

HB4041



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB4041

by Rep. Peter Breen

SYNOPSIS AS INTRODUCED:

625 ILCS 5/11-208.3

from Ch. 95 1/2, par. 11-208.3

Amends the Illinois Vehicle Code. Provides that in an administrative hearing in which the owner of a vehicle may contest the merits of an alleged automated traffic law violation, the violation must be proven beyond a reasonable doubt and the formal or technical rules of evidence that apply in court proceedings on moving traffic violations shall apply.

LRB099 06228 RJF 26293 b

A BILL FOR

1 AN ACT concerning transportation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Vehicle Code is amended by changing
5 Section 11-208.3 as follows:

6 (625 ILCS 5/11-208.3) (from Ch. 95 1/2, par. 11-208.3)

7 Sec. 11-208.3. Administrative adjudication of violations
8 of traffic regulations concerning the standing, parking, or
9 condition of vehicles, automated traffic law violations, and
10 automated speed enforcement system violations.

11 (a) Any municipality or county may provide by ordinance for
12 a system of administrative adjudication of vehicular standing
13 and parking violations and vehicle compliance violations as
14 described in this subsection, automated traffic law violations
15 as defined in Section 11-208.6, 11-208.9, or 11-1201.1, and
16 automated speed enforcement system violations as defined in
17 Section 11-208.8. The administrative system shall have as its
18 purpose the fair and efficient enforcement of municipal or
19 county regulations through the administrative adjudication of
20 automated speed enforcement system or automated traffic law
21 violations and violations of municipal or county ordinances
22 regulating the standing and parking of vehicles, the condition
23 and use of vehicle equipment, and the display of municipal or

1 county wheel tax licenses within the municipality's or county's
2 borders. The administrative system shall only have authority to
3 adjudicate civil offenses carrying fines not in excess of \$500
4 or requiring the completion of a traffic education program, or
5 both, that occur after the effective date of the ordinance
6 adopting such a system under this Section. For purposes of this
7 Section, "compliance violation" means a violation of a
8 municipal or county regulation governing the condition or use
9 of equipment on a vehicle or governing the display of a
10 municipal or county wheel tax license.

11 (b) Any ordinance establishing a system of administrative
12 adjudication under this Section shall provide for:

13 (1) A traffic compliance administrator authorized to
14 adopt, distribute and process parking, compliance, and
15 automated speed enforcement system or automated traffic
16 law violation notices and other notices required by this
17 Section, collect money paid as fines and penalties for
18 violation of parking and compliance ordinances and
19 automated speed enforcement system or automated traffic
20 law violations, and operate an administrative adjudication
21 system. The traffic compliance administrator also may make
22 a certified report to the Secretary of State under Section
23 6-306.5.

24 (2) A parking, standing, compliance, automated speed
25 enforcement system, or automated traffic law violation
26 notice that shall specify the date, time, and place of

1 violation of a parking, standing, compliance, automated
2 speed enforcement system, or automated traffic law
3 regulation; the particular regulation violated; any
4 requirement to complete a traffic education program; the
5 fine and any penalty that may be assessed for late payment
6 or failure to complete a required traffic education
7 program, or both, when so provided by ordinance; the
8 vehicle make and state registration number; and the
9 identification number of the person issuing the notice.
10 With regard to automated speed enforcement system or
11 automated traffic law violations, vehicle make shall be
12 specified on the automated speed enforcement system or
13 automated traffic law violation notice if the make is
14 available and readily discernible. With regard to
15 municipalities or counties with a population of 1 million
16 or more, it shall be grounds for dismissal of a parking
17 violation if the state registration number or vehicle make
18 specified is incorrect. The violation notice shall state
19 that the completion of any required traffic education
20 program, the payment of any indicated fine, and the payment
21 of any applicable penalty for late payment or failure to
22 complete a required traffic education program, or both,
23 shall operate as a final disposition of the violation. The
24 notice also shall contain information as to the
25 availability of a hearing in which the violation may be
26 contested on its merits. The violation notice shall specify

1 the time and manner in which a hearing may be had.

