House Bill 447

By: Representatives Vance of the 133rd, Collins of the 71st, Mitchell of the 88th, Powell of the 33rd, Williamson of the 112th, 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 authorize the use of automated plate recognition systems for the issuance of a civil monetary penalty for the ownership of a motor vehicle operated without proper insurance or with an expired, revoked, canceled, or suspended registration; to provide a short title; to provide for legislative intent; to provide for definitions; to provide for penalties; to provide for procedures, conditions, and limitations for the issuance of such citations; to provide for standards for retention of stored images; to provide for standards for agreements relating to issuance of such citations; to revise provisions relating to operation of an unregistered motor vehicle or motor vehicle without a current license plate, revalidation decal, or county decal; to provide for disclosure of certain records of the Department of Revenue for purposes of issuance such civil monetary penalties; to revise provisions relating to operation of a motor vehicle and motorcycle without proper insurance; to provide for conforming changes; to provide for construction; to amend Title 15 of the Official Code of Georgia Annotated, relating to courts, so as to authorize prosecuting attorneys, district attorneys, and solicitors-general to enforce civil monetary penalties relative to the issuance of a civil monetary penalty for the ownership of a motor vehicle operated without proper insurance or with an expired, revoked, canceled, or suspended registration; to provide for related matters; 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 Chapter 1, relating to identification and regulation, by adding a new article to read as follows:

″ARTICLE 4

40-1-250.

This Act shall be known and may be cited as the 'Georgia Secure Automated Vehicle Enforcement (SAVE) Act.'

40-1-251.

The General Assembly finds that uninsured and unregistered motor vehicles on the roads in this state place the safety of Georgians at risk. The failure of motor vehicle owners to maintain adequate insurance leads to increases in insurance premiums for all drivers and also places an unnecessary burden on motor vehicle accident victims. The legislature further finds that while punishment of violations of mandatory motor vehicle insurance and registration laws as criminal offenses remains necessary, an alternate civil process utilizing technology is needed to increase compliance. By establishing parameters for use of technology to aid in automated enforcement, the General Assembly ensures that individual privacy rights and due process are respected while making the job of law enforcement safer.

40-1-252.

As used in this article, the term:

(1) 'Agent' means a person or entity that is authorized through a contract with a law enforcement agency or governing body thereof to administer the procedures contained in this article and that:

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

(B) Operates, maintains, leases, or licenses an automated license plate recognition system; or

(C) Is authorized by such law enforcement agency or governing body thereof to review and assemble stored images.

(2) 'Automated license plate recognition system' means a system which converts images from a video capture device into computer-readable data which is compared to information relating to motor vehicle registrations and insurance maintained by the Department of Revenue.

(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) 'Stored images' means images of motor vehicle license plates digitally captured and retained by a video capture device which have been processed through an automated license plate system and the associated metadata for such images, including the date, time, and global position satellite system coordinates.

(5) 'Video capture device' means a camera or group of cameras installed upon a motor vehicle marked in accordance with Code Section 40-8-91 capable of capturing and retaining stored images.

40-1-253.

(a) The owner of a motor vehicle operated on the highways of this state at a time when the registration of such vehicle is expired, suspended, canceled, or revoked shall be liable for

the civil monetary penalty as set forth in subsection (b) of this Code section when such operation is evidenced by stored images and such operation was not otherwise authorized by law.

(b) A citation issued in accordance with this article for a violation of subsection (a) of this Code section shall include a civil monetary penalty of $100.00 for a motor vehicle operated with an expired registration and $200.00 for a motor vehicle operated with a suspended, canceled, or revoked registration.

40-1-254.

(a) The owner of a motor vehicle operated on the highways of this state without the minimum motor vehicle liability insurance coverage required under Chapter 34 of Title 33 shall be liable for the civil monetary penalty as set forth in subsection (b) of this Code section when such operation is evidenced by stored images and such operation was not otherwise authorized by law.

(b) A citation issued in accordance with this article for a violation of subsection (a) of this Code section shall include a civil monetary penalty of $200.00.

40-1-255.

The law enforcement agency authorized to enforce the traffic laws of this state or agent thereof shall send by first-class mail addressed to the owner of the motor vehicle operated in violation of Code Section 40-1-253 or Code Section 40-1-254, not later than ten days after obtaining the name and address of such owner from the Department of Revenue, the following:

(1) A citation for the alleged violation, which shall include the type of violation alleged, the date and time of the alleged violation, the location of the alleged violation, the amount of the civil monetary penalty imposed, and the date by which the civil monetary penalty shall be paid.

