

House Bill 651 (RULES COMMITTEE SUBSTITUTE)

By: Representatives Powell of the 33rd, Corbett of the 174th, Erwin of the 32nd, Burchett of the 176th, Williamson of the 112th, and others

A BILL TO BE ENTITLED

AN ACT

1 To amend Article 2 of Chapter 14 of Title 40 of the Official Code of Georgia Annotated,
2 relating to speed detection devices, so as to revise provisions relative to the use of automated
3 traffic enforcement safety devices in school zones; to provide for standards for signs warning
4 of the use of automated traffic enforcement safety devices in school zones; to repeal
5 exceptions to making a case based upon use of speed detection devices; to include civil
6 monetary penalties collected for violations of speed limits enforced by automated traffic
7 enforcement safety devices for consideration of the maximum percent of a law enforcement
8 agency's budget; to provide for time frames for issuing citations for the violation of speed
9 limit by ten miles per hour or more in a school zone through the use of automated traffic
10 enforcement safety devices; to revise application procedure and standards for a permit to
11 operate such devices; to remove authorization to impose processing fees relating to civil
12 monetary penalties; to provide standards for notice sent for imposition of a civil monetary
13 penalty; to remove penalties relating to motor vehicle registration renewal; to provide for
14 distribution of moneys collected; to require quarterly reporting on use of collected moneys;
15 to provide for definitions; to amend Title 15 of the Official Code of Georgia Annotated,
16 relating to courts, so as to authorize district attorneys, solicitors-general, and prosecuting
17 attorneys to enforce civil monetary penalties relative to the enforcement of laws regarding

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18 speeding in a school zone using recorded images; to provide for related matters; to repeal
19 conflicting laws; and for other purposes.

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

21 **SECTION 1.**

22 Article 2 of Chapter 14 of Title 40 of the Official Code of Georgia Annotated, relating to
23 speed detection devices, is amended in Code Section 40-14-1.1, relating to definitions, by
24 revising paragraph (5) as follows:

25 "(5) 'School zone' means the area ~~within 1,000 feet of the boundary of~~ defined in an
26 existing master state order or local ordinance as a school zone area for any public or
27 private elementary or secondary school."

28 **SECTION 2.**

29 Said article is further amended in Code Section 40-14-6, relating to warning signs required
30 and signage requirements, by revising subsection (c) as follows:

31 "(c) In addition to the signs required under subsections (a) and (b) of this Code section,
32 each law enforcement agency using an automated traffic enforcement safety device as
33 provided for in Code Section 40-14-18 shall erect signs warning of the use of a ~~stationary~~
34 ~~speed detection~~ an automated traffic safety enforcement device within the approaching
35 school zone. Such signs shall be at least 24 by 30 inches in area, shall be visible plainly
36 from every lane of traffic, shall be viewable in all traffic conditions, and shall not be placed
37 in such a manner that the view of such sign is subject to being obstructed by any other
38 vehicle on such highway. Automated traffic enforcement safety device warning Such signs
39 shall be placed within 500 feet prior to ~~the~~ any warning sign announcing the reduction of
40 the speed limit for the school ~~speed~~ zone. Such signs shall include a sign or device which
41 provides the operator of a motor vehicle approaching such sign with an accurate depiction

of the speed of such motor vehicle and lights which flash yellow when the automated traffic enforcement safety device is authorized to issue citations pursuant to Code Section 40-14-18 and in accordance with any rule or regulation established by the Department of Transportation. There shall be a rebuttable presumption that such signs are properly installed pursuant to this subsection at the time of any alleged violation under this article."

SECTION 3.

Said article is further amended by revising Code Section 40-14-8, relating to when case may be made and conviction had, as follows:

"40-14-8.

(a) No county, city, or campus officer shall be allowed to make a case based on the use of any speed detection device, unless the speed of the vehicle exceeds the posted speed limit by more than ten miles per hour and no conviction shall be had thereon unless such speed is more than ten miles per hour above the posted speed limit.

~~(b) The limitations contained in subsection (a) of this Code section shall not apply in properly marked school zones one hour before, during, and one hour after the normal hours of school operation or programs for care and supervision of students before school, after school, or during vacation periods as provided for under Code Section 20-2-65, in properly marked historic districts, and in properly marked residential zones. For purposes of this chapter, thoroughfares with speed limits of 35 miles per hour or more shall not be considered residential districts. For purposes of this Code section, the term 'historic district' means a historic district as defined in paragraph (5) of Code Section 44-10-22 and which is listed on the Georgia Register of Historic Places or as defined by ordinance adopted pursuant to a local constitutional amendment."~~

SECTION 4.

