

House Bill 77 (COMMITTEE SUBSTITUTE) (AM)

By: Representatives Loudermilk of the 14th, Scott of the 2nd, Franklin of the 43rd, Lunsford of the 110th, Mumford of the 95th, and others

A BILL TO BE ENTITLED
AN ACT

To amend Title 40 of the Official Code of Georgia Annotated, relating to motor vehicles and traffic, so as to require use of a certified peace officer to swear to a traffic light violation; to provide for an engineering study; to provide for changing timing; to provide for reports to the Department of Transportation; to provide for disposition of funds collected through use of traffic-control signal monitoring devices; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 40 of the Official Code of Georgia Annotated, relating to motor vehicles and traffic, is revised in Code Section 40-6-20, relating to enforcement by traffic-control signal monitoring devices, as follows:

"40-6-20.

(a) The driver of any vehicle shall obey the instructions of an official traffic-control device applicable thereto, placed in accordance with this chapter, unless otherwise directed by a police officer, subject to the exceptions granted the driver of an authorized emergency vehicle in this chapter. A violation of this subsection shall be a misdemeanor, except as otherwise provided by subsection (f) of this Code section.

(b) No provisions of this chapter which require official traffic-control devices shall be enforced against an alleged violator if at the time and place of the alleged violation an official device was not in proper position and sufficiently legible to be seen by an ordinarily observant person. Whenever a particular Code section does not state that official traffic-control devices are required, such Code section shall be effective even though no devices are erected or in place.

(c) Whenever official traffic-control devices are placed in position approximately conforming to the requirements of this chapter, such devices shall be presumed to have

1 been so placed by the official act or direction of lawful authority, unless the contrary shall
2 be established by competent evidence.

3 (d) Any official traffic-control device placed pursuant to this chapter and purporting to
4 conform to the lawful requirements pertaining to such devices shall be presumed to comply
5 with the requirements of this chapter, unless the contrary shall be established by competent
6 evidence.

7 (e) The disregard or disobedience of the instructions of any official traffic-control device
8 or signal placed in accordance with the provisions of this chapter by the driver of a vehicle
9 shall be deemed prima-facie evidence of a violation of law, without requiring proof of who
10 and by what authority such sign or device has been erected.

11 (f)(1) As used in this subsection, the term:

12 (A) 'Owner' means the registrant of a motor vehicle, except that such term shall not
13 include a motor vehicle rental company when a motor vehicle registered by such
14 company is being operated by another person under a rental agreement with such
15 company.

16 (B) 'Recorded images' means images recorded by a traffic-control signal monitoring
17 device:

18 (i) On:

19 (I) Two or more photographs;

20 (II) Two or more microphotographs;

21 (III) Two or more electronic images; or

22 (IV) Videotape; and

23 (ii) Showing a traffic-control signal displaying a CIRCULAR RED or RED ARROW
24 signal along with the rear of a motor vehicle apparently operated in disregard or
25 disobedience of such signal and, on at least one image or portion of tape, clearly
26 revealing the number or other identifying designation of the license plate displayed
27 on the motor vehicle.

28 (C) 'Traffic-control signal monitoring device' means a device with one or more motor
29 vehicle sensors working in conjunction with a traffic-control signal to produce recorded
30 images of motor vehicles being operated in disregard or disobedience of a CIRCULAR
31 RED or RED ARROW signal.

32 (2) Subsection (a) of this Code section may be enforced as provided in this subsection
33 pursuant to the use of traffic-control signal monitoring devices in accordance with Article
34 3 of Chapter 14 of this title.

35 (3) For the purpose of enforcement pursuant to this subsection:

36 (A) The driver of a motor vehicle shall be liable for a civil monetary penalty of not
37 more than \$70.00 if such vehicle is found, as evidenced by recorded images produced

1 by a traffic-control signal monitoring device, to have been operated in disregard or
2 disobedience of a CIRCULAR RED or RED ARROW signal in violation of subsection
3 (a) of this Code section and such disregard or disobedience was not otherwise
4 authorized by law;

5 (B) The law enforcement agency for which such device is permitted shall send by
6 first-class mail addressed to the owner of the motor vehicle postmarked not later than
7 ten days after the date of the alleged violation:

8 (i) A citation for the alleged violation, which shall include the date and time of the
9 violation, the location of the intersection, the amount of the civil monetary penalty
10 imposed, and the date by which the civil monetary penalty shall be paid;

11 (ii) A copy of the recorded image;

