

SENATE SUBSTITUTE TO HB 651**ADOPTED SENATE****A BILL TO BE ENTITLED****AN ACT**

1 To amend Article 2 of Chapter 14 of Title 40 of the Official Code of Georgia Annotated,
2 relating to speed detection devices, so as to revise provisions relative to the use of automated
3 traffic enforcement safety devices in school zones; to revise standards for signs warning of
4 the use of automated traffic enforcement safety devices in school zones; to repeal exceptions
5 to making a case based upon use of speed detection devices; to provide for investigations
6 relative to complaints and violations; to provide for penalties for misuse or unauthorized use
7 of automated traffic enforcement safety devices; to authorize revocation of permits relating
8 to such devices; to include civil monetary penalties collected for violations of speed limits
9 enforced by automated traffic enforcement safety devices for consideration of the maximum
10 percent of a law enforcement agency's budget; to provide for hearing rights upon revocation
11 of permits for operation of automated traffic enforcement safety devices; to provide for
12 appeal; to provide for the ability of a local government to decrease time frames for issuing
13 citations for the violation of posted speed limit by ten miles per hour or more in a school
14 zone through the use of automated traffic enforcement safety devices; to revise application
15 procedure for a permit to operate such devices; to prohibit the assessment of late fees,
16 surcharges, and taxes relating to civil monetary penalties; to provide standards for notice sent
17 for imposition of a civil monetary penalty; to provide for distribution of moneys collected;

18 to amend Title 15 of the Official Code of Georgia Annotated, relating to courts, so as to
19 authorize district attorneys, solicitors-general, and prosecuting attorneys to enforce civil
20 monetary penalties relative to the enforcement of laws regarding speeding in a school zone
21 using recorded images; to provide for related matters; to repeal conflicting laws; and for
22 other purposes.

23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

24 **SECTION 1.**

25 Article 2 of Chapter 14 of Title 40 of the Official Code of Georgia Annotated, relating to
26 speed detection devices, is amended in Code Section 40-14-6, relating to warning signs
27 required and signage requirements, by revising subsection (c) as follows:

28 "(c) In addition to the signs required under subsections (a) and (b) of this Code section,
29 each law enforcement agency using an automated traffic enforcement safety device as
30 provided for in Code Section 40-14-18 shall erect signs warning of the use of a ~~stationary~~
31 ~~speed detection~~ an automated traffic enforcement safety device within ~~the~~ an approaching
32 school zone. Such signs shall be at least 24 by 30 inches in area, shall be visible plainly
33 from every lane of traffic, shall be viewable in all traffic conditions, and shall not be placed
34 in such a manner that the view of such sign is subject to being obstructed by any other
35 vehicle on such highway. Automated traffic enforcement safety device warning Such signs
36 shall be placed within 500 feet prior to ~~the~~ any warning sign announcing the reduction of
37 the speed limit for the school ~~speed~~ zone. Such signs shall include lights which flash
38 yellow in accordance with any rule or regulation established by the Department of
39 Transportation when the automated traffic enforcement safety device is authorized to issue
40 citations pursuant to Code Section 40-14-18. There shall be a rebuttable presumption that
41 such signs are properly installed pursuant to this subsection at the time of any alleged
42 violation under this article."

43

SECTION 2.

44 Said article is further amended by revising Code Section 40-14-8, relating to when case may
45 be made and conviction had, as follows:

46 "40-14-8.

47 (a) No county, city, or campus officer shall be allowed to make a case based on the use of
48 any speed detection device, unless the speed of the motor vehicle exceeds the posted speed
49 limit by more than ten miles per hour and no conviction shall be had thereon unless such
50 speed is more than ten miles per hour above the posted speed limit.