(2) A copy of the stored image which shows the motor vehicle involved in the alleged violation.

(3) A copy of a certificate sworn to or affirmed by a certified peace officer employed by the law enforcement agency stating that, based upon inspection of stored images and the data provided by an automated license plate recognition system, the owner's motor vehicle was operated in violation of Code Section 40-1-253 or Code Section 40-1-254 and that such disregard or disobedience was not otherwise authorized by law.

(4) A statement of the inference provided for in Code Section 40-1-256 and of the means specified therein by which such inference may be rebutted.

(5) Information advising the owner of the motor vehicle of the manner in which liability as alleged in the citation may be contested.

40-1-256.

(a) Proof that a motor vehicle was operated in violation of Code Section 40-1-253 or Code Section 40-1-254 may be evidenced by stored images and data provided by an automated license plate recognition system. A copy of a certificate sworn to or affirmed by a certified peace officer employed by a law enforcement agency and stating that, based upon inspection of stored images and data provided by an automated license plate recognition system, a motor vehicle was operated in violation of Code Section 40-1-253 or Code Section 40-1-254 and that such operation was not otherwise authorized by law shall be prima-facie evidence of the facts contained therein.

(b) Liability under this article shall be determined based upon a preponderance of the evidence. Prima-facie evidence that the motor vehicle described in the citation issued pursuant to this article was operated in violation of Code Section 40-1-253 or Code Section 40-1-254 , together with proof that the defendant was at the time of such violation the registered owner of the motor vehicle, shall permit the trier of fact in its discretion to infer that such owner of the motor vehicle was the operator or authorized the use of the

motor vehicle at the time of the alleged violation. Such an inference may be rebutted if the owner of the motor vehicle presents to the court a certified copy of a police report showing that the motor vehicle had been reported to the police as stolen prior to the time of the alleged violation or proof that the motor vehicle had proper insurance or registration at the time the citation was issued.

40-1-257.

(a) When a person fails to pay the civil monetary penalty for which citation and notice were sent pursuant to Code Section 40-1-255 or has failed to file a police report pursuant to Code Section 40-1-256 within 60 days from the date such citation and notice were mailed pursuant to Code Section 40-1-255, the law enforcement agency or agent thereof which sent the original citation shall send a second notice; provided, however, that such second notice shall not be sent in cases in which an adjudication that no violation occurred has been issued or there is an otherwise lawful determination that no civil monetary penalty shall be imposed. Such second notice shall include all information required of the original citation and notice in Code Section 40-1-255 and a new date of return which shall be no less than 30 days after such mailing. If such person notified by second notice again fails to pay the civil monetary penalty or file a police report 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 article, except in cases in which an adjudication that no violation occurred has been issued or there is an otherwise a lawful determination that no civil monetary penalty shall be imposed.

(b) When a citation is issued for any offense pursuant to this article and a previous citation issued by the same jurisdiction pursuant to this article has not been paid for more than 90 days from the first mailing of such citation, the amount of the civil penalty for the subsequent citation shall be double the amount of the most recently issued unpaid civil monetary penalty; provided, however, that such subsequent civil monetary penalty shall

not exceed $800.00. The amount owed for any previous unpaid civil penalties shall remain due. The total amount collected for a single citation issued pursuant to this article, including any late fees assessed, shall not exceed $800.00.

(c) A subsequent citation shall not be issued for the same offense in the same jurisdiction as a previous citation until after 30 days from the date the previous citation was mailed.

(d) A civil monetary penalty under this article shall not be imposed on the owner of a motor vehicle during a traffic stop when the owner of the motor vehicle has been arrested during such stop or issued a uniform traffic citation and notice to appear by a certified peace officer pursuant to the applicable criminal statute.

40-1-258.

(a) Notices mailed by first-class mail shall be adequate notification of the fees and penalties imposed by this article.

(b) Any court having jurisdiction over violations relating to violation of traffic laws shall have jurisdiction over cases arising under this article and shall be authorized to impose the civil monetary penalty provided by this article. Except as otherwise provided to the contrary, the provisions of law governing jurisdiction, procedure, defenses, adjudication, appeal, and payment and distribution of penalties otherwise applicable to traffic violations within the jurisdiction in which a citation has been issued shall apply to enforcement under this article; provided, however, that any appeal from a superior or state court shall be by application in the same manner as that provided by Code Section 5-6-35; provided, further, however, that the provisions of Chapter 11 of Title 17 to the contrary notwithstanding, the costs of such prosecution shall not be taxed nor shall any additional penalty, fee, or surcharge to a fine for such offense be assessed against a person for a citation issued pursuant to this article.