Said article is further amended in Code Section 40-14-11, relating to investigations by commissioner of public safety, issuance of order suspending or revoking permit, and ratio of speeding fines to agency's budget, by revising subsection (d) as follows:

"(d) There shall be a rebuttable presumption that a law enforcement agency is employing speed detection devices for purposes other than the promotion of the public health, welfare, and safety if the fines or civil monetary penalties levied based on the use of speed detection devices for speeding offenses are equal to or greater than 35 percent of a municipal or county law enforcement agency's budget. For purposes of this Code section, fines collected for citations issued for violations of Code Section 40-6-180 shall be included when calculating total speeding fine revenue for the agency; provided, however, that fines for speeding violations exceeding 20 miles per hour over the established speed limit ~~and civil monetary penalties for speeding violations issued pursuant to Code Section 40-14-18~~ shall not be considered when calculating total speeding fine revenue for the agency."

SECTION 5.

Said article is further amended by revising Code Section 40-14-18, relating to enforcement of speed limit in school zones with recorded images, civil monetary penalty, and consequences for failure to pay penalty, as follows:

"40-14-18.

(a)(1) The speed limit within any school zone ~~as provided for in Code Section 40-14-8 and marked pursuant to Code Section 40-14-6~~ may be enforced by using photographically recorded images for violations that are in excess of ten miles per hour over the speed limit and which occurred only on a school day during the time in which instructional classes are taking place ~~and one hour before such classes are scheduled to begin and for one hour after such classes have concluded when such violations are in excess of ten miles per hour over the speed limit and only:~~

91 (A) One hour prior to and one hour after the school's official starting time; and

92 (B) One hour prior to and one hour after the school's official dismissal time.

93 (2) Prior to the placement of ~~a~~ an automated traffic enforcement safety device within a
94 school zone, ~~each school within whose school zone~~ the governing body of the county or
95 municipality whose law enforcement agency is authorized to enforce the speed limit of
96 a school zone where such ~~automated traffic enforcement safety~~ device is to be placed and
97 which holds a valid permit for the operation of speed detection devices issued by the
98 Department of Public Safety pursuant to Code Section 40-14-2 shall first apply for and
99 secure a permit from the Department of Transportation for the use of such automated
100 traffic enforcement safety device. Such permit shall be awarded based upon need;
101 provided, however, that a permit issued for placement upon any highway with more than
102 two lanes shall require a demonstration of prior history which justifies such need. The
103 Department of Transportation shall promulgate rules and regulations for the
104 implementation of this paragraph.

105 (b) For the purpose of enforcement pursuant to this Code section:

106 (1) The owner of a motor vehicle shall be liable for a civil monetary penalty to the
107 governing body of the law enforcement agency provided for in paragraph (2) of this
108 subsection if such vehicle is found, as evidenced by ~~photographically~~ recorded images,
109 to have been operated in disregard or disobedience of the speed limit within ~~any~~ a school
110 zone and such disregard or disobedience was not otherwise authorized by law. The
111 amount of such civil monetary penalty shall be \$75.00 for a first violation and \$125.00
112 for a second or any subsequent violation, ~~in addition to fees associated with the electronic~~
113 ~~processing of such civil monetary penalty which shall not exceed \$25.00;~~ provided,
114 however, that for a period of 30 days after the first automated traffic enforcement safety
115 device is introduced by a law enforcement agency within a school zone, the ~~driver~~ owner
116 of a motor vehicle shall not be liable for a civil monetary penalty but shall be issued a
117 civil warning for disregard or disobedience of the speed limit within the school zone;

(2) A law enforcement agency authorized to enforce the speed limit of a school zone, or an agent working on behalf of a law enforcement agency or governing body, shall send by ~~first class~~ first-class mail in an envelope which prominently displays the name and seal or logo of the governing body and addressed to the owner of the motor vehicle within 30 days after obtaining the name and address of the owner of the motor vehicle from the Department of Revenue but no later than 60 days after the date of the alleged violation:

(A) A citation for the alleged violation, which shall include the date and time of the violation, the location of the infraction, the maximum speed at which such motor vehicle was traveling ~~in photographically~~ as evidenced by recorded images, the maximum speed applicable within such school zone, the civil warning or the amount of the civil monetary penalty imposed, and the date by which a civil monetary penalty shall be paid;

(B) An image taken from the ~~photographically~~ recorded images showing the vehicle involved in the infraction;

(C) A website address where ~~photographically~~ recorded images showing the vehicle involved in the infraction and a duplicate of the information provided for in this paragraph may be viewed;

(D) A copy of a certificate sworn to or affirmed by a certified peace officer employed by a law enforcement agency authorized to enforce the speed limit of the school zone and stating that, based upon inspection of ~~photographically~~ recorded images, the owner's motor vehicle was operated in disregard or disobedience of the speed limit in the marked school zone and that such disregard or disobedience was not otherwise authorized by law;