51 ~~(b) The limitations contained in subsection (a) of this Code section shall not apply in~~
52 ~~properly marked school zones one hour before, during, and one hour after the normal hours~~
53 ~~of school operation or programs for care and supervision of students before school, after~~
54 ~~school, or during vacation periods as provided for under Code Section 20-2-65, in properly~~
55 ~~marked historic districts, and in properly marked residential zones. For purposes of this~~
56 ~~chapter, thoroughfares with speed limits of 35 miles per hour or more shall not be~~
57 ~~considered residential districts. For purposes of this Code section, the term 'historic~~
58 ~~district' means a historic district as defined in paragraph (5) of Code Section 44-10-22 and~~
59 ~~which is listed on the Georgia Register of Historic Places or as defined by ordinance~~
60 ~~adopted pursuant to a local constitutional amendment."~~

61

SECTION 3.

62 Said article is further amended by revising Code Section 40-14-11, relating to investigations
63 by commissioner of public safety, issuance of order suspending or revoking permit, and ratio
64 of speeding fines to agency's budget, as follows:

65 "40-14-11.

66 (a) Upon a complaint being made to the commissioner of public safety that any county,
67 municipality, college, ~~or university,~~ or agent is employing speed detection devices for
68 purposes other than the promotion of the public health, welfare, and safety or in a manner

69 which violates this chapter or violates its speed detection device permit, the commissioner
70 or the commissioner's designee is authorized and empowered to conduct an investigation
71 into the acts and practices of such county, municipality, college, ~~or university,~~ or agent
72 with respect to speed detection devices. If, as a result of ~~this~~ such investigation, the
73 commissioner or the commissioner's designee finds that there is probable cause to suspend
74 or revoke the speed detection device permit of such county, municipality, college, or
75 university, he or she shall issue an order to that effect.

76 (b) Upon the suspension or revocation of any speed detection device permit for the reasons
77 set forth in this Code section, the commissioner of public safety shall notify the executive
78 director of the Georgia Peace Officer Standards and Training Council of the action taken.
79 When the speed detection device is an automated traffic enforcement safety device, the
80 commissioner of public safety shall send a copy of such order to the commissioner of
81 transportation.

82 (c) Upon receipt from the executive director of the Georgia Peace Officer Standards and
83 Training Council that ~~an~~ a peace officer's certification to operate speed detection devices
84 has been withdrawn or suspended pursuant to Code Section 35-8-12, the commissioner of
85 public safety or the commissioner's designee shall suspend the speed detection device
86 permit for the employing agency. The period of suspension or revocation shall be
87 consistent with the action taken by the Georgia Peace Officer Standards and Training
88 Council.

89 (d) Upon the conclusion of an investigation pursuant to subsection (a) of this Code section,
90 any agent, law enforcement agency, or governing body found to have intentionally violated
91 any provision of this chapter relating to automated traffic enforcement safety devices,
92 including, but not limited to, the unauthorized issuance of a civil monetary penalty for a
93 violation of this title other than as provided for in this chapter, shall be assessed a fine
94 of \$2,500.00 for the first violation and \$5,000.00 for a second violation by the
95 commissioner of public safety. The commissioner of public safety shall be further

96 authorized to suspend all speed detection device permits relating to the operation of
97 automated traffic enforcement safety devices for a jurisdiction upon a third or subsequent
98 finding of a violation of this chapter. The commissioner of public safety shall notify the
99 Department of Transportation of any such suspension, and the Department of
100 Transportation shall suspend the operating permit for an automated traffic enforcement
101 safety device for such jurisdiction upon receipt of such notice and for a period not to
102 exceed 12 months.

103 (e) There shall be a rebuttable presumption that a law enforcement agency is employing
104 speed detection devices for purposes other than the promotion of the public health, welfare,
105 and safety if the fines or civil monetary penalties levied based on the use of speed detection
106 devices for speeding offenses are equal to or greater than 35 percent of a municipal or
107 county law enforcement agency's budget. For purposes of this Code section, fines collected
108 for citations issued for violations of Code Section 40-6-180 shall be included when
109 calculating total speeding fine revenue for the agency; provided, however, that fines for
110 speeding violations exceeding 20 miles per hour over the established speed limit ~~and civil~~
111 ~~monetary penalties for speeding violations issued pursuant to Code Section 40-14-18~~ shall
112 not be considered when calculating total speeding fine revenue for the agency."

113

SECTION 4.

