

By: King, Hill, Berman, et al.

H.B. No. 901

Substitute the following for H.B. No. 901:

By: Hill

C.S.H.B. No. 901

A BILL TO BE ENTITLED

AN ACT

relating to the authority of a municipality to implement a photographic traffic signal enforcement system; providing for the imposition of civil penalties and providing a criminal penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle I, Title 7, Transportation Code, is amended by adding Chapter 707 to read as follows:

CHAPTER 707. PHOTOGRAPHIC TRAFFIC SIGNAL

ENFORCEMENT SYSTEM

Sec. 707.001. DEFINITIONS. In this chapter:

(1) "Owner of a motor vehicle" means the owner of a motor vehicle as shown on the motor vehicle registration records of the Texas Department of Transportation or the analogous department or agency of another state or country.

(2) "Photographic traffic signal enforcement system" means a system that:

(A) consists of a camera system and vehicle sensor installed to exclusively work in conjunction with an electrically operated traffic-control signal; and

(B) is capable of producing at least two recorded images that depict the license plate attached to the rear of a motor vehicle that is not operated in compliance with the instructions of the traffic-control signal.

(3) "Recorded image" means a photographic or digital

1 image that depicts the rear of a motor vehicle.

2 (4) "Traffic-control signal" has the meaning assigned  
3 by Section 541.304.

4 Sec. 707.002. AUTHORITY TO PROVIDE FOR CIVIL PENALTY. The  
5 governing body of a municipality by ordinance may implement a  
6 photographic traffic signal enforcement system and provide that the  
7 owner of a motor vehicle is liable to the municipality for a civil  
8 penalty if, while facing only a steady red signal displayed by an  
9 electrically operated traffic-control signal located in the  
10 municipality, the vehicle is operated in violation of the  
11 instructions of that traffic-control signal, as specified by  
12 Section 544.007(d).

13 Sec. 707.003. INSTALLATION AND OPERATION OF PHOTOGRAPHIC  
14 TRAFFIC SIGNAL ENFORCEMENT SYSTEM. (a) A municipality that  
15 implements a photographic traffic signal enforcement system under  
16 this chapter may:

17 (1) contract for the administration and enforcement of  
18 the system; and

19 (2) install and operate the system or contract for the  
20 installation or operation of the system.

21 (b) A municipality that contracts for the administration  
22 and enforcement of a photographic traffic signal enforcement system  
23 may agree to compensate the contractor on the basis of a monthly or  
24 other fee but may not agree to pay the contractor a specified  
25 percentage of, or dollar amount from, each civil penalty collected.

26 (c) Before installing a photographic traffic signal  
27 enforcement system at an intersection approach, the municipality

1 shall conduct a traffic engineering study of the approach to  
2 determine whether, in addition to or as an alternative to the  
3 system, a design change to the approach or a change in the  
4 signalization of the intersection is likely to reduce the number of  
5 red light violations at the intersection.

6 (d) An approach must be selected for the installation of a  
7 photographic traffic signal enforcement system based on traffic  
8 volume, the history of accidents at the approach, the number or  
9 frequency of red light violations at the approach, and similar  
10 traffic engineering and safety criteria, without regard to the  
11 ethnic or socioeconomic characteristics of the area in which the  
12 approach is located.

13 (e) The operator of the system shall ensure that the  
14 photographic traffic signal enforcement system is subject to  
15 regular and periodic inspections for proper operation, that each  
16 item of equipment of the system is kept in proper working condition  
17 and, if applicable, is properly calibrated, and that any  
18 malfunction of the system is corrected as soon as practicable. The  
19 operator shall maintain records relating to inspections of the  
20 system and to each malfunction of the system.

21 Sec. 707.004. REQUIRED ORDINANCE PROVISIONS. An ordinance  
22 adopted under Section 707.002 must provide that a person against  
23 whom the municipality seeks to impose a civil penalty is entitled to  
24 a hearing and shall:

25 (1) provide for the period in which the hearing must be  
26 held;

27 (2) provide for the appointment of a hearing officer

1 with authority to administer oaths and issue orders compelling the  
2 attendance of witnesses and the production of documents; and

3 (3) designate the department, agency, or office of the  
4 municipality responsible for the enforcement and administration of  
5 the ordinance or provide that the entity with which the  
6 municipality enters into a contract under Section 707.003(a)(1) is  
7 responsible for the enforcement and administration of the  
8 ordinance.

