SENATE DOCKET, NO. 1779 FILED ON: 1/18/2019

SENATE . . . . . No. 2045

The Commonwealth of Massachusetts

PRESENTED BY:

Nick Collins

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act concerning photo enforcement of certain traffic violations.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
Nick Collins	*First Suffolk*	
Mayor Martin J. Walsh	*Boston City Hall*	
Michael F. Rush	*Norfolk and Suffolk*	*1/31/2019*
James K. Hawkins	*2nd Bristol*	*2/4/2019*

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SENATE . . . . . No. 2045

By Mr. Collins, a petition (accompanied by bill, Senate, No. 2045) of Nick Collins, Mayor Martin J. Walsh, Michael F. Rush and James K. Hawkins for legislation concerning photo enforcement of certain traffic violations. Transportation.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

An Act concerning photo enforcement of certain traffic violations.

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

SECTION 1. Section 14 of Chapter 90 of the General Laws is hereby amended by inserting after section 14B the following section:-

Section 14C. (a) As used in this section, the following words shall have the following meanings:

"Automated Traffic Law Enforcement System", a device with one or more camera sensors working in conjunction with:

(1) A red light signal to produce recorded images of a motor vehicle that enters an intersection, which it is unable to proceed through without stopping, and thereby blocks vehicles from travelling in a free direction in violation of section 9 of Chapter 89; and

(2) A school bus stop arm traffic control sign to produce recorded images of a motor vehicle that fails to come to a complete stop when approaching a vehicle which displays a sign bearing the words “SCHOOL BUS” in violation of section 14.

“Automated Traffic Law Enforcement System” shall be a system with 2 or more camera sensors and computers that produce live digital and recorded video and 2 or more film or digital photographic still images of each motor vehicle at the time it is used or operated.

“School Bus Stop Arm Traffic Control Sign”, a stop sign mounted on a mechanical arm installed on a school bus which is deployed when a school bus is stopped to allow pupils to alight from or board the same and notify motorists when they are required to stop and when they can proceed.

(b) (1) Notwithstanding any general or special law to the contrary, a city or town may install and operate an Automated Traffic Law Enforcement Systems for the purposes of enforcing violations against the registered owner of a motor vehicle whose vehicle commits a violation pursuant to this section. Such systems shall be limited to monitor and detect violations of a school bus stop arm traffic control sign pursuant to section 14, and violations of motorists that block an intersection in violation of section 9 of chapter 89.

(2) The city or town shall install a sign notifying the public that an Automated Traffic Law Enforcement System is in use at each location of such a system. Each school bus with a stop arm traffic control signal shall have a sign notifying the public that a camera is in use on the bus.

(3) The city or town shall make a public announcement and conduct a public awareness campaign of the use of an Automated Traffic Law Enforcement System beginning at least 30

days before the system is in use. The public awareness campaign shall continue throughout the period of time that the system is in use.

(4) For a period of at least 60 days after the implementation of an Automated Traffic Law Enforcement System, a city or town may issue only warnings to owners of motor vehicles operated in violation of this section and said city or town shall not collect fines for a violation of this section.

(2) All systems installed for use under this section shall produce an evidence file that includes a live digital video image viewable remotely, a recorded image of the license plate and shall be able to record the date, time and location of the vehicle committing the violation.

(3) Recorded video images and still photographic images shall record the rear or front of the motor vehicle, with at least 1 photographic image and 1 recorded video image clearly recording the motor vehicle immediately before the violation and at least 1 photographic image and 1 recorded video image recording the motor vehicle committing the violation. At least 1 photographic image and 1 recorded video image shall clearly identify the license plate of the motor vehicle.

(4) To the extent practicable, a Automated Traffic Law Enforcement System shall use necessary technologies to ensure that photographs or recorded video images produced by the Automated Traffic Law Enforcement System shall not include a frontal view photograph or video image that identifies the operator, the passengers, or the contents of the vehicle; provided, however, no notice of liability issued under this section shall be dismissed solely because a photograph or recorded video image allow for the identification of the operator, passengers, or contents of a vehicle as long as a reasonable effort has been made to comply with this paragraph.

(5) A penalty imposed for a violation of this section shall not be considered a criminal conviction and shall not be considered a surchargeable offense pursuant to section 113B of chapter 175;

(6) The fines contained in this section shall be applied whether the violation is detected through the use of a Automated Traffic Law Enforcement System or by a police officer on scene who issues a written citation to the operator of the motor vehicle. Pursuant to the provisions of section 2 of chapter 280, all fines imposed for a violation that is detected by a Automated Traffic Law Enforcement System or by a police officer who cites the operator in hand shall be paid over to the treasury of the city or town where the offense was committed.