40-1-259.

(a) Any agreement entered into between an agent and governing body or law enforcement agency for the administration of this article shall provide that stored images shall be maintained in a system compliant with security and privacy standards set forth by the Georgia Crime Information Center Council for criminal justice information systems.

(b) Notwithstanding Code Section 35-1-22 and Code Section 50-18-96, stored images collected for purposes of this article shall:

(1) Not be a public record for purposes of Article 4 of Chapter 18 of Title 50;

(2) Be destroyed no later than 60 calendar days of adjudication that a penalty is not owed or no later than 60 calendar days of payment of any and all civil penalties; and

(3) Be destroyed no later than 60 calendar days after such image is captured when not associated with the issuance of a citation.

40-1-260.

The moneys collected and remitted to the governing body or law enforcement agency pursuant to this article shall only be used by such governing body or law enforcement agency to fund local law enforcement or public safety initiatives. This subsection shall not preclude the appropriation of a greater amount than collected and remitted under this article for such purposes.

40-1-261.

A violation for which a civil monetary penalty is imposed pursuant to this article shall not be considered a moving traffic violation for the purpose of points assessment under Code Section 40-5-57. Such violation shall be considered noncriminal, and the imposition of a civil monetary penalty pursuant to this article shall not be considered a conviction and shall not be made a part of the operating record of the person upon whom such penalty is

imposed, nor shall it be used for any purposes in the provision of motor vehicle insurance coverage.″

SECTION 2.

Said title is further amended by revising Code Section 40-2-8, relating to operation of unregistered vehicle or vehicle without current license plate, revalidation decal, or county decal and temporary plate issued by dealers of new or used motor vehicles, as follows:

″40-2-8.

(a) Except as otherwise provided for in this Code section, no person shall own or operate a motor vehicle upon the highways of this state that is required to be registered pursuant to Code Section 40-2-20 without complying with such Code section. No person shall loan, rent, or lease a motor vehicle required to be registered pursuant to Code Section 40-2-20 for use upon the highways of this state without complying with such Code section. Each day a motor vehicle is operated in violation of this subsection shall be a separate violation. ~~Any person owning or operating any vehicle described in Code Section 40-2-20 on any public highway or street without complying with that Code section shall be guilty of a misdemeanor, provided that a person shall register his or her motor vehicle within 30 days after becoming a resident of this state. Any person renting, leasing, or loaning any vehicle described in Code Section 40-2-20 which is being used on any public highway or street without complying with that Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of $100.00 for each violation; and each day that such vehicle is operated in violation of Code Section 40-2-20 shall be deemed to be a separate and distinct offense.~~

~~(b)(1) Reserved.~~

~~(2)(A) It shall be a misdemeanor to operate any vehicle required to be registered in the State of Georgia without a valid numbered license plate properly validated, unless such operation is otherwise permitted under this chapter; and provided, further, that the~~

(b)(1)(A) The purchaser of a new vehicle or a used vehicle from a dealer of new or used motor vehicles who displays a temporary plate issued as provided by subparagraph (B) of this paragraph may operate such vehicle on the ~~public~~ highways ~~and streets~~ of this state without a current valid license plate during the period within which the purchaser is required by Code Section 40-2-20. An owner acquiring a motor vehicle from an entity that is not a new or used vehicle dealer shall register such vehicle as provided for in Code Section 40-2-29 unless such vehicle is to be registered under the International Registration Plan pursuant to Article 3A of this chapter.

(B)(i) Any dealer of new or used motor vehicles shall issue to the purchaser of a vehicle at the time of sale thereof, unless such vehicle is to be registered under the International Registration Plan, a temporary plate as provided for by department rules or regulations which may bear the dealer's name and location and shall bear an expiration date 45 days from the date of purchase. The expiration date of such a temporary plate may be revised and extended by the county tag agent upon application by the dealer, the purchaser, or the transferee if an extension of the purchaser's initial registration period has been granted as provided by Code Section 40-2-20. Such temporary plate shall not resemble a license plate issued by this state and shall be issued without charge or fee. The requirements of this subparagraph shall not apply to a dealer whose primary business is the sale of salvage motor vehicles and other vehicles on which total loss claims have been paid by insurers.

(ii) All temporary plates issued by dealers to purchasers of vehicles shall be of a standard design prescribed by regulation promulgated by the department. The department may provide by rule or regulation for the sale and distribution of such temporary plates by third parties in accordance with paragraph ~~(3)~~ (2) of this subsection.

