

HOUSE No. 3638

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act to promote school zone safety..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 90 of the General Laws is hereby amended by adding the
2 following new section:-

3 Chapter 90, Section 33C. Safety devices, school zones.

4 SECTION 1.

5 (a) Notwithstanding the provisions of any general or special law to the contrary, cities
6 and towns may, upon the acceptance of this act, employ a violation monitoring system to (1)
7 measure speed limit violations within designated school zones; and, (2) capture violations in
8 conjunction with traffic signals deployed by school busses and school vans. Further, cities and
9 towns may promulgate local measures imposing a penalty on the owner of a motor vehicle for
10 failure by the operator thereof to comply with the laws, codes, regulations, ordinances, rules
11 and/or other forms of legislation governing the traffic control signals in said cities and towns in
12 which a violation monitoring system is located.

13 (b) As used in this act, the following words shall, unless the content clearly indicates
14 otherwise, have the following meanings:

15 "Local measure", shall mean the ordinances, rules and regulations adopted by cities and
16 towns, whichever is applicable, establishing a schedule of fines imposed on the owner of a motor
17 vehicle for failure by the operator thereof to comply with the laws, codes, regulations,
18 ordinances, rules and/or other forms of legislation governing the traffic control signals in said
19 cities and towns at which a traffic control signal violation monitoring system is located.

20 "Motor vehicle", shall have the meaning provided in section 1 of chapter 90 of the
21 General Laws.

22 "Operator", shall have the meaning provided in section 1 of chapter 90 of the General
23 Laws.

24 "Owner", shall have the meaning provided in section 1 of chapter 90 of the General
25 Laws.

26 "Violation monitoring system", shall mean an automated motor vehicle sensor device that
27 produces two or more wet-film photographs, two or more digital photographs, two or more
28 microphotographs, streaming video images, or other recorded images of each motor vehicle at
29 the time it is used or operated in a manner that is in violation of school zone speed limits and
30 school bus activated stop signals.. The photographs, microphotographs, streaming video images,
31 or other recorded images must, at a minimum, record the rear of the motor vehicle, with at least
32 one of the images clearly recording the motor vehicle immediately prior and following the
33 violation. Additionally, at least one of the images must clearly identify the registration plate of
34 the motor vehicle.

35 "Violation", shall mean the failure of an operator of a motor vehicle to comply with the
36 laws, codes, regulations, ordinances, rules and/or other forms of legislation governing the speed
37 limits posted in school zones and stop signals located on school busses.

38 (c) No violation monitoring system shall be utilized in such a manner as to take a
39 frontal view photograph of the motor vehicle that is in violation.

40 (d) A certificate, or a facsimile thereof, based upon inspection of photographs,
41 microphotograph, streaming video, or other recorded images produced by a violation monitoring
42 system, and sworn to or affirmed by a police officer authorized to issue citations shall be prima
43 facie evidence of the facts contained therein. No photographs, microphotographs, streaming
44 video, or other recorded images taken in conformance with this act shall be discoverable in any
45 judicial or administrative proceeding other than a proceeding held pursuant to this act; and no
46 photographs, microphotographs, streaming video, or other recorded images taken in
47 conformance with this act shall be admissible in any judicial or administrative proceeding other
48 than in a proceeding to adjudicate liability for such violation of this act.

49 (e) For each violation pursuant to this act, the owner or owners of a vehicle shall be
50 liable for the penalty imposed by a local measure; provided, however, that no owner of a vehicle
51 shall be liable for a penalty imposed pursuant to this act where the operator of such vehicle has
52 been convicted of the underlying violation pursuant to a citation issued in accordance with
53 section 2 of chapter 90C of the General Laws, and provided, further, that the maximum penalty
54 that may be imposed pursuant this act shall be One Hundred Dollars (\$100.00) for each
55 violation.

56 (f) A penalty imposed by a local measure may, if so provided in the local measure,
57 be increased by up to 33 1/3% if said fine remains unpaid in excess of 30 days after a notice of
58 violation has been issued consistent with the procedures established in section 20A 1/2 of chapter
59 90 of the General Laws.

60 (g) A penalty imposed by a local measure for a violation pursuant to this act shall not
61 be deemed a criminal conviction and shall not be made part of the operating record of the person
62 upon whom such liability is imposed, nor shall such imposition of a penalty be subject to merit
63 rating for insurance purposes and no surcharge points shall be imposed in the provision of motor
64 vehicle insurance coverage.