9 Sec. 707.005. EFFECT ON OTHER ENFORCEMENT. (a) The  
10 implementation of a photographic traffic signal enforcement system  
11 by a municipality under this chapter does not:

12 (1) preclude the application or enforcement in the  
13 municipality of Section 544.007(d) in the manner prescribed by  
14 Chapter 543; or

15 (2) prohibit a peace officer from arresting a violator  
16 of Section 544.007(d) as provided by Chapter 543 or from issuing the  
17 violator a citation and notice to appear as provided by that  
18 chapter.

19 (b) A municipality may not impose a civil penalty under this  
20 chapter on the owner of a motor vehicle if the operator of the  
21 vehicle was arrested or issued a citation and notice to appear by a  
22 peace officer for the same violation of Section 544.007(d) recorded  
23 by the photographic traffic signal enforcement system.

24 Sec. 707.006. NOTICE OF VIOLATION; CONTENTS. (a) The  
25 imposition of a civil penalty under this chapter is initiated by the  
26 mailing of a notice of violation to the owner of the motor vehicle  
27 against whom the municipality seeks to impose the civil penalty.

1        (b) Not later than the 30th day after the date the violation  
2 is alleged to have occurred, the designated department, agency, or  
3 office of the municipality or the entity with which the  
4 municipality has entered into a contract under Section  
5 707.003(a)(1) shall mail the notice of violation to the owner at:

6            (1) the owner's address as shown on the registration  
7 records of the Texas Department of Transportation; or

8            (2) if the vehicle is registered in another state or  
9 country, the owner's address as shown on the motor vehicle  
10 registration records of the department or agency of the other state  
11 or country analogous to the Texas Department of Transportation.

12        (c) The notice of violation must contain the following:

13            (1) a description of the violation alleged;

14            (2) the location of the intersection where the  
15 violation occurred;

16            (3) the date and time of the violation;

17            (4) the name and address of the owner of the vehicle  
18 involved in the violation;

19            (5) the registration number displayed on the license  
20 plate of the vehicle involved in the violation;

21            (6) a copy of a recorded image of the violation limited  
22 solely to a depiction of the area of the registration number  
23 displayed on the license plate of the vehicle involved in the  
24 violation;

25            (7) the amount of the civil penalty for which the owner  
26 is liable;

27            (8) the number of days the person has in which to pay

1 or contest the imposition of the civil penalty and a statement that  
2 the person incurs a late payment penalty if the civil penalty is not  
3 paid or imposition of the penalty is not contested within that  
4 period;

5 (9) a statement that the owner of the vehicle in the  
6 notice of violation may elect to pay the civil penalty by mail sent  
7 to a specified address instead of appearing at the time and place of  
8 the administrative adjudication hearing;

9 (10) information that informs the owner of the vehicle  
10 named in the notice of violation:

11 (A) of the owner's right to contest the  
12 imposition of the civil penalty against the person in an  
13 administrative adjudication hearing;

14 (B) that imposition of the civil penalty may be  
15 contested by submitting a written request for an administrative  
16 adjudication hearing before the expiration of the period specified  
17 by Subdivision (8); and

18 (C) that failure to pay the civil penalty or to  
19 contest liability for the penalty in a timely manner is an admission  
20 of liability and a waiver of the owner's right to appeal the  
21 imposition of the civil penalty; and

22 (11) an explanation of the provisions of Section  
23 707.008 and a statement that a person in the business of selling,  
24 renting, or leasing motor vehicles may avoid imposition of the  
25 civil penalty by complying with the applicable requirements of that  
26 section.

27 (d) A notice of violation is presumed to have been received

1 on the fifth day after the date the notice is mailed.

2 Sec. 707.007. ADMISSION OF LIABILITY. A person who fails to  
3 pay the civil penalty or to contest liability for the penalty in a  
4 timely manner or who requests an administrative adjudication  
5 hearing to contest the imposition of the civil penalty against the  
6 person and fails to appear at that hearing is considered to:

7 (1) admit liability for the full amount of the civil  
8 penalty stated in the notice of violation mailed to the person; and

9 (2) waive the person's right to appeal the imposition  
10 of the civil penalty.

11 Sec. 707.008. PRESUMPTION. (a) It is presumed that the  
12 owner of the motor vehicle committed the violation alleged in the  
13 notice of violation mailed to the person if the motor vehicle  
14 depicted in a photograph or digital image taken by a photographic  
15 traffic signal enforcement system belongs to the owner of the motor  
16 vehicle.