(E) A statement of the inference provided by paragraph (4) of this subsection and of the means specified therein by which such inference may be rebutted;

(F) Information advising the owner of the motor vehicle of the manner in which liability as alleged in the citation may be contested ~~through an administrative hearing~~

145 which shall include a statement which reads: 'YOU HAVE A RIGHT TO CONTEST
146 LIABILITY BY CONTACTING YOUR LOCAL COURT'; and

147 (G) A warning that failure to pay the civil monetary penalty or to contest liability in
148 a timely manner as provided for in subsection (d) of this Code section shall waive any
149 right to contest liability;

150 (3) Proof that a motor vehicle was operated in disregard or disobedience of the speed
151 limit of the marked school zone shall be evidenced by ~~photographically~~ recorded images.
152 A copy of a certificate sworn to or affirmed by a certified peace officer employed by a
153 law enforcement agency and stating that, based upon inspection of ~~photographically~~
154 recorded images, a motor vehicle was operated in disregard or disobedience of the speed
155 limit in the marked school zone and that such disregard or disobedience was not
156 otherwise authorized by law shall be prima-facie evidence of the facts contained therein;
157 and

158 (4) Liability under this Code section shall be determined based upon a preponderance of
159 the evidence. Prima-facie evidence that the vehicle described in the citation issued
160 pursuant to this Code section was operated in violation of the speed limit of the school
161 zone, together with proof that the defendant was, at the time of such violation, the
162 registered owner of the vehicle, shall permit the trier of fact in its discretion to infer that
163 such owner of the vehicle was the ~~driver~~ operator of the vehicle at the time of the alleged
164 violation. Such an inference may be rebutted if the owner of the vehicle:

165 (A) Testifies under oath in open court or submits to the court a sworn notarized
166 statement that he or she was not the operator of the vehicle at the time of the alleged
167 violation; or

168 (B) Presents to the court a certified copy of a police report showing that the vehicle had
169 been reported to the police as stolen prior to the time of the alleged violation.

170 (c) A violation for which a civil warning or a civil monetary penalty is imposed pursuant
171 to this Code section shall not be considered a moving traffic violation for the purpose of

points assessment under Code Section 40-5-57. Such violation shall be deemed noncriminal, and imposition of a civil warning or civil monetary penalty pursuant to this Code section shall not be deemed a conviction and shall not be made a part of the operating record of the person upon whom such liability is imposed, nor shall it be used for any insurance purposes in the provision of motor vehicle insurance coverage.

(d) If a person issued and mailed a citation pursuant to subsection (b) of this Code section fails to pay the civil monetary penalty for the violation or has not filed a police report or notarized statement pursuant to paragraph (4) of subsection (b) of this Code section in no less than 30 nor more than 60 days after such mailing as determined and noticed by the law enforcement agency, the agent or law enforcement agency shall send to such person by ~~first class~~ first-class mail a second notice of any unpaid civil monetary penalty, except in cases where there is an adjudication that no violation occurred or there is otherwise a lawful determination that no civil monetary penalty shall be imposed. The second notice shall include all information required in paragraph (2) of subsection (b) of this Code section and shall include a new date ~~of return~~ by which the civil monetary penalty shall be paid which shall be no less than 30 days after such mailing as determined and noticed by the law enforcement agency. If such person notified by second notice again fails to pay the civil monetary penalty or file a police report or notarized statement pursuant to paragraph (4) of subsection (b) of this Code section by the new date ~~of return~~ included in the notice, such person shall have waived the right to contest the violation and shall be liable for the civil monetary penalty provided for under this Code section, except in cases where there is an adjudication that no violation occurred or there is otherwise a lawful determination that no civil monetary penalty shall be imposed.

(e) Notices mailed by ~~first-class~~ first-class mail pursuant to this Code section shall be adequate notification of the fees and penalties imposed by this Code section. No other notice shall be required for the purposes of this Code section.

(f) Any court having jurisdiction over violations of subsection (a) of this Code section shall have jurisdiction over cases arising under this subsection and shall be authorized to impose the civil monetary penalty provided by this subsection. Except as otherwise provided in this subsection, the provisions of law governing jurisdiction, procedure, defenses, adjudication, appeal, and payment and distribution of penalties otherwise applicable to violations of subsection (a) of this Code section shall apply to enforcement under this Code section except as provided in subsection (b) of this Code section; provided, however, that any appeal from superior or state court shall be by application in the same manner as that provided by Code Section 5-6-35.

