~~Indicates Matter Stricken~~

Indicates New Matter

AMENDED

May 26, 2011

**S. 336**

Introduced by Senator Grooms

S. Printed 5/26/11--H.

Read the first time March 31, 2011.

**A** **BILL**

TO AMEND SECTION 56‑7‑30 OF THE 1976 CODE, RELATING TO GENERATING UNIFORM TRAFFIC CITATIONS WITH AN ELECTRONIC DEVICE, TO REQUIRE THAT A COPY OF THE CITATION IS HANDED DIRECTLY TO THE OFFENDER BY THE LAW ENFORCEMENT OFFICER ISSUING THE TICKET; TO AMEND CHAPTER 7, TITLE 56, RELATING TO MOTOR VEHICLE TRAFFIC TICKETS, BY ADDING SECTION 56‑7‑35 TO PROVIDE THAT A LAW ENFORCEMENT OFFICER MUST STOP AN OWNER OR OPERATOR OF A VEHICLE TO ISSUE A TRAFFIC TICKET, TO PROVIDE THAT THE TRAFFIC TICKET MUST BE HANDED DIRECTLY TO THE OWNER OR OPERATOR OF THE VEHICLE, TO PROVIDE THAT A LAW ENFORCEMENT AGENCY MAY NOT MAIL OR OTHERWISE SEND A TRAFFIC TICKET TO AN OFFENDER, TO PROVIDE THAT A TRAFFIC TICKET CANNOT BE ISSUED BASED IN WHOLE OR IN PART UPON PHOTOGRAPHIC EVIDENCE REGARDLESS OF WHETHER THE CAMERA OR OTHER DEVICE CAPTURING THE IMAGE WAS ATTENDED OR UNATTENDED, AND TO PROVIDE THAT THE PROVISIONS OF THE SECTION DO NOT APPLY TO TOLL COLLECTION; TO AMEND SECTION 56‑5‑710, RELATING TO THE POWER OF LOCAL AUTHORITIES CONCERNING TRAFFIC LAWS, TO PROVIDE THAT A TRAFFIC TICKET CANNOT BE ISSUED BASED IN WHOLE OR IN PART UPON PHOTOGRAPHIC EVIDENCE REGARDLESS OF WHETHER THE CAMERA OR OTHER DEVICE CAPTURING THE IMAGE WAS ATTENDED OR UNATTENDED; TO AMEND SECTION 56‑5‑70, AS AMENDED, RELATING TO CERTAIN VEHICLE REQUIREMENTS BEING SUSPENDED DURING A STATE OF EMERGENCY, TO CLARIFY THAT UNIFORM TRAFFIC CITATIONS MAY NOT BE ISSUED IN WHOLE OR IN PART ON PHOTOGRAPHIC EVIDENCE REGARDLESS OF WHETHER THE CAMERA OR OTHER ELECTRONIC DEVICE CAPTURING THE PHOTOGRAPHIC EVIDENCE WAS ATTENDED OR UNATTENDED AT THE TIME IT CAPTURED THE PHOTOGRAPHIC EVIDENCE; AND TO DISGORGE ANY FINES COLLECTED IN VIOLATION OF SECTION 56‑5‑70.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 7, Title 56 of the 1976 Code is amended by adding:

“Section 56‑7‑35. (A)(1) A law enforcement officer who issues a uniform traffic ticket for a violation of a local ordinance or traffic laws relating to speeding must do so incident to and contemporaneous with a traffic stop.

(2) A copy of the citation must be given directly to the offender by the law enforcement officer issuing the citation at the time of the traffic stop for the offense.

(3) A law enforcement agency may not utilize the United States mail, a parcel delivery service, electronic means, or otherwise to send to the operator or owner of a motor vehicle or motorcycle, as defined in Section 56‑3‑20, a uniform traffic citation alleging a violation of a local ordinance or the traffic laws relating to speeding. This subsection does not prohibit the law enforcement agency from sending the operator or owner an additional copy of a uniform citation that was issued to the operator or owner during the traffic stop for the offense upon request of the operator or owner.