65 SECTION 2. (a) The compensation paid to the manufacturer or vendor of the violation
66 monitoring system deployed as a means of promoting traffic safety as authorized herein shall not
67 be based upon the number of traffic citations issued or any portion or percentage of the fine
68 generated by such citations. The compensation paid to such manufacturer or vendor of the
69 equipment shall be based upon the value of such equipment and the services provided or
70 rendered in support of the violation monitoring system.

71 (b) Other than for purposes of enforcement of a violation of this act or for purposes of
72 an owner defending a violation of this act, no private entity or individual may obtain
73 photographs, microphotographs, streaming video or other recorded images or records taken
74 pursuant to this act.

75 SECTION 3. (a) The parking clerk designated or appointed by the municipality shall
76 supervise and coordinate the administration of violations issued pursuant to Section 1. The

77 parking clerk shall have the authority to hire and designate such personnel as may be necessary
78 or contract for such services to implement the provisions of this section.

79 (b) It shall be the duty of the parking clerk of the city employing its violation
80 monitoring system to deliver the notice of violation to the registered owner or owners of any
81 motor vehicle identified in any photographs, microphotographs, streaming video or other
82 recorded images produced by such device as evidence of a violation pursuant to this act. Such
83 notice shall contain but not be limited to the following information: a copy of the aforementioned
84 recorded images showing the vehicle in violation, the registration number and state of issuance
85 of said registration number of the vehicle; the date, time and location of the violation; the
86 specific violation charged; a schedule of fines for such violation as established by the city or
87 town; instructions for the return of the notice; and text as follows: "This notice may be returned
88 personally, by mail, or by an agent authorized in writing. A hearing may be obtained upon the
89 written request of the registered owner in writing. Failure to obey this notice within 30 days of
90 issuance of this notice will result in the non-renewal or suspension of the license to drive and the
91 certificate of registration of the registered owner."

92 (c) In the case of a violation involving a motor vehicle registered under the laws of
93 the Commonwealth, such notice of violation shall be mailed within 14 days of the violation,
94 exclusive of Sundays and holidays, to the address of the registered owner or owners as listed in
95 the records of the registrar of motor vehicles. In the case of any motor vehicle registered under
96 the laws of another state or country, such notice of violation shall be mailed within 21 days of
97 the violation, exclusive of Sundays and holidays, to the address of the registered owner or
98 owners as listed in the records of the official in such state or country having charge of the
99 registration of such motor vehicle. If said address is unavailable, it shall be sufficient for the

100 parking clerk to mail notice of violation to the official in such state or country having charge of
101 the registration of such motor vehicle.

102 (d) Notice of violation shall be sent by first class mail in accordance with subsection
103 3(c) and shall include an affidavit form approved by the parking clerk for the purpose of
104 complying with subsection 3(g). A manual or automatic record of mailing prepared by the
105 parking clerk in the ordinary course of business shall be prima facie evidence thereof, and shall
106 be admitted as evidence in any judicial or administrative proceeding, as to the facts contained
107 therein.

108 (e) Any motor vehicle owner to whom notice of violation has been issued pursuant to
109 this act may admit responsibility for such violation and pay the fine provided therein. Payment
110 shall be made either personally or through a duly authorized agent, or by appearing before the
111 parking clerk during normal office hours, or by mailing both payment and notice of the violation
112 to the parking clerk. Payment by mail shall be made only by money order, credit card or check
113 made out to the parking clerk. Payment of the established fine and any applicable penalties shall
114 operate as a final disposition of the case. Payment of the fine by one motor vehicle owner shall
115 be satisfaction of the fine as to all other motor vehicle owners of the same motor vehicle for the
116 same violation.

117 (f) Any owner to whom a notice of violation has been issued may, within 30 days of
118 the mailing of said notice by the parking clerk, request a hearing to contest the liability alleged in
119 said notice. A hearing request shall be made either personally or through a duly authorized agent
120 by appearing before the parking clerk during regular business hours or by mailing a request in
121 writing to the parking clerk. Upon receipt of a hearing request, the parking clerk shall forthwith

122 schedule the matter before a person hereafter referred to as a hearing officer, said hearing officer
123 to be the parking clerk of the city wherein the violation occurred or such other person or persons
124 as the parking clerk may designate. Written notice of the date, time and place of said hearing
125 shall be sent by first class mail to each registered owner. Said hearing shall be informal, the rules
126 of evidence shall not apply, and the decision of the hearing officer shall be final subject to
127 judicial review as outlined by section 14 of Chapter 30A of the General Laws. Within twenty-
128 one days of the hearing, the parking clerk or the hearing officer should send by first class mail to
129 the registered owner or owners the decision of the hearing officer, including the reasons for the
130 outcome.

