

B-Engrossed
House Bill 4105

Ordered by the Senate February 23
Including House Amendments dated February 9 and Senate Amendments
dated February 23

Sponsored by Representative REARDON, Senator DEMBROW; Representative WILDE (Pre-session filed.)

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.

Authorizes duly authorized traffic enforcement agents to review and issue citations based on photographs taken by photo red light cameras or photographs taken by photo radar cameras. Defines "duly authorized traffic enforcement agent."

Authorizes duly authorized traffic enforcement agents to present evidence[, *examine and cross-examine witnesses and make arguments*] in trials relating to citations issued by agent.

A BILL FOR AN ACT

1
2 Relating to traffic offenses; amending ORS 153.083, 810.436, 810.437 and 810.444.

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

4 **SECTION 1.** ORS 810.436 is amended to read:

5 810.436. (1) Notwithstanding any other provision of law, if a city chooses to operate a camera
6 that complies with this section and ORS 810.434, a citation for violation of ORS 811.265 may be is-
7 sued on the basis of photographs from a camera taken without the presence of a police officer if the
8 following conditions are met:

9 (a) Signs are posted, so far as is practicable, on all major routes entering the jurisdiction indi-
10 cating that compliance with traffic control devices is enforced through cameras.

11 (b) For each traffic control device at which a camera is installed, signs indicating that a camera
12 may be in operation at the device are posted before the device at a location near the device.

13 (c) If the traffic control device is a traffic light, the yellow light shows for at least the length
14 of time recommended by the standard set by the Institute of Transportation Engineers.

15 (d) The citation is mailed to the registered owner of the vehicle, or to the driver if identifiable,
16 within 10 business days of the alleged violation.

17 (e) The registered owner is given 30 days from the date the citation is mailed to respond to the
18 citation.

19 (f) A police officer **or a duly authorized traffic enforcement agent** who has reviewed the
20 photograph signs the citation. The citation may be prepared on a digital medium, and the signature
21 may be electronic in accordance with the provisions of ORS 84.001 to 84.061.

22 (2) Notwithstanding subsection (1) of this section, if the city issues a citation under ORS 810.437
23 for exceeding the speed limit under ORS 811.111 or designated speed posted under ORS 810.180 by
24 11 to 20 miles per hour, the city may not issue a citation under this section for violation of ORS
25 811.265 arising out of the same criminal episode, as defined in ORS 131.505.

26 (3) If the person named as the registered owner of a vehicle in the current records of the De-

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.

1 partment of Transportation fails to respond to a citation issued under subsection (1) of this section,
2 a default judgment under ORS 153.102 may be entered for failure to appear after notice has been
3 given that the judgment will be entered.

4 (4) A rebuttable presumption exists that the registered owner of the vehicle was the driver of
5 the vehicle when the citation was issued and delivered as provided in this section.

6 (5) A person issued a citation under subsection (1) of this section may respond to the citation
7 by submitting a certificate of innocence or a certificate of nonliability under subsection (7) of this
8 section or any other response allowed by law.

9 (6) A citation for violation of ORS 811.265 issued on the basis of photographs from a camera
10 installed as provided in this section and ORS 810.434 may be delivered by mail or otherwise to the
11 registered owner of the vehicle or to the driver if the driver is identifiable from the photograph.

12 (7)(a) A registered owner of a vehicle may respond by mail to a citation issued under subsection
13 (1) of this section by submitting, within 30 days from the mailing of the citation, a certificate of in-
14 nocence swearing or affirming that the owner was not the driver of the vehicle and by providing a
15 photocopy of the owner's driver license. A jurisdiction that receives a certificate of innocence under
16 this paragraph shall dismiss the citation without requiring a court appearance by the registered
17 owner or any other information from the registered owner other than the swearing or affirmation
18 and the photocopy. The citation may be reissued only once, only to the registered owner and only
19 if the jurisdiction verifies that the registered owner appears to have been the driver at the time of
20 the violation. A registered owner may not submit a certificate of innocence in response to a reissued
21 citation.

22 (b) If a business or public agency responds to a citation issued under subsection (1) of this sec-
23 tion by submitting, within 30 days from the mailing of the citation, a certificate of nonliability
24 stating that at the time of the alleged violation the vehicle was in the custody and control of an
25 employee or was in the custody and control of a renter or lessee under the terms of a motor vehicle
26 rental agreement or lease, and if the business or public agency provides the driver license number,
27 name and address of the employee, renter or lessee, the citation shall be dismissed with respect to
28 the business or public agency. The citation may then be reissued and delivered by mail or otherwise
29 to the employee, renter or lessee identified in the certificate of nonliability.

30 (8) The penalties for and all consequences of a violation of ORS 811.265 initiated by the use of
31 a camera installed as provided in this section and ORS 810.434 are the same as for a violation ini-
32 tiated by any other means.

