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## MOTOR VEHICLES AND TRAFFIC Use of Radar Speed Detecting Devices: Change the Definition of Speed Detection Device; Change Certain Provisions Related to Permit Requirements and Applications; Provide for the Suspension or Revocation of Permits for Certain Employing Agencies

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## MOTOR VEHICLES AND TRAFFIC

### *Use of Radar Speed Detection Devices: Change the Definition of Speed Detection Device; Change Certain Provisions Related to Permit Requirements and Applications; Provide for the Suspension or Revocation of Permits for Certain Employing Agencies*

CODE SECTIONS: O.C.G.A. §§ 35-8-2, -12, 40-14-1 to -3, -5 to -6, -10 to -14 (amended)<sup>1</sup>

BILL NUMBER: HB 1256

ACT NUMBER: 1011

GEORGIA LAWS: 1996 Ga. Laws 1281

SUMMARY: The Act updates the definition of a speed detection device by including in the definition devices measuring speed or velocity based upon either radar principles or laser technology. The Act also provides for notice to the Commissioner of Public Safety of revocation or suspension of any certificate to operate speed detection devices, followed by revocation or suspension for the entire employing agency. The Act amends requirements for certification to operate or to continue to operate speed detection devices.

EFFECTIVE DATE: July 1, 1996

#### *History*

Representative Mary Jamieson received word of concerns from her constituency that law enforcement agencies were using speed detection devices in "speed trapping situations."<sup>2</sup> In response to these concerns,

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1. The Act affects two separate chapters in title 40 of the Code and amends chapter 8 of title 35. This *Peach Sheet*<sup>TM</sup> addresses amendments to chapter 8 of title 35 and chapter 14 of title 40. A separate *Peach Sheet* within this issue discusses the changes to chapter 6 of title 40, creating the new offenses of homicide and serious injury resulting from tampering with traffic-control devices. See *Legislative Review*, 13 GA. ST. U. L. REV. 241 (1996).

2. Telephone Interview with Rep. Mary Jamieson, House District No. 22 (Apr. 29, 1996) [hereinafter Jamieson Interview]. A speed trap is a "stretch of road watched by concealed officers or devices (as radar) to catch motorists who exceed a speed limit." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2190 (1981). Representative Jamieson believed from the information she received that the use of radar equipment was being abused, that motorists were being unfairly ticketed, and that the complaints were not simply from motorists who were unhappy that they had been

she introduced HB 1256 to give motorists the right to view and inspect radar readings.<sup>3</sup> Although this language was later omitted, the purpose of the Act remained to monitor the operation and possible abuses of speed detection devices and to impose penalties for abuse or misuse by local law enforcement agencies.<sup>4</sup>

### *HB 1256*

As introduced, HB 1256 sought to amend Code section 40-14-5 to give persons the right to view and inspect the radar reading when an officer intends to charge a driver with speeding based on the use of a radar device.<sup>5</sup> The law previously provided only the right for a driver to "request the officer to test the device for accuracy."<sup>6</sup> The bill as introduced passed without change through the House committee.<sup>7</sup> On the House floor, an amendment was introduced by Representative Terry Coleman of the 142nd District.<sup>8</sup> The floor amendment made no changes to Code section 40-14-5, but added a subsection (b) to Code section 40-14-6.<sup>9</sup> Code section 40-14-6 mandates the posting of signs to "warn approaching motorists that speed detection devices are being employed" and states that these devices must not be used within 500 feet of a warning sign.<sup>10</sup> Subsection (b) requires that speed limit warning signs be posted to "warn approaching motorists of changes in the speed limit."<sup>11</sup> The signs must be "visible plainly from every lane of traffic . . . in any traffic conditions" and must be placed so that the view of the sign cannot be obstructed by any other vehicle on the highway.<sup>12</sup> No speed detection device may be used within 500 feet of such signs.<sup>13</sup> The floor amendment passed without challenge.<sup>14</sup>

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caught speeding. Jamieson Interview, *supra*.

3. Jamieson Interview, *supra* note 2. Representative Jamieson believed that this would motivate law enforcement officers not to abuse the use of speed detection devices and would perhaps codify what the public believed was already a lawful right. *Id.*

4. *Id.*

5. Compare HB 1256, as introduced, 1996 Ga. Gen. Assem. with 1989 Ga. Laws 586, § 1, at 588 (formerly found at O.C.G.A. § 40-14-5 (1994)).

6. 1989 Ga. Laws 586, § 1, at 588 (codified at O.C.G.A. § 40-14-5(b) (1994)).

7. Final Composite Status Sheet, Mar. 18, 1996.

8. Jamieson Interview, *supra* note 2.

9. Compare HB 1256, as introduced, 1996 Ga. Gen. Assem. with HB 1256 (HFA), 1996 Ga. Gen. Assem.

10. 1989 Ga. Laws 586, § 1, at 588 (formerly found at O.C.G.A. § 40-14-6(a) (1994)).

