

SENATE SUBSTITUTE TO HB 294

AS PASSED SENATE

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 40 of the Official Code of Georgia Annotated, relating to motor vehicles and
2 traffic, so as to generally prohibit the use of photographic speed-monitoring systems but
3 allow their use in school zones only; to provide for definitions and operating requirements
4 relative to such photographic speed-monitoring systems; to provide for a civil monetary
5 penalty for violations; to provide for enforcement; to provide for disposition and use of
6 monetary penalties resulting from the use of photographic speed-monitoring systems and
7 traffic-control signal monitoring devices; to provide for related matters; to repeal conflicting
8 laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

10 Title 40 of the Official Code of Georgia Annotated, relating to motor vehicles and traffic, is
11 amended in Article 9 of Chapter 6, relating to speed restrictions, by adding a new Code
12 Section 40-6-189 to read as follows:
13

14 "40-6-189.

15 (a) As used in this Code section, the term:

16 (1) 'Owner' means the registrant of a motor vehicle, except that such term shall not
17 include a motor vehicle rental company when a motor vehicle registered by such
18 company is being operated by another person under a rental agreement with such
19 company.

20 (2) 'Photographic speed-measuring system' means a speed-measuring system that works
21 in conjunction with a photographic, video, or electronic camera to automatically measure
22 the speed and produce photographs, video, or electronic or digital images of vehicles
23 violating the speed limit.

24 (3) 'Recorded images' means images recorded by a photographic speed-measuring
25 system on:

26 (A) One or more photographs;

1 (B) One or more microphotographs;

2 (C) One or more electronic or digital images; or

3 (D) Videotape

4 showing the posted speed limit and the actual speed of the vehicle along with the rear of
5 a motor vehicle apparently operated in disregard or disobedience of such speed limit and,
6 on at least one image or portion of tape, clearly revealing the number or other identifying
7 designation of the license plate displayed on the motor vehicle.

8 (b) The use of a photographic speed-measuring system for traffic enforcement purposes
9 is generally prohibited, but such systems may be used for such purposes only in school
10 speed zones as authorized in this Code section and in accordance with Article 4 of Chapter
11 14 of this title.

12 (c) For the purpose of enforcement pursuant to this Code section:

13 (1) The driver of a motor vehicle shall be liable for a civil monetary penalty of not more
14 than \$70.00 if such vehicle is found, as evidenced by recorded images produced by a
15 photographic speed-measuring system, to have been operated in disregard or
16 disobedience of the maximum lawful speed limit by more than five miles per hour in
17 excess of the limit in violation of Code Sections 40-6-181 through 40-6-183 and such
18 disregard or disobedience was not otherwise authorized by law; and

19 (2) The law enforcement agency for which such system is authorized shall send by
20 first-class mail addressed to the owner of the motor vehicle postmarked not later than ten
21 days after the date of the alleged violation:

22 (A) A citation for the violation, which shall include the date and time of the violation,
23 the location where the violation occurred, the amount of the civil monetary penalty
24 imposed, and the date by which the civil monetary penalty shall be paid;

25 (B) A copy of one or more of the recorded images;

26 (C) A copy of a certificate sworn to or affirmed by a trained law enforcement officer
27 or a technician employed by a law enforcement agency for which such systems are
28 authorized and stating that, based upon inspection of recorded images, the owner's
29 motor vehicle was operated in disregard or disobedience of the maximum lawful speed
30 limit by more than five miles per hour in excess of the limit in violation of Code
31 Sections 40-6-181 through 40-6-183 and that such disregard or disobedience was not
32 otherwise authorized by law;

33 (D) A statement of the inference provided by subsection (e) of this Code section and
34 of the means specified therein by which such inference may be rebutted;

35 (E) Information advising the owner of the motor vehicle of the manner and time in
36 which liability as alleged in the citation may be contested in court; and

1 (F) Warning that failure to pay the civil monetary penalty or to contest liability in a
2 timely manner shall waive any right to contest liability and result in a civil monetary
3 penalty;

4 provided, however, that only warning notices and not citations for violations shall be sent
5 during the 30 day period commencing with the installation of a photographic
6 speed-measuring system at such location.

