title.

(2) The Department of Transportation, or the governing body of New Castle County or any municipality, may provide by regulation or ordinance, for the establishment of a program imposing monetary liability on the owner of a motor vehicle for failure to comply with designated posted speeds, as monitored by an electronic speed monitoring system in accordance with this section.

(3) This section does not apply to any authorized emergency vehicles being operated in compliance with § 4106 of this title.

(b) Definitions. For purposes of this section:

(1) "Business district" means as defined in § 101 of this title.

(2) "Electronic speed monitoring system operator" means an individual who has been trained and certified to operate an electronic speed monitoring system.

(3) "Electronic speed monitoring system" means a device with 1 or more motor vehicle sensors that can produce a recorded image of a motor vehicle whose speed exceeds the posted speed limit.

(4) "Owner" means the registered owner of the vehicle on record with this or any other state provided, however, that in the event that the owner is a vehicle leasing company the "owner", for purposes of this section, shall mean the person shown on the records to be the lessee of the vehicle. Vehicle rental companies are excluded from the definition of "owner".

(5) "Recorded image" means an image recorded by an electronic speed monitoring system and includes any of the following:

a. A photograph.

b. A microphotograph.

c. A digital image.

d. A video.

e. Any other

medium used to store images or sounds.

(6) "Residence district" means as defined in § 101 of this title.

(7) "Work zone" means any area of roadway designated as a work zone by the Department of Transportation and in accordance with § 4105 (f)(2) of this title.

(c) Conditions for installation and operation of electronic speed monitoring system.

(1) The Department of Transportation may approve the installation and use of an electronic speed monitoring system to be installed and used to record images of a motor vehicle travelling in a work zone, or in a residence district in either New Castle County or a municipality, if all of the following conditions are met:

a. If in a residence district, unless in a designated work zone, a study, which is no more than 1 year old and approved by the Department of Transportation, documents that the 85th percentile speed on the road is 5 miles per hour or greater than the posted speed limit.

b. If in a residence district the police agency with jurisdiction over the road has agreed to participate in the use of the system.

c. If the road is within the boundaries of a municipality the municipality must approve the road and extent of the road eligible for electronic speed monitoring.

d. The police agency, with jurisdiction over the road, must notify the Department of Transportation of the intent to use the electronic speed monitoring system at least 30 days in advance of implementation.

e. The Department of Transportation and police agency with jurisdiction must provide notice on their publicly accessible web sites of the intended use of the electronic speed monitoring system at least 14 days prior to its implementation.

f. At least 1 sign must be installed advising motorists that the electronic speed monitoring system is in use.

(2) Once a road is approved for an electronic speed monitoring system the use of an electronic speed monitoring system will be at the discretion of the police agency with jurisdiction over the residence district or work zone where the system will be implemented. The police agency may consider crash data in prioritizing locations where the system is to be implemented.

(3) The Delaware State Police shall have enforcement authority over the electronic speed monitoring system in all work zones.

(4) The Department of Transportation shall develop guidelines related to the safe positioning of portable and permanent electronic speed monitoring equipment within the road right-of-way.

(d) System vendor, calibration and operator.

(1) System vendor. The Department of Transportation shall select the system vendor to provide electronic speed monitoring systems for the State, counties and municipalities. The system vendor must be selected through an open competitive procurement process. To ensure integrity in the selection process a person involved in the administration or enforcement of the electronic speed monitoring system may not own any direct interest or equity in any selected vendor.

(2) System calibration. Every electronic speed monitoring system in use on the roads in this State must undergo an annual calibration check to be performed by an independent calibration laboratory.

a. The independent calibration laboratory must issue a signed certificate of calibration after the annual calibration check which:

1. Must be kept on file by the police agency within the jurisdiction where the electronic speed monitoring system is located, and

2. May be entered into evidence in any court proceeding for a violation of this section.

(3) System operator. Every electronic speed monitoring system operator must complete training by the manufacturer of the electronic speed monitoring system in the procedures for setting up, testing, and operating the electronic speed monitoring system.

a. On completion of the training, the manufacturer must issue a signed certificate to the electronic speed monitoring system operator.

b. The certificate of training may be entered into evidence in any court proceeding for a violation of this section.

c. An electronic speed monitoring system operator must fill out and sign a daily set-up log for the electronic speed monitoring system which:

1. States the date and time when the system was set up.

2. States that the operator successfully performed, and the device passed, the manufacturer's specified self-test of the system before producing a recorded image.

3. Must be kept on file by the police agency within the jurisdiction where the electronic speed monitoring system is located.

4. May be entered into evidence in any court proceeding for a violation of this section.

(e) Violation and proof of violation.