114 Said article is further amended by revising Code Section 40-14-12, relating to administrative
115 hearing upon permit suspension or revocation, as follows:

116 "40-14-12.

117 (a) Upon issuance by the commissioner of public safety of an order suspending or
118 revoking the speed detection device permit of any county, municipality, college, or
119 university, the county, municipality, college, or university affected shall be afforded a
120 hearing, to be held within ten days of the effective date of the order. The hearing shall be
121 held before the commissioner or deputy commissioner of public safety, and, following the

122 such hearing, the county, municipality, college, or university affected shall be served with
123 a written decision announcing whether the permit shall remain revoked or whether it shall
124 be reinstated.

125 (b) Upon issuance of an order by the commissioner of transportation suspending or
126 revoking an operating permit for an automated traffic enforcement safety device, the
127 affected governing body shall be afforded a hearing, to be held within ten days of the
128 effective date of the order. The hearing shall be held before the commissioner of
129 transportation, and, following such hearing, the affected governing body shall be served
130 with a written decision announcing whether the permit shall remain revoked or whether it
131 shall be reinstated."

132

SECTION 5.

133 Said article is further amended by revising Code Section 40-14-13, relating to administrative
134 and judicial appeal of decision suspending or revoking permit, as follows:

135 "40-14-13.

136 (a) Any county, municipality, college, or university aggrieved by a decision of the
137 commissioner or deputy commissioner of public safety suspending or revoking its speed
138 detection device permit may appeal that decision within 30 days of its effective date to the
139 Board of Public Safety, which shall schedule a hearing with respect ~~thereto~~ to such hearing
140 before the board. Following a hearing before the board, the county, municipality, college,
141 or university affected shall be served with a written decision announcing whether the
142 permit shall remain revoked or whether it shall be reinstated. An adverse decision of the
143 board may be appealed by the county, municipality, college, or university to the superior
144 court with appropriate jurisdiction, but the ~~municipality~~, county, municipality, college, or
145 university shall be denied the use of the speed detection device until after such appeal is
146 decided by the court.

147 (b) Any governing body aggrieved by a decision of the commissioner of transportation
 148 suspending or revoking its operating permit for an automated traffic enforcement safety
 149 device may appeal such decision within 30 days of its effective date to the superior court
 150 with appropriate jurisdiction; provided, however, that the governing body shall be denied
 151 the use of an automated traffic enforcement safety device until after such appeal is decided
 152 by the court."

153

SECTION 6.

154 Said article is further amended by revising Code Section 40-14-18, relating to enforcement
 155 of speed limit in school zones with recorded images, civil monetary penalty, and
 156 consequences for failure to pay penalty, as follows:

157 "40-14-18.

158 (a)(1) The speed limit within any school zone ~~as provided for in Code Section 40-14-8~~
 159 ~~and~~ marked pursuant to Code Section 40-14-6 may be enforced by using photographically
 160 recorded images for violations which occurred only on a school day during the time in
 161 which instructional classes are taking place and for one hour before such classes are
 162 scheduled to begin and for one hour after such classes have concluded ~~when such~~
 163 violations are in excess of ten miles per hour over the speed limit; provided, however,
 164 that a governing body of a county or municipality shall be authorized to enact an
 165 ordinance or resolution which provides for further limitations upon the hours when
 166 enforcement may take place than as authorized by this paragraph. Violations enforced
 167 pursuant to this paragraph shall be based upon the ten miles per over the reduced speed
 168 limit when a reduction for the speed limit for a school zone is in effect and ten miles per
 169 hour over the posted speed limit for the school zone when no reduced speed limit is in
 170 effect.

171 (2) Prior to the placement of ~~a~~ an automated traffic enforcement safety device within a
 172 school zone, ~~each school within whose school zone~~ the governing body of the county or

173 municipality whose law enforcement agency is authorized to enforce the speed limit of
174 a school zone where such automated traffic enforcement safety device is to be placed and
175 which holds a valid permit for the operation of speed detection devices issued by the
176 Department of Public Safety pursuant to Code Section 40-14-2 shall first apply for and
177 secure a permit from the Department of Transportation for the use of such automated
178 traffic enforcement safety device. Such permit shall be awarded based upon need. The
179 Department of Transportation shall promulgate rules and regulations for the
180 implementation of this paragraph.