(7) A city or town may enter into an agreement with a private vendor or manufacturer, pursuant to the provisions of chapter 30B, to provide an Automated Traffic Law Enforcement System and evidence file processing services, up to and including the installation, operation, monitoring, evidence file preparation and maintenance of such systems. An agreement pursuant to this section shall take effect upon its acceptance by a municipality or district; such acceptance shall be in a municipality, by a vote of the legislative body, subject to the charge of the municipality, or, in a district, by a vote of the district at a district meeting. Compensation paid to the manufacturer or vendor of the Automated Traffic Law Enforcement System shall not be based upon the revenue generated by the use of such systems. The compensation paid to the manufacturer or vendor of the equipment shall be based upon the value of the equipment installed and the recurring services provided in support of the Automated Traffic Law Enforcement Systems including processing of evidence files, cost of the technology provided and maintenance of such technology.

(8) A city or town shall provide reimbursement of expenses to the private vendor or manufacturer for the installation, operation and maintenance of the Automated Traffic Law Enforcement Systems in operation and acknowledged by an agreement between the private vendor and the city or town. Unless modified by an agreement with a city or town, reimbursement shall be made from ticket revenue proceeds incurred under this section only if received as currently allocated under the laws of the Commonwealth for said citations so as to eliminate any cost to the city or town for installation, operation and maintenance of the Automated Traffic Law Enforcement Systems in its municipality. Such reimbursement shall be made to the private vendor or manufacturer within 45 days following the submittal of request for cost reimbursement.

(c) (1) An evidence file of the alleged violation shall be forwarded to the chief of police of the municipality, or a designee of the chief, who is trained to observe and detect a violation of this section. The officer shall issue a citation if satisfied that a violation was committed and the vehicle committing such violation can be identified from its registration plate. A certificate, or a facsimile thereof, sworn to or affirmed by a police officer or other law enforcement officer authorized to issue motor vehicle citations, stating that based upon inspection of the evidence file produced by a Automated Traffic Law Enforcement System, the vehicle was in violation of this section, shall be prima facie evidence of the facts contained therein. A recorded video images or still photographic images produced by a Automated Traffic Law Enforcement System evidencing the violation shall be available for inspection in any proceeding to adjudicate the liability for a violation pursuant to this section.

(2) In all proceedings of violations pursuant to this section, the registered owner of the motor vehicle shall be primarily responsible, except as otherwise provided in this section. In the

event the registered owner of the vehicle operated in violation of this section was not the operator of the vehicle at the time of the violation, the registered owner of the vehicle shall assume liability for the violation by paying the fine or defend the violation pursuant to the procedures established for violations pursuant to this section. A vehicle owned or leased to a corporation that is identified by a Automated Traffic Law Enforcement System shall be primarily responsible for a violation pursuant to this section even if a person who normally operates the vehicle for the corporation denies operating the vehicle at the time of the violation; provided, however, no entry shall be made on the person's driving record.

(3) A penalty imposed may, if so provided in writing, be increased by up to 33 1/3% if the penalty remains unpaid in excess of 45 days after a citation has been issued consistent with the procedures established in this section and there has been no request for a hearing under paragraph (3) of subsection (d).

(d) (1) Upon the determination of a violation through the use of a Automated Traffic Law Enforcement System, the chief of police of the city or town, or a designee of the chief, shall issue to the registered owner of the vehicle a citation. The citation shall include, but not be limited to, the following information: (i) the name and address of the the registered owner of the motor vehicle; the registration number and state of issuance of the registration number of the vehicle involved in the violation; the date, time and location of the violation; the specific violation charged; the amount of the penalty for the violation; and the date by which the penalty shall be paid; (ii) a copy of 2 or more still photographs or microphotographs showing the vehicle committing the violation; (iii) a copy of the certificate or affidavit of the police officer under paragraph (1) of subsection (c); (iv) a statement that recorded video images and photographic images are evidence of a violation of section 14; (v) instructions for the return of the citation