(1) For a violation to occur, a motor vehicle must exceed the posted speed limit by 11 miles per hour or more in the residence district or work zone.

(2) Proof of a violation of this section may be evidenced by information obtained from an electronic speed monitoring system approved under this section. A certificate, or facsimile thereof, based upon inspection of photographs, microphotographs, videotape or other recorded images produced by an electronic speed monitoring system shall constitute prima facie evidence of the facts contained therein, if the certificate, or facsimile thereof, is sworn to or affirmed by an operator or a technician employed by a state agency or entity designated by a state agency for the purpose of carrying out this subsection. Any photographs, microphotographs, videotape or other recorded images evidencing a violation shall be made available for inspection in any proceeding to adjudicate liability for violation of this section.

(f) Notice of violation, procedure to contest violation, and orders subject to appeal.

(1) Any resident or nonresident owner or operator of any motor vehicle driven on the public streets, roads, turnpikes or highways of this State will be deemed to have submitted to the jurisdiction of the courts in this State for purposes of this section. Notwithstanding any other provision of the Code, a summons for a violation of this section may be executed by mailing to any resident or nonresident, by first class mail, a copy thereof to the address of the owner of the vehicle as shown in the records of the Division of Motor Vehicles of this or any other state. Collection actions, including default judgment and execution, may proceed based upon jurisdiction obtained through the mailing, by first- class mail, of a summons and subsequent court notices pursuant to this subsection. Every initial mailing shall include the following:

a. Name and address of the owner of the vehicle.

b. Registration number of the motor vehicle involved in the violation.

c. Violation charges.

d. Location where the violation occurred.

e. Date and time of the violation.

f. Copies of 2 or more photographs, microphotographs, or other recorded images, taken as proof of the violation.

g. Amount of the civil penalty imposed and the date by which the civil penalty should be paid.

h. The length of time and location for contesting liability and notice that the failure to pay the civil penalty or to contest liability, in a timely manner, is an admission of liability and may result in a judgment being entered against the summonsed person and the denial of the registration or renewal of registration of any of the owner's vehicles.

i. The ability to rebut the presumption under this section that the summonsed person was the operator of the vehicle at the time of the violation and the manner of rebutting said presumption.

(2) A person receiving the summons pursuant to this subsection may request a hearing to contest the violation by notifying, in writing, the entity designated on the summons within 20 days of the date of the summons. Upon receipt of a timely request for a hearing a civil hearing, a civil hearing shall be scheduled, and the defendant notified of the hearing date by first class mail. A civil hearing shall be held by the Justice of the Peace Court or other court with competent jurisdiction as designated by the Department of Safety and Homeland Security or county or municipality in which the speed camera was located. There shall be no right of transfer to the Court of Common Pleas.

(3) Any person found, by the court, to be responsible for a speeding violation, under this subsection, shall have a right of appeal only in those cases in which the civil penalty exceeds \$100, upon giving bond with surety satisfactory to the judge before whom such person was found responsible, such appeal to be taken and bond given within 15 days from the court's order. Such appeal shall operate as a stay or supersedeas of all proceedings in the court below in the same manner that a certiorari from the Superior Court operates. The taking of such appeal shall constitute a waiver by the appellant of the appellant's right to a writ of certiorari in the Superior Court.

(g) Civil penalties.

(1) The owner or operator of a vehicle who has failed to comply with the posted speed limit, as evidenced by information obtained from an electronic speed monitoring system, shall be subject to a civil penalty consistent with those established under § 4169(c) of this title. Assessments defined under § 4105 of this title, § 4101 and § 9016 of Title 11 and § 8505 of Title 10, shall only be assessed for violations occurring in a work zone as defined in § 4170A (6) of this title.

(2) Court costs, or similar administrative fees, not to exceed \$35, may be imposed against an owner or operator of a motor vehicle who requests a hearing to contest a violation and is either found at fault or admits to fault at the hearing. No costs may be assessed against a prevailing party.

(3) No additional assessments or court costs, other than those specified in this subsection, shall be assessed or collected against the owner or operator of a vehicle who has violated this section.

(4) Persons electing to pay by voluntary assessment shall make payments to the entity designated on the summons for payment. Such entity may be the Department of Safety and Homeland Security, or the city or county in which the speed camera was located. Procedures for payment under this subsection shall be as provided by court rule or policy directive of the Justice of the Peace Court, or by regulation of the Department of Safety and Homeland Security, or by regulation, code, or ordinance of the applicable city or county, and shall be in lieu of the procedures set forth in § 709 of this title.

(5) A violation for which a civil penalty is imposed under this section is not a criminal offense and is not to be made a part of the operating record of the person upon whom such liability is imposed.

