

ADOPTED

Representatives Powell of the 32nd and Atwood of the 179th offer the following amendment:

Amend the Senate substitute to HB 736 (HB 736/SCSFA/2) by inserting between lines 9 and 10 the following:

to amend Article 2 of Chapter 14 of Title 40 of the Official Code of Georgia Annotated, relating to speed detection devices, so as to provide for automated traffic enforcement safety devices in school zones; to provide for definitions; to provide for the operation of automated traffic enforcement safety devices by agents or registered or certified peace officers; to provide for automated traffic enforcement safety device testing exceptions and procedures; to provide for automated traffic enforcement safety device use warning signs; to provide for further exceptions for when case may be made and conviction had for exceeding posted speed limit by less than ten miles per hour; to provide for an exception for the ratio of speeding fines to an agency budget; to provide for civil enforcement of violations recorded by automated traffic enforcement safety devices; to provide for rules, regulations, and terms of use for automated traffic enforcement safety devices;

By inserting between lines 183 and 184 the following:

Article 2 of Chapter 14 of Title 40 of the Official Code of Georgia Annotated, relating to speed detection devices, is amended by adding two new Code sections to read as follows:

"40-14-1.1.

As used in this article, the term:

(1) 'Agent' means a person or entity who is authorized by a law enforcement agency or governing body to administer the procedures contained herein and:

(A) Provides services to such law enforcement agency or governing body;

(B) Operates, maintains, leases, or licenses an automated traffic enforcement safety device; or

(C) Is authorized by such law enforcement agency or governing body to review and assemble the recorded images captured by the automated traffic enforcement safety device for review by a peace officer.

(2) 'Automated traffic enforcement safety device' means a speed detection device that:

(A) Is capable of producing photographically recorded still or video images, or both, of the rear of a motor vehicle or of the rear of a motor vehicle being towed by another vehicle, including an image of such vehicle's rear license plate;

(B) Is capable of monitoring the speed of a vehicle as photographically recorded pursuant to subparagraph (A) of this paragraph; and

(C) Indicates on each of the one or more photographically recorded still or video images produced the date, time, location, and speed of a photographically recorded vehicle traveling at a speed above the posted speed limit within a marked school zone.

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

(4) 'Recorded images' means still or video images recorded by an automated traffic enforcement safety device.

(5) 'School zone' means any roadway within the area defined in an existing master state order or local ordinance as a school zone area.

40-14-1.2.

Nothing in this article shall be construed to mean that an agent is providing or participating in private investigative services or acting in such a manner as would render such agent subject to the provisions of Article 4 of Chapter 18 of Title 50."

SECTION 4.

Said article is further amended by revising subsection (c) of Code Section 40-14-2, relating to permit required for use of speed detection devices, use not authorized where officers paid on fee system, and operation by registered or certified peace officers, as follows:

"(c) A permit shall not be issued by the Department of Public Safety to an applicant under this Code section unless the applicant provides law enforcement services by certified peace officers 24 hours a day, seven days a week on call or on duty or allows only peace officers employed full time by the applicant to operate speed detection devices. Speed detection devices can only be operated by registered or certified peace officers of the county sheriff, county, municipality, college, or university to which the permit is applicable; provided, however, that an automated traffic enforcement safety device may be operated by an agent or registered or certified peace officers of the county sheriff, county, or municipality to which the permit is applicable. Persons operating the speed detection devices must be registered or certified by the Georgia Peace Officer Standards and Training Council as peace officers and certified by the Georgia Peace Officer Standards and Training Council as operators of speed detection devices; provided, however, that agents may operate automated traffic enforcement safety devices without such registrations or certifications."

SECTION 5.

Said article is further amended by revising Code Section 40-14-5, relating to testing and removal of inaccurate radar devices from service, as follows:

"40-14-5.

(a) Each state, county, municipal, or campus law enforcement officer using a radar device, except for an automated traffic enforcement safety device as provided for under Code Section 40-14-18, shall test the device for accuracy and record and maintain the results of the test at the beginning and end of each duty tour. Each such test shall be made in accordance with the manufacturer's recommended procedure. Any radar unit not meeting the manufacturer's minimum accuracy requirements shall be removed from service and thereafter shall not be used by the state, county, municipal, or campus law enforcement agency until it has been serviced, calibrated, and recertified by a technician with the qualifications specified in Code Section 40-14-4.

(b) Each county, municipal, or campus law enforcement officer using a radar device, except for an automated traffic enforcement safety device as provided for under Code Section 40-14-18, shall notify each person against whom the officer intends to make a case based on the use of the radar device that the person has a right to request the officer to test the radar device for accuracy. The notice shall be given prior to the time a citation and complaint or ticket is issued against the person and, if requested to make a test, the officer shall test the radar device for accuracy. In the event the radar device does not meet the minimum accuracy requirements, the citation and complaint or ticket shall not be issued against the person, and the radar device shall be removed from service and thereafter shall not be used by the county, municipal, or campus law enforcement agency until it has been serviced, calibrated, and recertified by a technician with the qualifications specified in Code Section 40-14-4.

