

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1311**

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**Introduced by Assembly Member Miller**

February 18, 2011

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An act to amend ~~Section 22456~~ of Sections 21455.6, 40518, and 40520 of, and to add Section 22368 to, the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 1311, as amended, Miller. Vehicles: ~~ice cream trucks: safety automated speed enforcement systems.~~

*Existing law does not expressly authorize the use of photo radar from an automated enforcement system for speed enforcement purposes by any jurisdiction.*

*This bill would authorize a local authority to establish a program utilizing an automated speed enforcement system for speed enforcement only in areas designated as school zones, if specified conditions are met.*

~~Existing law, the Destiny Nicole Stout Memorial Act, requires an ice cream truck to be equipped at all time, while engaged in vending in a residential area, with warning signs mounted on both the front and rear and clearly legible from a distance of 100 feet under daylight conditions, as provided.~~

~~This bill would make technical, nonsubstantive changes to that law.~~

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     *SECTION 1. The Legislature finds and declares all of the*  
2 *following:*

3     *(a) A school zone refers to the area described in subparagraph*  
4 *(B) of paragraph (2) of subdivision (a) of Section 22352 of the*  
5 *Vehicle Code on streets near a school or near a crosswalk leading*  
6 *to a school that has a likely presence of schoolchildren or younger*  
7 *pedestrians. School zones generally have a reduced speed limit*  
8 *during certain hours in order to protect children and younger*  
9 *pedestrians.*

10    *(b) Safety in school zones is critical to the safety of young*  
11 *children, and it is the intent of the Legislature to vigilantly enforce*  
12 *speed limits applicable in school zones to protect this vulnerable*  
13 *population. Traffic speed enforcement is critical to law enforcement*  
14 *agencies' efforts to reduce factors that contribute to traffic*  
15 *collisions and collisions involving pedestrians.*

16    *(c) Law enforcement and local agencies employ a variety of*  
17 *methods to reduce speeding, including, but not limited to,*  
18 *engineering, education, and enforcement. Additional tools,*  
19 *including the use of automated enforcement systems, are available*  
20 *to assist law enforcement in addressing excessive speeding and*  
21 *speed-related accidents. Automated speed enforcement offers a*  
22 *high rate of detection, and, in conjunction with education,*  
23 *engineering, and law enforcement measures, it can significantly*  
24 *improve traffic safety.*

25    *(d) Several automated enforcement programs implemented in*  
26 *other cities and states have proven successful in reducing speeding*  
27 *and addressing traffic safety concerns. These programs have also*  
28 *given policymakers the opportunity to assess which programs have*  
29 *operated appropriately and successfully. The automated speed*  
30 *enforcement programs that this act authorizes are limited to school*  
31 *zones.*

32    *SEC. 2. Section 21455.6 of the Vehicle Code is amended to*  
33 *read:*

34    21455.6. (a) A city council or county board of supervisors  
35 shall conduct a public hearing on the proposed use of an automated  
36 traffic enforcement system authorized under Section 21455.5 prior  
37 to authorizing the city or county to enter into a contract for the use  
38 of the system.

1 (b) (1) The activities listed in subdivision (c) of Section 21455.5  
2 that relate to the operation of an automated *traffic* enforcement  
3 system may be contracted out by the city or county, except that  
4 the activities listed in paragraph (1) of, and subparagraphs (A),  
5 (D), (E), or (F) of paragraph (2) of, subdivision (c) of Section  
6 21455.5 may not be contracted out to the manufacturer or supplier  
7 of the automated *traffic* enforcement system.

8 (2) Paragraph (1) does not apply to a contract that was entered  
9 into by a city or county and a manufacturer or supplier of  
10 automated *traffic* enforcement equipment before January 1, 2004,  
11 unless that contract is renewed, extended, or amended on or after  
12 January 1, 2004.

13 (c) ~~The~~ *Except as authorized pursuant to Section 22368, the*  
14 *authorization in Section 21455.5 to use automated traffic*  
15 *enforcement systems does not authorize the use of photo radar for*  
16 *speed enforcement purposes by any jurisdiction.*

17 *SEC. 3. Section 22368 is added to the Vehicle Code, to read:*

18 *22368. (a) As used in this section, “automated speed*  
19 *enforcement system” or “ASE system” means a fixed or a mobile*  
20 *photo enforcement system operated by a law enforcement agency*  
21 *that utilizes automated equipment to detect a violation of speeding*  
22 *laws and is designed to obtain a clear photograph of a vehicle’s*  
23 *license plate.*

24 *(b) A local authority may establish a program utilizing an ASE*  
25 *system for speed enforcement in school zones, provided the system*  
26 *satisfies the following requirements:*