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

182 (1) The owner of a motor vehicle shall be liable for a civil monetary penalty to the
183 governing body of the law enforcement agency ~~provided for in paragraph (2) of this~~
184 subsection authorized to enforce the speed limit within the school zone where an
185 automated traffic enforcement safety device is located if such motor vehicle is found, as
186 evidenced by ~~photographically~~ recorded images, to have been operated in disregard or
187 disobedience of the posted speed limit within ~~any a~~ a school zone and such disregard or
188 disobedience was not otherwise authorized by law. The amount of such civil monetary
189 penalty shall be \$75.00 for a ~~first violation and \$125.00 for a second or any subsequent~~
190 violation, in addition to fees associated with the electronic processing of such civil
191 monetary penalty which shall not exceed ~~\$25.00~~ five percent when payment is made by
192 credit card, check, or money order; provided, however, that for a period of 30 days after
193 the first automated traffic enforcement safety device is introduced ~~by a law enforcement~~
194 ~~agency~~ within a school zone, the ~~driver~~ owner of a motor vehicle shall not be liable for
195 a civil monetary penalty but shall be issued a civil warning for disregard or disobedience
196 of the posted speed limit within the school zone;

197 (2) A law enforcement agency authorized to enforce the speed limit of a school zone; or
198 an agent ~~working on behalf of a law enforcement agency or governing body~~, shall send
199 ~~by first class~~ first-class mail in an envelope which prominently displays the name and seal

200 or logo of the governing body and addressed to the owner of the motor vehicle within 30
201 days after obtaining the name and address of the owner of the motor vehicle from the
202 Department of Revenue or other official state agency which registers motor vehicles for
203 a motor vehicle registered in another state but no later than 60 days after the date of the
204 alleged violation:

205 (A) A citation for the alleged violation, which shall include the date and time of the
206 violation, the location of the infraction, the maximum speed at which such motor
207 vehicle was traveling ~~in photographically~~ as evidenced by recorded images, the
208 maximum speed applicable within such school zone, the civil warning or the amount
209 of the civil monetary penalty imposed, and the date by which a civil monetary penalty
210 shall be paid;

211 (B) An image taken from the ~~photographically~~ recorded images showing the motor
212 vehicle involved in the infraction;

213 (C) A website address where ~~photographically~~ recorded images showing the motor
214 vehicle involved in the infraction and a duplicate of the information provided for in this
215 paragraph may be viewed;

216 (D) A copy of a certificate sworn to or affirmed by a certified peace officer employed
217 by a law enforcement agency authorized to enforce the speed limit of the school zone
218 and stating that, based upon inspection of ~~photographically~~ recorded images, the
219 owner's motor vehicle was operated in disregard or disobedience of the speed limit in
220 the marked school zone and that such disregard or disobedience was not otherwise
221 authorized by law;

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

224 (F) Information advising the owner of the motor vehicle of the manner in which
225 liability as alleged in the citation may be contested ~~through an administrative hearing~~

226 which shall include a statement which reads: 'YOU HAVE A RIGHT TO CONTEST
227 LIABILITY IN COURT'; and

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

231 (3) Proof that a motor vehicle was operated in disregard or disobedience of the speed
232 limit of the marked school zone ~~shall be as~~ evidenced by ~~photographically~~ recorded
233 images. ~~A~~ accompanied by a copy of a certificate sworn to or affirmed by a certified
234 peace officer employed by a law enforcement agency ~~and~~ stating that, based upon
235 inspection of ~~photographically~~ recorded images, a motor vehicle was operated in
236 disregard or disobedience of the speed limit in the marked school zone and that such
237 disregard or disobedience was not otherwise authorized by law shall be prima-facie
238 evidence of the facts contained therein; and

