

By: West, Royce

S.B. No. 939

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 front or 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 front or 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) An approach must be selected for the installation of a
27 photographic traffic signal enforcement system based on traffic

1 volume, the history of accidents at the approach, the number or
2 frequency of red light violations at the approach, and similar
3 traffic engineering and safety criteria, without regard to the
4 ethnic or socioeconomic characteristics of the area in which the
5 approach is located.

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

10 (1) provide for the period in which the hearing must be
11 held;

12 (2) provide for the appointment of a hearing officer
13 with authority to administer oaths and issue orders compelling the
14 attendance of witnesses and the production of documents; and

15 (3) designate the department, agency, or office of the
16 municipality responsible for the enforcement and administration of
17 the ordinance or provide that the entity with which the
18 municipality enters into a contract under Section 707.003(a)(1) is
19 responsible for the enforcement and administration of the
20 ordinance.

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

24 (1) preclude the application or enforcement in the
25 municipality of Section 544.007(d) in the manner prescribed by
26 Chapter 543; or

27 (2) prohibit a peace officer from arresting a violator

1 of Section 544.007(d) as provided by Chapter 543 or from issuing the
2 violator a citation and notice to appear as provided by that
3 chapter.

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

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

13 (b) Not later than the 30th day after the date the violation
14 is alleged to have occurred, the designated department, agency, or
15 office of the municipality or the entity with which the
16 municipality has entered into a contract under Section
17 707.003(a)(1) shall mail the notice of violation to the owner at:

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

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

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

25 (1) a description of the violation alleged;

26 (2) the location of the intersection where the
27 violation occurred;

- 1 (3) the date and time of the violation;
2 (4) the name and address of the owner of the vehicle
3 involved in the violation;
4 (5) the registration number displayed on the license
5 plate of the vehicle involved in the violation;
6 (6) a copy of a recorded image of the violation limited
7 solely to a depiction of the area of the registration number
8 displayed on the license plate of the vehicle involved in the
9 violation;
10 (7) the amount of the civil penalty for which the owner
11 is liable;
12 (8) the number of days the person has in which to pay
13 or contest the imposition of the civil penalty and a statement that
14 the person incurs a late payment penalty if the civil penalty is not
15 paid or imposition of the penalty is not contested within that
16 period;
17 (9) a statement that the owner of the vehicle in the
18 notice of violation may elect to pay the civil penalty by mail sent
19 to a specified address instead of appearing at the time and place of
20 the administrative adjudication hearing; and
21 (10) information that informs the owner of the vehicle
22 named in the notice of violation:
23 (A) of the owner's right to contest the
24 imposition of the civil penalty against the person in an
25 administrative adjudication hearing;
26 (B) that imposition of the civil penalty may be
27 contested by submitting a written request for an administrative

1 adjudication hearing before the expiration of the period specified
2 by Subdivision (8);

3 (C) that failure to pay the civil penalty or to
4 contest liability for the penalty in a timely manner is an admission
5 of liability and a waiver of the owner's right to appeal the
6 imposition of the civil penalty; and

7 (D) that imposition of the civil penalty may
8 result in the assessment on the owner's driver's license of a
9 surcharge under the Driver Responsibility Program.

10 (d) A notice of violation is presumed to have been received
11 on the fifth day after the date the notice is mailed.

12 Sec. 707.007. ADMISSION OF LIABILITY. A person who fails to
13 pay the civil penalty or to contest liability for the penalty in a
14 timely manner or who requests an administrative adjudication
15 hearing to contest the imposition of the civil penalty against the
16 person and fails to appear at that hearing is considered to:

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

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

21 Sec. 707.008. PRESUMPTION. (a) It is presumed that the
22 owner of the motor vehicle committed the violation alleged in the
23 notice of violation mailed to the person if the motor vehicle
24 depicted in a photograph or digital image taken by a photographic
25 traffic signal enforcement system belongs to the owner of the motor
26 vehicle.

27 (b) If, at the time of the violation alleged in the notice of

1 violation, the motor vehicle depicted in a photograph or digital
2 image taken by a photographic traffic signal enforcement system was
3 owned by a person in the business of selling, renting, or leasing
4 motor vehicles or by a person who was not the person named in the
5 notice of violation, the presumption under Subsection (a) is
6 rebutted on the presentation of evidence establishing that the
7 vehicle was at that time:

8 (1) being test driven by another person;

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

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

13 (c) Notwithstanding Section 707.009, the presentation of
14 evidence under Subsection (b) by a person who is in the business of
15 selling, renting, or leasing motor vehicles or did not own the
16 vehicle at the time of the violation must be made by affidavit,
17 through testimony at the administrative adjudication hearing under
18 Section 707.009, or by a written declaration under penalty of
19 perjury. The affidavit or written declaration may be submitted by
20 mail to the municipality or the entity with which the municipality
21 contracts under Section 707.003(a)(1).

