

**SENATE . . . . . No.**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**Ms. Menard**

*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 permitting the use of traffic control signal violation monitoring system devices as a means of promoting traffic safety in the cities of the Commonwealth.

PETITION OF:

NAME:

Ms. Menard

DISTRICT/ADDRESS:

First Bristol and Plymouth

# The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT PERMITTING THE USE OF TRAFFIC CONTROL SIGNAL VIOLATION MONITORING SYSTEM DEVICES AS A MEANS OF PROMOTING TRAFFIC SAFETY IN THE CITIES OF THE COMMONWEALTH.

*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. (a) Notwithstanding the provisions of any general or special law to the contrary,  
2 any city town or political subdivision may, upon the acceptance of this act, employ a traffic  
3 control signal violation monitoring system and electronic speed monitoring system may be both  
4 mobile and fixed along any portion of any ways within its control and may promulgate local  
5 measures imposing a penalty on the owner of a motor vehicle for failure by the operator thereof  
6 to comply with the laws, codes, regulations, ordinances, rules and/or other forms of legislation  
7 governing the traffic control signals in said cities at which a traffic control signal violation  
8 monitoring system is located.

9 (a) As used in this act, the following words shall, unless the content clearly indicates  
10 otherwise, have the following meanings: "Local measure", shall mean the ordinances, rules and  
11 regulations adopted by any city town or political subdivision, whichever is applicable,  
12 establishing a schedule of fines imposed on the owner of a motor vehicle for failure by the  
13 operator thereof to comply with the laws, codes, regulations, ordinances, rules and/or other forms  
14 of legislation governing the traffic control signals in said cities at which a traffic control signal  
15 violation monitoring system is located; "Motor vehicle", shall have the meaning provided in  
16 section 1 of chapter 90 of the General Laws; "Operator", shall have the meaning provided in  
17 section 1 of chapter 90 of the General Laws; "Owner", shall have the meaning provided in  
18 section 1 of chapter 90 of the General Laws; "Traffic control signal violation monitoring  
19 system", shall mean an automated motor vehicle sensor device installed to work in conjunction  
20 with a traffic control signal which produces two or more digital photographs of each motor

21 vehicle at the time it is used or operated in a manner that is in violation of the traffic control  
22 signal at which the automated monitoring system is located. The photographs, must, at a  
23 minimum, record the rear of the motor vehicle, with at least one of the images clearly recording  
24 the motor vehicle behind the stop bar immediately prior to the violation of the traffic control  
25 signal, and at least one image recording the motor vehicle passing through the intersection in  
26 violation of the traffic control signal. Additionally, at least one of the images must clearly  
27 identify the registration plate of the motor vehicle; "Violation", shall mean the failure of an  
28 operator of a motor vehicle to comply with the laws, codes, regulations, ordinances, rules and/or  
29 other forms of legislation governing the traffic control signals or the rate of speed at which  
30 vehicle enters the intersection at which a traffic control signal violation monitoring system is  
31 located.

32 (b) No traffic control signal violation monitoring system shall be utilized in such a  
33 manner as to take a frontal view photograph of the motor vehicle that is in violation of the traffic  
34 control signal.

35 (c) A certificate, or a facsimile thereof, based upon inspection of photographs  
36 produced by a traffic control signal violation monitoring system, and sworn to or affirmed by a  
37 police officer authorized to issue citations for violations of traffic signals at the subject  
38 intersection, shall be *prima facie* evidence of the facts contained therein. No photographs taken  
39 in conformance with this act shall be discoverable in any judicial or administrative proceeding  
40 other than a proceeding held pursuant to this act; and no photograph taken in conformance with  
41 this act shall be admissible in any judicial or administrative proceeding other than in a  
42 proceeding to adjudicate liability for such violation of this act.

43 (d) For each violation pursuant to this act, the owner or owners of a vehicle shall be  
44 liable for the penalty imposed by a local measure; provided, however, that no owner of a vehicle  
45 shall be liable for a penalty imposed pursuant to this act where the operator of such vehicle has  
46 been convicted of the underlying violation pursuant to a citation issued in accordance with  
47 section 2 of chapter 90C of the General Laws, and provided, further, that the maximum penalty  
48 that may be imposed pursuant this act shall be One Hundred and Twenty-five Dollars (\$125.00)  
49 for each violation.

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

54 (f) A penalty imposed by a local measure for a violation pursuant to this act shall not  
55 be deemed a criminal conviction and shall not be made part of the operating record of the person  
56 upon whom such liability is imposed, nor shall such imposition of a penalty be subject to merit

57 rating for insurance purposes and no surcharge points shall be imposed in the provision of motor  
58 vehicle insurance coverage.

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

65 (b) Other than for purposes of enforcement of a violation of this act or for purposes of an  
66 owner defending a violation of this act, no private entity or individual may obtain photographs or  
67 records taken pursuant to this act.