(6) A violation for which a civil penalty is imposed under this section shall not be used for insurance purposes in the provision of motor vehicle insurance.

(h) Presumption of ownership.

(1) The owner of any vehicle found to be in violation of this section shall be held prima facie responsible for such violation in the same manner as under § 7003 of this title unless the owner can furnish evidence that the vehicle was, at the time of the violation, in the care, custody or control of another person. Such presumption may be rebutted if the owner:

a. Provides an affidavit, by regular mail, to the entity indicated on the summons that the owner was not the operator of the vehicle at the time of the alleged violation and provides the name and address of the person or company who leased, rented, or otherwise had care, custody or control of the vehicle, or attaches a certified copy of a police report showing that the vehicle or license plate or plates thereof had been reported to the police as stolen prior to the alleged violation of this section, or

b. Provides proof in court or to the entity handling the administrative appeal process that the owner was not the operator of the vehicle at the time of the alleged violation and identifies the operator at the time of the violation. If the owner granted multiple persons permission to use the vehicle and is unable to identify the person who was operating the vehicle at the time of the violation, the owner will remain liable for the violation.

(2) A summons may be issued to any person identified by affidavit or evidence in court as the actual operator of the vehicle alleged to have violated the speed limit. There shall be a presumption that the person so identified was the operator; this presumption may be rebutted as described under this subsection.

(3) Notwithstanding any other provision in this section, if the motor vehicle which is documented by the electronic speed monitoring system in violation of § 4170A(e) of this title is commercially licensed, then the owner of that vehicle shall be sent notice of the date, time, and location of the violation with 2 photographs thereof. Within 10 days of the receipt of said notice, the owner of the vehicle shall provide the law-enforcement agency which has issued the summons with the name and address of the driver of the vehicle at the date, time, and location of the violation and, within the same time period, shall provide the driver of the vehicle with the photographs of the violation. After receipt by the law-enforcement agency which has issued the summons of the name and address of the driver of the vehicle at the time of the violation, the driver of the vehicle shall be prima facie responsible for such violation in the same manner as provided for under § 7003 of this title and shall be subject to the provisions of this section. Failure of the owner of the vehicle found to be in violation of this section to provide the name and address of the driver, within the prescribed time period, shall cause the owner to be held responsible as set forth in this subsection.

(i) Failure to pay civil penalty.

(1) If the owner or operator identified by the owner fails to pay the civil penalty by voluntary assessment, request a hearing within the required time or submit an affidavit stating that the owner or operator identified was not the driver, the Division of Motor Vehicles shall refuse to renew the registration of the owner's vehicle operated at the time the summons was issued. If the owner or operator identified by the owner is found responsible at a hearing and fails to pay the fine as ordered by the court, or requests a hearing and fails to appear, the Division of Motor Vehicles shall suspend the license of the owner or operator.

(2) Upon receiving a record of failure to comply, a court clerk may enter a civil traffic judgement against the owner or operator in the amount of the civil penalty, costs, and any applicable additional assessment, giving credit for any amount paid. Such judgement may, upon motion, be transferred by the court to the civil docket. Any judgement so transferred may be executed and enforced or transferred in the same manner as other judgements of the court and the Division of Public Safety, or its designee, shall have authority to seek such execution, enforcement or transfer.

(j) Funding sources and use of revenue.

(1) The Department of Transportation, New Castle County, and any municipality, may contract with the approved system vendor for carrying out any tasks related to the use of an electronic speed monitoring system by using any eligible funding source.

(2) Revenue generated through the use of electronic speed monitoring systems may be used to pay costs of the system vendor, staff required to implement this section, and any consultant fees for administration of the electronic speed monitoring system.

(3) Any revenue collected above what is required for the operation of the electronic speed monitoring system, as set forth in this subsection, shall be managed by the Office of Highway Safety and may be used only for transportation safety purposes under any of the following categories:

- a. Education.
- b. Enforcement.
- c. Engineering.
- d. Administrative expenses.

(k) Annual report.

(1) The Department of Transportation shall be responsible for preparing an annual report on the Electronic Speed Monitoring System as implemented state-wide. The report shall include all of the following:

- a. Where and when the system was used.
- b. Citation data.
- c. Crash data.
- d. Readily available speed data.
- e. Financial data including expenditures and revenues.

(2) Police agencies shall cooperate with the Department of Transportation regarding the collection of data necessary to prepare the annual report. In the event a police agency does not provide requested information, in a timely manner, to the Department of Transportation, the police agency will no longer be eligible for use of the electronic speed monitoring system.

Section 2. This Act expires 5 years after its enactment into law, unless otherwise provided by a subsequent act of the General Assembly.

Approved June 30, 2023