(g) If a violation has not been contested and the assessed penalty has not been paid, the agent or governing body shall send to the person who is the registered owner of the motor vehicle a final notice of any unpaid civil monetary penalty authorized by this Code section, except in cases where there is an adjudication that no violation occurred or there is otherwise a lawful determination that no civil monetary penalty shall be imposed. ~~The notice shall inform the registered owner that the agent or governing body shall send a referral to the Department of Revenue if the assessed penalty is not paid within 30 days after the final notice was mailed and of the consequences for failure to pay such penalty and any late fee.~~

(h) ~~The agent or governing body shall send a referral to the Department of Revenue not sooner than 30 days after the final notice required under subsection (g) was mailed if a violation has not been contested and the assessed penalty has not been paid, except in cases where there is an adjudication that no violation occurred or there is otherwise a lawful determination that no civil monetary penalty shall be imposed. The referral to the Department of Revenue shall include the following:~~

~~(1) Any information known or available to the agent or governing body concerning the license plate number, year of registration, and the name of the owner of the motor vehicle;~~

~~(2) The date on which the violation occurred;~~

~~(3) The citation number issued for the violation; and~~

~~(4) The date when the notice required under this Code section was mailed.~~

~~(i) If the Department of Revenue receives a referral under subsection (h) of this Code section, such referral shall be entered into the motor vehicle data base within five days of receipt and the Department of Revenue shall refuse to renew the registration of the motor vehicle unless and until the civil monetary penalty plus any late fee is paid to the agent or governing body.~~

~~(j) The Department of Revenue shall remove the penalty on a vehicle registration if any person presents the Department of Revenue with adequate proof from the agent or governing body that the penalty and any late fee, if applicable, has been paid.~~

~~(k) Recorded images made for purposes of this Code section shall not be a public record for purposes of Article 4 of Chapter 18 of Title 50.~~

~~(h)(i)~~ (i) A civil warning or civil monetary penalty under this Code section on the owner of a motor vehicle shall not be imposed if the operator of the vehicle was arrested or issued a citation and notice to appear by a certified peace officer for the same violation.

~~(m)(j)(1)~~ (1) As used in this subsection, the term 'school safety purposes' means activities incident to the establishment, procurement, or maintenance of safety measures within public or private elementary or secondary schools that enhance and ensure the protection of students, staff, and visitors to such a school, including, but not limited to, access control systems, communication systems, cyber security measures, perimeter security systems, surveillance systems, visitor management systems, employment of crossing guards, and safety protocol training. Such purposes may further include mental health support services in collaboration with law enforcement to address safety concerns proactively.

(2) The ~~money~~ moneys collected and remitted to the governing body pursuant to paragraph (1) of subsection (b) of this Code section shall only be used by such governing body ~~to~~ as follows:

(A) Fifty percent shall be allocated to fund local law enforcement or public safety initiatives; and

(B) Fifty percent shall be allocated equally among all schools within the jurisdiction of the governing body for school safety purposes.

(3) This subsection shall not preclude the appropriation of a greater amount than collected and remitted under this subsection.

(4) At least quarterly, the local governing body shall post upon its website a report on the moneys disbursed pursuant to this subsection, which shall include the amount allocated to each school within the jurisdiction of such governing body."

SECTION 6.

Title 15 of the Official Code of Georgia Annotated, relating to courts, is amended in Code Section 15-9-155, relating to prosecuting attorney's duties and authority in probate courts in counties in which there are no state courts, by revising subparagraph (a)(1)(A) as follows:

"(A) In the prosecution of any violation of the laws or ordinances of such county which is within the jurisdiction of such probate court and punishable by confinement or a fine or both or by a civil penalty authorized by Code Section 40-6-163 or 40-14-18;"

SECTION 7.

Said title is further amended in Code Section 15-18-6, relating to duties of district attorney, by revising paragraph (6) as follows:

"(6) To prosecute civil actions to enforce any civil penalty set forth in Code Section 40-6-163 or 40-14-18 and to prosecute or defend any other civil action in the

274 prosecution or defense of which the state is interested, unless otherwise specially
275 provided for;"

276 **SECTION 8.**

277 Said title is further amended in Code Section 15-18-66, relating to duties and authority of
278 solicitors-general of state courts, by revising paragraph (4) of subsection (b) as follows:

279 "(4) To prosecute civil actions to enforce any civil penalty set forth in Code
280 Section 40-6-163 or 40-14-18 and when authorized by law to prosecute or defend any
281 civil action in the state court in the prosecution or defense of which the state is interested,
282 unless otherwise specially provided for;"

283 **SECTION 9.**

284 Said title is further amended in Code Section 15-18-96, relating to authority of prosecuting
285 attorney of municipal courts, by revising subparagraph (a)(1)(A) as follows:

286 "(A) In the prosecution of any violation of the laws or ordinances of such municipality
287 which is within the jurisdiction of such municipal court and punishable by confinement
288 or a fine or both or by a civil penalty authorized by Code Section 40-6-163 or 40-14-18;
289 and"

290 **SECTION 10.**

291 All laws and parts of laws in conflict with this Act are repealed.