17 (b) If, at the time of the violation alleged in the notice of  
18 violation, the motor vehicle depicted in a photograph or digital  
19 image taken by a photographic traffic signal enforcement system was  
20 owned by a person in the business of selling, renting, or leasing  
21 motor vehicles or by a person who was not the person named in the  
22 notice of violation, the presumption under Subsection (a) is  
23 rebutted on the presentation of evidence establishing that the  
24 vehicle was at that time:

25 (1) being test driven by another person;

26 (2) being rented or leased by the vehicle's owner to  
27 another person; or

1           (3) owned by a person who was not the person named in  
2 the notice of violation.

3           (c) Notwithstanding Section 707.009, the presentation of  
4 evidence under Subsection (b) by a person who is in the business of  
5 selling, renting, or leasing motor vehicles or did not own the  
6 vehicle at the time of the violation must be made by affidavit,  
7 through testimony at the administrative adjudication hearing under  
8 Section 707.009, or by a written declaration under penalty of  
9 perjury. The affidavit or written declaration may be submitted by  
10 mail to the municipality or the entity with which the municipality  
11 contracts under Section 707.003(a)(1).

12           (d) If the presumption established by Subsection (a) is  
13 rebutted under Subsection (b), a civil penalty may not be imposed on  
14 the owner of the vehicle or the person named in the notice of  
15 violation, as applicable.

16           (e) If, at the time of the violation alleged in the notice of  
17 violation, the motor vehicle depicted in the photograph or digital  
18 image taken by the photographic traffic signal enforcement system  
19 was owned by a person in the business of renting or leasing motor  
20 vehicles and the vehicle was being rented or leased to an  
21 individual, the owner of the motor vehicle shall provide to the  
22 municipality or the entity with which the municipality contracts  
23 under Section 707.003(a)(1) the name and address of the individual  
24 who was renting or leasing the motor vehicle depicted in the  
25 photograph or digital image and a statement of the period during  
26 which that individual was renting or leasing the vehicle. The owner  
27 shall provide the information required by this subsection not later



1 than the 30th day after the date the notice of violation is  
2 received. If the owner provides the required information, it is  
3 presumed that the individual renting or leasing the motor vehicle  
4 committed the violation alleged in the notice of violation and the  
5 municipality or contractor may send a notice of violation to that  
6 individual at the address provided by the owner of the motor  
7 vehicle.

8 Sec. 707.009. ADMINISTRATIVE ADJUDICATION HEARING. (a) A  
9 person who receives a notice of violation under this chapter may  
10 contest the imposition of the civil penalty specified in the notice  
11 of violation by filing a written request for an administrative  
12 adjudication hearing. The request for a hearing must be filed on or  
13 before the date specified in the notice of violation, which may not  
14 be earlier than the 30th day after the date the notice of violation  
15 was mailed.

16 (b) On receipt of a timely request for an administrative  
17 adjudication hearing, the municipality shall notify the person of  
18 the date and time of the hearing.

19 (c) A hearing officer designated by the governing body of  
20 the municipality shall conduct the administrative adjudication  
21 hearing.

22 (d) In an administrative adjudication hearing, the issues  
23 must be proven by a preponderance of the evidence.

24 (e) The reliability of the photographic traffic signal  
25 enforcement system used to produce the recorded image of the motor  
26 vehicle involved in the violation may be attested to by affidavit of  
27 an officer or employee of the municipality or of the entity with

1 which the municipality has contracted under Section 707.003(a)(1)  
2 who is responsible for inspecting and maintaining the system.

3 (f) An affidavit of an officer or employee of the  
4 municipality or entity that alleges a violation based on an  
5 inspection of the applicable recorded image is:

6 (1) admissible in the administrative adjudication  
7 hearing and in an appeal under Section 707.013; and

8 (2) evidence of the facts contained in the affidavit.

9 (g) At the conclusion of the administrative adjudication  
10 hearing, the hearing officer shall enter a finding of liability for  
11 the civil penalty or a finding of no liability for the civil  
12 penalty. A finding under this subsection must be in writing and be  
13 signed and dated by the hearing officer.

14 (h) A finding of liability for a civil penalty must specify  
15 the amount of the civil penalty for which the person is liable. If  
16 the hearing officer enters a finding of no liability, a civil  
17 penalty for the violation may not be imposed against the person.

