

AMENDED IN SENATE MAY 25, 2010

AMENDED IN SENATE MAY 11, 2010

AMENDED IN SENATE MARCH 23, 2010

SENATE BILL

No. 1362

**Introduced by Senator Simitian
(Coauthors: Senators Ashburn and Huff)**

February 19, 2010

An act to amend Sections 21455.5 and 40518 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 1362, as amended, Simitian. Vehicles: automated traffic enforcement systems.

(1) Existing law authorizes the limit line, intersection, or other places where a driver is required to stop to be equipped with an automated enforcement system, as defined, if the system meets certain requirements. Existing law authorizes a governmental agency to contract out the operation of the system under certain circumstances, except for specified activities, that include, among other things, establishing guidelines for selection of location. A violation of the Vehicle Code is a crime.

This bill would require that those requirements include identifying the system by signs posted at each intersection where a system is operating and that the guidelines be based solely on safety and be made available to the public, including posting the guidelines on the governmental agency's Internet Web site, if applicable. The bill would require, prior to installing an automated traffic enforcement system, the governmental agency, for a minimum period of 6 months, to collect

traffic collision data for the type of violation to be photographed and would also require at each location where a system is to be installed that the traffic collision data demonstrate a significant need for the infraction upon which the citations will be based, *except as specified*. The bill would authorize a governmental agency to use an automated traffic enforcement system only if the data indicate that there is a significant number of collisions that occur as a result of the type of violation the governmental agency seeks to use the automated system to enforce.

The bill would prohibit an employee, agent, or representative of the governmental agency or of a law enforcement agency from contacting the registered owner of a vehicle prior to issuing a notice to appear either directly or indirectly in an effort to determine the identity of an alleged automated traffic enforcement system violator without making the registered owner aware, in a clear and prominent fashion, that the registered owner is not required to provide that information and that failure to provide that information shall not result in any adverse action.

The bill would make any citation issued by a governmental agency null and void if the governmental agency violates or engages in a contract that violates specified activities. The bill would also require the dismissal of any citation issued by a law enforcement agency if the court finds that the governmental agency has failed to operate the automated traffic enforcement system in compliance with specified provisions of law applicable to automated traffic enforcement. If a court finds that the governmental agency has failed to operate the system in compliance with applicable provisions of law, a law enforcement agency would be prohibited from issuing any citations until the governmental agency demonstrates to the satisfaction of the court that it is in full compliance with all of the requirements applicable to automated traffic enforcement.

The bill would prohibit a governmental agency that operates an automated traffic enforcement system from considering revenue generation, beyond recovering its actual costs of operating the system, as a factor when considering whether or not to operate a system within its local jurisdiction. The bill would require the manufacturer or supplier that operates an automated traffic enforcement system, in cooperation with the governmental agency, to submit an annual report to the Judicial Council that includes specified information.

(2) Existing law provides special written, mailed notice to appear procedures in connection with certain alleged violations recorded by

an automated traffic enforcement system and provides that whenever a written notice to appear has been issued by a peace officer or by a qualified employee of a law enforcement agency on a form approved by the Judicial Council for an alleged traffic violation recorded by an automated traffic enforcement system, and delivered by mail within 15 days of the alleged violation to the current address of the registered owner of the vehicle on file with the Department of Motor Vehicles, with a certificate of mailing obtained as evidence of service, an exact and legible duplicate copy of the notice when filed with the magistrate constitutes a complaint to which the defendant may enter a plea.

This bill would delete “qualified employee of a law enforcement agency” from these provisions and would expand the information that must be included on a notice to appear. The bill would authorize the mailing of a specified courtesy notice or any other notice other than a notice to appear by the issuing agency to the registered owner or the alleged violator prior to issuing a notice to appear that is required to contain specified information. The bill would prohibit a manufacturer or supplier of an automated traffic enforcement system or the governmental agency operating the system from altering the notice to appear or any other form approved by the Judicial Council. If a form is found to have been altered, the bill would require that the citation based on the altered form be dismissed.

(3) Because it is unlawful and constitutes an infraction for any person to violate, or fail to comply with any provision of the Vehicle Code, this bill would impose a state-mandated local program.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

- 1 SECTION 1. Section 21455.5 of the Vehicle Code is amended
- 2 to read:
- 3 21455.5. (a) The limit line, the intersection, or a place
- 4 designated in Section 21455, where a driver is required to stop,
- 5 may be equipped with an automated traffic enforcement system if

1 the governmental agency utilizing the system meets all of the
2 following requirements:

3 (1) Identifies the system by signs posted at each intersection
4 where a system is operating that clearly indicate the system's
5 presence and are visible to traffic approaching from all directions.

6 (2) If it locates the system at an intersection, and ensures that
7 the system meets the criteria specified in Section 21455.7.