27 *(1) Identifies clearly the presence of the fixed or mobile ASE*  
28 *system by signs that are visible to traffic entering the roadway in*  
29 *the direction in which the ASE system is utilized.*

30 *(2) For mobile systems, identifies, with distinctive markings,*  
31 *the vehicle containing the mobile automated speed enforcement*  
32 *equipment.*

33 *(3) Provides notice to drivers that a photographic record may*  
34 *be taken when the driver passes the vehicle containing the mobile*  
35 *ASE system.*

36 *(c) Prior to enforcing speed and traffic laws utilizing an ASE*  
37 *system, a local authority shall do both of the following:*

38 *(1) Make a public announcement about the system, that includes*  
39 *public information regarding the hazards of excessive speed in*

1 school zones, at least 30 days following the installation of the signs  
2 placed pursuant to paragraph (1) of subdivision (b).  
3 (2) Issue only warning notices for the first 30 days of  
4 enforcement under the program.  
5 (d) A local authority with the oversight of a local law  
6 enforcement agency may operate an ASE system pursuant to this  
7 section. As used in this subdivision, “operate” includes all of the  
8 following activities:  
9 (1) Develop uniform guidelines for all of the following:  
10 (A) The selection of school zones where the system will be  
11 utilized.  
12 (B) The screening and issuing of citations.  
13 (C) The processing and storage of confidential information.  
14 (D) The establishment of procedures to ensure compliance with  
15 the guidelines.  
16 (2) Perform administrative and day-to-day functions, including,  
17 but not limited to, all of the following:  
18 (A) Certify that the equipment is properly installed and  
19 calibrated and is operating properly so that, at a minimum, the  
20 radar or other electronic device used to measure the speed of the  
21 accused meets or exceeds the minimum operational standards and  
22 has been calibrated within three years prior to the date of the  
23 alleged violation by an independent certified repair and testing  
24 or calibration facility.  
25 (B) Ensure that the equipment is regularly inspected.  
26 (C) Regularly inspect and maintain warning signs placed  
27 pursuant to paragraph (1) of subdivision (b).  
28 (D) Maintain controls necessary to ensure that only those  
29 citations that have been reviewed and approved by law enforcement  
30 are issued.  
31 (E) Citations issued pursuant to this section shall include a  
32 clear photo of the license plate of the vehicle and a description of  
33 the alleged violation, including the time when the alleged violation  
34 occurred. A separate document that contains both a brief, basic  
35 explanation of California speed laws, including references, and  
36 an explanation that the driver has a right to appeal the violation  
37 shall accompany the citation.  
38 (e) (1) Notwithstanding Section 6253 of the Government Code,  
39 or any other law, photographic records made by an ASE system  
40 shall be confidential, and shall be made available only to

1 *governmental agencies and law enforcement agencies and only*  
2 *for the purposes of enforcing the requirements of this section.*

3 (2) *Confidential information obtained from the Department of*  
4 *Motor Vehicles for the administration or enforcement of this*  
5 *section shall be held confidential and shall not be used for any*  
6 *other purpose.*

7 (3) *Except for court records described in Section 68152 of the*  
8 *Government Code, the confidential records and information*  
9 *described in paragraphs (1) and (2) may be retained for up to six*  
10 *months from the date the information was first obtained, or until*  
11 *final disposition of the citation, whichever date is later. As soon*  
12 *as feasible, after that time, the information shall be destroyed in*  
13 *a manner that will preserve the confidentiality of the person*  
14 *included in the record or information.*

15 (f) *The registered owner or an individual identified by the*  
16 *registered owner as the driver of the vehicle at the time of the*  
17 *alleged violation shall be permitted to review the photographic*  
18 *evidence establishing the alleged violation.*

19 (g) *A contract between a local authority and a manufacturer*  
20 *or supplier of photo enforcement equipment shall allow the local*  
21 *authority to purchase or lease materials and equipment and*  
22 *contract for processing services from a manufacturer or supplier*  
23 *based on either or both the services rendered or on a transactional*  
24 *basis, but only the local authority shall control enforcement*  
25 *activities and only designated peace officers of the local authority*  
26 *may authorize citations for issuance.*

27 *SEC. 4. Section 40518 of the Vehicle Code is amended to read:*

28 40518. (a) *Whenever a written notice to appear has been issued*  
29 *by a peace officer or by a qualified employee of a law enforcement*  
30 *agency on a form approved by the Judicial Council for an alleged*  
31 *violation of Section 22451, or, based on an alleged violation of*  
32 *Section 21453, 21455, or 22101 recorded by an automated traffic*  
33 *enforcement system pursuant to Section 21455.5 or 22451, or,*  
34 *based on an alleged violation of subparagraph (B) of paragraph*  
35 *(2) of subdivision (a) of Section 22352 recorded by an automated*  
36 *speed enforcement system pursuant to Section 22368, and delivered*  
37 *by mail within 15 days of the alleged violation to the current*  
38 *address of the registered owner of the vehicle on file with the*  
39 *department, with a certificate of mailing obtained as evidence of*  
40 *service, an exact and legible duplicate copy of the notice when*

1 filed with the magistrate shall constitute a complaint to which the  
2 defendant may enter a plea. Preparation and delivery of a notice  
3 to appear pursuant to this section is not an arrest.