18 (i) A finding of liability or a finding of no liability  
19 entered under this section may:

20 (1) be filed with the clerk or secretary of the  
21 municipality or with a person designated by the governing body of  
22 the municipality; and

23 (2) be recorded on microfilm or microfiche or using  
24 data processing techniques.

25 Sec. 707.010. UNTIMELY REQUEST FOR ADMINISTRATIVE  
26 ADJUDICATION HEARING. Notwithstanding any other provision of this  
27 chapter, a person who receives a notice of violation under this

1 chapter and who fails to timely pay the amount of the civil penalty  
2 or fails to timely request an administrative adjudication hearing  
3 is entitled to an administrative adjudication hearing if:

4 (1) the person submits a written request for the  
5 hearing to the designated hearing officer, accompanied by an  
6 affidavit that attests to the date on which the person received the  
7 notice of violation; and

8 (2) the written request and affidavit are submitted to  
9 the hearing officer within the same number of days after the date  
10 the person received the notice of violation as specified by Section  
11 707.006(c)(8).

12 Sec. 707.011. AMOUNT OF CIVIL PENALTY; LATE PAYMENT  
13 PENALTY. (a) Except as provided by Subsections (b) and (c), the  
14 amount of a civil penalty that may be imposed on the owner of a motor  
15 vehicle under this chapter may not exceed \$75.

16 (b) For a third or subsequent violation committed by the  
17 same owner of a motor vehicle during any 12-month period, the amount  
18 of the civil penalty may not exceed \$200.

19 (c) The governing body of the municipality may prescribe a  
20 late payment penalty not to exceed \$50 for a civil penalty that is  
21 not timely paid.

22 Sec. 707.012. ENFORCEMENT. If the owner of a motor vehicle  
23 is delinquent in the payment of three or more civil penalties  
24 imposed under this chapter, the motor vehicle alleged to have been  
25 involved in any of the violations may be impounded or immobilized by  
26 placement of an appropriate device on the vehicle.

27 Sec. 707.013. APPEAL. (a) The owner of a motor vehicle

1 determined by a hearing officer to be liable for a civil penalty may  
2 appeal that determination to a judge of the municipal court of the  
3 municipality by filing an appeal petition with the clerk of the  
4 municipal court.

5 (b) The petition must be:

6 (1) filed before the 31st day after the date on which  
7 the administrative adjudication hearing officer entered the  
8 finding of liability for the civil penalty; and

9 (2) accompanied by payment of the costs required by  
10 law for municipal court.

11 (c) The municipal court clerk shall schedule a hearing and  
12 notify the owner of the motor vehicle and the appropriate  
13 department, agency, or office of the municipality of the date,  
14 time, and place of the hearing.

15 (d) Unless the owner of the vehicle, before filing the  
16 appeal petition, posts a bond in the amount of the civil penalty  
17 with the clerk of the municipal court, an appeal does not stay  
18 enforcement or collection of the civil penalty imposed against that  
19 owner.

20 (e) An appeal under this section shall be determined by the  
21 municipal court by trial de novo.

22 Sec. 707.014. IMPOSITION OF CIVIL PENALTY NOT A CONVICTION.  
23 The imposition of a civil penalty under this chapter is not a  
24 conviction and may not be considered a conviction for any purpose.

25 Sec. 707.015. REQUIRED SIGNAGE. (a) A municipality that  
26 implements a photographic traffic signal enforcement system shall  
27 place or erect signs to inform motorists entering the municipality

1 that a photographic traffic signal enforcement system is in use in  
2 the municipality.

3 (b) The municipality shall place or erect a sign required by  
4 Subsection (a) at each location where a city limits sign has been  
5 placed or erected adjacent to a roadway that enters the  
6 municipality.

7 (c) A sign required by this section must:

8 (1) conform to the manual and specifications adopted  
9 by the Texas Transportation Commission under Section 544.001; and

10 (2) read as follows: "THIS (CITY, TOWN, OR VILLAGE)  
11 USES A PHOTOGRAPHIC TRAFFIC SIGNAL ENFORCEMENT SYSTEM TO ENFORCE  
12 COMPLIANCE WITH TRAFFIC SIGNALS."