2 (3) Service of the parking, standing, or compliance
3 violation notice by affixing the original or a facsimile of
4 the notice to an unlawfully parked vehicle or by handing
5 the notice to the operator of a vehicle if he or she is
6 present and service of an automated speed enforcement
7 system or automated traffic law violation notice by mail to
8 the address of the registered owner or lessee of the cited
9 vehicle as recorded with the Secretary of State or the
10 lessor of the motor vehicle within 30 days after the
11 Secretary of State or the lessor of the motor vehicle
12 notifies the municipality or county of the identity of the
13 owner or lessee of the vehicle, but not later than 90 days
14 after the violation, except that in the case of a lessee of
15 a motor vehicle, service of an automated traffic law
16 violation notice may occur no later than 210 days after the
17 violation. A person authorized by ordinance to issue and
18 serve parking, standing, and compliance violation notices
19 shall certify as to the correctness of the facts entered on
20 the violation notice by signing his or her name to the
21 notice at the time of service or in the case of a notice
22 produced by a computerized device, by signing a single
23 certificate to be kept by the traffic compliance
24 administrator attesting to the correctness of all notices
25 produced by the device while it was under his or her
26 control. In the case of an automated traffic law violation,

1 the ordinance shall require a determination by a technician
2 employed or contracted by the municipality or county that,
3 based on inspection of recorded images, the motor vehicle
4 was being operated in violation of Section 11-208.6,
5 11-208.9, or 11-1201.1 or a local ordinance. If the
6 technician determines that the vehicle entered the
7 intersection as part of a funeral procession or in order to
8 yield the right-of-way to an emergency vehicle, a citation
9 shall not be issued. In municipalities with a population of
10 less than 1,000,000 inhabitants and counties with a
11 population of less than 3,000,000 inhabitants, the
12 automated traffic law ordinance shall require that all
13 determinations by a technician that a motor vehicle was
14 being operated in violation of Section 11-208.6, 11-208.9,
15 or 11-1201.1 or a local ordinance must be reviewed and
16 approved by a law enforcement officer or retired law
17 enforcement officer of the municipality or county issuing
18 the violation. In municipalities with a population of
19 1,000,000 or more inhabitants and counties with a
20 population of 3,000,000 or more inhabitants, the automated
21 traffic law ordinance shall require that all
22 determinations by a technician that a motor vehicle was
23 being operated in violation of Section 11-208.6, 11-208.9,
24 or 11-1201.1 or a local ordinance must be reviewed and
25 approved by a law enforcement officer or retired law
26 enforcement officer of the municipality or county issuing

1 the violation or by an additional fully-trained reviewing
2 technician who is not employed by the contractor who
3 employs the technician who made the initial determination.
4 In the case of an automated speed enforcement system
5 violation, the ordinance shall require a determination by a
6 technician employed by the municipality, based upon an
7 inspection of recorded images, video or other
8 documentation, including documentation of the speed limit
9 and automated speed enforcement signage, and documentation
10 of the inspection, calibration, and certification of the
11 speed equipment, that the vehicle was being operated in
12 violation of Article VI of Chapter 11 of this Code or a
13 similar local ordinance. If the technician determines that
14 the vehicle speed was not determined by a calibrated,
15 certified speed equipment device based upon the speed
16 equipment documentation, or if the vehicle was an emergency
17 vehicle, a citation may not be issued. The automated speed
18 enforcement ordinance shall require that all
19 determinations by a technician that a violation occurred be
20 reviewed and approved by a law enforcement officer or
21 retired law enforcement officer of the municipality
22 issuing the violation or by an additional fully trained
23 reviewing technician who is not employed by the contractor
24 who employs the technician who made the initial
25 determination. Routine and independent calibration of the
26 speeds produced by automated speed enforcement systems and