(4) A uniform traffic citation alleging the violation of a local ordinance or the traffic laws relating to speeding may not be issued based in whole or in part upon photographic evidence, whether gathered in conjunction with radar speed detection devices and whether the camera or other electronic device capturing the photographic evidence was attended or unattended at the time it captured the photographic evidence. This section does not prohibit the use of photographic or video evidence at any hearing related to the offense to corroborate the testimony of a law enforcement officer who personally observed the offense.

(B)(1) A law enforcement officer who issues a uniform traffic ticket for a violation of a local ordinance or the traffic laws relating to disregarding a traffic control device must do so incident to and contemporaneous with a traffic stop.

(2) A copy of the citation must be given directly to the offender by the law enforcement officer issuing the citation at the time of the traffic stop for the offense.

(3) A law enforcement agency may not utilize the United States mail, a parcel delivery service, electronic means, or otherwise to send to the operator or owner of a motor vehicle or motorcycle, as defined in Section 56‑3‑20, a uniform traffic citation alleging a violation of a local ordinance or the traffic laws relating to disregarding traffic control devices. This subsection does not prohibit the law enforcement agency from sending the operator or owner an additional copy of a uniform citation that was issued to the operator or owner during the traffic stop for the offense upon request of the operator or owner.

(4) A uniform traffic citation alleging the violation of a local ordinance or the traffic laws relating to disregarding traffic control devices may not be issued based in whole upon photographic evidence, whether the camera or other electronic device capturing the photographic evidence was attended or unattended at the time it captured the photographic evidence. This section does not prohibit the use of photographic or video evidence at any hearing related to the offense to corroborate the testimony of a law enforcement officer who personally observed the offense.

(C) The provisions of this section do not apply to toll collection.

(D) The provisions of this section prohibiting the use of photographic evidence, in whole or in part, whether the camera or other electronic device capturing the photographic evidence was attended or unattended, do not apply to a violation of a local ordinance or the traffic laws relating to driving under the influence of alcohol or any other drug or a combination of other drugs or substances or driving with an unlawful alcohol concentration.”

SECTION 2. Section 56‑5‑710 of the 1976 Code is amended to read:

“Section 56‑5‑710. (A) Subject to the limitations prescribed in Section 56‑5‑930, the provisions of this chapter shall not be deemed to prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power from:

(1) ~~Regulating~~ regulating the standing or parking of vehicles;

(2) ~~Regulating~~ regulating traffic by means of police officers or traffic‑control signals;

(3) ~~Regulating~~ regulating or prohibiting processions or assemblages on the highways;

(4) ~~Designating~~ designating particular highways as one‑way highways and requiring that all vehicles thereon be moved in one specific direction;

(5) ~~Regulating~~ regulating the speed of vehicles in public parks;

(6) ~~Designating~~ designating any highway as a through highway and requiring that all vehicles stop before entering or crossing it or designating any intersection as a stop intersection and requiring all vehicles to stop at one or more entrances at such intersection;

(7) ~~Restricting~~ restricting the use of highways as authorized in Sections 56‑5‑4210 and 56‑5‑4220;

(8) ~~Regulating~~ regulating the operation of bicycles and requiring the registration and licensing of them, including the requirement of a registration fee;

(9) ~~Regulating~~ regulating or prohibiting the turning of vehicles or specified types of vehicles at intersections;

(10) ~~Altering~~ altering the prima facie speed limits as authorized herein; or

(11) ~~Adopting~~ adopting such other traffic regulations as are specifically authorized by this chapter.

(B) Nothing in subsection (A) may be construed to permit a local authority to issue a uniform traffic citation for violating a local ordinance or the traffic laws relating to speeding or disregarding traffic control devices based in whole or in part upon photographic evidence whether gathered in conjunction with radar speed detection devices and whether the camera or other electronic device capturing the photographic evidence was attended or unattended at the time it captured the photographic evidence.”