13 Sec. 707.016. IMPROPER USE OF SYSTEM; OFFENSE. (a) A  
14 person commits an offense if the person:

15 (1) uses a photographic traffic signal enforcement  
16 system to produce a recorded image other than in the manner and for  
17 the purposes specified by this chapter; or

18 (2) uses a recorded image produced by the photographic  
19 traffic signal enforcement system other than in the manner and for  
20 the purposes specified by this chapter.

21 (b) An offense under this section is a Class A misdemeanor.

22 Sec. 707.017. DISPOSITION OF REVENUE. (a) Not later than  
23 the 15th day after the end of a municipality's fiscal quarter, after  
24 deducting amounts the municipality is authorized by this section to  
25 retain, the municipality shall send to the comptroller for deposit  
26 to the credit of the Texas mobility fund:

27 (1) all revenue derived from civil penalties collected

1 by the municipality under this chapter in that fiscal quarter; and

2 (2) one-half of the revenue derived from any late  
3 payment penalties collected under Section 707.011(c) in that fiscal  
4 quarter.

5 (b) Together with the amounts sent for deposit, the  
6 municipality shall send to the comptroller a report that shows:

7 (1) the total amount of civil penalties and late  
8 penalties collected by the municipality in that fiscal quarter; and

9 (2) the amounts retained by the municipality under  
10 Subsection (c) in that fiscal quarter.

11 (c) A municipality may retain an amount equal to the amounts  
12 necessary to:

13 (1) purchase or lease equipment that is part of or used  
14 in connection with the photographic traffic signal enforcement  
15 system in the municipality;

16 (2) install the photographic traffic signal  
17 enforcement system at sites in the municipality, including the  
18 costs of installing cameras, flashes, computer equipment, loop  
19 sensors, detectors, utility lines, data lines, poles and mounts,  
20 networking equipment, engineering costs associated with Section  
21 707.003(c), and associated labor costs;

22 (3) operate the photographic traffic signal  
23 enforcement system in the municipality, including the costs of  
24 creating, distributing, and delivering violation notices, any  
25 review of violations by trained police officers, the processing of  
26 fine payments and collections, and the costs associated with  
27 administrative adjudications and appeals;

1           (4) maintain the general upkeep and functioning of the  
2 photographic traffic signal enforcement system; and

3           (5) fund the costs, not to exceed \$10,000, of a public  
4 awareness and education program that informs drivers about the  
5 municipality's use of the photographic traffic signal enforcement  
6 system in the first year the system is used.

7           (d) The comptroller shall enforce this section.

8           (e) If an audit is conducted by the comptroller under  
9 Subsection (d) and it is determined that during the period covered  
10 by the audit the municipality retained more than the amounts  
11 authorized by this section, the municipality shall pay the costs  
12 incurred by the comptroller in conducting the audit.

13           Sec. 707.018. DISPOSAL OF RECORDED IMAGES. A municipality  
14 shall dispose of each recorded image of a violation taken by the  
15 photographic traffic signal enforcement system not later than the  
16 30th day after the date:

17           (1) the civil penalty and any required late penalty  
18 for the violation is paid; or

19           (2) a finding of no liability for the violation is  
20 made.

21           SECTION 2. Section 29.003, Government Code, is amended by  
22 adding Subsection (g) to read as follows:

23           (g) A municipal court, including a municipal court of  
24 record, shall have exclusive appellate jurisdiction within the  
25 municipality's territorial limits in a case arising under Chapter  
26 707, Transportation Code.

27           SECTION 3. Subchapter C, Chapter 552, Government Code, is

1 amended by adding Section 552.1085 to read as follows:

2       Sec. 552.1085. PHOTOGRAPHIC TRAFFIC SIGNAL ENFORCEMENT  
3 SYSTEM INFORMATION. (a) Information, including a recorded image,  
4 that is obtained, produced, or held by a municipality or an agent or  
5 contractor of the municipality in connection with the operation in  
6 the municipality of a photographic traffic signal enforcement  
7 system under Chapter 707, Transportation Code, is excepted from the  
8 requirements of Section 552.021.

9       (b) Subsection (a) does not apply to information, including  
10 a recorded image, relating to a specific violation of Section  
11 544.007, Transportation Code, that is requested by the owner of the  
12 vehicle depicted in the recorded image of the violation.

13       SECTION 4. This Act takes effect immediately if it receives  
14 a vote of two-thirds of all the members elected to each house, as  
15 provided by Section 39, Article III, Texas Constitution. If this  
16 Act does not receive the vote necessary for immediate effect, this  
17 Act takes effect September 1, 2003.