1 equipment shall be conducted annually by a qualified
2 technician. Speeds produced by an automated speed
3 enforcement system shall be compared with speeds produced
4 by lidar or other independent equipment. Radar or lidar
5 equipment shall undergo an internal validation test no less
6 frequently than once each week. Qualified technicians
7 shall test loop based equipment no less frequently than
8 once a year. Radar equipment shall be checked for accuracy
9 by a qualified technician when the unit is serviced, when
10 unusual or suspect readings persist, or when deemed
11 necessary by a reviewing technician. Radar equipment shall
12 be checked with the internal frequency generator and the
13 internal circuit test whenever the radar is turned on.
14 Technicians must be alert for any unusual or suspect
15 readings, and if unusual or suspect readings of a radar
16 unit persist, that unit shall immediately be removed from
17 service and not returned to service until it has been
18 checked by a qualified technician and determined to be
19 functioning properly. Documentation of the annual
20 calibration results, including the equipment tested, test
21 date, technician performing the test, and test results,
22 shall be maintained and available for use in the
23 determination of an automated speed enforcement system
24 violation and issuance of a citation. The technician
25 performing the calibration and testing of the automated
26 speed enforcement equipment shall be trained and certified

1 in the use of equipment for speed enforcement purposes.
2 Training on the speed enforcement equipment may be
3 conducted by law enforcement, civilian, or manufacturer's
4 personnel and if applicable may be equivalent to the
5 equipment use and operations training included in the Speed
6 Measuring Device Operator Program developed by the
7 National Highway Traffic Safety Administration (NHTSA).
8 The vendor or technician who performs the work shall keep
9 accurate records on each piece of equipment the technician
10 calibrates and tests. As used in this paragraph,
11 "fully-trained reviewing technician" means a person who
12 has received at least 40 hours of supervised training in
13 subjects which shall include image inspection and
14 interpretation, the elements necessary to prove a
15 violation, license plate identification, and traffic
16 safety and management. In all municipalities and counties,
17 the automated speed enforcement system or automated
18 traffic law ordinance shall require that no additional fee
19 shall be charged to the alleged violator for exercising his
20 or her right to an administrative hearing, and persons
21 shall be given at least 25 days following an administrative
22 hearing to pay any civil penalty imposed by a finding that
23 Section 11-208.6, 11-208.8, 11-208.9, or 11-1201.1 or a
24 similar local ordinance has been violated. The original or
25 a facsimile of the violation notice or, in the case of a
26 notice produced by a computerized device, a printed record

1 generated by the device showing the facts entered on the
2 notice, shall be retained by the traffic compliance
3 administrator, and shall be a record kept in the ordinary
4 course of business. A parking, standing, compliance,
5 automated speed enforcement system, or automated traffic
6 law violation notice issued, signed and served in
7 accordance with this Section, a copy of the notice, or the
8 computer generated record shall be prima facie correct and
9 shall be prima facie evidence of the correctness of the
10 facts shown on the notice. The notice, copy, or computer
11 generated record shall be admissible in any subsequent
12 administrative or legal proceedings.

13 (4) An opportunity for a hearing for the registered
14 owner of the vehicle cited in the parking, standing,
15 compliance, or automated speed enforcement system, ~~or~~
16 ~~automated traffic law~~ violation notice in which the owner
17 may contest the merits of the alleged violation, and during
18 which formal or technical rules of evidence shall not
19 apply; provided, however, that under Section 11-1306 of
20 this Code the lessee of a vehicle cited in the violation
21 notice likewise shall be provided an opportunity for a
22 hearing of the same kind afforded the registered owner. An
23 opportunity for a hearing for the registered owner of the
24 vehicle cited in the automated traffic law violation notice
25 in which the owner may contest the merits of the alleged
26 violation, and during which the violation must be proven

1 beyond a reasonable doubt and the formal or technical rules
2 of evidence that apply in court proceedings on moving
3 traffic violations shall apply; provided, however, that
4 under Section 11-1306 of this Code the lessee of a vehicle
5 cited in the violation notice likewise shall be provided an
6 opportunity for a hearing of the same kind afforded the
7 registered owner. The hearings shall be recorded, and the
8 person conducting the hearing on behalf of the traffic
9 compliance administrator shall be empowered to administer
10 oaths and to secure by subpoena both the attendance and
11 testimony of witnesses and the production of relevant books
12 and papers. Persons appearing at a hearing under this
13 Section may be represented by counsel at their expense. The
14 ordinance may also provide for internal administrative
15 review following the decision of the hearing officer.

