

HOUSE No. 00917

The Commonwealth of Massachusetts

PRESENTED BY:

Kevin G. Honan, (BY REQUEST)

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 passage of the accompanying bill:

An Act to promote school zone safety.

PETITION OF:

NAME:

Kevin G. Honan

DISTRICT/ADDRESS:

17th Suffolk

HOUSE No. 00917

By Mr. Kevin G. Honan of Boston (by request), petition (accompanied by bill, House, No. 00917) of Kevin G. Honan promoting motor vehicle safety in school zones. Joint Committee on Transportation.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
□ HOUSE
□ , NO. 3638 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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 and towns
6 may, upon the acceptance of this act, employ a violation monitoring system to (1) measure speed
7 limit violations within designated school zones; and, (2) capture violations in conjunction with
8 traffic signals deployed by school busses and school vans. Further, cities and towns may

9 promulgate local measures imposing a penalty on the owner of a motor vehicle for failure by the
10 operator thereof to comply with the laws, codes, regulations, ordinances, rules and/or other forms
11 of legislation governing the traffic control signals in said cities and towns in which a violation
12 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 towns,
16 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 General Laws.

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

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

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

30 violation. Additionally, at least one of the images must clearly identify the registration plate of
31 the motor vehicle.

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

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

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

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

52 (f) A penalty imposed by a local measure may, if so provided in the local measure, be
53 increased by up to 33 1/3% if said fine remains unpaid in excess of 30 days after a notice of
54 violation has been issued consistent with the procedures established in section 20A 1/2 of chapter
55 90 of the General Laws.

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

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

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

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

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

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

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

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

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

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

112 (f) Any owner to whom a notice of violation has been issued may, within 30 days of the
113 mailing of said notice by the parking clerk, request a hearing to contest the liability alleged in
114 said notice. A hearing request shall be made either personally or through a duly authorized agent
115 by appearing before the parking clerk during regular business hours or by mailing a request in
116 writing to the parking clerk. Upon receipt of a hearing request, the parking clerk shall forthwith
117 schedule the matter before a person hereafter referred to as a hearing officer, said hearing officer

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

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

141 disputing the violation; (2) the full legal name and address of the owner of the motor vehicle; (3)
142 the full legal name and address of the operator of the motor vehicle at the time the violation
143 occurred; (4) the names and addresses of all witnesses supporting the owner's defense and the
144 specifics of their knowledge; and where applicable (5) the signed statements from witnesses.

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

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

181 (j) Photographic and other recorded evidence obtained through the use of violation
182 monitoring system deployed as a means of promoting traffic safety authorized herein within
183 cities and towns shall be destroyed within 1 year of final disposition of any recorded event. Said
184 cities shall file notice annually with the Secretary of State that said records have been destroyed
185 in accordance with this section.