notice including, but not limited to the following text:- "This notice and the required payment may be returned in person, by mail, or by a duly authorized agent. A hearing to contest liability may be obtained upon the written request of the registered owner. Failure to pay the penalty or to contest liability within 30 days of issuance of this notice is an admission of liability and may result in a default judgment being entered against the owner to whom the violation has been issued and non-renewal or suspension of the license to drive and the certificate of registration of the registered owner."; (vii) a statement explaining the procedure to adjudicate the violation by mail under paragraph (6); and (viii) a statement explaining the procedure for the violator to access and view the digital video or other recorded images showing the vehicle in violation. The citation shall require the registered owner to pay the fine amount issued pursuant to this section or appear before the parking clerk not later than 30 days after the date the citation was mailed to the registered owner. Citations shall be mailed by first class mail, postmarked no later than 14 days after the date of the alleged violation, inclusive of sundays and legal holidays. The citation shall be mailed to the address of the registered owner on record with the registry of motor vehicles, or, in the case of a motor vehicle registered under the laws of another state or jurisdiction, at the address of the registered owner on record with the official in the state or other jurisdiction having charge of the registration of the vehicle. If the address is unavailable in the case of a motor vehicle registered under the laws of another state or jurisdiction, the chief of police, or a designee, shall mail the citation to the official in the state or other jurisdiction having charge of the registration of the vehicle. The citation shall be considered sufficient notice, and a certificate of the chief of police, or a designee, mailing the citation stating that it has been mailed in accordance with this section shall be deemed prima facie evidence thereof and shall be admissible in any judicial or administrative proceeding as to the facts contained therein.

The chief of police, or designee, shall retain and safely preserve a copy of the citation and shall at a time no later than the beginning of the next business day after mailing to the registered owner, deliver a copy of the citation to the parking clerk. The parking clerk shall maintain a docket of all issued citations. The date of issuance shall be the date of mailing. The police officer issuing the citation shall certify that the evidence obtained from the Automated Traffic Law Enforcement System was sufficient to demonstrate a violation of this section. Such certification shall be sufficient in all proceedings pursuant to this section to justify the entry of a default judgment in all cases where the citation is not answered within the time period permitted under this section.

(2) A person issued a citation may pay the fine by appearing before the parking clerk, or his designee, and admit to the violation, either personally, through a duly authorized agent, or by mailing to the parking clerk the fine. Payment of the penalty established shall operate as a final disposition of the case.

(3) If the person requests a hearing to contest liability of the citation, the parking clerk shall forthwith schedule the matter before a hearing officer. The hearing officer shall be the parking clerk, or a designee, of the city or town in which the violation occurred. Written notice of the date, time and place of the hearing shall be sent by first-class mail to the registered owner. The hearing shall be informal, the rules of evidence shall not apply and the decision of the hearing officer shall be final subject to judicial review as provided by section 14 of chapter 30A. Within 21 days of the hearing, the hearing officer shall send by first class mail to the registered owner the decision of the hearing officer, including the reasons for the outcome.

(4) A person issued a citation may, without waiving his right to a hearing before the parking clerk or hearing officer, and also without waiving judicial review under section 14 of chapter 30A, challenge the validity of the citation and receive a review and disposition of the violation from the parking clerk or a hearing officer by mail. The registered owner may, upon receipt of the citation, send a signed statement explaining his objections to the violation notice as well as signed statements from witnesses, police officers, government officials and any other relevant parties. Photographs, diagrams, maps and other documents may also be sent with the statements. Any statements or materials sent to the parking clerk for review shall include the name and address of the person as well as the citation number and the date of the violation. The parking clerk or hearing officer shall, within 21 days of receipt of this material, review the material and dismiss or uphold the violation and notify, by mail, the registered owner of the disposition of the written review. If the outcome of the written review is adverse to the registered owner, the parking clerk or hearing officer shall include the reasons for the outcome on the notice. The review and disposition handled by mail shall be informal, the rules of evidence shall not apply, and the decision of the parking clerk or hearing officer based upon the written materials shall be final, unless the owner invokes the hearing provisions under this section or judicial review under section 14 of chapter 30A.

(5) A person who violates this section by failing to stop for a school bus traffic control arm signal shall be punished by a fine of not less than $250; and for a second offense by a fine of not less than $500 nor more than $1,000; and for a third or subsequent offense by a fine of not less than $1,000 nor more than $2,000. All other violations under this section shall be punished by a fine of not less than $150.

