

2011 ORS § 810.439¹

Citations based on photo radar

• response to citation

- (1) Notwithstanding any other provision of law, in the jurisdictions using photo radar:
 - (a) A citation for speeding may be issued on the basis of photo radar if the following conditions are met:
 - (A) The photo radar equipment is operated by a uniformed police officer.
 - (B) The photo radar equipment is operated out of a marked police vehicle.
 - (C) An indication of the actual speed of the vehicle is displayed within 150 feet of the location of the photo radar unit.
 - (D) Signs indicating that speeds are enforced by photo radar are posted, so far as is practicable, on all major routes entering the jurisdiction.
 - (E) The citation is mailed to the registered owner of the vehicle within six business days of the alleged violation.
 - (F) The registered owner is given 30 days from the date the citation is mailed to respond to the citation.
 - (G) The jurisdiction operating photo radar complies with the requirements described in ORS 810.438 (Photo radar authorized).
 - (b) A rebuttable presumption exists that the registered owner of the vehicle was the driver of the vehicle when the citation is issued and delivered as provided in this section.
 - (c) A person issued a citation under this subsection may respond to the citation by submitting a certificate of innocence or a certificate of nonliability under subsection (3) of this section or may make any other response allowed by law.
- (2) A citation issued on the basis of photo radar may be delivered by mail or otherwise to the registered owner of the vehicle or to the driver. The citation may be prepared on a digital medium, and the signature may be electronic in

accordance with the provisions of ORS 84.001 (Short title) to 84.061 (Federal electronic signatures law partially superseded).

- (3)** (a) A registered owner of a vehicle may respond by mail to a citation issued under subsection (1) of this section by submitting a certificate of innocence within 30 days from the mailing of the citation swearing or affirming that the owner was not the driver of the vehicle and by providing a photocopy of the owners driver license. A jurisdiction that receives a certificate of innocence under this paragraph shall dismiss the citation without requiring a court appearance by the registered owner or any other information from the registered owner other than the swearing or affirmation and the photocopy. The citation may be reissued only once, only to the registered owner and only if the jurisdiction verifies that the registered owner appears to have been the driver at the time of the violation. A registered owner may not submit a certificate of innocence in response to a reissued citation.
- (b)** If a business or public agency responds to a citation issued under subsection (1) of this section by submitting a certificate of nonliability within 30 days from the mailing of the citation stating that at the time of the alleged speeding violation the vehicle was in the custody and control of an employee or was in the custody and control of a renter or lessee under the terms of a rental agreement or lease, and if the business or public agency provides the driver license number, name and address of the employee, renter or lessee, the citation shall be dismissed with respect to the business or public agency. The citation may then be issued and delivered by mail or otherwise to the employee, renter or lessee identified in the certificate of nonliability.
- (4)** If the person named as the registered owner of a vehicle in the current records of the Department of Transportation fails to respond to a citation issued under subsection (1) of this section, a default judgment under ORS 153.102 (Entry) may be entered for failure to appear after notice has been given that the judgment will be entered.
- (5)** The penalties for and all consequences of a speeding violation initiated by the use of photo radar are the same as for a speeding violation initiated by any other means.
- (6)** A registered owner, employee, renter or lessee against whom a judgment for failure to appear is entered may move the court to relieve the owner, employee, renter or lessee from the judgment as provided in ORS 153.105 (Relief from default judgment) if the failure to appear was due to mistake, inadvertence, surprise or excusable neglect. [1995 c.579 §2; 1997 c.280 §2; 1999 c.1051 §142; 1999 c.1071 §2; 2005 c.22 §516; 2005 c.686 §4; 2007 c.634 §2]

Note: Sections 4, 5 and 6, chapter 634, Oregon Laws 2007, provide:

Sec. 4. Highway work zone. (1) The Department of Transportation may operate photo radar within a highway work zone that is located on a state highway, except for a highway work zone located on an interstate highway.