131 (g) Any owner to whom a notice of violation has been issued shall not be liable for a
132 violation under the provisions of this act: (1) if the violation was necessary to allow the passage
133 of an emergency vehicle; (2) if the violation was necessary in order to protect the property or
134 person of another; (3) if the violation was incurred while participating in a funeral procession;
135 (4) if the violation was incurred during a period of time in which the motor vehicle was reported
136 to the police department of any state, city or town as having been stolen and had not been
137 recovered prior to the time the violation occurred; (5) if the operator of the motor vehicle was
138 operating the motor vehicle under a rental or lease agreement and the owner of the motor vehicle
139 is a rental or leasing company and has complied with the provisions of section 20E of chapter 90
140 of the General Laws; (6) if the operator of the motor vehicle was convicted of the underlying
141 violation pursuant to a citation issued in accordance with section 2 of chapter 90C of the General
142 Laws; or (7) if the violation was necessary to comply with any other law or regulation governing
143 the operation of a motor vehicle during the time of violation. An owner disputing a violation
144 under this section shall, within 30 days, provide the parking clerk with a signed affidavit in a

145 form approved by the parking clerk, as provided for in subsection 3(d), stating (1) the reason for
146 disputing the violation; (2) the full legal name and address of the owner of the motor vehicle; (3)
147 the full legal name and address of the operator of the motor vehicle at the time the violation
148 occurred; (4) the names and addresses of all witnesses supporting the owner's defense and the
149 specifics of their knowledge; and where applicable (5) the signed statements from witnesses.

150 (h) If an owner to whom notice of violation has been issued either fails to pay the fine
151 provided for in said notice in accordance with subsection 3(e), or fails to receive a favorable
152 adjudication of said notice from a hearing officer in accordance with subsection 3(f), the parking
153 clerk shall notify the registrar of motor vehicles who shall place the matter on record. Upon
154 notification to the registrar of two or more notices under this act and/or sections 20A and 20A
155 1/2 of chapter 90 of the General Laws from the parking clerk of either city or state authorities or
156 agencies, the registrar shall not issue or renew or may suspend such owner's license to operate a
157 motor vehicle or motor vehicle registration until after notification from the parking clerk of each
158 city, agency or authority, from whom the registrar received notification, that all fines, taxes and
159 penalties owed by such owner pursuant to either this section, or arising out of the parking or
160 usage of such owner's motor vehicles, have been disposed of in accordance with law. Upon such
161 notification to the registrar, an additional charge of \$20 payable to the registrar but collected by
162 the city, and an additional charge of \$20 payable to and collected by the city, shall be assessed
163 against the registered owner of said motor vehicle. It shall be the duty of the parking clerk to
164 notify the registrar forthwith that such case has been so disposed; provided, however, that
165 certified receipt of full and final payment from the parking clerk of the city or state agency or
166 authority issuing such violation shall also serve as legal notice to the registrar that said violation

167 has been disposed of in accordance with law. The certified receipt shall be printed in such form
168 as the registrar of motor vehicles may approve.

169 (i) Upon the accumulation by an owner of five or more outstanding notices under
170 this act and/or sections 20A and 20A 1/2 of chapter 90 of the General Laws on account of
171 violations of any statute, ordinance, order, rule or regulation relating to the operation, control or
172 parking of motor vehicles in a particular city, notwithstanding any notification to the registrar,
173 the parking clerk of such city may notify the chief of police or director of traffic and parking of
174 such city that the vehicle bearing the registration to which said notices have been issued shall be
175 removed and stored or otherwise immobilized by a mechanical device at the expense of the
176 registered owner of such vehicle until such time as all fines, taxes and penalties owed by such
177 owner pursuant to either this section, or arising out of the parking or usage of such owner's motor
178 vehicle have been disposed of in accordance with law. No vehicle shall be removed, stored, or
179 otherwise immobilized until and unless the owner of such motor vehicle shall have received 10
180 days notification by mail that such motor vehicle may be removed, stored, or immobilized
181 without further notification. It shall be sufficient for the parking clerk to mail, postage prepaid,
182 said notification to the last known address of the registered owner. It shall be sufficient for the
183 parking clerk, in the case of a motor vehicle registered in another state or country, to mail
184 notification to the official in such state or country having charge of the registration of such motor
185 vehicle.

186 (j) Photographic and other recorded evidence obtained through the use of violation
187 monitoring system deployed as a means of promoting traffic safety authorized herein within
188 cities and towns shall be destroyed within 1 year of final disposition of any recorded event. Said

189 cities shall file notice annually with the Secretary of State that said records have been destroyed
190 in accordance with this section.