

HOUSE BILL 929

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CF SB 652

By: **Delegates Malone and McMillan**

Introduced and read first time: February 5, 2014

Assigned to: Environmental Matters

A BILL ENTITLED

AN ACT concerning

Motor Vehicles – Speed Monitoring Systems – Local Jurisdictions

FOR the purpose of altering the standards and requirements for the required warning period for violations recorded by speed monitoring systems; establishing that speed monitoring systems placed in certain areas may be placed only on highways with a certain minimum speed limit; applying certain notice and signage standards for unmanned local stationary speed monitoring systems to all local speed monitoring systems; altering the standards for signage required for local stationary speed monitoring systems; requiring certain local jurisdictions to designate certain persons to act in a certain liaison capacity; altering the standards and requirements for daily self-tests and annual calibrations for speed monitoring systems; requiring certain local jurisdictions to designate a certain program administrator; requiring a contract for a certain speed monitoring system to include certain provisions; establishing certain training requirements; clarifying that a certificate alleging that a certain speeding violation occurred is required to be sworn to or affirmed by a certain law enforcement officer; expanding the application of the prohibition against a speed monitoring system contractor's fee being contingent on the number of citations issued or paid; providing that, except under certain circumstances, existing obligations, contracts, or contract rights may not be impaired by this Act; defining certain terms; and generally relating to speed monitoring systems operated by local jurisdictions.

BY repealing and reenacting, with amendments,

Article – Transportation

Section 21–809

Annotated Code of Maryland

(2012 Replacement Volume and 2013 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article – Transportation

21–809.

(a) (1) In this section the following words have the meanings indicated.

(2) “Agency” means:

(i) A law enforcement agency of a local political subdivision that is authorized to issue a citation for a violation of the Maryland Vehicle Law or of local traffic laws or regulations; or

(ii) For a municipal corporation that does not maintain a police force, an agency established or designated by the municipal corporation to implement this subtitle using speed monitoring systems in accordance with this section.

(3) **(I) “ERRONEOUS VIOLATION” MEANS A POTENTIAL VIOLATION SUBMITTED BY A SPEED MONITORING SYSTEM CONTRACTOR FOR REVIEW BY AN AGENCY THAT IS:**

1. CLEARLY NOT SUPPORTED BY THE AVAILABLE EVIDENCE OR APPLICABLE LAW; OR

2. APPARENTLY INACCURATE BASED ON A TECHNICAL VARIABLE FOR WHICH THE CONTRACTOR IS RESPONSIBLE.

(II) “ERRONEOUS VIOLATION” INCLUDES:

1. A POTENTIAL VIOLATION BASED ON INACCURATE RADAR IMAGING, INCLUDING THE PHENOMENON KNOWN AS THE “RADAR EFFECT”; OR

2. A POTENTIAL VIOLATION BASED ON A RECORDED IMAGE THAT IS GENERATED BY A SPEED MONITORING SYSTEM THAT IS AT AN IMPROPER DISTANCE OR ANGLE OR IN IMPROPER FOCUS.

(III) “ERRONEOUS VIOLATION” DOES NOT INCLUDE A POTENTIAL VIOLATION THAT AN AGENCY IS UNABLE TO VALIDATE INDEPENDENTLY BUT THAT OTHERWISE COMPLIES WITH APPLICABLE LAWS AND CONTRACT PROVISIONS.

(4) (i) “Owner” means the registered owner of a motor vehicle or a lessee of a motor vehicle under a lease of 6 months or more.

(ii) “Owner” does not include:

1. A motor vehicle rental or leasing company; or
2. A holder of a special registration plate issued under Title 13, Subtitle 9, Part III of this article.

(5) “PROGRAM ADMINISTRATOR” MEANS AN EMPLOYEE OR A REPRESENTATIVE OF THE LOCAL JURISDICTION DESIGNATED BY THE LOCAL JURISDICTION TO OVERSEE A CONTRACT WITH A SPEED MONITORING SYSTEM CONTRACTOR.

[(4)] (6) “Recorded image” means an image recorded by a speed monitoring system:

(i) On:

1. A photograph;
2. A microphotograph;
3. An electronic image;
4. Videotape; or
5. Any other medium; and

(ii) Showing:

1. The rear of a motor vehicle;
2. At least two time-stamped images of the motor vehicle that include the same stationary object near the motor vehicle; and
3. On at least one image or portion of tape, a clear and legible identification of the entire registration plate number of the motor vehicle.

