SENATE . . . . . No. 2553

The Commonwealth of Massachusetts

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

SENATE, February 20, 2020.

The committee on Senate Ways and Means to whom was referred the Senate Bill relative to automated enforcement (Senate, No. 1376), - reports, recommending that the same ought to pass with an amendment substituting a new draft with the same title (Senate, No. 2553).

For the committee,
Michael J. Rodrigues

FILED ON: 2/20/2020

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An Act relative to automated enforcement.

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. Clause Twenty-sixth of section 7 of chapter 4 of the General Laws, as appearing in the 2018 Official Edition, is hereby amended by adding the following subclause:-

(w) Photographs and other personal identifying information collected by cities and towns under chapter 90J.

SECTION 2. The General Laws are hereby amended by inserting after chapter 90I the following chapter:-

CHAPTER 90J.

AUTOMATED ROAD SAFETY ENFORCEMENT.

Section 1. As used in this chapter, the following words shall have the following meanings unless the context clearly requires otherwise:

"Automated road safety camera system", an automated motor vehicle sensor device that produces digital photographs of a motor vehicle that commits a camera enforceable violation at the location where the automated motor vehicle sensor device is installed.

"Camera enforceable violation", any of the following violations of a traffic law or regulation: (i) failing to stop at a steady red indication in a traffic control signal at an intersection pursuant to section 9 of chapter 89; (ii) making a right turn on a steady red indication in a traffic control signal where prohibited pursuant to section 8 of said chapter 89; (iii) exceeding the speed limit in violation of section 17 or section 18 of chapter 90; (iv) passing a school bus when its warning signals are activated in violation of section 14 of said chapter 90; (v) blocking an intersection in violation of said section 9 of said chapter 89; and (vi) operating, parking or causing a motor vehicle to stand in a lane designated for the exclusive use of buses unless otherwise regulated or posted by an official traffic signal, sign or marking or at the direction of an authorized police officer.

"Municipal designee", the municipal entity designated by the city manager in a city with a Plan E form of government, the mayor in all other cities or the board of selectmen in a town to supervise and coordinate the administration of camera enforceable violations under this chapter.

"Registrar", the registrar of motor vehicles.

Section 2. (a) A city or town that accepts this chapter may install an automated road safety camera system as a means of promoting traffic safety. The automated road safety camera system may be placed: (i) along any portion of any way within the city's or town's control; (ii) along any portion of any way within the control of the commonwealth with written permission from the Massachusetts Department of Transportation or the department of conservation and recreation; or (iii) attached to a school bus; provided, however, that before equipping a school bus serving a regional school district with an automated road safety camera, each city or town member of the regional school district shall accept this chapter and shall approve the location of the automated road safety camera system pursuant to subsection (b); provided further, that the

city or town may impose a penalty for a camera enforceable violation on the registered owner of a motor vehicle pursuant to section 3.

(b) A city or town that accepts this chapter shall not employ more than 1 automated road safety camera system per 2,500 residents as measured by using the most recent census data; provided, however, that a city or town with less than 2,500 residents shall not employ an automated road safety camera system; and provided further, that an automated road safety camera system that is attached to a school bus shall not be included in the number of automated road safety camera systems in the city or town. The location of an automated road safety camera system shall be approved by the city manager in a city with a Plan E form of government, the mayor in all other cities or the board of selectmen in a town after a public hearing on the proposed location of the automated road safety camera system.

(c) Annually, not later than December 1, a city or town that accepts this chapter shall transmit a report to the Massachusetts Department of Transportation that details each automated road safety camera system located in the city or town or proposed to be located in the city or town. The report shall include, but not be limited to: (i) a list of the locations of each automated road safety camera system in the city or town; (ii) an analysis of the nexus between public safety and each location's automated road safety camera system; and (iii) the number of fines and warnings issued for camera enforceable violations pursuant to section 3. The department shall post all reports received pursuant to this section on its website.

Section 3. (a) The maximum fine imposed under this chapter for a camera enforceable violation shall be $25 per violation. Except as provided in section 4, the registered owner of a motor vehicle shall be liable for the fine; provided, however, that a registered owner of a motor vehicle shall not be liable for the fine imposed under this chapter for a camera enforceable

violation if the operator of the motor vehicle was issued a citation for the violation in accordance with section 2 of chapter 90C. A city or town that accepts this chapter may send a written warning to the registered owner of a motor vehicle for the purposes of education in lieu of enforcement through a fine; provided, however, that a written warning shall only be issued pursuant to objective and consistent criteria in a written policy established by the municipal designee; provided further, that the department of public safety may provide guidance to the city or town on establishing such objective and consistent criteria.