- (2) The department, at its own cost, may ask a jurisdiction authorized to operate photo radar under ORS 810.438 (Photo radar authorized) (1) or the Oregon State Police to operate a photo radar unit in a highway work zone on a state highway, except for a highway work zone located on an interstate highway.
- (3) A photo radar unit operated under this section may not be used unless a sign is posted announcing that photo radar is in use. The sign posted under this subsection must be all of the following:
 - (a) Located on the state highway on which the photo radar unit is being used.
 - (b) Between 100 and 400 yards before the location of the photo radar unit.
- (4) The department shall, once each biennium, conduct a process and outcome evaluation for the purposes of subsection (5) of this section that includes:
 - (a) The effect of the use of photo radar on traffic safety;
 - (b) The degree of public acceptance of the use of photo radar; **and**
 - (c) The process of administration of the use of photo radar.
- (5) The department shall report to the Legislative Assembly by March 1 of each odd-numbered year.
- (6) As used in this section, highway work zone has the meaning given that term in ORS 811.230 (Definitions). [2007 c.634 §4]

Sec. 5. Highway work zone; citation. (1) Notwithstanding any other provision of law, when a jurisdiction or the Oregon State Police uses photo radar in a highway work zone:

- (a) A citation for speeding may be issued on the basis of photo radar if the following conditions are met:
 - (A) The photo radar unit is operated by a uniformed police officer.
 - (B) The photo radar unit is operated out of a marked police vehicle.
 - (C) An indication of the actual speed of the vehicle is displayed within 150 feet of the location of the photo radar unit.
 - (D) The citation is mailed to the registered owner of the vehicle within six business days of the alleged violation.
 - (E) The registered owner is given 30 days from the date the citation is mailed to respond to the citation.

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

- (5) The penalties for and all consequences of a speeding violation initiated by the use of photo radar are the same as for a speeding violation initiated by any other means.
- (6) A registered owner, employee, renter or lessee against whom a judgment for failure to appear is entered may move the court to relieve the registered owner, employee, renter or lessee from the judgment as provided in ORS 153.105 (Relief from default judgment) if the failure to appear was due to mistake, inadvertence, surprise or excusable neglect.
- (7) As used in this section, highway work zone has the meaning given that term in ORS 811.230 (Definitions). [2007 c.634 §5]

Sec. 6. Sections 4 and 5 of this 2007 Act are repealed on December 31, 2014.
[2007 c.634 §6]

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Notes of Decisions

Presumption that vehicle was driven by registered owner does not improperly shift burden of persuasion to defendant. *State v. Dahl*, 185 Or App 149, 57 P3d 965 (2002), *affd* 336 Or 481, 87 P3d 650 (2004)

Where vehicle is registered to single owner, presumption that registered owner was driving vehicle has sufficient rational basis to meet due process requirements. *State v. Dahl*, 185 Or App 149, 57 P3d 965 (2002), *affd* 336 Or 481, 87 P3d 650 (2004)

This section and ORS 810.438 (Photo radar authorized) are precitation procedural statutes that do not add to substantive requirements for commission of offense. *State v. King*, 199 Or App 278, 111 P3d 1146 (2005), Sup Ct review denied

Enumerated conditions for issuance of photo radar citation supersede ORS 153.045 (Citation) requirement for officer certification regarding offense. *State v. King*, 199 Or App 278, 111 P3d 1146 (2005), Sup Ct review denied

Related Statutes³

- 153.054
Service and filing

¹ Legislative Counsel Committee, *CHAPTER 810—Road Authorities; Courts; Police; Other Enforcement Officials*, <http://www.leg.state.or.us/ors/810.html> (2011) (last accessed Mar. 25, 2012).

² Legislative Counsel Committee, *Annotations to the Oregon Revised Statutes, Cumulative Supplement - 2011, Chapter 810*, <http://www.leg.state.or.us/ors/annos/810ano.htm> (2011) (last accessed Mar. 25, 2012).

³ OregonLaws.org assembles these lists by analyzing references between Sections. Each listed item refers back to the current Section in its own text. The result reveals relationships in the code that may not have otherwise been apparent.

Currency Information

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