(7) “SCHOOL ZONE” MEANS A DESIGNATED ROADWAY SEGMENT WITHIN UP TO A HALF-MILE RADIUS OF A SCHOOL FOR ANY OF GRADES KINDERGARTEN THROUGH GRADE 12 WHERE SCHOOL-RELATED ACTIVITY OCCURS, INCLUDING:

(I) TRAVEL BY STUDENTS TO OR FROM SCHOOL ON FOOT OR BY BICYCLE; OR

(II) THE DROPPING OFF OR PICKING UP OF STUDENTS BY SCHOOL BUSES OR OTHER VEHICLES.

[(5)] (8) “Speed monitoring system” means a device with one or more motor vehicle sensors producing recorded images of motor vehicles traveling at speeds at least 12 miles per hour above the posted speed limit.

[(6)] (9) “Speed monitoring system operator” means a representative of an agency or contractor that operates a speed monitoring system.

(b) (1) (i) A speed monitoring system may not be used in a local jurisdiction under this section unless its use is authorized by the governing body of the local jurisdiction by local law enacted after reasonable notice and a public hearing.

(ii) Before a county may use a speed monitoring system on a State highway at a location within a municipal corporation, the county shall:

1. Obtain the approval of the State Highway Administration;

2. Notify the municipal corporation of the State Highway Administration’s approval of the use of a speed monitoring system at that location; and

3. Grant the municipal corporation 60 days from the date of the county’s notice to the municipal corporation to enact an ordinance authorizing the municipal corporation instead of the county to use a speed monitoring system at that location.

(iii) 1. This subparagraph applies only in Prince George’s County.

2. In the county, a municipal corporation may implement and use a speed monitoring system consistent with the requirements of this subsection on a county highway at a location within its corporate limits if the municipal corporation:

A. Submits to the county a plan describing the boundary of the applicable school zone and the proposed location of the speed monitoring system; and

B. Requests and receives permission from the county to use the speed monitoring system at the proposed location.

3. If the county fails to respond to the request within 60 days, the municipal corporation may implement and use the speed monitoring system as described in the plan submission.

4. The county may not:

A. Unreasonably deny a request under this subparagraph; or

B. Place exactions, fees, or unreasonable restrictions on the implementation and use of a speed monitoring system under this subparagraph.

5. The county shall state in writing the reasons for any denial of a request under this subparagraph.

6. A municipal corporation may contest in the circuit court a county denial of a request under this subparagraph.

(iv) In Prince George's County, if a municipal corporation has established a school zone that is within one-quarter mile of a school zone established in another municipal corporation, the municipal corporation may not implement or use a speed monitoring system in that school zone unless it has obtained the approval of the other municipal corporation.

(v) An ordinance or resolution adopted by the governing body of a local jurisdiction under this paragraph shall provide that [for a period of at least 30 days after the first speed monitoring system is placed in the local jurisdiction, a violation recorded by any speed monitoring system in the local jurisdiction may be enforced only by the issuance of a warning], **IF THE LOCAL JURISDICTION MOVES OR PLACES A MOBILE OR STATIONARY SPEED MONITORING SYSTEM TO OR AT A LOCATION WHERE A SPEED MONITORING SYSTEM HAD NOT PREVIOUSLY BEEN MOVED OR PLACED, THE LOCAL JURISDICTION MAY NOT ISSUE A CITATION FOR A VIOLATION RECORDED BY THAT SPEED MONITORING SYSTEM:**

1. UNTIL SIGNAGE IS INSTALLED IN ACCORDANCE WITH SUBPARAGRAPH (VII) OF THIS PARAGRAPH; AND

2. FOR AT LEAST THE FIRST 15 CALENDAR DAYS AFTER THE SIGNAGE IS INSTALLED.

(vi) This section applies to a violation of this subtitle recorded by a speed monitoring system that meets the requirements of this subsection and has been placed:

1. In Montgomery County, on a highway in a residential district, as defined in § 21-101 of this title, with a maximum posted speed limit of 35 miles per hour, which speed limit was established using generally accepted traffic engineering practices;

2. In a school zone [established under § 21–803.1 of this subtitle] **WITH A POSTED SPEED LIMIT OF AT LEAST 20 MILES PER HOUR;** or

3. In Prince George’s County, on that part of a highway located within the grounds of an institution of higher education as defined in § 10–101(h) of the Education Article, or within one-half mile of the grounds of a building or property used by the institution of higher education where generally accepted traffic and engineering practices indicate that motor vehicle, pedestrian, or bicycle traffic is substantially generated or influenced by the institution of higher education.