(b) A certificate, or a facsimile thereof, based upon inspection of photographs and data produced by an automated road safety camera system and sworn to or affirmed by the municipal designee shall be prima facie evidence of the facts contained therein.

(c) A camera enforceable violation issued by a city or town under this chapter shall not be: (i) made part of the operating record of the person upon whom such liability is imposed; or (ii) a conviction of a moving violation of the motor vehicle laws for the purpose of determining a surcharge on a motor vehicle premium pursuant to section 113B of chapter 175.

(d) The municipal designee may hire and designate personnel as necessary or contract for services to implement this chapter.

(e) (1) The municipal designee shall provide a notice of violation to the registered owner of a motor vehicle that is identified in photographs produced by an automated road safety camera system as evidence of a camera enforceable violation pursuant to this chapter. The notice shall include, but not be limited to: (i) a copy of the photographs produced by the automated road safety camera system and any other data showing the vehicle in the process of a camera enforceable violation; (ii) the registration number and state of issuance of the vehicle; (iii) the date, time and location of the alleged camera enforceable violation; (iv) the specific camera

enforceable violation charged; (v) instructions for payment of the fine imposed pursuant to subsection (a); (vi) instructions on how to appeal the camera enforceable violation in writing and to obtain a hearing; and (vii) an affidavit form approved by the municipal designee for the purposes of making a written appeal pursuant to subsection (h).

(2) In the case of a violation involving a motor vehicle registered in the commonwealth, the notice of violation shall be mailed within 14 days of the violation to the address of the registered owner of the motor vehicle as listed in the records of the registrar. If a motor vehicle is registered under the laws of another state or country, the notice of violation shall be mailed within 21 days of the violation to the address of the registered owner as listed in the records of the official in the state or country that has charge of the registration of the motor vehicle. If the address is unavailable, it shall be sufficient for the municipal designee to mail a notice of violation to the official in the state or country that has charge of the registration of the motor vehicle.

(3) The notice of violation shall be sent by first class mail in accordance with paragraph (2). A manual or automatic record of mailing processed by or on behalf of the municipal designee in the ordinary course of business shall be prima facie evidence thereof and shall be admitted as evidence in any judicial or administrative proceeding as to the facts contained therein.

(f) A registered owner of a motor vehicle shall not be liable for a camera enforceable violation under this chapter if the: (i) violation was necessary to allow the passage of an emergency vehicle; (ii) violation was incurred while participating in a funeral procession; (iii) 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; (iv) operator of the motor vehicle was operating the motor vehicle under a rental or lease agreement and the registered owner of the motor vehicle is a rental or leasing company and has complied with section 4; (v) operator of the motor vehicle was issued a citation for the violation in accordance with section 2 of chapter 90C; or (vi) violation was necessary to comply with any other law or regulation governing the operation of a motor vehicle.

(g) A registered owner of a motor vehicle to whom a notice of violation has been issued pursuant to this chapter may admit responsibility for the violation and pay the fine provided therein. Payment of the established fine shall operate as the final disposition of a camera enforceable violation; provided, however, that payment by a registered owner of a motor vehicle shall operate as the final disposition of the violation as to any other registered owner of the same motor vehicle for the same violation.

(h) Not more than 60 days after a camera enforceable violation under this chapter, a registered owner of a motor vehicle may contest responsibility for the violation in writing by mail or online. The registered owner shall provide the municipal designee with a signed affidavit, in a form approved by the municipal designee, stating the: (i) reason for disputing the violation; (ii) full legal name and address of the registered owner of the motor vehicle; and (iii) full legal name and address of the operator of the motor vehicle at the time the violation occurred. The registered owner may include signed statements from witnesses, including the names and addresses of witnesses, supporting the registered owner’s defense. Not more than 21 days after receipt of the signed affidavit, the municipal designee or the hearing officer shall send the decision of the hearing officer, including the reasons for the outcome, by first class mail to the registered owner. If the registered owner is found responsible for the violation, the registered

owner shall pay the fine in the manner described in subsection (g) not more than 14 days after the issuance of the decision or request further judicial review pursuant to section 14 of chapter 30A.