7 (d) Proof that a motor vehicle was operated in disregard or disobedience of the maximum
8 lawful speed limit in violation of Code Sections 40-6-181 through 40-6-183 shall be
9 evidenced by recorded images produced by a photographic speed-measuring system
10 authorized pursuant to Article 4 of Chapter 14 of this title. A copy of a certificate sworn
11 to or affirmed by a trained law enforcement officer or a technician employed by a law
12 enforcement agency for which such system is authorized and stating that, based upon
13 inspection of recorded images, a motor vehicle was operated in disregard or disobedience
14 of the maximum lawful speed limits in violation of Code Sections 40-6-181 through
15 40-6-183 and that such disregard or disobedience was not otherwise authorized by law shall
16 be prima-facie evidence of the facts contained therein.

17 (e) Liability under this Code section shall be determined based upon a preponderance of
18 the evidence. Prima-facie evidence that the vehicle described in the citation issued pursuant
19 to this Code section was operated in violation of Code Sections 40-6-181 through
20 40-6-183, together with proof that the defendant was at the time of such violation the
21 registered owner of the vehicle, shall permit the trier of fact in its discretion to infer that
22 such owner of the vehicle was the driver of the vehicle at the time of the alleged violation.
23 Such an inference may be rebutted if the owner of the vehicle:

24 (1) Testifies under oath in open court that he or she was not the operator of the vehicle
25 at the time of the alleged violation;

26 (2) Presents to the court prior to the return date established on the citation an affidavit
27 stating that the vehicle was reported to the police as stolen prior to the time of the alleged
28 violation and a copy of a police report showing that the vehicle had been reported to the
29 police as stolen prior to the time of the alleged violation; or

30 (3) Submits to the court prior to the return date established on the citation a sworn
31 notarized statement that he or she was not the operator of the vehicle at the time of the
32 alleged violation and identifying the name and address of the operator of the vehicle at
33 the time of the alleged violation.

34 (f) A violation for which a civil penalty is imposed pursuant to this Code section shall not
35 be considered a moving traffic violation for the purpose of points assessment under Code
36 Section 40-5-57. Such violation shall be deemed noncriminal and imposition of a civil

1 penalty pursuant to this Code section shall not be deemed a conviction and shall not be
2 made a part of the operating record of the person upon whom such liability is imposed.

3 (g) If a person summoned by first-class mail fails to appear on the date of return set out
4 in the citation and has not paid the penalty for the violation or complied with paragraph (2)
5 or (3) of subsection (e) of this Code section, the person summoned shall have waived the
6 right to contest the violation and shall be liable for a civil monetary penalty of not more
7 than \$70.00.

8 (h) Any court having jurisdiction over violations of Code Sections 40-6-181 through
9 40-6-183 or any ordinance adopting the provisions of said Code sections pursuant to Code
10 Section 40-6-372 shall have jurisdiction over cases arising under this Code section and
11 shall be authorized to impose the civil monetary penalty provided by this Code section.
12 Except as otherwise provided in this Code section, the provisions of law governing
13 jurisdiction, procedure, defenses, adjudication, and appeal otherwise applicable to
14 violations of Code Sections 40-6-181 through 40-6-183 shall apply to enforcement under
15 this Code section; provided, however, that any appeal from superior or state court shall be
16 by application in the same manner as that provided by Code Section 5-6-35.

17 (i) The provisions of this Code section shall not limit law enforcement agencies to the use
18 of a photographic speed-measuring system in enforcing Code Sections 40-6-181 and
19 40-6-183; and, when there is evidence obtained from another source or sources which
20 constitutes a prima-facie case of a violation of Code Sections 40-6-181 and 40-6-183, such
21 violation may be prosecuted as otherwise provided by law in lieu of, but not in addition to,
22 enforcement under this Code section."

23 SECTION 2.

24 Said title is further amended in Chapter 14, relating to traffic enforcement devices, by
25 striking Code Section 40-14-20, relating to definitions applicable to traffic-control signal
26 monitoring devices, and inserting in its place a new Code section to read as follows:

27 "40-14-20.