12 (iii) A copy of a certificate sworn to or affirmed by a ~~trained law enforcement~~
13 certified peace officer or a technician employed by a law enforcement agency for
14 which such device is authorized and stating that, based upon inspection of recorded
15 images, the owner's motor vehicle was operated in disregard or disobedience of a
16 CIRCULAR RED or RED ARROW signal in violation of subsection (a) of this Code
17 section and that such disregard or disobedience was not otherwise authorized by law;

18 (iv) A statement of the inference provided by subparagraph (D) of this paragraph and
19 of the means specified therein by which such inference may be rebutted;

20 (v) Information advising the owner of the motor vehicle of the manner and time in
21 which liability as alleged in the citation may be contested in court; and

22 (vi) Warning that failure to pay the civil monetary penalty or to contest liability in a
23 timely manner shall waive any right to contest liability and result in a civil monetary
24 penalty;

25 provided, however, that only warning notices and not citations for violations shall be
26 sent during the 30 day period commencing with the installation of a traffic-control
27 signal monitoring device at such location;

28 (C) Proof that a motor vehicle was operated in disregard or disobedience of a
29 CIRCULAR RED or RED ARROW signal in violation of subsection (a) of this Code
30 section shall be evidenced by recorded images produced by a traffic-control signal
31 monitoring device authorized pursuant to Article 3 of Chapter 14 of this title. A copy
32 of a certificate sworn to or affirmed by a ~~trained law enforcement~~ certified peace officer
33 ~~or a technician~~ employed by a law enforcement agency for which such device is
34 authorized and stating that, based upon inspection of recorded images, a motor vehicle
35 was operated in disregard or disobedience of a CIRCULAR RED or RED ARROW
36 signal in violation of subsection (a) of this Code section and that such disregard or

disobedience was not otherwise authorized by law shall be prima-facie evidence of the facts contained therein; and

(D) Liability under this subsection shall be determined based upon preponderance of the evidence. Prima-facie evidence that the vehicle described in the citation issued pursuant to this subsection was operated in violation of subsection (a) of this Code section, together with proof that the defendant was at the time of such violation the registered owner of the vehicle, shall permit the trier of fact in its discretion to infer that such owner of the vehicle was the driver of the vehicle at the time of the alleged violation. Such an inference may be rebutted if the owner of the vehicle:

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

(ii) Presents to the court prior to the return date established on the citation a certified copy of a police report showing that the vehicle had been reported to the police as stolen prior to the time of the alleged violation; or

(iii) Submits to the court prior to the return date established on the citation a sworn notarized statement identifying the name of the operator of the vehicle at the time of the alleged violation.

(4) A violation for which a civil penalty is imposed pursuant to this subsection 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 penalty pursuant to this subsection 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.

(5) If a person summoned by first-class mail fails to appear on the date of return set out in the citation and has not paid the penalty for the violation or filed a police report or affidavit pursuant to division (3)(D)(ii) or (3)(D)(iii) of this subsection, the person summoned shall have waived the right to contest the violation and shall be liable for a civil monetary penalty of not more than \$70.00.

(6) Any court having jurisdiction over violations of subsection (a) of this Code section or any ordinance adopting the provisions of said subsection pursuant to Code Section 40-6-372 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 subsection; 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.

(7) Recorded images made for purposes of this subsection shall not be a public record for purposes of Article 4 of Chapter 18 of Title 50.

(8) The provisions of this subsection shall ~~not~~ limit law enforcement agencies to the use of traffic-control signal monitoring devices in enforcing subsection (a) of this Code section; ~~and, when there is evidence obtained from another source or sources which constitutes a prima-facie case of a violation of subsection (a) of this Code section, such violation may be prosecuted as otherwise provided by law in lieu of, but not in addition to, enforcement under this subsection."~~

SECTION 2.

Said title is further amended by revising Code Section 40-14-21, relating to the use of traffic-control signal monitoring devices, as follows:

"40-14-21.

(a) The law enforcement agency of any county or municipality shall not use traffic-control signal monitoring devices unless the chief law enforcement officer of such county or municipality desires the use of such devices and such use is approved by the governing authority of the county or municipality. The governing authority of the county or municipality shall conduct a public hearing on the proposed use of such devices prior to entering any contract on or after July 1, 2001, for the use or purchase of such devices.

(b) No county or municipality shall operate a traffic-control signal monitoring device unless it has first conducted a traffic engineering study of the approach to an intersection to determine whether, in addition to or as an alternative to the traffic-control signal monitoring device, a design change to the approach, reducing the approach speed, or a change in the signalization of the intersection is likely to reduce the number of accidents or red light violations at that intersection. This report shall be submitted with the annual report required under these provisions.

(c) No county or municipal governing authority shall be authorized to use traffic-control signal monitoring devices where any arresting officer or official of the court having jurisdiction of traffic cases is paid on a fee system. This subsection shall not apply to any official receiving a recording fee.