68 SECTION 3. (a) The parking clerk designated or appointed by the city shall supervise and  
69 coordinate the administration of violations issued pursuant to Section 1. The parking clerk shall  
70 have the authority to hire and designate such personnel as may be necessary or contract for such  
71 services to implement the provisions of this section.

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

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

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

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

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

110 (f) Any owner to whom a notice of violation has been issued may, within 30 days of the  
111 mailing of said notice by the parking clerk, request a hearing to contest the liability alleged in  
112 said notice. A hearing request shall be made either personally, via the internet or through a duly  
113 authorized agent by appearing before the parking clerk during regular business hours or by  
114 mailing a request in writing to the parking clerk. Upon receipt of a hearing request, the parking  
115 clerk shall forthwith schedule the matter before a person hereafter referred to as a hearing officer,  
116 said hearing officer to be the parking clerk of the city wherein the violation occurred or such  
117 other person or persons as the parking clerk may designate. Written notice of the date, time and  
118 place of said hearing shall be sent by first class mail to each registered owner. Said hearing shall  
119 be informal, the rules of evidence shall not apply, and the decision of the hearing officer shall be  
120 final subject to judicial review as outlined by section 14 of Chapter 30A of the General Laws.  
121 Within twenty-one days of the hearing, the parking clerk or the hearing officer should send by  
122 first class mail to the registered owner or owners the decision of the hearing officer, including  
123 the reasons for the outcome.

124 (g) Any owner to whom a notice of violation has been issued shall not be liable for a  
125 violation under the provisions of this act (1) if the violation was necessary to allow the passage  
126 of an emergency vehicle; (2) if the violation was necessary in order to protect the property or  
127 person of another; (3) if the violation was incurred while participating in a funeral procession;  
128 (4) if the violation was incurred during a period of time in which the motor vehicle was reported  
129 to the police department of any state, city or town as having been stolen and had not been  
130 recovered prior to the time the violation occurred; (5) if the operator of the motor vehicle was

131 operating the motor vehicle under a rental or lease agreement and the owner of the motor vehicle  
132 is a rental or leasing company and has complied with the provisions of section 20E of chapter 90  
133 of the General Laws; (6) if the operator of the motor vehicle was convicted of the underlying  
134 violation pursuant to a citation issued in accordance with section 2 of chapter 90C of the General  
135 Laws; or (7) if the violation was necessary to comply with any other law or regulation governing  
136 the operation of a motor vehicle at the intersection. An owner disputing a violation under this  
137 section shall, within 30 days, provide the parking clerk with a signed affidavit in a form  
138 approved by the parking clerk, as provided for in subsection (d), stating (1) the reason for  
139 disputing the violation; (2) the full legal name and address of the owner of the motor vehicle; (3)  
140 the full legal name and address of the operator of the motor vehicle at the time the violation  
141 occurred; (4) the names and addresses of all witnesses supporting the owner's defense and the  
142 specifics of their knowledge; and where applicable (5) the signed statements from witnesses.

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

162 (i) Upon the accumulation by an owner of two or more outstanding notices under  
163 this act and/or sections 20A and 20A 1/2 of chapter 90 of the General Laws on account of  
164 violations of any statute, ordinance, order, rule or regulation relating to the operation, control or  
165 parking of motor vehicles in a particular city, notwithstanding any notification to the registrar,  
166 the parking clerk of such city may notify the chief of police or director of traffic and parking of  
167 such city that the vehicle bearing the registration to which said notices have been issued shall be  
168 removed and stored or otherwise immobilized by a mechanical device at the expense of the  
169 registered owner of such vehicle until such time as all fines, taxes and penalties owed by such

170 owner pursuant to either this section, or arising out of the parking or usage of such owner's motor  
171 vehicle have been disposed of in accordance with law. No vehicle shall be removed, stored, or  
172 otherwise immobilized until and unless the owner of such motor vehicle shall have received 10  
173 days notification by mail that such motor vehicle may be removed, stored, or immobilized  
174 without further notification. It shall be sufficient for the parking clerk to mail, postage prepaid,  
175 said notification to the last known address of the registered owner. It shall be sufficient for the  
176 parking clerk, in the case of a motor vehicle registered in another state or country, to mail  
177 notification to the official in such state or country having charge of the registration of such motor  
178 vehicle.

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

184 (k) The administrator of the traffic control signal monitoring system within any city  
185 town or political subdivision accepting this act shall submit a report regarding the use and  
186 operation of the traffic control signal monitoring system. The Massachusetts state Department of  
187 Transportation will, within 90 days of passage of this act, promulgate rules and regulations for  
188 the orderly operation and standardization of this act. Rules and regulations not promulgated  
189 within 90 days will then require any city town or political subdivision accepting this act to  
190 promulgate rules and regulations within its jurisdiction.