16 (5) Service of additional notices, sent by first class
17 United States mail, postage prepaid, to the address of the
18 registered owner of the cited vehicle as recorded with the
19 Secretary of State or, if any notice to that address is
20 returned as undeliverable, to the last known address
21 recorded in a United States Post Office approved database,
22 or, under Section 11-1306 or subsection (p) of Section
23 11-208.6 or 11-208.9, or subsection (p) of Section 11-208.8
24 of this Code, to the lessee of the cited vehicle at the
25 last address known to the lessor of the cited vehicle at
26 the time of lease or, if any notice to that address is

1 returned as undeliverable, to the last known address
2 recorded in a United States Post Office approved database.
3 The service shall be deemed complete as of the date of
4 deposit in the United States mail. The notices shall be in
5 the following sequence and shall include but not be limited
6 to the information specified herein:

7 (i) A second notice of parking, standing, or
8 compliance violation. This notice shall specify the
9 date and location of the violation cited in the
10 parking, standing, or compliance violation notice, the
11 particular regulation violated, the vehicle make and
12 state registration number, any requirement to complete
13 a traffic education program, the fine and any penalty
14 that may be assessed for late payment or failure to
15 complete a traffic education program, or both, when so
16 provided by ordinance, the availability of a hearing in
17 which the violation may be contested on its merits, and
18 the time and manner in which the hearing may be had.
19 The notice of violation shall also state that failure
20 to complete a required traffic education program, to
21 pay the indicated fine and any applicable penalty, or
22 to appear at a hearing on the merits in the time and
23 manner specified, will result in a final determination
24 of violation liability for the cited violation in the
25 amount of the fine or penalty indicated, and that, upon
26 the occurrence of a final determination of violation

1 liability for the failure, and the exhaustion of, or
2 failure to exhaust, available administrative or
3 judicial procedures for review, any incomplete traffic
4 education program or any unpaid fine or penalty, or
5 both, will constitute a debt due and owing the
6 municipality or county.

7 (ii) A notice of final determination of parking,
8 standing, compliance, automated speed enforcement
9 system, or automated traffic law violation liability.
10 This notice shall be sent following a final
11 determination of parking, standing, compliance,
12 automated speed enforcement system, or automated
13 traffic law violation liability and the conclusion of
14 judicial review procedures taken under this Section.
15 The notice shall state that the incomplete traffic
16 education program or the unpaid fine or penalty, or
17 both, is a debt due and owing the municipality or
18 county. The notice shall contain warnings that failure
19 to complete any required traffic education program or
20 to pay any fine or penalty due and owing the
21 municipality or county, or both, within the time
22 specified may result in the municipality's or county's
23 filing of a petition in the Circuit Court to have the
24 incomplete traffic education program or unpaid fine or
25 penalty, or both, rendered a judgment as provided by
26 this Section, or may result in suspension of the

1 person's drivers license for failure to complete a
2 traffic education program or to pay fines or penalties,
3 or both, for 10 or more parking violations under
4 Section 6-306.5, or a combination of 5 or more
5 automated traffic law violations under Section
6 11-208.6 or 11-208.9 or automated speed enforcement
7 system violations under Section 11-208.8.

8 (6) A notice of impending drivers license suspension.

9 This notice shall be sent to the person liable for failure
10 to complete a required traffic education program or to pay
11 any fine or penalty that remains due and owing, or both, on
12 10 or more parking violations or combination of 5 or more
13 unpaid automated speed enforcement system or automated
14 traffic law violations. The notice shall state that failure
15 to complete a required traffic education program or to pay
16 the fine or penalty owing, or both, within 45 days of the
17 notice's date will result in the municipality or county
18 notifying the Secretary of State that the person is
19 eligible for initiation of suspension proceedings under
20 Section 6-306.5 of this Code. The notice shall also state
21 that the person may obtain a photostatic copy of an
22 original ticket imposing a fine or penalty by sending a
23 self addressed, stamped envelope to the municipality or
24 county along with a request for the photostatic copy. The
25 notice of impending drivers license suspension shall be
26 sent by first class United States mail, postage prepaid, to

1 the address recorded with the Secretary of State or, if any
2 notice to that address is returned as undeliverable, to the
3 last known address recorded in a United States Post Office
4 approved database.