33 (9) A registered owner or an employee, renter or lessee against whom a judgment for failure to
34 appear is entered may move the court to relieve the owner or the employee, renter or lessee from
35 the judgment as provided in ORS 153.105 if the failure to appear was due to mistake, inadvertence,
36 surprise or excusable neglect.

37 **(10)(a) As used in this section, "duly authorized traffic enforcement agent" means an**
38 **individual who:**

39 **(A) Is employed, appointed and duly sworn in by the governing body of the incorporated**
40 **city in which the agent performs the agent's duties; and**

41 **(B) Has completed all necessary technical, administrative and other training to review**
42 **photographs and issue citations under this section.**

43 **(b) Duly authorized traffic enforcement agents are not police officers.**

44 **SECTION 2.** ORS 810.437 is amended to read:

45 810.437. (1) Notwithstanding any other provision of law, if a city chooses to operate cameras

1 that comply with this section and ORS 810.434, a citation for speeding may be issued on the basis
2 of photographs from a camera and other technology, including but not limited to sensors, that
3 measure the speed of a vehicle without the presence of a police officer if the following conditions
4 are met:

5 (a) Signs are posted, so far as is practicable, on all major routes entering the jurisdiction indi-
6 cating that compliance with traffic laws is enforced through cameras and other technology.

7 (b) For each traffic control device at which a camera is installed, signs indicating that a camera
8 system may be in operation at the traffic control device are posted before the device at a location
9 near the device.

10 (c) The citation is mailed to the registered owner of the vehicle, or to the driver if identifiable,
11 within 10 business days of the alleged violation.

12 (d) The registered owner is given 30 days from the date the citation is delivered to respond to
13 the citation.

14 (e) A police officer **or a duly authorized traffic enforcement agent** who has reviewed the
15 photograph and other data signs the citation. The citation may be prepared on a digital medium, and
16 the signature may be electronic in accordance with the provisions of ORS 84.001 to 84.061.

17 (f) The person exceeded the speed limit or designated speed by 11 miles per hour or greater.

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

22 (3) A rebuttable presumption exists that the registered owner of the vehicle was the driver of
23 the vehicle when the citation was issued and delivered as provided in this section.

24 (4) A person issued a citation under subsection (1) of this section may respond to the citation
25 by submitting a certificate of innocence or a certificate of nonliability under subsection (6) of this
26 section or any other response allowed by law.

27 (5) A citation issued under this section on the basis of photographs from a camera installed as
28 provided in this section and ORS 810.434 may be delivered by mail or otherwise to the registered
29 owner of the vehicle or to the driver if the driver is identifiable from the photograph.

30 (6)(a) A registered owner of a vehicle may respond by mail to a citation issued under subsection
31 (1) of this section by submitting, within 30 days from delivery of the citation, a certificate of inno-
32 cence swearing or affirming that the owner was not the driver of the vehicle and by providing a
33 photocopy of the owner's driver license. A jurisdiction that receives a certificate of innocence under
34 this paragraph shall dismiss the citation without requiring a court appearance by the registered
35 owner or any other information from the registered owner other than the swearing or affirmation
36 and the photocopy. The citation may be reissued only once, only to the registered owner and only
37 if the jurisdiction verifies that the registered owner appears to have been the driver at the time of
38 the violation. A registered owner may not submit a certificate of innocence in response to a reissued
39 citation.

40 (b) If a business or public agency responds to a citation issued under subsection (1) of this sec-
41 tion by submitting, within 30 days from delivery of the citation, a certificate of nonliability stating
42 that at the time of the alleged violation the vehicle was in the custody and control of an employee
43 or was in the custody and control of a renter or lessee under the terms of a motor vehicle rental
44 agreement or lease, and if the business or public agency provides the driver license number, name
45 and address of the employee, renter or lessee, the citation shall be dismissed with respect to the

1 business or public agency. The citation may then be reissued and delivered by mail or otherwise to
2 the employee, renter or lessee identified in the certificate of nonliability.

3 (7) The penalties for and all consequences of a speeding violation initiated by the use of a
4 camera installed as provided in this section and ORS 810.434 are the same as for a violation initi-
5 ated by any other means.

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

10 (9)(a) As used in this section, “duly authorized traffic enforcement agent” means an in-
11 dividual who:

12 (A) Is employed, appointed and duly sworn in by the governing body of the incorporated
13 city in which the agent performs the agent’s duties; and

14 (B) Has completed all necessary technical, administrative and other training to review
15 photographs and other data and issue citations under this section.

16 (b) Duly authorized traffic enforcement agents are not police officers.