(c)(1) The law enforcement agency, or agent on behalf of the law enforcement agency, operating an automated traffic enforcement safety device provided for under Code Section 40-14-18 shall maintain a log for the automated traffic enforcement safety device attesting to the performance of such device's self-test at least once every 30 days and the results of such self-test pertaining to the accuracy of the automated traffic enforcement safety device. Such log shall be admissible in any court proceeding for a violation issued pursuant to Code Section 40-14-18.

(2) The law enforcement agency, or agent on behalf of the law enforcement agency, operating an automated traffic enforcement safety device shall have performed an independent calibration test on the automated traffic enforcement safety device at least once every 12 months. The results of such calibration test shall be admissible in any court proceeding for a violation issued pursuant to Code Section 40-14-18."

SECTION 6.

Said article is further amended by adding a new subsection to Code Section 40-14-6, relating to the requirement for warning signs, to read as follows:

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

SECTION 7.

Said article is further amended by revising Code Section 40-14-7, relating to the visibility of a vehicle from which a speed detection device is operated, as follows:

"40-14-7.

No Except as provided for in Code Section 40-14-18, no stationary speed detection device shall be employed by county, municipal, college, or university law enforcement officers where the vehicle from which the device is operated is obstructed from the view of approaching motorists or is otherwise not visible for a distance of at least 500 feet."

SECTION 8.

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

"(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 9.

Said article is further amended by revising subsection (d) of Code Section 40-14-11, relating to investigations by the commissioner of public safety, issuance of order suspending or revoking a permit, and ratio of speeding fines to agency's budget, 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 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 10.

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

"40-14-18.

(a) 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 recorded images for violations which occurred during the time periods relative to normal hours of school operation and programs of care and supervision of students as provided for in Code Section 40-14-8 when such violations are in excess of ten miles per hour over the speed limit.

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

(1) The driver of a motor vehicle shall be liable for a civil monetary penalty if such vehicle is found, as evidenced by recorded images, to have been operated in disregard or disobedience of the speed limit within any school zone and such disregard or disobedience was not otherwise authorized by law. The amount of such civil monetary penalty shall be \$125.00, in addition to fees associated with the electronic processing of such civil monetary penalty which shall not exceed \$25.00; provided, however, that for a period of 30 days after an automated traffic enforcement safety device is first introduced within a school system, other than an automated traffic enforcement safety device replacing a previously used automated traffic enforcement safety device, the driver of a motor vehicle shall not be liable for a civil monetary penalty but shall be issued a 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 shall send by first class mail addressed to the owner of the motor vehicle postmarked

171 within 30 days after obtaining the name and address of the owner of the motor vehicle but
172 no later than 60 days after the date of the alleged violation:

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

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

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

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

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

190 (F) Information advising the owner of the motor vehicle of the manner and time in
191 which liability as alleged in the citation may be contested through an administrative
192 hearing; and

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

196 (3) Proof that a motor vehicle was operated in disregard or disobedience of the speed
197 limit of the marked school zone shall be evidenced by recorded images. A copy of a
198 certificate sworn to or affirmed by a certified peace officer employed by a law
199 enforcement agency and stating that, based upon inspection of recorded images, a motor
200 vehicle was operated in disregard or disobedience of the speed limit in the marked school
201 zone and that such disregard or disobedience was not otherwise authorized by law shall
202 be prima-facie evidence of the facts contained therein; and

203 (4) Liability under this Code section shall be determined based upon a preponderance of
204 the evidence. Prima-facie evidence that the vehicle described in the citation issued
205 pursuant to this Code section was operated in violation of the speed limit of the school
206 zone, together with proof that the defendant was, at the time of such violation, the
207 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:

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

(B) Presents to the court 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.

(c) A violation for which a civil warning or a civil monetary penalty is imposed pursuant 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 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 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, 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 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 the speed limit in the school zone shall have jurisdiction over cases arising under this Code section and shall be authorized to

245 impose the civil monetary penalty. The provisions of law governing jurisdiction,
246 procedure, defenses, adjudication, appeal, and payment and distribution of penalties
247 otherwise applicable to violations of the speed limit in the school zone shall apply to
248 enforcement under this Code section, except as otherwise provided in this Code section;
249 provided, however, that any appeal from superior or state court shall be by application in
250 the same manner as that provided by Code Section 5-6-35.
251 (g) Recorded images made for purposes of this Code section shall not be a public record
252 for purposes of Article 4 of Chapter 18 of Title 50.
253 (h) A civil warning or civil monetary penalty under this Code section on the owner of a
254 motor vehicle shall not be imposed if the operator of the vehicle was arrested or issued a
255 citation and notice to appear by a peace officer for the same violation."

256 **SECTION 11.**

257 *By redesignating Section 4 as Section 12.*