House Bill 182 (AS PASSED HOUSE AND SENATE)

By: Representative Benfield of the 56th, Post 1

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 provide for enforcement of certain uniform rules of the road by use of traffic-control signal monitoring devices; to change certain provisions relating to records of certificates of registration; to change certain provisions relating to obedience to traffic-control devices requirements, presumptions, and enforcement by traffic-control signal monitoring devices; to change certain provisions relating to use of traffic-control signal monitoring devices; to change certain provisions relating to reporting of traffic-control signal monitoring device use to elected officials; 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 amended in Code Section 40-2-130, relating to records of certificates of registration, by striking paragraph (1) of subsection (c) and inserting in lieu thereof the following:

"(1) Any law enforcement officer for official law enforcement investigations or for identifying the registrant of a motor vehicle for purposes of use of a traffic-control signal monitoring device pursuant to subsection (f) of Code Section 40-6-20, as certified by the commanding officer of the law enforcement agency making such request;"

SECTION 2.

Said title is further amended by striking Code Section 40-6-20, relating to obedience to traffic-control devices requirements, presumptions, and enforcement by traffic-control signal monitoring devices, and inserting in lieu thereof the following:

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

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

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

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

(A) '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.

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

(i) On:

(I) Two or more photographs;

(II) Two or more microphotographs;

(III) Two or more electronic images; or

(IV) Videotape; and

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

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

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

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

(A) The driver of a motor vehicle shall be liable for a civil monetary penalty of not more than $70.00 if such vehicle is found, as evidenced by recorded images produced by a traffic-control signal monitoring device, to have been operated in disregard or disobedience of a CIRCULAR RED or RED ARROW signal in violation of subsection (a) of this Code section and such disregard or disobedience was not otherwise authorized by law;

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

(i) A ~~uniform traffic~~ citation for the violation, which shall include the date and time of the violation, the location of the intersection, the amount of the civil monetary penalty imposed, and the date by which the civil monetary penalty shall be paid;

(ii) A copy of the recorded image;

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

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

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

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

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

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

Said title is further amended by striking subsection (c) of Code Section 40-14-21, relating to use of traffic-control signal monitoring devices, and inserting in lieu thereof the following:

"(c) If a county or municipality elects to use traffic-control signal monitoring devices, no portion of any ~~fine~~ 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 ~~traffic~~ citations issued or the revenue generated by such devices."

SECTION 4.

Said title is further amended by striking Code Section 40-14-24, relating to reporting of traffic-control signal monitoring device use to elected officials, and inserting in lieu thereof the following:

″40-14-24.

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. 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 ~~fines~~ civil monetary penalties and total amount of ~~fines~~ 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 ~~fines~~ civil monetary penalties paid; and

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

SECTION 5.

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