(vii) Before activating [an unmanned stationary] A speed monitoring system, the local jurisdiction shall:

1. Publish notice of the location of the speed monitoring system on its website and in a newspaper of general circulation in the jurisdiction;

2. Ensure that each sign that designates a school zone [indicates] **IS PROXIMATE TO A SIGN THAT:**

A. INDICATES that speed monitoring systems are in use in **THE** school [zones] **ZONE;** and

B. IS IN ACCORDANCE WITH THE MANUAL FOR AND THE SPECIFICATIONS FOR A UNIFORM SYSTEM OF TRAFFIC CONTROL DEVICES ADOPTED BY THE STATE HIGHWAY ADMINISTRATION UNDER § 25–104 OF THIS ARTICLE; AND

3. With regard to a speed monitoring system established based on proximity to an institution of higher education under paragraph (1)(vi)3 of this subsection, ensure that all speed limit signs approaching and within the segment of highway on which the speed monitoring system is located include signs that:

A. Are in accordance with the manual and specifications for a uniform system of traffic control devices adopted by the State Highway Administration under § 25–104 of this article; and

B. Indicate that a speed monitoring system is in use.

(viii) A speed monitoring system in a school zone may operate only Monday through Friday between 6:00 a.m. and 8:00 p.m.

(IX) 1. A LOCAL JURISDICTION THAT AUTHORIZES A PROGRAM OF SPEED MONITORING SYSTEMS SHALL DESIGNATE AN OFFICIAL OR EMPLOYEE TO INVESTIGATE AND RESPOND TO QUESTIONS OR CONCERNS ABOUT THE LOCAL JURISDICTION’S SPEED MONITORING SYSTEM PROGRAM.

2. A. THE LOCAL DESIGNEE SHALL REVIEW A CITATION GENERATED BY A SPEED MONITORING SYSTEM IF THE PERSON WHO RECEIVED THE CITATION REQUESTS REVIEW BEFORE THE DEADLINE FOR CONTESTING LIABILITY UNDER THIS SECTION.

B. IF THE LOCAL DESIGNEE DETERMINES THAT THE CITATION IS AN ERRONEOUS VIOLATION, THE LOCAL DESIGNEE SHALL VOID THE CITATION.

3. A LOCAL DESIGNEE MAY NOT BE EMPLOYED BY A SPEED MONITORING SYSTEM CONTRACTOR OR HAVE BEEN INVOLVED IN ANY REVIEW OF A SPEED MONITORING SYSTEM CITATION, OTHER THAN REVIEW OF A CITATION UNDER THIS SUBPARAGRAPH.

4. ON RECEIPT OF A WRITTEN QUESTION OR CONCERN FROM A PERSON, THE LOCAL DESIGNEE SHALL PROVIDE A WRITTEN ANSWER OR RESPONSE TO THE PERSON WITHIN A REASONABLE TIME.

5. A LOCAL JURISDICTION SHALL MAKE ANY WRITTEN QUESTIONS OR CONCERNS RECEIVED UNDER THIS SUBPARAGRAPH AND ANY SUBSEQUENT WRITTEN ANSWERS OR RESPONSES AVAILABLE FOR PUBLIC INSPECTION.

(2) (i) A speed monitoring system operator shall complete training by a manufacturer of speed monitoring systems in the procedures for setting up and operating the speed monitoring system.

(ii) The manufacturer shall issue a signed certificate to the speed monitoring system operator on completion of the training.

(iii) The certificate of training shall be admitted as evidence in any court proceeding for a violation of this section.

(3) A speed monitoring system operator shall fill out and sign a daily set-up log for a speed monitoring system that:

(i) States that the speed monitoring system operator successfully performed **OR REVIEWED AND EVALUATED** the manufacturer-specified **DAILY** self-test of the speed monitoring system prior to producing a recorded image;

(ii) Shall be kept on file; and

(iii) Shall be admitted as evidence in any court proceeding for a violation of this section.

(4) (i) A speed monitoring system shall undergo an annual calibration check performed by an independent calibration laboratory **THAT IS:**

1. **SELECTED BY THE LOCAL JURISDICTION; AND**
2. **UNAFFILIATED WITH THE MANUFACTURER OF THE SPEED MONITORING SYSTEM.**

(ii) The independent calibration laboratory shall issue a signed certificate of calibration after the annual calibration check that:

1. Shall be kept on file; and
2. Shall be admitted as evidence in any court proceeding for a violation of this section.

(5) IF A LOCAL JURISDICTION AUTHORIZES A PROGRAM OF SPEED MONITORING SYSTEMS UNDER THIS SECTION:

(I) THE LOCAL JURISDICTION SHALL DESIGNATE A PROGRAM ADMINISTRATOR WHO MAY NOT BE AN EMPLOYEE OR REPRESENTATIVE OF THE SPEED MONITORING SYSTEM CONTRACTOR; AND

