

# **WEST VIRGINIA LEGISLATURE**

## **2022 REGULAR SESSION**

**Introduced**

### **House Bill 4790**

BY DELEGATES YOUNG AND PINSON

[Introduced February 15, 2022; Referred to the  
Committee on Technology and Infrastructure then the  
Judiciary]

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 school zones in this state; authorizing the Commissioner of Highways to set speed limits  
5 in school zones on public highways; establishing use of school zone speed control  
6 systems as 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 school zone speed  
9 control systems for enforcement of speed restrictions in active school 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 125 feet along the street or highway from the entrance to the  
19 access right-of-way. The West Virginia Division of Highways shall erect signage indicating the  
20 place of entry and exit of each school zone. Upon a formal vote and a written request by a county  
21 board of education to expand a school zone to a road that is adjacent to school property or from  
22 the entrance to an access right-of-way, the West Virginia Division of Highways shall expand the  
23 school zone by erecting new signage indicating the expanded school zone's location and speed  
24 limit within 90 days of receiving the request: Provided, That the school zone may not be expanded  
25 more than 125 feet along an adjacent road unless the division determines that the additional  
26 extension is needed and necessary for the safety of the school children. The speed restriction  
27 does not apply to vehicles traveling on a controlled-access highway which is separated from the  
28 school or school grounds by a fence or barrier approved by the Division of Highways;

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

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

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

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

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

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

51 (f) Any person who violates the provisions of subdivision (1), subsection (b) of this section  
52 is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor  
53 more than \$500: *Provided*, That if the conviction is based upon a violation of the provisions of  
54 subdivision (1), subsection (b) of this section where the offender exceeded the speed limit by 15

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

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

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

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

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

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

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

2 “Active school zone” means a school zone, as defined in §17C-6-1 of this code;

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

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

8 “School zone speed control system” means a device having one or more motor vehicle  
9 sensors connected to a camera system capable of producing recorded images of motor vehicles  
10 traveling at or above a predetermined speed in or approaching a school zone;

11 “School zone speed control system operator” means an individual who has been trained  
12 and certified to operate a school zone speed control system;

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

17 (b) Active and inactive school zones. —

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

22 (2) A school zone speed control system may be used to enforce speed limit restrictions in

23 active school zones on multilane, high-speed highways under the following conditions:

24 (A) The system is operated by a qualified school zone speed control system operator who  
25 is present at the control system location;

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

29 (3) A notice identifying the location of the school zone speed control system is posted on  
30 the West Virginia 511 traffic information website and the notice on the website shall remain  
31 throughout the period of use.

32 (c) Operator qualifications. —

33 (1) A school zone speed control systems operator may be a police officer, Division of  
34 Highways employee, or an employee of a business with which the Division of Highways has  
35 contracted to operate school zone speed control systems.

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

41 (d) System specifications. —

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

47 (2) No school zone speed control system may be utilized in such a manner as to take a  
48 frontal view recorded image of the vehicle as evidence of having committed a violation.

49 (3) Notwithstanding any other provision of law, camera equipment deployed as part of a  
50 school zone speed control system shall be incapable of automated or user-controlled remote  
51 surveillance by means of recorded video images. Recorded images collected as part of the school  
52 zone speed control system enforcement system shall only record speed violations and may not  
53 be used for any other surveillance purposes, but may include video of the area enforced when  
54 triggered by a violation.

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

57 (e) Administration of enforcement program. —

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

62 (f) Notice of violation. —

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

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

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

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

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

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

74 (E) Verification that the speed control system was operating correctly at the time of the

75 alleged violation and the date of the most recent inspection of the system; and  
76 (F) The address to which the vehicle owner shall respond to the notice.  
77 (3) The notice shall explain how the owner may admit the violation and submit payment,  
78 if required for the violation, and shall explain how the vehicle owner may request a hearing. The  
79 notice shall also explain the consequences for failing to respond to the notice and include the  
80 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.

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

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

88 (g) Response to notice, payment of penalty. —

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

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

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

95 (4) If a response is not received within 90 days of original notice, the owner has defaulted.

96 and the violation is considered to be admitted. The system administrator shall notify the Division  
97 of Motor Vehicles of the default and may also refer claim for payment to the Secretary of Finance  
98 and Administration for collection pursuant to §14-1-18a of this code.

99 (h) Civil Penalty.—

100 (1) If a person violates this section for a first time, the person shall receive a written  
101 warning. The penalty for a second violation under this section shall be a fine of \$25 and \$75 for  
102 the third and subsequent violations.

103 (2) The fine or warning is not authorized during times when the school zone speed control  
104 system is not active or when no system operator is present.

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

106 (A) Constitute a criminal conviction;

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

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

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

113 (i) Defenses.—

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

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

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

122 system.

123 (i) Contest and Hearing. —

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

129 (2) Upon receipt of a hearing request, the system administrator shall forthwith notify the  
130 Division of Motor Vehicles of the request, together with the information that was provided to the  
131 vehicle owner in the notice of violation. The Division of Motor Vehicles shall then schedule an  
132 administrative hearing and shall in a timely manner schedule the matter before a hearing officer  
133 designated by the division. Written notice of the date, time, and place of hearing shall be sent by  
134 first class mail to the owner requesting the hearing and to the school zone speed control system  
135 operator identified in the notice of violation.

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

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

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

142 (k) Restricted use of images and data. — De-identified statistical or summary data  
143 pertaining to vehicle speeds in active or inactive school zones, regardless of who operates the  
144 school zone speed control system, are public records and may be obtained upon request pursuant  
145 to §29B-1-1 et seq. of this code. Images of a sufficiently identified vehicle may be obtained in the  
146 same manner; however, the provisions of §29B-1-1 et seq. of this code do not apply to requests  
147 for bulk production of images from any school zone speed control system or systems and no

148 police agency, state agency, or contractor shall be required to produce recorded images in bulk  
149 or series.

150 (l) Reporting. —

151 The Secretary of Department of Transportation shall prepare and submit an annual report  
152 to the Governor, President of the Senate, and Speaker of the House of Delegates. The first such  
153 report shall be submitted no later than one year after the installation of the first school zone speed  
154 control system authorized by this section. Every report shall provide comprehensive review of the  
155 program including, but not limited to, an evaluation of the program's effectiveness, the number of  
156 vehicle accidents and related serious injuries and deaths in all school zones in which the program  
157 was implemented, speed data, the number of notices of violation issued, the amount of penalties  
158 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 school 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.