SECTION 3. Section 56‑5‑70(E) of the 1976 Code, as last amended by Act 250 of 2010, is further amended to read:

“(E)(1) Citations for violating a local ordinance or the ~~for violating~~ traffic laws relating to speeding or disregarding traffic control devices based ~~solely~~ in whole or in part on photographic evidence, whether gathered in conjunction with radar speed detection devices and whether the camera or other electronic device capturing the photographic evidence was attended or unattended at the time it captured the photographic evidence, only may be issued for violations that occur while relief from regulations pursuant to 49 C.F.R. 390.23 has been granted due to an emergency. A person who receives a citation for violating traffic laws relating to speeding or disregarding traffic control devices based ~~solely~~ in whole or in part on photographic evidence must be served in person with notice of the violation within one hour of the occurrence of the violation unless a collision occurred and fault cannot be determined immediately or the party who caused the collision is not immediately accessible due to medical treatment. The provisions of this subsection do not apply to toll collection enforcement.”

SECTION 4. (A) There is established a commission to be known as the South Carolina Traffic Camera Enforcement Commission which must exercise the powers and fulfill the duties contained in this section. The commission is comprised of the following thirteen members:

(1) the Governor, ex officio, or her designee;

(2) the Chief Justice of the South Carolina Supreme Court, or her designee;

(3) the Speaker of the House of Representatives, ex officio, or his designee;

(4) the President Pro Tempore of the Senate, ex officio, or his designee;

(5) the Attorney General of South Carolina, ex officio, or his designee;

(6) the Director of the Department of Public Safety, ex officio, or his designee;

(7) the Director of the Department of Parks, Recreation and Tourism, ex officio, or his designee;

(8) the Chairman of the Senate Transportation Committee, ex officio, or his designee;

(9) the Chairman of the House Education and Public Works Committee, ex officio, or his designee;

(10) the President of South Carolina Law Enforcement Officers Association, or his designee;

(11) the President of the South Carolina Sheriff’s Association, or his designee;

(12) the President of the South Carolina Bar Association, or his designee; and

(13) the President of the South Carolina Association of Criminal Defense Lawyers, or his designee.

(B) The Governor, or her designee, shall serve as chairman of the commission.

(C) Designees serving on the commission must have substantial academic or professional experience or specialization in one or more areas of law enforcement, public safety, or civil or criminal justice. Designees serving on the commission must have been a resident of South Carolina since January 1, 2001.

(D) The commission must meet as soon as practicable after appointment to organize itself and elect officers that it considers necessary. Thereafter, the commission must meet as necessary to exercise the powers and fulfill the duties required by this section at the call of the chairman or by a majority of the members. A quorum consists of six members.

(E) The duties of the commission shall be to:

(1) conduct a comprehensive study concerning the use of traffic enforcement camera systems to detect violations of and enforce the state’s uniform traffic laws, including, but not limited to, violating speed limits and the failure to obey traffic control signals and stop signs;

(2) develop criteria for assessing the use of traffic enforcement camera systems to detect violations of and enforce the state’s uniform traffic laws, including, but not limited to, violating speed limits and the failure to obey traffic control signals and stop signs;

(3) issue a report of its findings concerning utilizing traffic enforcement camera systems to detect violations of and enforce the state’s uniform traffic laws. The report must consider and address at least the following issues:

(a) the positives and negatives of a private company’s involvement in enforcing traffic laws;

(b) assuming private companies are authorized to participate in enforcing traffic laws, the appropriate distribution of authority between law enforcement and a private company;

(c) whether there is a conflict of interest when a private company is paid a commission based on the number of traffic tickets issued through the use of its traffic enforcement camera systems and, if so, how the conflict of interest may be resolved;

(d) the public policy implications, if any, of a private company reimbursing a state or local government for the use of their law enforcement personnel in connection with the operation of the company’s traffic enforcement camera system;