(II) THE CONTRACT WITH THE SPEED MONITORING SYSTEM CONTRACTOR SHALL INCLUDE THE FOLLOWING PROVISIONS:

1. **FOR POTENTIAL VIOLATIONS SUBMITTED BY A CONTRACTOR FOR REVIEW BY AN AGENCY, IF MORE THAN 5% OF THE VIOLATIONS IN A CALENDAR YEAR ARE ERRONEOUS VIOLATIONS, THEN THE CONTRACTOR SHALL BE SUBJECT TO LIQUIDATED DAMAGES FOR EACH ERRONEOUS VIOLATION EQUAL TO AT LEAST 50% OF THE FINE AMOUNT FOR THE ERRONEOUS VIOLATION, PLUS ANY REIMBURSEMENTS PAID BY THE LOCAL JURISDICTION; AND**

2. **THE LOCAL JURISDICTION MAY CANCEL A CONTRACT WITH A CONTRACTOR IF THE CONTRACTOR VIOLATES THE CONTRACT BY SUBMITTING ERRONEOUS VIOLATIONS TO THE AGENCY THAT EXCEED A THRESHOLD SPECIFIED IN THE CONTRACT OR VIOLATES THE LAW IN IMPLEMENTING THE CONTRACT.**

(6) (I) THE MARYLAND POLICE TRAINING COMMISSION, IN CONSULTATION WITH THE STATE HIGHWAY ADMINISTRATION AND OTHER INTERESTED STAKEHOLDERS, SHALL DEVELOP A TRAINING PROGRAM CONCERNING THE OVERSIGHT AND ADMINISTRATION OF A SPEED MONITORING

PROGRAM BY A LOCAL JURISDICTION, INCLUDING A CURRICULUM OF BEST PRACTICES IN THE STATE.

(II) 1. A PROGRAM ADMINISTRATOR SHALL PARTICIPATE IN THE TRAINING PROGRAM ESTABLISHED UNDER THIS PARAGRAPH BEFORE A LOCAL JURISDICTION INITIALLY IMPLEMENTS A SPEED MONITORING PROGRAM AND SUBSEQUENTLY AT LEAST ONCE EVERY 2 YEARS.

2. IF A LOCAL JURISDICTION DESIGNATES A NEW PROGRAM ADMINISTRATOR, THE NEW PROGRAM ADMINISTRATOR SHALL PARTICIPATE IN THE NEXT AVAILABLE TRAINING PROGRAM.

(c) (1) Unless the driver of the motor vehicle received a citation from a police officer at the time of the violation, the owner or, in accordance with subsection (f)(4) of this section, the driver of a motor vehicle is subject to a civil penalty if the motor vehicle is recorded by a speed monitoring system while being operated in violation of this subtitle.

(2) A civil penalty under this subsection may not exceed \$40.

(3) For purposes of this section, the District Court shall prescribe:

(i) A uniform citation form consistent with subsection (d)(1) of this section and § 7-302 of the Courts Article; and

(ii) A civil penalty, which shall be indicated on the citation, to be paid by persons who choose to prepay the civil penalty without appearing in District Court.

(d) (1) Subject to the provisions of paragraphs (2) through (4) of this subsection, an agency shall mail to an owner liable under subsection (c) of this section a citation that shall include:

- (i) The name and address of the registered owner of the vehicle;
- (ii) The registration number of the motor vehicle involved in the violation;
- (iii) The violation charged;
- (iv) The location where the violation occurred;
- (v) The date and time of the violation;
- (vi) A copy of the recorded image;

(vii) The amount of the civil penalty imposed and the date by which the civil penalty should be paid;

(viii) A signed statement by a duly authorized law enforcement officer employed by or under contract with an agency that, based on inspection of recorded images, the motor vehicle was being operated in violation of this subtitle;

(ix) A statement that recorded images are evidence of a violation of this subtitle;

(x) Information advising the person alleged to be liable under this section of the manner and time in which liability as alleged in the citation may be contested in the District Court; and

(xi) Information advising the person alleged to be liable under this section that failure to pay the civil penalty or to contest liability in a timely manner:

1. Is an admission of liability;
2. May result in the refusal by the Administration to register the motor vehicle; and
3. May result in the suspension of the motor vehicle registration.

(2) An agency may mail a warning notice instead of a citation to the owner liable under subsection (c) of this section.

(3) Except as provided in subsection (f)(4) of this section, an agency may not mail a citation to a person who is not an owner.