(6) If a person fails to pay the fine or fails to receive a favorable adjudication of the hearing from a hearing officer and fails to pay the fine within 30 days of the date that the hearing officer has mailed notice of the decision of the hearing officer, the parking clerk shall notify the registrar of motor vehicles, who shall place the matter on record. Upon notification to the registrar of 2 or more citations under this section from the parking clerk of the city or town, the registrar shall not issue or renew or may suspend the license to operate a motor vehicle of the registered owner or motor vehicle registration of the registered owner until after notification from the parking clerk of each city or town, from whom the registrar received notification, that all fines, taxes and penalties owed by the owner under this section have been disposed of in accordance with law. Upon such notification to the registrar, an additional charge of $20 payable to the registrar but collected by the city or town, and an additional charge of $20 payable to and collected by the city or town, shall be assessed against the registered owner of the motor vehicle. It shall be the duty of the parking clerk to notify the registrar forthwith that the case has been so disposed; provided, however, certified receipt of full and final payment from the parking clerk of the city or town issuing the violation shall also serve as legal notice to the registrar that the violation has been disposed of in accordance with law. The certified receipt shall be printed in a form approved by the registrar of motor vehicles.

(7) Upon the accumulation by a registered owner of 2 or more outstanding citations under this section on account of violation of this section, the parking clerk of the city or town may notify the chief of police or director of traffic and parking of the city or town that the vehicle bearing the registration to which the notices have been issued shall be removed and stored or otherwise immobilized by a mechanical device at the expense of the registered owner of the vehicle until all fines, taxes and penalties owed by the owner either under this section, or

otherwise arising out of the parking or usage of the owner's motor vehicle, have been disposed of in accordance with law. No vehicle shall be removed, stored, or otherwise immobilized unless the registered owner of the motor vehicle shall have received 10 days prior notification by mail that the motor vehicle may be removed, stored, or immobilized without further notification. It shall be sufficient for the parking clerk to mail, postage prepaid, the notification to the last known address of the registered owner. It shall be sufficient for the parking clerk, in the case of a motor vehicle registered in another state or jurisdiction, to mail notification to the official in the state or jurisdiction having charge of the registration of the motor vehicle.

(8) Except as expressly provided, all proceedings based on evidence produced by a Automated Traffic Law Enforcement System shall follow the procedures of this section. Notwithstanding the installation and use of an Automated Traffic Law Enforcement System, a trained police officer, in whose presence a motorist commits a violation under any general or special law, may issue a citation at the scene to the operator of such vehicle for such violation. An owner of a vehicle shall not be liable for a citation as a result of an Automated Traffic Law Enforcement System if the operator of the vehicle was cited directly by a police officer at the scene of the violation

(9) An owner to whom a citation has been issued shall not be liable for a violation of this section (a) if the violation was necessary to allow the passage of an emergency vehicle; (b) if the violation was necessary in order to protect the property or person of another; (c) if the violation was incurred while participating in a funeral procession; (d) if the violation was incurred during a period of time in which the motor vehicle was reported to the police department of any state, city or town as having been stolen and had not been recovered before the time the violation occurred; (e) if the operator of the motor vehicle was convicted of the underlying violation under

a citation issued in accordance with section 2 of chapter 90C; (f) if the violation was necessary to comply with an order of a law enforcement officer or a flagger directing traffic flow; or (g) if the vehicle was subject to the exceptions granted to an authorized emergency vehicle under section 7B of chapter 89. An owner disputing a violation under this subsection shall, within 30 days of issuance of the notice, provide the parking clerk with an affidavit signed under the pains and penalties of perjury in a form approved by the parking clerk, as provided for in clause (vii) of paragraph (1) of this subsection, stating the following: (1) the reason for disputing the violation; (2) the full legal name and address of the registered owner of the motor vehicle; (3) the names and addresses of all witnesses supporting the registered owner's defense and the specifics of their knowledge; and (4) where applicable, the signed statements from witnesses. The affidavit shall be filed with the request for a hearing.

(e)(1) Other than for purposes of enforcement of a violation of this section or for purposes of a registered owner defending a violation of this section, recorded video images and photographs taken or created under this section may only be obtained under an order by a court of competent jurisdiction.

(2) All recorded video images and other photographic information obtained through the use of Automated Traffic Law Enforcement Systems authorized in this section that do not identify a violation shall be destroyed by a city, town, school department or vendor within 30 days of the date the image was recorded, unless otherwise ordered by a court of competent jurisdiction. All photographic and other recorded information that identifies a violation shall be destroyed within 1 year of final disposition of proceedings related to the enforcement or defense of a violation, unless otherwise ordered by a court of competent jurisdiction. All recorded video, audio and other photographic information, however stored or retained, which is obtained through

a Automated Traffic Law Enforcement System are the property of the municipality under agreement with a vendor and shall not be used by a vendor for any other purposes. Upon the expiration of an agreement authorized under this section, all of such video, audio, and other photographic information shall be delivered within 30 days to the particular municipality, unless otherwise ordered by a court of competent jurisdiction.