SPONSOR: Rep. Schwartzkopf & Rep. D. Short & Sen. Lopez
Reps. S. Moore, Osienski, Smyk; Sens. Hocker, Pettyjohn, Walsh, Wilson

HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 490
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 21 OF THE DELAWARE CODE RELATING TO THE USE OF ELECTRONIC TRAFFIC MONITORING FOR VEHICLE OBSTRUCTIONS SYSTEM.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 41, Title 21 of the Delaware Code by making deletions as shown by strik though and insertions as shown by underline as follows:

§ 4137. Electronic Traffic Monitoring for Vehicle Obstructions System.

This section establishes the authority for the State and municipalities in the State to use an electronic traffic monitoring for vehicle obstructions system to assist in the enforcement of right-of way pursuant to §§4130 and 4179(c) of this title. This section does not establish a new violation.

(a) Definitions.

As used in this section:

(1) "Owner" means the registered owner of such vehicle on record with this or any other state; provided, however, that in the event that the owner is a vehicle leasing company, the "owner," for purposes of this subsection, shall mean the person shown on the records to be the lessee of such vehicle. "Owner" does not include vehicle rental companies.

(2) "Electronic traffic monitoring for vehicle obstructions system" means a device with 1 or more motor vehicle sensors that is capable of producing a recorded image of a motor vehicle whose position within an intersection violates right-of way regulations.

(3) "Electronic traffic monitoring for vehicle obstructions system operator" means an individual who has been trained and certified to operate an electronic traffic monitoring for vehicle obstructions system.

(4) "Recorded image" means an image recorded by an electronic traffic monitoring for vehicle obstructions system and includes any of the following:

a. A photograph.

b. A microphotograph.

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c. A digital image.

d. A video.

e. Any other medium used to store images or sounds to be seen or heard later.

(b) This section does not apply to an authorized emergency vehicle operating in compliance with § 4106 of this title.

(c) (1) An electronic traffic monitoring for vehicle obstructions system may be installed or used to record images of a motor vehicle traveling through an intersection within the State.

(2) An electronic traffic monitoring for vehicle obstructions system may be installed or used to record images of a motor vehicle traveling on roadways with a Principal Arterial or Other Arterial functional classification as defined by the Department of Transportation, under all of the following conditions:

a. A study approved by the Department of Transportation showing that intersection blockages are frequent is required for an intersection to be eligible under this chapter. The intersection will remain eligible for up to one year after the acceptance of the study by the Department of Transportation.

b. Prior to the implementation of the system at a specific location, all of the following is required:

1. Within a municipality, the municipality must approve the intersection eligible for monitoring under this chapter, consistent with this chapter.

2. The Department of Transportation and applicable police agency must provide notice on a publicly accessible website of the intended use of the system at least 14 days prior to implementation.

(d) A vendor shall be selected through an open competitive procurement process to administer the system. To assure integrity and propriety, a person involved in the administration or enforcement of the vehicle obstructing traffic monitoring system may not own any direct interest or equity in the vendor used.

(e) Funding; revenue.

(1) The Department of Transportation may initiate tasks with the selected vendor utilizing eligible funding sources. No separate funding is allocated through this section.

(2) Revenue generated through the use of the system may be used to pay eligible costs to the vendor, staff required to implement this section, and consultant fees for administration of the programs.

(3) Any revenue collected above and beyond those required for the operation of the program as noted above may only be used for education, enforcement, or engineering purposes, related to transportation safety.

(f) Liability for failure of owner to comply with right-of-way regulations.

(1) The Department of Safety and Homeland Security shall provide for the establishment of a program imposing monetary liability on the owner of a motor vehicle for failure to comply with right-of-way regulations in accordance with the provisions of this subsection. This subsection allows the State and municipalities to install and operate electronic traffic monitoring for vehicle obstructions systems.

(2) The owner or operator of a vehicle which has failed to comply with right-of-way regulations, as evidenced by information obtained from the system, shall be subject to a civil or administrative assessment consistent with those established under § 4205 of this title. Court costs or similar administrative fees not to exceed $35 may also be assessed against an owner or operator who requests a hearing to contest the violation and is ultimately found or pleads responsible for the violation or who fails to pay or contest the violation in a timely manner. No assessments and court costs other than those specified in this subsection may be imposed. A violation for which a civil assessment is imposed under this subsection shall not be classified as a criminal offense and shall not be made a part of the operating record of the person upon whom such liability is imposed, nor shall it be used for insurance purposes in the provision of motor vehicle insurance.