8 (b) Prior to issuing citations under this section, a local
9 jurisdiction utilizing an automated traffic enforcement system shall
10 commence a program to issue only warning notices for 30 days.
11 The local jurisdiction shall also make a public announcement of
12 the automated traffic enforcement system at least 30 days prior to
13 the commencement of the enforcement program.

14 (c) Only a governmental agency, in cooperation with a law
15 enforcement agency, may operate an automated traffic enforcement
16 system. A governmental agency that operates an automated traffic
17 enforcement system shall do all of the following:

18 (1) Develop uniform guidelines for screening and issuing
19 violations and for the processing and storage of confidential
20 information, and establish procedures to ensure compliance with
21 those guidelines.

22 (2) Perform administrative functions and day-to-day functions,
23 including, but not limited to, all of the following:

24 (A) Establishing guidelines for selection of location based solely
25 on safety. The guidelines shall be made available to the public,
26 including posting the guidelines on the governmental agency's
27 Internet Web site, if applicable. Prior to installing an automated
28 traffic enforcement system, the governmental agency shall, for a
29 minimum period of six months, collect traffic collision data for
30 the type of violation to be photographed. At each location where
31 a system is to be installed, the traffic collision data shall
32 demonstrate a significant need for the infraction upon which the
33 citation will be based. A governmental agency may use an
34 automated traffic enforcement system to provide evidence of a
35 violation involving a driver turning right, turning left, or proceeding
36 straight through an intersection during a red light only if the data
37 indicate that there is a significant number of collisions that occur
38 as a result of the type of violation the governmental agency seeks
39 to use the automated system to enforce.

40 (B) Ensuring that the equipment is regularly inspected.

1 (C) Certifying that the equipment is properly installed and
2 calibrated, and is operating properly.

3 (D) Regularly inspecting and maintaining warning signs placed
4 under paragraph (1) of subdivision (a).

5 (E) Overseeing the establishment or change of signal phases
6 and the timing thereof.

7 (F) Maintaining controls necessary to ensure that only those
8 citations that have been reviewed and approved by law enforcement
9 are delivered to actual violators. An employee, agent, or
10 representative of the governmental agency or of the law
11 enforcement agency shall not contact the registered owner of a
12 vehicle prior to issuing a notice to appear either directly or
13 indirectly in an effort to determine the identity of an alleged
14 automated traffic enforcement system violator without making the
15 registered owner aware, in a clear and prominent fashion, that the
16 registered owner is not required to provide that information and
17 that failure to provide that information shall not result in any
18 adverse action.

19 *(3) The guidelines adopted pursuant to subparagraph (A) of*
20 *paragraph (2) and the requirements for data collection regarding*
21 *the installation of an automated traffic enforcement system shall*
22 *not apply to automated traffic enforcement systems installed prior*
23 *to January 1, 2011.*

24 (d) (1) The activities listed in subdivision (c) that relate to the
25 operation of the system may be contracted out by the governmental
26 agency, if it maintains overall control and supervision of the
27 system. However, the activities listed in paragraph (1) of, and
28 subparagraphs (A), (D), (E), and (F) of paragraph (2) of,
29 subdivision (c) may not be contracted out to the manufacturer or
30 supplier of the automated traffic enforcement system.

31 (2) Any citation issued by a governmental agency is null and
32 void if it violates or engages in a contract that violates any of the
33 activities described in paragraph (1) of, or subparagraph (A), (D),
34 (E), or (F) of paragraph (2) of, subdivision (c).

35 (3) Any citation issued by a law enforcement agency shall be
36 dismissed if the court finds that the governmental agency has failed
37 to operate the automated traffic enforcement system in compliance
38 with the requirements of this section or any other law applicable
39 to automated traffic enforcement.

1 (4) If a court finds that the governmental agency has failed to
2 operate the system in compliance with this section or any other
3 law applicable to automated traffic enforcement, a law enforcement
4 agency shall not issue any citations until the governmental agency
5 demonstrates to the satisfaction of the court that it is in full
6 compliance with the requirements of this section or any other law
7 applicable to automated traffic enforcement.

8 (e) (1) Notwithstanding Section 6253 of the Government Code,
9 or any other provision of law, photographic records made by an
10 automated traffic enforcement system shall be confidential, and
11 shall be made available only to governmental agencies and law
12 enforcement agencies and only for the purposes of this article.

13 (2) Confidential information obtained from the Department of
14 Motor Vehicles for the administration or enforcement of this article
15 shall be held confidential, and may not be used for any other
16 purpose.

17 (3) Except for court records described in Section 68152 of the
18 Government Code, the confidential records and information
19 described in paragraphs (1) and (2) may be retained for up to six
20 months from the date the information was first obtained, or until
21 final disposition of the citation, whichever date is later, after which
22 time the information shall be destroyed in a manner that will
23 preserve the confidentiality of any person included in the record
24 or information.