(e) assuming that traffic enforcement camera systems are used to enforce uniform traffic laws*,* whether a statewide agency such as the Department of Public Safety should be solely authorized to operate the system, whether a statewide agency should operate the system in conjunction with local law enforcement authorities, or whether local law enforcement authorities be solely authorized to operate systems within their jurisdiction;

(f) the accuracy of current traffic enforcement camera systems, specifically whether vehicles violating the speed limit or failing to obey traffic control signals or stop signs, other than the vehicle photographed, trigger the photograph being taken and, if so, whether the technology can be improved to prevent that from occurring;

(g) whether it is important to have a law enforcement officer actually view the vehicle violating a speed limit in order to confirm, with his visual estimation of speed, what the radar indicates, whether an officer viewing a picture being taken of the vehicle is sufficient confirmation, or whether officer confirmation is necessary;

(h) whether traffic enforcement camera systems present a possible visual disturbance for the driver resulting from a flash when the system takes a picture;

(i) whether the use of traffic enforcement camera systems diminish the dangers to and increase the safety of law enforcement personnel;

(j) whether the use of traffic enforcement camera systems decrease the number of speed limit violations and, thereby, increase public safety;

(k) whether the use of traffic enforcement camera systems in connection with law enforcement raise any personal privacy issues;

(l) identify the criminal laws, if any, that should not be enforced by cameras;

(m) whether the information contained in photographs taken by traffic enforcement camera systems should be limited to the enforcement of traffic laws, or whether the information, including, but not limited to, license plate numbers, should also be generally available for use by law enforcement for official law enforcement purposes;

(n) whether there is a difference between using a traffic enforcement camera system to enforce traffic laws related to speed limits and traffic laws requiring obedience to traffic control signals and stop signs;

(o) assuming that traffic enforcement camera systems are used to enforce uniform traffic laws, whether they should be used on all public roads, only on certain roads, or only in certain areas, including, but not limited to, school zones, temporary work zones, and construction zones;

(p) assuming that traffic enforcement camera systems are used to enforce uniform traffic laws, whether there is a way to ensure that traffic enforcement camera systems are being used to improve road safety, and assuming that their use improves road safety, rather than maximizing government revenues resulting from violations of uniform traffic laws;

(q) the constitutionality of utilizing traffic enforcement camera systems to enforce uniform traffic laws and mailing citations to alleged violators, and, if unconstitutional, the manner in which a system may be constitutionally operated;

(r) the public policy implications, if any, raised by citations for uniform traffic law violations being mailed to the alleged violator after the event as opposed to being personally delivered contemporaneous with or within one hour of the alleged violation;

(s) whether the state’s criminal justice system currently has a sufficient number of judges and magistrates to handle the increased number of citations that would result from statewide use of traffic enforcement camera systems; and

(t) assuming that traffic enforcement camera systems are used to enforce uniform traffic laws, the manner in which the revenue raised should be allocated and the purposes for which it should be used;

(4) make recommendations, if any, for changes to existing law concerning the use of traffic enforcement camera systems to detect and enforce the state’s uniform traffic laws, including, but not limited to, violating speed limits and the failure to obey traffic control signals and stop signs. Rather than making recommendations for changes to existing law, the commission may also recommend that no changes are necessary to the existing law that prohibits the use of traffic enforcement cameras to detect traffic regulation violations. Recommendations made pursuant to this item must be contained in the report issued pursuant to item (3).

(F) On or before November 1, 2011, the commission must conclude its business and report its findings to the General Assembly, at which time the commission is dissolved. The General Assembly may extend the dates by which the commission shall submit reports required by this act.

(G) The members of the commission shall serve without compensation and are ineligible for the usual mileage, subsistence, and per diem allowed by law for members of state boards, committees, and commissions.

SECTION 5. This act takes effect upon approval by the Governor.

‑‑‑‑XX‑‑‑‑