239 (4) Liability under this Code section shall be determined based upon a preponderance of
240 the evidence. Prima-facie evidence that the motor vehicle described in the citation issued
241 pursuant to this Code section was operated in violation of the speed limit of the school
242 zone, together with proof that the defendant was, at the time of such violation, the
243 registered owner of the motor vehicle, shall permit the trier of fact in its discretion to
244 infer that such owner of the motor vehicle was the ~~driver~~ operator of the motor vehicle
245 at the time of the alleged violation. Such an inference may be rebutted if the owner of
246 the motor vehicle:

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

250 (B) Presents to the court a certified copy of a police report showing that the motor
251 vehicle had been reported to the police as stolen prior to the time of the alleged
252 violation.

253 (c) A violation for which a civil warning or a civil monetary penalty is imposed pursuant
254 to this Code section shall not be considered a moving traffic violation for the purpose of
255 points assessment under Code Section 40-5-57. Such violation shall be deemed
256 noncriminal, and imposition of a civil warning or civil monetary penalty pursuant to this
257 Code section shall not be deemed a conviction and shall not be made a part of the operating
258 record of the person upon whom such liability is imposed, nor shall it be used for any
259 insurance purposes in the provision of motor vehicle insurance coverage. A civil monetary
260 penalty imposed pursuant to this Code section shall not be taxed nor shall any additional
261 penalty, fee, or surcharge to such penalty be assessed other than as authorized by this Code
262 section.

263 (d) If a person issued and mailed a citation pursuant to subsection (b) of this Code section
264 fails to pay the civil monetary penalty for the violation or has not filed a police report or
265 notarized statement pursuant to paragraph (4) of subsection (b) of this Code section in no
266 less than 30 nor more than 60 days after such mailing as determined and noticed by the law
267 enforcement agency, the agent or law enforcement agency shall send to such person by ~~first~~
268 ~~class~~ first-class mail a second notice of any unpaid civil monetary penalty, except in cases
269 where there is an adjudication that no violation occurred or there is otherwise a lawful
270 determination that no civil monetary penalty shall be imposed. No late fee shall be
271 imposed for any unpaid civil monetary penalty imposed under this Code section. The
272 second notice shall include all information required in paragraph (2) of subsection (b) of
273 this Code section and shall include a new date ~~of return~~ by which the civil monetary
274 penalty shall be paid which shall be no less than 30 days after such mailing as determined
275 and noticed by the law enforcement agency. If such person notified by second notice again
276 fails to pay the civil monetary penalty or file a police report or notarized statement pursuant
277 to paragraph (4) of subsection (b) of this Code section by the new date ~~of return~~ included
278 in the notice, such person shall have waived the right to contest the violation and shall be
279 liable for the civil monetary penalty provided for under this Code section, except in cases

280 where there is an adjudication that no violation occurred or there is otherwise a lawful
281 determination that no civil monetary penalty shall be imposed.

282 (e) Notices mailed by ~~first-class~~ first-class mail pursuant to this Code section shall be
283 adequate notification of the ~~fees and~~ penalties imposed by this Code section. No other
284 notice shall be required for the purposes of this Code section.

285 (f) Any court having jurisdiction over violations of ~~subsection (a) of this Code section~~
286 traffic laws within a jurisdiction where recorded images were produced shall have
287 jurisdiction over cases arising under this ~~subsection~~ Code section and shall be authorized
288 to impose the civil monetary penalty provided by this ~~subsection~~ Code section. Except as
289 otherwise provided in this ~~subsection~~ Code section, the provisions of law governing
290 jurisdiction, procedure, defenses, adjudication, appeal, and payment and distribution of
291 penalties otherwise applicable to violations of ~~subsection (a) of this Code section~~ traffic
292 laws within a jurisdiction where recorded images were produced shall apply to enforcement
293 under this Code section ~~except as provided in subsection (b) of this Code section~~; provided,
294 however, that any appeal from superior or state court shall be by application in the same
295 manner as that provided by Code Section 5-6-35.