28 As used in this article, the term:

29 (1) 'Recorded images' has the meaning provided in subparagraph (f)(1)(B) of Code
30 Section 40-6-20.

31 (2) 'Traffic accident prevention' means any activities, resources, or programs associated
32 with reducing or preventing traffic and pedestrian accidents, including, but not limited
33 to, driver education programs, pedestrian safety measures, traffic calming measures,
34 intersection improvements, sidewalks, and traffic signalization and signage.

35 (3) 'Traffic enforcement' means any activities, resources, or programs associated with
36 enforcing laws and regulations intended to improve traffic and pedestrian safety.

1 including, but not limited to, law enforcement officers and other personnel, equipment,
 2 court proceedings, or vendor contracts associated with the provisioning of traffic-control
 3 signal monitoring devices.

4 (4) 'Traffic-control signal monitoring device' has the meaning provided in subparagraph
 5 (f)(1)(C) of Code Section 40-6-20."

6 **SECTION 3.**

7 Said title is further amended in said Chapter 14 by striking Code Section 40-14-24, relating
 8 to reporting of device usage, and inserting in its place a new Code section to read as follows:

9 "40-14-24.

10 (a) The disposition and use of civil penalties imposed and collected as a result of the use
 11 of traffic-control signal monitoring devices shall not be subject to the provisions of law
 12 applicable to disposition of criminal fines and forfeitures. All such civil penalties shall be
 13 collected by the clerk or court officer charged with the duty of collecting moneys arising
 14 from fines and shall be paid over by the last day of the following month to the Georgia
 15 Superior Court Clerks' Cooperative Authority for remittance to the Brain and Spinal Injury
 16 Trust Fund created in Code Section 15-21-143 to be deposited into the Brain and Spinal
 17 Injury Trust Fund.

18 (b) Each county or municipality using any traffic-control signal monitoring device shall
 19 submit not later than February 1 of each year a report on such use during the preceding
 20 calendar year to the Governor, the Lieutenant Governor, and the Speaker of the House of
 21 Representatives. Such report shall include, without limitation:

22 (1) A description of the locations where traffic-control signal monitoring devices were
 23 used;

24 (2) The number of violations recorded at each location and in the aggregate on a monthly
 25 basis;

26 (3) The total number of citations issued;

27 (4) The number of civil monetary penalties and total amount of such penalties paid after
 28 citation without contest;

29 (5) The number of violations adjudicated and results of such adjudications, including a
 30 breakdown of dispositions made;

31 (6) The total amount of civil monetary penalties paid; ~~and~~

32 (7) The quality of the adjudication process and its results; and

33 (8) Documentation of compliance with the requirements of subsection (a) of this Code
 34 section."

SECTION 4.

Said title is further amended in said Chapter 14 by adding a new Article 4 to read as follows:

"ARTICLE 4

40-14-30.

As used in this article, the term:

(1) 'Photographic speed-measuring system' means a speed-measuring system that works in conjunction with a photographic, video, or electronic camera to automatically measure the speed and produce photographs, video, or digital images of vehicles violating the speed limit.

(2) 'Traffic accident prevention' means any activities, resources, or programs associated with reducing or preventing traffic and pedestrian accidents, including, but not limited to, driver education programs, pedestrian safety measures, traffic calming measures, intersection improvements, sidewalks, and traffic signalization and signage.

(3) 'Traffic enforcement' means any activities, resources, or programs associated with enforcing laws and regulations intended to improve traffic and pedestrian safety, including, but not limited to, law enforcement officers and other personnel, equipment, court proceedings, or vendor contracts associated with the provisioning of photographic speed-measuring systems.

(4) 'Vendor' means a company or manufacturer contracted by a county or municipality to install and maintain a photographic speed-measuring system.

40-14-31.

(a)(1) The law enforcement agency of any county or municipality shall not use a photographic speed-measuring system unless the chief law enforcement officer of such county or municipality desires the use of such system and such use is approved by the governing authority of the county or municipality.