(i) In lieu of contesting responsibility for a violation in writing or online pursuant to subsection (h) and not more than 60 days after a violation under this chapter, a registered owner of the motor vehicle may request a hearing to contest responsibility for a camera enforceable violation. A hearing request shall be made in writing by mail or online. Upon receipt of a hearing request, the municipal designee shall schedule the matter before a hearing officer. The hearing officer may be an employee of the municipal designee or such other person as the municipal designee may designate. Written notice of the date, time and place of the hearing shall be sent by first class mail to each registered owner of the motor vehicle. 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 pursuant to section 14 of chapter 30A. Not more than 21 days after the hearing, the municipal designee or the hearing officer shall send the decision of the hearing officer, including the reason for the outcome, by first class mail to the registered owner. If the registered owner is found to be responsible for the camera enforceable violation, the registered owner shall pay the fine in the manner described in subsection (g) not more than 14 days after the issuance of the decision or request further judicial review pursuant to said section 14 of said chapter 30A.

(j) The municipal designee shall notify the registrar when a registered owner of a motor vehicle to whom a notice of a camera enforceable violation has been issued: (i) fails to contest the responsibility for a violation pursuant to subsection (h) or subsection (i) and fails to pay the fine in the notice in accordance with subsection (g) within 60 days of the violation; or (ii) is found responsible for the violation and does not pay the fine in accordance with subsection (h) or

subsection (i). Upon being notified by the municipal designee, the registrar shall place the matter on record. Upon receipt by the registrar of 5 or more of such notices, the registrar shall not issue or renew the registered owner's motor vehicle registration until after notification from the municipal designee of each city or town from whom the registrar received notification that all fines owed pursuant to this chapter have been paid. The municipal designee shall notify the registrar immediately when a fine that is the basis for a notice to the registrar under this subsection has been paid; provided, however, that certified receipt of full and final payment from the municipal designee issuing a violation shall also serve as legal notice to the registrar that a violation has been disposed of in accordance with this chapter. The certified receipt shall be printed in such form as the registrar may approve.

Section 4. (a) Notwithstanding section 3, if the registered owner of a motor vehicle is a person or entity engaged in the business of leasing or renting motor vehicles and the motor vehicle was operated under a rental or lease agreement at the time of the camera enforceable violation, this section shall be applicable and the registered owner shall not be liable for any unpaid fines if the registered owner has complied with the requirements of this section.

(b) The municipal designee shall provide notice in writing of each camera enforceable violation to the registered owner of a motor vehicle if a motor vehicle owned by the registered owner is involved in a camera enforceable violation.

(c) Not more than 45 days after the violation, the registered owner shall furnish to the municipal designee, in writing, the name and address of the lessee or rentee of the motor vehicle at the time of the camera enforceable violation, the lessee's or rentee's driver's license number, the state that issued the driver's license and the lessee's or rentee's date of birth.

(d) Upon receipt of the information required under subsection (c), the municipal designee shall issue a notice of a camera enforceable violation to the lessee or rentee in the form prescribed by section 3 and the lessee or rentee shall be liable for the violation.

(e) The municipal designee shall notify the registrar if the lessee or rentee to whom a notice of violation has been issued: (i) fails to contest the responsibility for a camera enforceable violation pursuant to either subsection (h) or subsection (i) of section 3 and fails to pay the fine in the notice in accordance with subsection (g) of said section 3 within 90 days of the violation; or (ii) is found responsible for the violation and does not pay the fine in accordance with said subsection (h) or said subsection (i) of said section 3. Upon being notified by the municipal designee, the registrar shall place the matter on record.

Upon receipt by the registrar of 5 or more of such notices under this section, the registrar shall: (i) suspend and not renew the license to operate a motor vehicle of the lessee or rentee; or (ii) suspend the right to operate of a lessee or rentee not licensed in the commonwealth until the registrar receives notification from each applicable municipal designee that all fines owed by the lessee or rentee pursuant to this chapter have been paid. The municipal designee shall notify the registrar immediately when a fine that is the basis for a notice to the registrar under this subsection has been paid; provided, however, that certified receipt of full and final payment from the municipal designee issuing a camera enforceable violation shall also serve as notice to the registrar that the camera enforceable violation has been disposed of in accordance with this chapter; provided further, that the certified receipt shall be printed in such form as the registrar may approve.