(4) Except as provided in subsection (f)(4) of this section, a citation issued under this section shall be mailed no later than 2 weeks after the alleged violation if the vehicle is registered in this State, and 30 days after the alleged violation if the vehicle is registered in another state.

(5) A person who receives a citation under paragraph (1) of this subsection may:

(i) Pay the civil penalty, in accordance with instructions on the citation, directly to the political subdivision; or

(ii) Elect to stand trial in the District Court for the alleged violation.

(e) (1) A certificate alleging that the violation of this subtitle occurred and the requirements under subsection (b) of this section have been satisfied, sworn to, or affirmed by [an agent or employee of] **A DULY AUTHORIZED LAW ENFORCEMENT OFFICER EMPLOYED BY OR UNDER CONTRACT WITH** an agency, based on inspection of recorded images produced by a speed monitoring system, shall be evidence of the facts contained in the certificate and shall be admissible in a proceeding alleging a violation under this section without the presence or testimony of the speed monitoring system operator who performed the requirements under subsection (b) of this section.

(2) If a person who received a citation under subsection (d) of this section desires the speed monitoring system operator to be present and testify at trial, the person shall notify the court and the State in writing no later than 20 days before trial.

(3) Adjudication of liability shall be based on a preponderance of evidence.

(f) (1) The District Court may consider in defense of a violation:

(i) Subject to paragraph (2) of this subsection, that the motor vehicle or the registration plates of the motor vehicle were stolen before the violation occurred and were not under the control or possession of the owner at the time of the violation;

(ii) Subject to paragraph (3) of this subsection, evidence that the person named in the citation was not operating the vehicle at the time of the violation; and

(iii) Any other issues and evidence that the District Court deems pertinent.

(2) To demonstrate that the motor vehicle or the registration plates were stolen before the violation occurred and were not under the control or possession of the owner at the time of the violation, the owner shall submit proof that a police report regarding the stolen motor vehicle or registration plates was filed in a timely manner.

(3) To satisfy the evidentiary burden under paragraph (1)(ii) of this subsection, the person named in the citation shall provide to the District Court a letter, sworn to or affirmed by the person and mailed by certified mail, return receipt requested, that:

(i) States that the person named in the citation was not operating the vehicle at the time of the violation; and

(ii) Includes any other corroborating evidence.

(4) (i) If the District Court finds that the person named in the citation was not operating the vehicle at the time of the violation or receives evidence under paragraph (3) of this subsection identifying the person driving the vehicle at the time of the violation, the clerk of the court shall provide to the agency issuing the citation a copy of any evidence substantiating who was operating the vehicle at the time of the violation.

(ii) On receipt of substantiating evidence from the District Court under subparagraph (i) of this paragraph, an agency may issue a citation as provided in subsection (d) of this section to the person who the evidence indicates was operating the vehicle at the time of the violation.

(iii) A citation issued under subparagraph (ii) of this paragraph shall be mailed no later than 2 weeks after receipt of the evidence from the District Court.

(g) If a person liable under this section does not pay the civil penalty or contest the violation, the Administration:

(1) May refuse to register or reregister the motor vehicle cited for the violation; or

(2) May suspend the registration of the motor vehicle cited for the violation.

(h) A violation for which a civil penalty is imposed under this section:

(1) Is not a moving violation for the purpose of assessing points under § 16–402 of this article;

(2) May not be recorded by the Administration on the driving record of the owner or driver of the vehicle;

(3) May be treated as a parking violation for purposes of § 26–305 of this article; and

(4) May not be considered in the provision of motor vehicle insurance coverage.

(i) In consultation with the appropriate local government agencies, the Chief Judge of the District Court shall adopt procedures for the issuance of citations, the trial of civil violations, and the collection of civil penalties under this section.

(j) (1) An agency or an agent or contractor designated by the agency shall administer and process civil citations issued under this section in coordination with the District Court.

(2) If a contractor **IN ANY MANNER** operates a speed monitoring system **OR ADMINISTERS OR PROCESSES CITATIONS GENERATED BY A SPEED MONITORING SYSTEM** on behalf of a local jurisdiction, the contractor's fee may not be contingent **ON A PER-TICKET BASIS** on the number of citations issued or paid.

SECTION 2. AND BE IT FURTHER ENACTED, That, except as provided in Section 3 of this Act, a presently existing obligation, contract, or contract right may not be impaired in any way by this Act and this Act does not abrogate any current obligation, contract, or contract right in existence before the effective date of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That a local jurisdiction shall alter without penalty an obligation, a contract, or a contract right existing on January 1, 2014, to comply with the provisions of this Act by June 1, 2017.

SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2014.