(g) Electronic traffic monitoring for vehicle obstructions system requirements.

(1) An operator shall complete training by the manufacturer of the system in the procedures for setting up, testing, and operating the vehicle obstructing traffic monitoring system.

(2) Upon completion of the training, the manufacturer shall issue a signed certificate to the operator.

(3) The certificate of training shall be admitted into evidence in any court proceeding for a violation of this section.

(4) An operator shall fill out and sign a daily set-up log for the system that does all of the following:

a. States the date and time when and the location where the system was set up.

b. States that the operator successfully performed, and the device passed, the manufacturer-specified self-tests of the system before producing a recorded image.

c. Is kept on file.

d. Is n admitted into evidence in any court proceeding for a violation of this section.

(5) The system shall undergo an annual calibration check performed by an independent calibration laboratory which shall issue a signed certificate of calibration after the annual calibration check that shall be kept on file and be admitted into evidence in any court proceeding for a violation of this section.

(h) Violation criteria

For a violation to occur, a motor vehicle must be located within a conflicting left-turn or through vehicle's path of travel following the termination of the violating vehicle's right-of-way and subsequent all-red clearance interval.

(i) Summons and notice of violation.

Any nonresident owner or operator of any motor vehicle which is operated or driven on the public streets, roads, turnpikes or highways of this State is deemed to have submitted to the jurisdiction of the Delaware courts for purposes of this subsection. Notwithstanding any other provision of the Delaware Code, a summons for a violation of this subsection may be executed by mailing to any Delaware resident or nonresident by first class mail a copy thereof to the address of the owner of the vehicle as shown on the records of the Division of Motor Vehicles of this or any other state, as appropriate. Collection actions, including default judgment and execution, may proceed based upon jurisdiction obtained through the mailing by first class mail of a summons and subsequent court notices pursuant to this subsection. Every initial mailing shall include all of the following:

(1). Name and address of the owner of the vehicle.

(2) Registration number of the motor vehicle involved in the violation.

(3)Violation charges.

(4) Location where the violation occurred.

(5) Date and time of the violation.

(6) Copies of 2 or more photographs, or microphotographs or other recorded images, taken as proof of the violation.

(7) Amount of the civil assessment imposed and the date by which the civil assessment should be paid.

(8) Information advising the summonsed person of the matter, time and place by which liability as alleged in the notice may be contested, and warning that the failure to pay the civil assessment or to contest liability in a timely manner is an admission of liability and may result in a judgment being entered against the summonsed person and/or the denial of the registration or the renewal of the registration of any of the owner's vehicles.

(9) Notice of the summonsed person's ability to rebut the presumption that the summonsed person was the operator of the vehicle at the time of the alleged violation and the means for rebutting such presumption.

(j) Payment by voluntary assessment.

Persons electing to pay by voluntary assessment shall make payments to the entity designated on the summons for payment. Such entity may be the Justice of the Peace Court or an entity designated by the Court or the Department of Safety and Homeland Security. Procedures for payment under this subsection shall be as provided by court rule or policy

directive of the Justice of the Peace Court or by regulation of the Department of Safety and Homeland Security and shall be in lieu of the procedures set forth in §709 of this title.

(k) Procedures to contest the violation.

A person receiving the summons pursuant to this subsection may request a hearing to contest the violation by notifying, in writing, the entity designated on the summons within 20 days of the date. Upon receipt of a timely request for a hearing a civil hearing shall be scheduled and the defendant notified of the hearing date by first class mail. A civil hearing shall be held by the Justice of the Peace Court or such other entity as designated by the Department of Safety and Homeland Security. The hearing may be informal and shall be held in accordance with Justice of the Peace Court rules or policy directive or regulation of the Department of Safety and Homeland Security. Additional administrative collection processes may be established by court rule, policy directive, regulation, code or ordinance, as applicable. Costs for such hearing shall not be assessed against the prevailing party. There shall be no right of transfer to the Court of Common Pleas.

(l) Failure to pay or successfully contest the violation.