11. O.C.G.A. § 40-14-6(b) (Supp. 1996).

12. *Id.*

13. *Id.*

14. Final Composite Status Sheet, Mar. 18, 1996.

When HB 1256 arrived in the Senate, the Department of Public Safety viewed it as an opportunity to add amendments to additional sections of chapter 14 of title 40 and to two sections of chapter 8 of title 35, and a substitute was offered in the Senate Judiciary Committee.<sup>15</sup> The Senate committee substitute also deleted the original language of HB 1256, relating to a person's right to view and inspect a radar reading.<sup>16</sup> Representatives from law enforcement departments explained to the Senate subcommittee that it was not possible to allow the motorist to view the reading for two reasons.<sup>17</sup> First, a law enforcement officer must "lock in" a radar reading, which means the officer must track a particular vehicle to "determine without question that it was indeed that vehicle and not another car that might have been passing it" that was speeding.<sup>18</sup> The law enforcement representatives contended that it was not possible to "lock in" a reading and hold it in order to keep it available to the motorist to inspect.<sup>19</sup> Second, the representatives expressed concern that motorists may be struck while going to the officer's car to view the radar.<sup>20</sup> Although Representative Jamieson believed that the law enforcement officers' concerns could be addressed and the individual's right to view and inspect a radar reading could be retained, she agreed to strike the "right to view and inspect" language.<sup>21</sup> Finally, the Senate committee substitute included amendments addressing penalties to local law enforcement departments for abusing the use of any speed detection device.<sup>22</sup> The Senate committee substitute passed the Senate on March 15, 1996.<sup>23</sup>

Next, a conference committee considered HB 1256 and offered another substitute.<sup>24</sup> The previously proposed amendments to titles 35 and 40 remained intact, but a new Code section, 40-6-396, was added.<sup>25</sup> The final version of HB 1256 is identical to the conference

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15. Jamieson Interview, *supra* note 2; Final Composite Status Sheet, Mar. 18, 1996. These amendments are examined in detail in the remainder of this article.

16. Jamieson Interview, *supra* note 2. Compare HB 1256 (HFA), 1996 Ga. Gen. Assem. with HB 1256 (SCS), 1996 Ga. Gen. Assem.

17. Jamieson Interview, *supra* note 2.

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. Final Composite Status Sheet, Mar. 18, 1996.

24. HB 1256 (CCS), 1996 Ga. Gen. Assem.

25. O.C.G.A. § 40-6-396 (Supp. 1996). This *Peach Sheet* does not address the new Code section. A separate *Peach Sheet* within this issue discusses the history and language of O.C.G.A. § 40-6-396. See *Legislative Review*, *supra* note 1.

committee version and was sent to Governor Zell Miller on April 2, 1996.<sup>26</sup>

### *Definitions*

The Act updates the Code language relating to speed detection devices in two separate titles of the Code. The changes to both Code sections 35-8-2(11) and 40-14-1(4) include the addition of devices using laser technology to the definition of a "speed detection device."<sup>27</sup> The law previously limited the definition of a speed detection device to "Vascar," "radar," and devices operating under similar principles.<sup>28</sup>

The Act further strikes the word "radar" from the phrase "radar speed detection devices" in Code sections 40-14-10 to -14 relating to restrictions on the use of the radar devices.<sup>29</sup> With the expanded definition of speed detection devices to include laser equipment, the amended Code sections impose those restrictions on laser devices, as well as radar devices.<sup>30</sup>

Code section 40-14-5, however, adds the word "radar" to create the phrase "radar device."<sup>31</sup> Code section 40-14-5 relates solely to the testing of radar devices, not to the testing of any speed detection device.<sup>32</sup> The addition of the word "radar" clarifies that Code section 40-14-5 does not relate to the testing of all speed detection devices as defined elsewhere in the Code.

### *Withdrawal or Suspension of the Right to Operate Speed Detection Devices*

Prior to the enactment of HB 1256, Code section 35-8-12 required that a person be certified to operate a speed detection device.<sup>33</sup> In order to avoid having certification withdrawn or suspended, a person must be initially certified, pass refresher courses and otherwise operate a speed detection device according to the law.<sup>34</sup> These requirements remain, but the Act amends Code section 35-8-12 by adding two subsections relating to the effect of withdrawal or suspension.<sup>35</sup>

26. Final Composite Status Sheet, Mar. 18, 1996.

27. O.C.G.A. §§ 35-8-2(11), 40-14-1(4) (Supp. 1996).

28. 1980 Ga. Laws 979, § 1, at 979-80 (formerly found at O.C.G.A. § 35-8-2(11) (1993)); 1989 Ga. Laws 586, § 1, at 587 (formerly found at O.C.G.A. § 40-14-1(4) (1994)).