5 (7) Final determinations of violation liability. A
6 final determination of violation liability shall occur
7 following failure to complete the required traffic
8 education program or to pay the fine or penalty, or both,
9 after a hearing officer's determination of violation
10 liability and the exhaustion of or failure to exhaust any
11 administrative review procedures provided by ordinance.
12 Where a person fails to appear at a hearing to contest the
13 alleged violation in the time and manner specified in a
14 prior mailed notice, the hearing officer's determination
15 of violation liability shall become final: (A) upon denial
16 of a timely petition to set aside that determination, or
17 (B) upon expiration of the period for filing the petition
18 without a filing having been made.

19 (8) A petition to set aside a determination of parking,
20 standing, compliance, automated speed enforcement system,
21 or automated traffic law violation liability that may be
22 filed by a person owing an unpaid fine or penalty. A
23 petition to set aside a determination of liability may also
24 be filed by a person required to complete a traffic
25 education program. The petition shall be filed with and
26 ruled upon by the traffic compliance administrator in the

1 manner and within the time specified by ordinance. The
2 grounds for the petition may be limited to: (A) the person
3 not having been the owner or lessee of the cited vehicle on
4 the date the violation notice was issued, (B) the person
5 having already completed the required traffic education
6 program or paid the fine or penalty, or both, for the
7 violation in question, and (C) excusable failure to appear
8 at or request a new date for a hearing. With regard to
9 municipalities or counties with a population of 1 million
10 or more, it shall be grounds for dismissal of a parking
11 violation if the state registration number, or vehicle make
12 if specified, is incorrect. After the determination of
13 parking, standing, compliance, automated speed enforcement
14 system, or automated traffic law violation liability has
15 been set aside upon a showing of just cause, the registered
16 owner shall be provided with a hearing on the merits for
17 that violation.

18 (9) Procedures for non-residents. Procedures by which
19 persons who are not residents of the municipality or county
20 may contest the merits of the alleged violation without
21 attending a hearing.

22 (10) A schedule of civil fines for violations of
23 vehicular standing, parking, compliance, automated speed
24 enforcement system, or automated traffic law regulations
25 enacted by ordinance pursuant to this Section, and a
26 schedule of penalties for late payment of the fines or

1 failure to complete required traffic education programs,
2 provided, however, that the total amount of the fine and
3 penalty for any one violation shall not exceed \$250, except
4 as provided in subsection (c) of Section 11-1301.3 of this
5 Code.

6 (11) Other provisions as are necessary and proper to
7 carry into effect the powers granted and purposes stated in
8 this Section.

9 (c) Any municipality or county establishing vehicular
10 standing, parking, compliance, automated speed enforcement
11 system, or automated traffic law regulations under this Section
12 may also provide by ordinance for a program of vehicle
13 immobilization for the purpose of facilitating enforcement of
14 those regulations. The program of vehicle immobilization shall
15 provide for immobilizing any eligible vehicle upon the public
16 way by presence of a restraint in a manner to prevent operation
17 of the vehicle. Any ordinance establishing a program of vehicle
18 immobilization under this Section shall provide:

19 (1) Criteria for the designation of vehicles eligible
20 for immobilization. A vehicle shall be eligible for
21 immobilization when the registered owner of the vehicle has
22 accumulated the number of incomplete traffic education
23 programs or unpaid final determinations of parking,
24 standing, compliance, automated speed enforcement system,
25 or automated traffic law violation liability, or both, as
26 determined by ordinance.

1 (2) A notice of impending vehicle immobilization and a
2 right to a hearing to challenge the validity of the notice
3 by disproving liability for the incomplete traffic
4 education programs or unpaid final determinations of
5 parking, standing, compliance, automated speed enforcement
6 system, or automated traffic law violation liability, or
7 both, listed on the notice.