296 (g) If a ~~violation~~ citation issued pursuant to this Code section has not been contested and
297 the assessed penalty has not been paid, the agent or governing body shall send to the person
298 who is the registered owner of the motor vehicle a final notice of any unpaid civil monetary
299 penalty authorized by this Code section, except in cases where there is an adjudication that
300 no violation occurred or there is otherwise a lawful determination that no civil monetary
301 penalty shall be imposed. The notice shall inform the registered owner that the agent or
302 governing body shall send a referral to the Department of Revenue if the assessed penalty
303 is not paid within 30 days after the final notice was mailed and of the consequences for
304 failure to pay such penalty ~~and any late fee~~.

305 (h) The agent or governing body shall send a the referral authorized by subsection (g) of
306 this Code section to the Department of Revenue not sooner than 30 days after the final

307 notice required under such subsection ~~(g)~~ was mailed if a violation has not been contested
308 and the assessed penalty has not been paid, except in cases where there is an adjudication
309 that no violation occurred or there is otherwise a lawful determination that no civil
310 monetary penalty shall be imposed. The referral to the Department of Revenue shall
311 include the following:

312 (1) Any information known or available to the agent or governing body concerning the
313 license plate number, year of registration, and the name of the owner of the motor
314 vehicle;

315 (2) The date on which the violation occurred;

316 (3) The citation number issued for the violation; and

317 (4) The date when the notice required under this Code section was mailed.

318 (i) If the Department of Revenue receives a referral under subsection (h) of this Code
319 section, such referral shall be entered into the motor vehicle ~~data base~~ database within five
320 days of receipt and the Department of Revenue shall refuse to renew the registration of the
321 motor vehicle unless and until the civil monetary penalty ~~plus any late fee~~ is paid to the
322 agent or governing body.

323 (j) The Department of Revenue shall remove the penalty on a vehicle registration if any
324 person presents the Department of Revenue with adequate proof from the agent or
325 governing body that the penalty ~~and any late fee, if applicable,~~ has been paid.

326 (k) Recorded images made for purposes of this Code section shall not be a public record
327 for purposes of Article 4 of Chapter 18 of Title 50.

328 (l) A civil warning or civil monetary penalty under this Code section on the owner of a
329 motor vehicle shall not be imposed if the operator of the motor vehicle was arrested or
330 issued a citation and notice to appear by a certified peace officer for the same violation.

331 (m) The money collected and remitted to the governing body pursuant to paragraph (1) of
332 subsection (b) of this Code section shall only be used by such governing body to fund local
333 law enforcement or public safety initiatives. This subsection shall not authorize the use of

334 such funds for salaries of law enforcement officers or personnel and shall not preclude the
335 appropriation of a greater amount than collected and remitted under this subsection."

336 **SECTION 7.**

337 Title 15 of the Official Code of Georgia Annotated, relating to courts, is amended in Code
338 Section 15-9-155, relating to prosecuting attorney's duties and authority in probate courts in
339 counties in which there are no state courts, by revising subparagraph (a)(1)(A) as follows:

340 "(A) In the prosecution of any violation of the laws or ordinances of such county which
341 is within the jurisdiction of such probate court and punishable by confinement or a fine
342 or both or by a civil penalty authorized by Code Section 40-6-163 or 40-14-18;"

343 **SECTION 8.**

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

346 "(6) To prosecute civil actions to enforce any civil penalty set forth in Code
347 Section 40-6-163 or 40-14-18 and to prosecute or defend any other civil action in the
348 prosecution or defense of which the state is interested, unless otherwise specially
349 provided for;"

350 **SECTION 9.**

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

353 "(4) To prosecute civil actions to enforce any civil penalty set forth in Code
354 Section 40-6-163 or 40-14-18 and when authorized by law to prosecute or defend any
355 civil action in the state court in the prosecution or defense of which the state is interested,
356 unless otherwise specially provided for;"

357

SECTION 10.

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

360 “(A) In the prosecution of any violation of the laws or ordinances of such municipality
361 which is within the jurisdiction of such municipal court and punishable by confinement
362 or a fine or both or by a civil penalty authorized by Code Section 40-6-163 or 40-14-18;
363 and”

364

SECTION 11.

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