25 (f) Notwithstanding subdivision (d), the registered owner or any
26 individual identified by the registered owner as the driver of the
27 vehicle at the time of the alleged violation shall be permitted to
28 review the photographic evidence of the alleged violation.

29 (g) (1) A contract between a governmental agency and a
30 manufacturer or supplier of automated traffic enforcement
31 equipment may not include provision for the payment or
32 compensation to the manufacturer or supplier based on the number
33 of citations generated, or as a percentage of the revenue generated,
34 as a result of the use of the equipment authorized under this section.

35 (2) Paragraph (1) does not apply to a contract that was entered
36 into by a governmental agency and a manufacturer or supplier of
37 automated traffic enforcement equipment before January 1, 2004,
38 unless that contract is renewed, extended, or amended on or after
39 January 1, 2004.

1 (3) A governmental agency that operates an automated traffic
2 enforcement system shall not consider revenue generation, beyond
3 recovering its actual costs of operating the system, as a factor when
4 considering whether or not to operate a system within its local
5 jurisdiction.

6 (h) A manufacturer or supplier that operates an automated traffic
7 enforcement system pursuant to this section shall, in cooperation
8 with the governmental agency, submit an annual report to the
9 Judicial Council that includes, but is not limited to, all of the
10 following information:

11 (1) The number of alleged violations captured by the systems
12 they operate.

13 (2) The number of citations issued by a law enforcement agency
14 based on information collected from the automated traffic
15 enforcement system.

16 (3) The number of citations issued for each type of violation.

17 (4) The number and percentage of citations that are contested.

18 (5) The number and percentage of citations that are dismissed.

19 (6) The number of traffic collisions at each intersection that
20 have occurred prior to, and after the installation of, the automated
21 traffic enforcement system.

22 SEC. 2. Section 40518 of the Vehicle Code is amended to read:

23 40518. (a) Whenever a written notice to appear has been issued
24 by a peace officer on a form approved by the Judicial Council for
25 an alleged violation of Section 22451, or, based on an alleged
26 violation of Section 21453, 21455, or 22101 recorded by an
27 automated traffic enforcement system pursuant to Section 21455.5
28 or 22451, and delivered by mail within 15 days of the alleged
29 violation to the current address of the registered owner of the
30 vehicle on file with the department, with a certificate of mailing
31 obtained as evidence of service, an exact and legible duplicate
32 copy of the notice when filed with the magistrate shall constitute
33 a complaint to which the defendant may enter a plea. Preparation
34 and delivery of a notice to appear pursuant to this section is not
35 an arrest.

36 (b) (1) A notice to appear shall contain the name and address
37 of the person, the license plate number of the person's vehicle, the
38 violation charged, including a description of the offense, and the
39 time and place when, and where, the person may appear in court
40 or before a person authorized to receive a deposit of bail. The time

1 specified shall be at least 10 days after the notice to appear is
2 delivered.

3 (2) A notice to appear shall also contain all of the following
4 information:

5 (A) The methods by which the registered owner of the vehicle
6 or the alleged violator may view and discuss with the issuing
7 agency, both by telephone and in person, the evidence used to
8 substantiate the violation.

9 (B) The contact information of the issuing agency.

10 (C) Information provided by the manufacturer or supplier of
11 the automated traffic enforcement system or the governmental
12 agency with which it contracts that clearly and conspicuously
13 identifies the manufacturer or supplier of the system.

14 (c) This section and Section 40520 do not preclude the issuing
15 agency from mailing a courtesy notice or any other notice other
16 than a notice to appear to the registered owner of the vehicle or
17 the alleged violator prior to issuing a notice to appear. The courtesy
18 notice or other notice other than a notice to appear shall be on a
19 form approved by the Judicial Council and shall contain all of the
20 following information:

21 (1) The methods by which the registered owner of the vehicle
22 or the alleged violator may view and discuss with the issuing
23 agency, both by telephone and in person, the evidence used to
24 substantiate the violation.

25 (2) The contact information of the issuing agency.

26 (3) Information provided by the manufacturer or supplier of the
27 automated traffic enforcement system or the governmental agency
28 with which it contracts that clearly and conspicuously identifies
29 the manufacturer or supplier of the system.

30 (d) A manufacturer or supplier of an automated traffic
31 enforcement system or the governmental agency operating the
32 system shall not alter the notice to appear or any other form
33 approved by the Judicial Council. If a form is found to have been
34 altered, the citation based on the altered form shall be dismissed.

35 SEC. 3. No reimbursement is required by this act pursuant to
36 Section 6 of Article XIII B of the California Constitution because
37 the only costs that may be incurred by a local agency or school
38 district will be incurred because this act creates a new crime or
39 infraction, eliminates a crime or infraction, or changes the penalty
40 for a crime or infraction, within the meaning of Section 17556 of

- 1 the Government Code, or changes the definition of a crime within
- 2 the meaning of Section 6 of Article XIII B of the California
- 3 Constitution.

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