8 (3) The right to a prompt hearing after a vehicle has
9 been immobilized or subsequently towed without the
10 completion of the required traffic education program or
11 payment of the outstanding fines and penalties on parking,
12 standing, compliance, automated speed enforcement system,
13 or automated traffic law violations, or both, for which
14 final determinations have been issued. An order issued
15 after the hearing is a final administrative decision within
16 the meaning of Section 3-101 of the Code of Civil
17 Procedure.

18 (4) A post immobilization and post-towing notice
19 advising the registered owner of the vehicle of the right
20 to a hearing to challenge the validity of the impoundment.

21 (d) Judicial review of final determinations of parking,
22 standing, compliance, automated speed enforcement system, or
23 automated traffic law violations and final administrative
24 decisions issued after hearings regarding vehicle
25 immobilization and impoundment made under this Section shall be
26 subject to the provisions of the Administrative Review Law.

1 (e) Any fine, penalty, incomplete traffic education
2 program, or part of any fine or any penalty remaining unpaid
3 after the exhaustion of, or the failure to exhaust,
4 administrative remedies created under this Section and the
5 conclusion of any judicial review procedures shall be a debt
6 due and owing the municipality or county and, as such, may be
7 collected in accordance with applicable law. Completion of any
8 required traffic education program and payment in full of any
9 fine or penalty resulting from a standing, parking, compliance,
10 automated speed enforcement system, or automated traffic law
11 violation shall constitute a final disposition of that
12 violation.

13 (f) After the expiration of the period within which
14 judicial review may be sought for a final determination of
15 parking, standing, compliance, automated speed enforcement
16 system, or automated traffic law violation, the municipality or
17 county may commence a proceeding in the Circuit Court for
18 purposes of obtaining a judgment on the final determination of
19 violation. Nothing in this Section shall prevent a municipality
20 or county from consolidating multiple final determinations of
21 parking, standing, compliance, automated speed enforcement
22 system, or automated traffic law violations against a person in
23 a proceeding. Upon commencement of the action, the municipality
24 or county shall file a certified copy or record of the final
25 determination of parking, standing, compliance, automated
26 speed enforcement system, or automated traffic law violation,

1 which shall be accompanied by a certification that recites
2 facts sufficient to show that the final determination of
3 violation was issued in accordance with this Section and the
4 applicable municipal or county ordinance. Service of the
5 summons and a copy of the petition may be by any method
6 provided by Section 2-203 of the Code of Civil Procedure or by
7 certified mail, return receipt requested, provided that the
8 total amount of fines and penalties for final determinations of
9 parking, standing, compliance, automated speed enforcement
10 system, or automated traffic law violations does not exceed
11 \$2500. If the court is satisfied that the final determination
12 of parking, standing, compliance, automated speed enforcement
13 system, or automated traffic law violation was entered in
14 accordance with the requirements of this Section and the
15 applicable municipal or county ordinance, and that the
16 registered owner or the lessee, as the case may be, had an
17 opportunity for an administrative hearing and for judicial
18 review as provided in this Section, the court shall render
19 judgment in favor of the municipality or county and against the
20 registered owner or the lessee for the amount indicated in the
21 final determination of parking, standing, compliance,
22 automated speed enforcement system, or automated traffic law
23 violation, plus costs. The judgment shall have the same effect
24 and may be enforced in the same manner as other judgments for
25 the recovery of money.

26 (g) The fee for participating in a traffic education

1 program under this Section shall not exceed \$25.

2 A low-income individual required to complete a traffic
3 education program under this Section who provides proof of
4 eligibility for the federal earned income tax credit under
5 Section 32 of the Internal Revenue Code or the Illinois earned
6 income tax credit under Section 212 of the Illinois Income Tax
7 Act shall not be required to pay any fee for participating in a
8 required traffic education program.

9 (Source: P.A. 97-29, eff. 1-1-12; 97-333, eff. 8-12-11; 97-672,
10 eff. 7-1-12; 98-556, eff. 1-1-14; 98-1028, eff. 8-22-14.)