(1) If the owner or an operator identified by the owner fails to pay the civil penalty by voluntary assessment, request a hearing within the required time or submit an affidavit stating that the owner or operator identified was not the driver, the Division of Motor Vehicles may refuse to renew the registration of the owner's vehicle operated at the time the summons was issued. If the owner or an operator identified by the owner is found responsible at a hearing and fails to pay as ordered by the Court, or requests a hearing and fails to appear, the Division of Motor Vehicles shall suspend the license of the owner or operator.

(2) Upon receiving a record of failure to comply, the Clerk may enter a civil traffic judgment against the owner or operator in the amount of the civil penalty, costs, and any applicable penalty amounts, giving credit for any amount paid. Such judgment may, upon motion, be transferred by the Court to the civil docket. Any judgment so transferred may be executed and enforced or transferred in the same manner as other judgments of the Court and the Division of Public Safety or its designee, shall have authority to seek such execution, enforcement or transfer.

(m) Proof of violation.

Proof of a violation of this subsection shall be evidenced by information obtained from the electronic traffic monitoring for vehicle obstructions system authorized pursuant to this subsection. A certificate, or facsimile thereof, based upon inspection of photographs, microphotographs, videotape or other recorded images produced by an electronic traffic monitoring for vehicle obstruction system shall constitute prima facie evidence of the facts contained therein, if the certificate, or facsimile thereof, is sworn to or affirmed by a technician employed to impose assessments pursuant to this subsection, or a technician employed by a state agency or entity designated by a state agency for the purposes of this

section. Any photographs, microphotographs, videotape or other recorded images evidencing such a violation shall be available for inspection in any proceeding to adjudicate the liability for such violation pursuant to regulation, ordinance or other law adopted pursuant to this subsection.

(n) Presumptions.

(1) The owner of any vehicle found to be in violation of this subsection shall be held prima facie responsible for such violation in the same manner as provided for under § 7003 of this title, unless the owner can furnish evidence that the vehicle was, at the time of the violation, in the care, custody or control of another person. Such presumption shall be rebutted if the owner does either of the following:

a. Furnishes an affidavit by regular mail to the entity indicated on the summons that the owner was not the operator of the vehicle at the time of the alleged violation and provides the name and address of the person or company who leased, rented or otherwise had the care, custody or control of the vehicle, or attaches a certified copy of a police report showing that the vehicle or license plate or plates thereof had been reported to the police as stolen prior to the time of the alleged violation of this subsection.

b. Provides proof in court or to the entity handling the administrative appeal process that the owner was not the operator of the vehicle at the time of the alleged violation.

(2) A summons may be issued to a person identified by affidavit or evidence in court as the actual operator of the vehicle shown to have violated the right-of-way regulations. There shall be a presumption that the person so identified was the driver. The presumption may be rebutted as described in this subsection.

(o) Notwithstanding any other provision in this section to the contrary, if the motor vehicle which is found by the electronic traffic monitoring for vehicle obstructions system to have failed to comply with the right-of-way regulations is commercially licensed, then the owner of that vehicle shall be sent notice of the date, time and location of the violation with 2 photographs thereof. Within 10 days of the receipt of said notice, the owner of the vehicle shall provide the law-enforcement agency which has issued the summons with the name and address of the driver of the vehicle at the date, time and location of the violation and, within the same time period, shall provide the driver of the vehicle with the photographs of the violation. After receipt by the law-enforcement agency which has issued the summons of the name and address of the driver of the vehicle at the time of the violation, the driver of the vehicle shall be prima facie responsible for such violation in the same manner as provided for under § 7003 of Title 21 and shall be subject to the provisions of this section. Failure of the owner of the vehicle found to be in violation of subsection (d) to provide the name and address of the driver at the time of the violation within the period prescribed shall cause the owner to be held responsible as set forth in paragraph (d)(5) of this section.

(p) Any person found responsible for a civil traffic offense shall have a right of appeal only in those cases in which the civil penalty imposed exceeds $100, upon giving bond with surety satisfactory to the judge before whom such person was found responsible, such appeal to be taken and bond given within 15 days from the time of the finding of responsible. Such appeal shall operate as a stay or supersedeas of all proceedings in the court below in the same manner that a certiorari from the Superior Court operates. The taking of such appeal shall constitute a waiver by the appellant of the appellant's right to a writ of certiorari in the Superior Court.