4 (b) A notice to appear shall contain the name and address of the  
5 person, the license plate number of the person's vehicle, the  
6 violation charged, including a description of the offense, and the  
7 time and place when, and where, the person may appear in court  
8 or before a person authorized to receive a deposit of bail. The time  
9 specified shall be at least 10 days after the notice to appear is  
10 delivered.

11 *SEC. 5. Section 40520 of the Vehicle Code is amended to read:*

12 40520. (a) A notice to appear issued pursuant to Section 40518  
13 for an alleged violation recorded by an automatic traffic  
14 enforcement system *or an automated speed enforcement system*  
15 shall contain, or be accompanied by, an affidavit of nonliability  
16 and information as to what constitutes nonliability, information as  
17 to the effect of executing the affidavit, and instructions for  
18 returning the affidavit to the issuing agency.

19 (b) (1) If a notice to appear is sent to a car rental or leasing  
20 company, as the registered owner of the vehicle, the company may  
21 return the notice of nonliability pursuant to paragraph (2), if the  
22 violation occurred when the vehicle was either leased or rented  
23 and operated by a person other than an employee of the rental or  
24 leasing company.

25 (2) If the affidavit of nonliability is returned to the issuing  
26 agency by the registered owner within 30 days of the mailing of  
27 the notice to appear together with the proof of a written rental  
28 agreement or lease between a bona fide renting or leasing company  
29 and its customer and that agreement identifies the renter or lessee  
30 and provides the driver's license number, name, and address of  
31 the renter or lessee, the agency shall cancel the notice for the  
32 registered owner to appear and shall, instead, issue a notice to  
33 appear to the renter or lessee identified in the affidavit of  
34 nonliability.

35 (c) Nothing in this section precludes an issuing agency from  
36 establishing a procedure whereby registered owners, other than  
37 bona fide renting and leasing companies, may execute an affidavit  
38 of nonliability if the registered owner identifies the person who  
39 was the driver of the vehicle at the time of the alleged violation

1 and whereby the issuing agency issues a notice to appear to that  
2 person.

3 ~~SECTION 1. Section 22456 of the Vehicle Code is amended~~  
4 ~~to read:~~

5 ~~22456. (a) This section shall be known and may be cited as~~  
6 ~~the Destiny Nicole Stout Memorial Act.~~

7 ~~(b) The Legislature finds and declares that motor vehicles~~  
8 ~~engaged in vending ice cream and similar food items in residential~~  
9 ~~neighborhoods can increase the danger to children and it is~~  
10 ~~necessary that these vehicles are clearly seen and noticed by~~  
11 ~~motorists and pedestrians to protect public safety.~~

12 ~~(c) As used in this section, the term “ice cream truck” means a~~  
13 ~~motor vehicle engaged in the curbside vending or sale of frozen~~  
14 ~~or refrigerated desserts, confections, or novelties commonly known~~  
15 ~~as ice cream, or prepackaged candies, prepackaged snack foods,~~  
16 ~~or soft drinks, primarily intended for the sale to children under 12~~  
17 ~~years of age.~~

18 ~~(d) An ice cream truck shall be equipped at all times, while~~  
19 ~~engaged in vending in a residential area, with signs mounted on~~  
20 ~~both the front and the rear and clearly legible from a distance of~~  
21 ~~100 feet under daylight conditions, incorporating the words~~  
22 ~~“WARNING” and “CHILDREN CROSSING.” Each sign shall~~  
23 ~~be at least 12 inches high by 48 inches wide, with letters of a dark~~  
24 ~~color and at least four inches in height, a one-inch wide solid~~  
25 ~~border, and a sharply contrasting background.~~

26 ~~(e) A person shall not vend from an ice cream truck that is~~  
27 ~~stopped, parked, or standing on a public street, alley, or highway~~  
28 ~~under any of the following conditions:~~

29 ~~(1) On a street, alley, or highway with a posted speed limit~~  
30 ~~greater than 25 miles per hour.~~

31 ~~(2) If the street, alley, or highway is within 100 feet of an~~  
32 ~~intersection with an opposing highway that has a posted speed~~  
33 ~~limit greater than 25 miles per hour.~~

34 ~~(3) If the vendor does not have an unobstructed view for 200~~  
35 ~~feet in both directions along the highway and of traffic on the~~  
36 ~~highway.~~

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