~~(3)~~(2) All sellers and distributors of temporary license plates shall maintain an inventory record of temporary license plates by number and name of the dealer.

~~(4) The purchaser and operator of a vehicle shall not be subject to the penalties set forth in this Code section during the period allowed for the registration of such vehicle. If the owner of such vehicle presents evidence that such owner has properly applied for the registration of such vehicle, but that the license plate or revalidation decal has not been delivered to such owner, then the owner shall not be subject to the penalties enumerated in this subsection.~~

(c) No person shall ~~It shall be unlawful and punishable as for a misdemeanor to~~ operate any motor vehicle required to be registered in ~~the State of Georgia~~ this state without a valid county decal designating the county where the vehicle was last registered, unless such operation is otherwise permitted under this chapter~~. Any person convicted of such offense shall be punished by a fine of $25.00 for a first offense and $100.00 for a second or subsequent such offense. However, a county name decal shall not be required if there is~~ or no space is provided for a county name decal on the ~~current~~ license plate.

(d) No person shall operate any motor vehicle required to be registered in this state without a valid revalidation decal affixed upon the license plate.

(e) A violation of this Code section shall be punished as follows:

(1) Upon enforcement through the issuance of a uniform traffic citation by a police officer at the time of the offense, a misdemeanor, and upon conviction thereof:

(A) By a fine not to exceed $100.00 for the operation of an unregistered motor vehicle in violation of subsection (a) of this Code section; provided, however, that upon presentation of evidence that the owner had properly applied for the registration of such vehicle, but that the license plate or revalidation decal had not been delivered to such owner at the time the uniform traffic citation was issued, such fine shall be reduced to an amount not to exceed $25.00; and

(B) By a fine of $25.00 for the operation of a motor vehicle without a county decal upon the license plate in violation of subsection (c) of this Code section; or

(2) Upon enforcement through the use of an automated license plate recognition system in accordance with Article 4 of Chapter 1, a civil monetary penalty as set forth in such article. A violation enforced pursuant to this paragraph shall not be considered a conviction and shall not be made a part of the operating record of the person upon whom such penalty is imposed, nor shall it be used for any purposes in the provision of motor vehicle insurance coverage."

SECTION 3.

Said title is further amended by repealing Code Section 40-2-8.1, relating to operation of vehicle without revalidation decal on license plate, in its entirety.

SECTION 4.

Said title is further amended by revising Code Section 40-2-20, relating to registration and license requirements, certificate of registration and temporary operating permit, and two-year registration option for new motor vehicles, by revising subsection (c) as follows:

"(c) A person shall register his or her motor vehicle within 30 days after becoming a resident of this state. ~~Any person who fails to register a new or used motor vehicle as required in subsection (a) of this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not exceeding $100.00.~~"

SECTION 5.

Said title is further amended in Code Section 40-3-23, relating to issuance of certificate of title, maintenance of record of certificates issued, public inspection, and furnishing records for fee, by revising subsection (d) as follows:

"(d) The motor vehicle records which the commissioner or the commissioner's duly authorized county tag agent is required to maintain under this Code section or any other provision are exempt from the provisions of any law of this state requiring that such records be open for public inspection; provided, however, that, subject to subsection (f) of this Code section, the records may be disclosed for use as provided in the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. Chapter 123, and by the following:

(1) Any licensed dealer of new or used motor vehicles;

(2) Any tax collector, tax receiver, or tax commissioner; ~~and~~

(3) A person or entity authorized by the commissioner for use in providing notice to the owners of towed or impounded vehicles; and

(4) An agent as such term is defined in Code Section 40-1-252."

SECTION 6.

Said title is further amended in Code Section 40-5-70, relating to suspension of drivers' licenses for failure to show proof of required minimum insurance, hearings, and mandatory suspension, by revising subsection (c) as follows:

"(c) For the purposes of mandatory suspension of a driver's license for a first ~~violation~~ conviction of subsection (a), (b), or (c) of Code Section 40-6-10, a forfeiture of bail or collateral used to seek a defendant's appearance in court, the payment of a fine, a plea of guilty, or a finding of guilty shall be considered a conviction regardless of whether the sentence is suspended, probated, rebated, or revoked. A plea of nolo contendere shall not be considered a conviction under this subsection, but a record of the disposition of the case shall be forwarded by the court to the department for the purposes of counting the plea of nolo contendere as a conviction under subsection (d) of this Code section."

SECTION 7.