(d) A county or municipality shall not impose a civil penalty under this Code section on the owner of a motor vehicle if the operator of the vehicle was arrested or issued a citation and notice to appear by a peace officer for the same violation that is recorded by a traffic-control signal monitoring device.

~~(e)~~(e) If a county or municipality elects to use traffic-control signal monitoring devices, no portion of any civil monetary penalty collected through the use of such devices may be paid to the manufacturer or vendor of the traffic-control signal monitoring devices. The compensation paid by the county or municipality for such devices shall be based on the value of such equipment and shall not be based on the number of citations issued or the revenue generated by such devices.

~~(d)~~(f)(1) A traffic-control signal monitoring device shall not be used by a law enforcement agency unless the law enforcement agency employs at least one full-time certified peace officer.

(2) Failure of a law enforcement agency to continue to meet the standards provided by this subsection shall cause such agency to be ineligible to use traffic-control signal monitoring devices.

~~(e)~~(g) A traffic-control signal monitoring device shall not be used to produce any photograph, microphotograph, electronic image, or videotape showing the identity of any person in a motor vehicle."

SECTION 3.

Said title is further amended by revising Code Section 40-14-22, relating to timing of traffic-control signals, as follows:

"40-14-22.

The timing of any traffic-control signal which is being monitored by a traffic-control signal monitoring device shall conform to regulations promulgated by the Department of Transportation pursuant to Code Section 32-6-50. The duration of the yellow or red light of any traffic-control device at which a traffic-control signal monitoring device is installed shall not be decreased prior to the installation of a device or during the time for which the device is operated. Each county or municipal law enforcement agency using a traffic-control signal monitoring device shall at its own expense test the device for accuracy at regular intervals and record and maintain the results of each test. Such test results shall be public records subject to inspection as provided by Article 4 of Chapter 18 of Title 50. Each such test shall be made in accordance with the manufacturer's recommended procedure. Any such device not meeting the manufacturer's minimum accuracy requirements shall be removed from service and thereafter shall not be used by the county or municipal law enforcement agency until it has been serviced and calibrated at the expense of the law enforcement agency by a qualified technician."

SECTION 4.

Said title is further amended by revising Code Section 40-14-23, relating to signs to notify motorists of use of traffic-control signal monitoring devices, as follows:

"40-14-23.

Each county or municipality using traffic-control signal monitoring devices shall erect signs on every highway which comprises a part of the state highway system at that point on the highway which intersects the jurisdictional limits of the county or municipality. A sign shall be erected also by such entity on each public road on the approach to the next traffic-control signal for such road when a traffic-control signal monitoring device is monitoring such next signal for such road. Such signs shall be ~~at least 30 inches by 30 inches in measurement and shall warn approaching motorists that traffic-control signal monitoring devices are being employed~~ of a design specified by the Department of Transportation and shall be a nationally recognized regulatory sign as designated by the Federal Highway Administration's Manual on Uniform Traffic Control Devices."

SECTION 5.

Said title is further amended by revising Code Section 40-14-24, relating to reports regarding use of traffic-control signal monitoring devices, as follows:

"40-14-24.

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

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

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

(3) The total number of citations issued;

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

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

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

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

(b) If any county or municipality fails to provide the report provided for in subsection (a) of this Code section, all revenues generated from the operation of any traffic-control signal

1 monitoring device in that county or municipality shall be forwarded to the general fund of
2 the state. The county or municipality shall not be entitled to retain any revenue until the
3 annual report is filed and accepted by the Department of Transportation.

4 (c) The Department of Transportation shall forward copies of all reports to the offices of
5 the Governor, Lieutenant Governor, and the Speaker of the House by March 1 of each year.
6 The department shall also forward to the offices of the Governor, Lieutenant Governor, and
7 the Speaker of the House a complete list of all traffic-control signal monitoring devices
8 currently in use."

9 **SECTION 6.**

10 Said title is further amended by adding a new Code section to read as follows:

11 "40-14-25.

12 The amount of civil monetary penalties collected under the provisions of this article, less
13 any costs incurred for acquisition, installation, maintenance, and operation of the
14 traffic-control signal monitoring devices, and less 25 percent of the remaining money to
15 be retained by the county or municipality, shall be deposited in the general fund of this
16 state with the intent that these moneys be used to fund a trauma care system in Georgia.
17 The Office of Treasury and Fiscal Services shall separately account for all of the moneys
18 received under the provisions of this Code section."

19 **SECTION 7.**

20 This Act shall become effective December 31, 2007.

21 **SECTION 8.**

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