17 **SECTION 3.** ORS 810.444 is amended to read:

18 810.444. (1) Notwithstanding any other provision of law, in the jurisdiction operating a fixed
19 photo radar system under ORS 810.443:

20 (a) A citation for speeding may be issued on the basis of fixed photo radar if:

21 (A) A sign that provides drivers with information about the driver’s current rate of speed is
22 posted between 100 and 400 yards before the location of each fixed photo radar unit; and

23 (B) A police officer **or a duly authorized traffic enforcement agent** who has reviewed the
24 photographic evidence of the conduct signs the citation.

25 (b) A rebuttable presumption exists that the registered owner of the vehicle was the driver of
26 the vehicle when the citation is issued and delivered as provided in subsection (2) of this section.

27 (c) An individual issued a citation under this subsection may respond to the citation by sub-
28 mitting a certificate of innocence under subsection (3)(a) of this section or may make any other re-
29 sponse allowed by law.

30 (d) A business or public agency issued a citation under this subsection may respond to the ci-
31 tation by submitting an affidavit of nonliability under subsection (3)(b) of this section or may make
32 any other response allowed by law.

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

36 (3)(a) An individual named as the registered owner of a vehicle in current records of the De-
37 partment of Transportation may respond by mail to a citation issued under subsection (1) of this
38 section by submitting a certificate of innocence within 30 days from the mailing of the citation
39 swearing or affirming that the registered owner was not the driver of the vehicle and by providing
40 a photocopy of the registered owner’s driver license. A jurisdiction that receives a certificate of
41 innocence under this paragraph shall dismiss the citation without requiring a court appearance by
42 the registered owner or any other information from the registered owner other than the swearing
43 or affirmation and the photocopy. The citation may be reissued only once, only to the registered
44 owner and only if the jurisdiction verifies that the registered owner appears to have been the driver
45 at the time of the violation. A registered owner may not submit a certificate of innocence in re-

1 sponse to a reissued citation.

2 (b) If a business or public agency named as the registered owner of a vehicle in current records
3 of the Department of Transportation responds to a citation issued under subsection (1) of this sec-
4 tion by submitting an affidavit of nonliability within 30 days from the mailing of the citation stating
5 that at the time of the alleged speeding violation the vehicle was in the custody and control of an
6 employee, or was in the custody and control of a renter or lessee under the terms of a rental
7 agreement or lease, and if the business or public agency provides the driver license number, name
8 and address of the employee, renter or lessee, the citation shall be dismissed with respect to the
9 business or public agency. The citation may then be issued and delivered by mail or otherwise to
10 the employee, renter or lessee identified in the affidavit of nonliability.

11 (4) If the registered owner, employee, renter or lessee fails to respond to a citation issued under
12 this section, a default judgment under ORS 153.102 may be entered for failure to appear after notice
13 has been given that the judgment will be entered.

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

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

20 **(7)(a) As used in this section, “duly authorized traffic enforcement agent” means an in-**
21 **dividual who:**

22 **(A) Is employed, appointed and duly sworn in by the governing body of the incorporated**
23 **city in which the agent performs the agent’s duties; and**

24 **(B) Has completed all necessary technical, administrative and other training to review**
25 **photographs and issue citations under this section.**

26 **(b) Duly authorized traffic enforcement agents are not police officers.**

27 **SECTION 4.** ORS 153.083 is amended to read:

28 153.083. (1) Notwithstanding ORS 9.160 and 9.320, in any trial of a violation, whether created
29 by ordinance or statute, in which a city attorney or district attorney does not appear, the peace
30 officer who issued the citation for the offense may present evidence, examine and cross-examine
31 witnesses and make arguments relating to:

32 [(1)] (a) The application of statutes and rules to the facts in the case;

33 [(2)] (b) The literal meaning of the statutes or rules at issue in the case;

34 [(3)] (c) The admissibility of evidence; and

35 [(4)] (d) Proper procedures to be used in the trial.

36 **(2) Notwithstanding ORS 9.160 and 9.320, in any trial of a violation, whether created by**
37 **ordinance or statute, in which a city attorney or district attorney does not appear, the duly**
38 **authorized traffic enforcement agent who issued the citation for the offense may present the**
39 **evidence reviewed by the agent as the basis for issuing a citation under ORS 810.436, 810.437**
40 **or 810.444.**

41 **(3)(a) As used in this section, “duly authorized traffic enforcement agent” means an in-**
42 **dividual who:**

43 **(A) Is employed, appointed and duly sworn in by the governing body of the incorporated**
44 **city in which the agent performs the agent’s duties; and**

45 **(B) Has completed all necessary technical, administrative and other training to review**

1 **photographs and issue citations under ORS 810.436, 810.437 or 810.444.**

2 **(b) Duly authorized traffic enforcement agents are not police officers as defined in ORS**
3 **801.395.**

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