Section 5. No violation shall be issued pursuant to this chapter for: (i) a failure to stop at a signal at an intersection if any part of the vehicle was over the stop line when the light was

yellow, regardless of whether or not the light turned red while the vehicle was over the stop line; (ii) exceeding the speed limit, unless the vehicle exceeds the speed limit by not less than 5 miles per hour; (iii) passing a school a bus when its warning signals are activated, unless the vehicle crosses the plane of the stop sign on the bus; (iv) making a right turn on a steady red indication in a traffic control signal where prohibited, unless the entire vehicle has crossed the stop line; or (v) blocking an intersection, unless the entire vehicle has crossed the stop line and no portion of the vehicle has exited the intersection.

Section 6. (a) A city or town that accepts this chapter shall install at each location of an automated road safety camera system an unobstructed sign notifying the public that an automated road safety camera system is in use; provided, however, that a school bus with an automated road safety camera system shall have a sign on the bus notifying the public that an automated road safety camera system is in use on the bus.

(b) A city or town that accepts this chapter shall make a public announcement and conduct a public awareness campaign of its use of automated road safety camera systems beginning not less than 30 days before the first such automated road safety camera system is put into use; provided, however, that a city or town that accepts this chapter may install but shall not activate automated road safety camera systems during the 30-day time period.

Section 7. (a) The compensation paid to the manufacturer or vendor of an automated road safety camera system authorized in this chapter shall be based on the value of the equipment or services provided and shall not be based on the number of camera enforceable violations issued or the revenue generated by the automated road safety camera system.

(b) Not less than annually, a professional engineer registered in the commonwealth or an independent laboratory shall verify that the automated road safety camera system and any appurtenant traffic control signals are correctly calibrated.

Section 8. (a) An automated road safety camera system shall only take photographs when a camera enforceable violation occurs. Photographs and other recorded evidence shall be destroyed not more than 48 hours after the final disposition of a camera enforceable violation.

(b) A photograph or other recorded evidence taken pursuant to this chapter shall not be discoverable in any judicial or administrative proceeding, other than a proceeding held pursuant to this chapter, without a court order. A photograph or other recorded evidence taken pursuant to this chapter shall not be admissible in any judicial or administrative proceeding, other than in a proceeding to adjudicate liability for a violation of this chapter, without a court order. A court shall not order a release of a photograph or other recorded evidence taken pursuant to this chapter unless the photograph or other recorded evidence establishes or undermines a finding of a moving violation and the camera enforceable violation is material as to a finding of civil or criminal liability.

(c) Photographs and other personal identifying information collected by a city or town pursuant to this chapter shall not be a public record under Clause Twenty-Sixth of section 7 of chapter 4 or chapter 66.

(d) An automated road safety camera system shall not be utilized to take a frontal view photograph of a motor vehicle committing a camera enforceable violation. A frontal view photograph of a motor vehicle committing a camera enforceable violation taken by an automated road safety camera system shall not be discoverable or admissible in any judicial or administrative proceeding and shall not be used as the basis for a camera enforceable violation

under this chapter. To the extent practicable, additional efforts shall be made to ensure that photographs produced by an automated road safety camera system do not identify the vehicle operator, the passengers or the contents of the vehicle.

(e) A manufacturer or vendor of an automated road safety camera system may not use, disclose, sell or permit access to data collected by an automated road safety camera system except as necessary to process camera enforceable violations in accordance with this chapter.

Section 9. A city or town that accepts this chapter may only recover costs reasonably related to the implementation and operation of an automated road safety camera system including, but not limited to, costs associated with: (i) maintaining and operating the automated road safety camera system; (ii) issuing notices of camera enforceable violations; (iii) holding hearings for appeals of camera enforceable violations; (iv) notifying the registrar of a failure to pay a fine under this chapter; and (v) collecting a fine; provided, however, that net revenues collected by participating cities and towns pursuant to this chapter shall be deposited in the Massachusetts Transportation Trust Fund established in section 4 of chapter 6C.

Section 10. The operation of emergency vehicles shall be subject to this chapter except as otherwise provided in section 7B of chapter 89.

Section 11. The Massachusetts Department of Transportation shall promulgate rules and regulations necessary to implement this chapter.

SECTION 3. Not later than 3 years after the effective date of this act, the Massachusetts Department of Transportation shall submit a report to the clerks of the senate and house of representatives, the senate and house committees on ways and means and the joint committee on transportation that analyzes the public safety and social and racial equity impacts of this act.