(2) A county or municipality may use a photographic speed-measuring system only in school zones and only up to one hour before, during, and up to one hour after normal hours of school operation on days when school is in session.

(3) The governing authority of the county or municipality shall conduct a public hearing on the proposed use of such system prior to entering into any contract on or after July 1, 2006, for the use or purchase of such system.

(b) No county or municipal governing authority shall be authorized to use a photographic speed-measuring system where any arresting officer or official of the court having

1 jurisdiction of traffic cases is paid on a fee system. This Code section shall not apply to any
2 official receiving a recording fee.

3 (c) The compensation paid by the county or municipality to a vendor for a photographic
4 speed-measuring system shall be based only on the value of such equipment or the services
5 provided. Compensation for services or equipment is not to be based on the number of
6 traffic citations issued or the revenue generated by the system.

7 (d) A photographic speed-measuring system shall not be used by a law enforcement
8 agency unless the law enforcement agency employs at least one full-time certified peace
9 officer.

10 (e) A photographic speed-measuring system shall be used only to produce the recorded
11 images as defined in paragraph (3) of subsection (a) of Code Section 40-6-189 and shall
12 not be used to produce any photograph, microphotograph, electronic image, or videotape
13 showing the person operating the motor vehicle.

14 40-14-32.

15 Each county or municipal law enforcement agency using a photographic speed-measuring
16 system shall at its own expense test the system for accuracy at regular intervals and record
17 and maintain the results of each test. Such test results shall be public records subject to
18 inspection as provided by Article 4 of Chapter 18 of Title 50. Each such test shall be made
19 in accordance with the manufacturer's recommended procedure. Any such system not
20 meeting the manufacturer's minimum accuracy requirements shall be removed from
21 service and thereafter shall not be used by the county or municipal law enforcement agency
22 until it has been serviced and calibrated at the expense of the law enforcement agency by
23 a qualified technician.

24 40-14-33.

25 Each county or municipality using a photographic speed-measuring system shall erect signs
26 warning all approaching motorists that a photographic speed-measuring system is being
27 employed on each public road on which a photographic speed-measuring system is being
28 utilized. Such warning signs shall be at least 30 inches by 30 inches in measurement and
29 shall be placed no less than 500 feet from the photographic speed-measuring devices.

30 40-14-34.

31 (a) The disposition of civil penalties imposed and collected as a result of the use of
32 photographic speed-measuring systems shall not be subject to the provisions of law
33 applicable to disposition of criminal fines and forfeitures. All such civil penalties shall be
34 collected by the clerk or court officer charged with the duty of collecting moneys arising

1 from fines and shall be paid over by the last day of the following month to the Georgia
2 Superior Court Clerks' Cooperative Authority for remittance to the Brain and Spinal Injury
3 Trust Fund created in Code Section 15-21-143 to be deposited into the Brain and Spinal
4 Injury Trust Fund.

5 (b) Each county or municipality using a photographic speed-measuring system shall
6 submit not later than February 1 of each year a report on such use during the preceding
7 calendar year to the Governor, the Lieutenant Governor, and the Speaker of the House of
8 Representatives. Such report shall include, without limitation:

9 (1) A description of the locations where a photographic speed-measuring system was
10 used;

11 (2) The number of violations recorded at each location on a monthly basis;

12 (3) The total number of citations issued;

13 (4) The number of civil monetary penalties and total amount of such penalties paid after
14 citation without contest;

15 (5) The number of violations adjudicated and results of such adjudications, including a
16 breakdown of dispositions made;

17 (6) The total amount of civil monetary penalties paid; and

18 (7) Documentation of compliance with the requirements of subsection (a) of this Code
19 section.

20 40-14-35.

21 Failure of a law enforcement agency, county, or municipality to meet the requirements of
22 this article shall cause such agency, county, or municipality to be ineligible to use the
23 photographic speed-measuring system for a period of at least 90 days commencing upon
24 the date such failure was discovered and until such requirements are met. Resumption of
25 eligibility and use shall be treated the same as initial installation for purposes of paragraph
26 (2) of subsection (c) of Code Section 40-6-189."

27 SECTION 5.

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