29. O.C.G.A. §§ 40-14-10 to -14 (Supp. 1996).

30. *Id.*; Jamieson Interview, *supra* note 2.

31. O.C.G.A. § 40-14-5 (Supp. 1996).

32. *Id.*

33. 1980 Ga. Laws 979, § 3, at 980 (formerly found at O.C.G.A. § 35-8-12 (1993)).

34. *Id.*

35. O.C.G.A. § 35-8-12(b), (c) (Supp. 1996).

Subsection (b) provides that when certification is withdrawn or suspended, the Commissioner of Public Safety must be notified of both the officer losing certification and the employing law enforcement agency.<sup>36</sup> Subsection (c) states that upon such notification, the certification to operate speed detection devices “for every certified operator employed by the agency” shall be withdrawn or suspended.<sup>37</sup> The Department of Public Safety determines the period of withdrawal or suspension.<sup>38</sup>

The Act similarly amends Code section 40-14-11.<sup>39</sup> Prior to amendment, Code section 40-14-11 provided for the suspension or revocation of a permit to operate speed detection devices when an agency of any “county, municipality, college, or university” used such devices for purposes other than the “promotion of the public health, welfare, and safety.”<sup>40</sup> This language remains, but the Act again adds two subsections relating to the effect of suspension or revocation.<sup>41</sup>

First, the Commissioner of Public Safety shall notify the Georgia Peace Officer Standards and Training Council that an officer’s certification has been suspended or revoked.<sup>42</sup> The Commissioner shall then suspend or revoke the permit for the entire employing agency to operate speed detection devices.<sup>43</sup> The effective period of suspension or revocation “shall be consistent with the action taken by the Georgia Peace Officer Standards and Training Council.”<sup>44</sup>

The objective of these amendments is to place the responsibility for lawful operation of speed detection devices on the law enforcement agency.<sup>45</sup> Law enforcement department heads, local sheriffs, or chiefs of police should be aware of individuals who abuse the operation of speed detection devices and have a responsibility to stop that abuse.<sup>46</sup> If the department or agency chooses “not to stop it or if they choose speed trapping as a revenue source,” then the penalties should apply to the department or agency, not solely to an individual.<sup>47</sup>

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36. *Id.* § 35-8-12(b).

37. *Id.* § 35-8-12(c).

38. *Id.*

39. *Id.* § 40-14-11.

40. 1989 Ga. Laws 586, § 1, at 590 (formerly found at O.C.G.A. § 40-14-11 (1994)).

41. O.C.G.A. § 40-14-11(b), (c) (Supp. 1996).

42. *Id.* § 40-14-11(b).

43. *Id.* § 40-14-11(c).

44. *Id.*

45. Jamieson Interview, *supra* note 2.

46. *Id.*

47. *Id.*

*Other Requirements for Agencies Operating Speed Detection Devices*

Code section 40-14-2 requires that entities using speed detection devices shall do so only upon approval of an application with the Department of Public Safety, and only if the department or agency has no arresting officers or officials of the court in traffic cases who are paid on a fee system.<sup>48</sup> The Act adds subsection (c) to Code section 40-14-2, requiring that an applicant for certification employ full-time or part-time certified peace officers.<sup>49</sup> Representative Jamieson initially wanted to require an applicant to have a certain number of employees.<sup>50</sup> However, because some small communities may not be able to meet such a requirement, but still need speed detection devices, the new subsection (c) requires only that employees be at least part-time peace officers.<sup>51</sup>

Additionally, the Code mandates that a department or agency using speed detection devices warn approaching motorists that such devices are being employed.<sup>52</sup> The Act amends Code section 40-14-6 to require the posting of speed limit signs warning motorists of speed limit changes that are plainly visible from every lane of traffic, in any traffic condition, and that cannot be obstructed by other vehicles.<sup>53</sup>

*Angela Carson*

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48. 1989 Ga. Laws 586, § 1, at 587 (formerly found at O.C.G.A. § 40-14-2(a), (b) (1994)).

49. O.C.G.A. § 40-14-2(c) (Supp. 1996).

50. Jamieson Interview, *supra* note 2.

51. *Id.*; see O.C.G.A. § 40-14-2(c) (Supp. 1996).

52. 1989 Ga. Laws 586, § 1, at 588 (formerly found at O.C.G.A. § 40-14-6 (1994)).

53. O.C.G.A. § 40-14-6(b) (Supp. 1996). Representative Jamieson wanted to protect motorists from speed traps that occur when the speed limit changes from 65 m.p.h. to 55 m.p.h., for example, so that the motorist would not be unaware of the speed limit change because of a sign not sufficiently visible or viewable. Jamieson Interview, *supra* note 2.