

House Bill 3438

Sponsored by Representative GORSEK; Representatives DEMBROW, GOMBERG, KENY-GUYER, KOMP, LIVELY, WHISNANT, Senator MONNES ANDERSON

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Permits any city to operate photo radar in school zone while school is in session. Requires that police officer review video recording of conduct before signing citation.

A BILL FOR AN ACT

1
2 Relating to use of photo radar in school zones; amending ORS 810.438 and 810.439.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1.** ORS 810.438 is amended to read:

5 810.438. (1) The following jurisdictions may, at their own cost, operate photo radar:

6 (a) Albany.

7 (b) Beaverton.

8 (c) Bend.

9 (d) Eugene.

10 (e) Gladstone.

11 (f) Medford.

12 (g) Milwaukie.

13 (h) Oregon City.

14 (i) Portland.

15 (j) Tigard.

16 **(2) Notwithstanding subsection (1) of this section, any city may, at its own cost, operate**
17 **photo radar in a school zone between 7 a.m. and 5 p.m. on a day when school is in session.**

18 [(2)] **(3)** A photo radar system operated under **subsection (1) of this section:**

19 (a) May be used on streets in residential areas [*or school zones*].

20 (b) May be used in other areas if the governing body of the city makes a finding that speeding
21 has had a negative impact on traffic safety in those areas.

22 (c) May not be used for more than four hours per day in any one location.

23 **(4) A photo radar system operated under subsection (1) or (2) of this section:**

24 [(d)] **(a)** May not be used on controlled access highways.

25 [(e)] **(b)** May not be used unless a sign is posted announcing "Traffic Laws Photo Enforced." The
26 sign posted under this paragraph must:

27 (A) Be on the street on which the photo radar unit is being used;

28 (B) Be between 100 and 400 yards before the location of the photo radar unit;

29 (C) Be at least two feet above ground level; and

30 (D) If posted in a school zone not otherwise marked by a flashing light used as a traffic control
31 device, indicate that school is in session.

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

(c) If used in a school zone, must be capable of making a video recording of the conduct.

[(3)] **(5)** A city that operates a photo radar system under this section shall, once each biennium, conduct a process and outcome evaluation for the purposes of subsection [(4)] **(6)** of this section that includes:

- (a) The effect of the use of the photo radar system on traffic safety;
- (b) The degree of public acceptance of the use of the photo radar system; and
- (c) The process of administration of the use of the photo radar system.

[(4)] **(6)** By March 1 of each odd-numbered year:

(a) The Department of Transportation shall provide to the Legislative Assembly an executive summary of the process and outcome evaluations conducted under subsection [(3)] **(5)** of this section; and

(b) Each city that operates a photo radar system under this section shall present to the Legislative Assembly the process and outcome evaluation conducted by the city under subsection [(3)] **(5)** of this section.

SECTION 2. ORS 810.439 is amended to read:

810.439. (1) Notwithstanding any other provision of law, in the jurisdictions using photo radar:

(a) A citation for speeding **issued under ORS 810.438 (1)** may be issued on the basis of photo radar if the following conditions are met:

- (A) The photo radar equipment is operated by a uniformed police officer.
- (B) The photo radar equipment is operated out of a marked police vehicle.

(b) A citation for speeding issued under ORS 810.438 (1) or (2) may be issued on the basis of photo radar if the following conditions are met:

[(C)] **(A)** An indication of the actual speed of the vehicle is displayed within 150 feet of the location of the photo radar unit.

[(D)] **(B)** Signs indicating that speeds are enforced by photo radar are posted, so far as is practicable, on all major routes entering the jurisdiction.

[(E)] **(C)** The citation is mailed to the registered owner of the vehicle within six business days of the alleged violation.

[(F)] **(D)** The registered owner is given 30 days from the date the citation is mailed to respond to the citation.

[(G)] **(E)** The jurisdiction operating photo radar complies with the requirements described in ORS 810.438.

(c) A citation for speeding in a school zone issued under ORS 810.438 (2) may be issued on the basis of photo radar if a police officer who has reviewed the video recording of the conduct signs the citation.

[(b)] **(d)** A rebuttable presumption exists that the registered owner of the vehicle was the driver of the vehicle when the citation is issued and delivered as provided in this section.

[(c)] **(e)** A person issued a citation under this subsection may respond to the citation by submitting a certificate of innocence or a certificate of nonliability under subsection (3) of this section or may make any other response allowed by law.

(2) A citation issued on the basis of photo radar may be delivered by mail or otherwise to the registered owner of the vehicle or to the driver. The citation may be prepared on a digital medium, and the signature may be electronic in accordance with the provisions of ORS 84.001 to 84.061.

(3)(a) A registered owner of a vehicle may respond by mail to a citation issued under subsection (1) of this section by submitting a certificate of innocence within 30 days from the mailing of the

1 citation swearing or affirming that the owner was not the driver of the vehicle and by providing a
 2 photocopy of the owner's driver license. A jurisdiction that receives a certificate of innocence under
 3 this paragraph shall dismiss the citation without requiring a court appearance by the registered
 4 owner or any other information from the registered owner other than the swearing or affirmation
 5 and the photocopy. The citation may be reissued only once, only to the registered owner and only
 6 if the jurisdiction verifies that the registered owner appears to have been the driver at the time of
 7 the violation. A registered owner may not submit a certificate of innocence in response to a reissued
 8 citation.

9 (b) If a business or public agency responds to a citation issued under subsection (1) of this sec-
 10 tion by submitting a certificate of nonliability within 30 days from the mailing of the citation stating
 11 that at the time of the alleged speeding violation the vehicle was in the custody and control of an
 12 employee or was in the custody and control of a renter or lessee under the terms of a rental
 13 agreement or lease, and if the business or public agency provides the driver license number, name
 14 and address of the employee, renter or lessee, the citation shall be dismissed with respect to the
 15 business or public agency. The citation may then be issued and delivered by mail or otherwise to
 16 the employee, renter or lessee identified in the certificate of nonliability.

17 (4) If the person named as the registered owner of a vehicle in the current records of the De-
 18 partment of Transportation fails to respond to a citation issued under subsection (1) of this section,
 19 a default judgment under ORS 153.102 may be entered for failure to appear after notice has been
 20 given that the judgment will be entered.

21 (5) The penalties for and all consequences of a speeding violation initiated by the use of photo
 22 radar are the same as for a speeding violation initiated by any other means.

23 (6) A registered owner, employee, renter or lessee against whom a judgment for failure to appear
 24 is entered may move the court to relieve the owner, employee, renter or lessee from the judgment
 25 as provided in ORS 153.105 if the failure to appear was due to mistake, inadvertence, surprise or
 26 excusable neglect.

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