Said title is further amended in Code Section 40-6-10, relating to insurance requirements for operation of motor vehicles generally, by revising paragraphs (5) and (6) of subsection (a) and subsection (b) as follows:

"(5)(A) Every law enforcement officer in this state shall determine if the operator of a motor vehicle subject to the provisions of this Code section has the required minimum insurance coverage every time the law enforcement officer stops the vehicle or requests the presentation of the driver's license of the operator of the vehicle.

~~(6)~~(B) When a determination is made that ~~If a law enforcement officer of this state determines that~~ the owner or operator of a motor vehicle subject to the provisions of this ~~Code section~~ subsection does not have proof or evidence of required minimum insurance coverage, the arresting officer shall issue a uniform traffic citation for operating a motor vehicle without proof of insurance. If the court or arresting officer determines that the operator is not the owner, then a uniform traffic citation may be issued to the owner for authorizing the operation of a motor vehicle without proof of insurance.

(6) Reserved."

"(b)(1) No person shall own, operate, or authorize another to operate a motor vehicle upon the highways of this state ~~An owner or any other person who knowingly operates or knowingly authorizes another to operate a motor vehicle~~ without effective insurance on such vehicle or without an approved plan of self-insurance ~~shall be guilty of~~. A violation of this subsection shall be punished as follows:

(A) Upon enforcement through the issuance of a uniform traffic citation by a police officer at the time of the offense, a misdemeanor, and~~,~~ upon conviction thereof, ~~shall be subject to~~ by a fine of not less than $200.00 nor more than $1,000.00 or imprisonment for not more than 12 months, or both; or

(B) Upon enforcement through the use of an automated license plate recognition system in accordance with Article 4 of Chapter 1, a civil monetary penalty as set forth in such article. A violation enforced pursuant to this subparagraph shall not be considered a conviction and shall not be made a part of the operating record of the person upon whom such penalty is imposed, nor shall it be used for any purposes in the provision of motor vehicle insurance coverage. ~~An operator of a motor vehicle shall not be guilty of a violation of this Code section if such operator maintains a policy of motor vehicle insurance which extends coverage to any vehicle the operator may drive.~~

(2) An owner or operator of a motor vehicle shall not be issued a uniform traffic citation by a law enforcement officer for a violation of this ~~Code section~~ subsection if the sole basis for issuance of such a citation is that the law enforcement officer is unable to obtain insurance coverage information from the records of the Department of Revenue or the operator of the motor vehicle maintains a policy of motor vehicle insurance which extends coverage to any vehicle the operator may drive."

SECTION 8.

Said title is further amended in Code Section 40-6-11, relating to insurance requirements for operation of motorcycles, by revising subsection (b) as follows:

"(b) No owner of a motorcycle or any other person, other than a self-insurer as defined in Chapter 34 of Title 33, shall operate or authorize any other person to operate the motorcycle unless the owner has liability insurance on the motorcycle equivalent to that required as evidence of security for bodily injury and property damage liability under Code Section 40-9-37. ~~Any person who violates this subsection shall be guilty of a misdemeanor~~ A violation of this subsection shall be punished as follows:

(1) Upon enforcement through the issuance of a uniform traffic citation by a police officer at the time of the offense, a misdemeanor; or

(2) Upon enforcement through the use of an automated license plate recognition system in accordance with Article 4 of Chapter 1, a civil monetary penalty as set forth in such article. A violation enforced pursuant to this subsection shall not be considered a conviction and shall not be made a part of the operating record of the person upon whom such penalty is imposed, nor shall it be used for any purposes in the provision of motor vehicle insurance coverage."

SECTION 9.

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 Article 4 of Chapter 1 of Title 40;"

SECTION 10.

Said title is further amended in Code Section 15-18-6, relating to duties of district attorney, by revising paragraph (5) as follows:

"(5) To prosecute civil actions to enforce any civil penalty set forth in Code Section 40-6-163 or Article 4 of Chapter 1 of Title 40 and to prosecute or defend any other civil action in the prosecution or defense of which the state is interested, unless otherwise specially provided for;"

SECTION 11.

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

″(4) To prosecute civil actions to enforce any civil penalty set forth in Code Section 40-6-163 or Article 4 of Chapter 1 of Title 40 and when authorized by law to prosecute or defend any civil action in the state court in the prosecution or defense of which the state is interested, unless otherwise specially provided for;″

SECTION 12.

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

″(A) In the prosecution of any violation of the laws or ordinances of such municipality which is within the jurisdiction of such municipal court and punishable by confinement or a fine or both or by a civil penalty authorized by Code Section 40-6-163 or Article 4 of Chapter 1 of Title 40; and″

SECTION 13.

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