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

26 (e) If, at the time of the violation alleged in the notice of
27 violation, the motor vehicle depicted in the photograph or digital

1 image taken by the photographic traffic signal enforcement system
2 was owned by a person in the business of renting or leasing motor
3 vehicles and the vehicle was being rented or leased to an
4 individual, the owner of the motor vehicle shall provide to the
5 municipality or the entity with which the municipality contracts
6 under Section 707.003(a)(1) the name and address of the individual
7 who was renting or leasing the motor vehicle depicted in the
8 photograph or digital image and a statement of the period during
9 which that individual was renting or leasing the vehicle. The owner
10 shall provide the information required by this subsection not later
11 than the 30th day after the date the notice of violation is
12 received. If the owner provides the required information, it is
13 presumed that the individual renting or leasing the motor vehicle
14 committed the violation alleged in the notice of violation and the
15 municipality or contractor may send a notice of violation to that
16 individual at the address provided by the owner of the motor
17 vehicle.

18 Sec. 707.009. ADMINISTRATIVE ADJUDICATION HEARING. (a) A
19 person who receives a notice of violation under this chapter may
20 contest the imposition of the civil penalty specified in the notice
21 of violation by filing a written request for an administrative
22 adjudication hearing. The request for a hearing must be filed on or
23 before the date specified in the notice of violation, which may not
24 be earlier than the 30th day after the date the notice of violation
25 was mailed.

26 (b) On receipt of a timely request for an administrative
27 adjudication hearing, the municipality shall notify the person of

1 the date and time of the hearing.

2 (c) A hearing officer designated by the governing body of
3 the municipality shall conduct the administrative adjudication
4 hearing.

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

7 (e) The reliability of the photographic traffic signal
8 enforcement system used to produce the recorded image of the motor
9 vehicle involved in the violation may be attested to by affidavit of
10 an officer or employee of the municipality or of the entity with
11 which the municipality has contracted under Section 707.003(a)(1)
12 who is responsible for inspecting and maintaining the system.

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

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

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

19 (g) At the conclusion of the administrative adjudication
20 hearing, the hearing officer shall enter a finding of liability for
21 the civil penalty or a finding of no liability for the civil
22 penalty. A finding under this subsection must be in writing and be
23 signed and dated by the hearing officer.

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

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

3 (1) be filed with the clerk or secretary of the
4 municipality or with a person designated by the governing body of
5 the municipality; and

6 (2) be recorded on microfilm or microfiche or using
7 data processing techniques.

8 Sec. 707.010. UNTIMELY REQUEST FOR ADMINISTRATIVE
9 ADJUDICATION HEARING. Notwithstanding any other provision of this
10 chapter, a person who receives a notice of violation under this
11 chapter and who fails to timely pay the amount of the civil penalty
12 or fails to timely request an administrative adjudication hearing
13 is entitled to an administrative adjudication hearing if:

14 (1) the person submits a written request for the
15 hearing to the designated hearing officer, accompanied by an
16 affidavit that attests to the date on which the person received the
17 notice of violation; and

18 (2) the written request and affidavit are submitted to
19 the hearing officer within the same number of days after the date
20 the person received the notice of violation as specified by Section
21 707.006(c)(8).

22 Sec. 707.011. AMOUNT OF CIVIL PENALTY. The amount of a
23 civil penalty that may be imposed on the owner of a motor vehicle
24 under this chapter may not be less than \$1 or more than \$200.

25 Sec. 707.012. ENFORCEMENT. If the owner of a motor vehicle
26 is delinquent in the payment of a civil penalty imposed under this
27 chapter, the county assessor-collector or the Texas Department of

1 Transportation may refuse to register a motor vehicle alleged to
2 have been involved in the violation.

3 Sec. 707.013. APPEAL. (a) The owner of a motor vehicle
4 determined by a hearing officer to be liable for a civil penalty may
5 appeal that determination to a judge of the municipal court of the
6 municipality by filing an appeal petition with the clerk of the
7 municipal court.

8 (b) The petition must be:

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

12 (2) accompanied by payment of the costs required by
13 law for municipal court.

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

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

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

25 Sec. 707.014. IMPOSITION OF CIVIL PENALTY CONVICTION FOR
26 PURPOSES OF DRIVER RESPONSIBILITY PROGRAM. (a) Except as provided
27 by Subsection (b), the imposition of a civil penalty under this

1 chapter is not a conviction and may not be considered a conviction
2 for any purpose.

3 (b) The imposition of a civil penalty under this chapter is
4 a conviction for the purposes of Chapter 708.

5 Sec. 707.015. UPPER PAYMENT LIMIT ACCOUNT. (a) The
6 designated upper payment limit account is created as a dedicated
7 account in the general revenue fund of the state treasury. Money in
8 the account may be appropriated only to the Health and Human
9 Services Commission or a health and human services agency, as
10 defined by Section 531.001, Government Code, for a purpose that
11 qualifies as a state expenditure for which federal matching funds
12 under the upper payment limit supplemental payment program are
13 available.

14 (b) The account is composed of money deposited to the credit
15 of the account under Section 707.016 and the earnings of the
16 account.

17 Sec. 707.016. DISPOSITION OF REVENUE. (a) After deducting
18 amounts the municipality is authorized by this section to retain,
19 the municipality shall send all revenue derived from civil or
20 administrative penalties collected by the municipality under this
21 section to:

22 (1) the comptroller for deposit to the credit of the
23 upper payment limit program account established under Section
24 707.015 if a public hospital, hospital district, or a health care
25 district is located within the jurisdiction of the municipality; or

26 (2) the comptroller for deposit to the credit of the
27 designated trauma facility and emergency medical services account

1 established under Section 780.003, Health and Safety Code, if a
2 public hospital, hospital district, or a health care district is
3 not located within the jurisdiction of the municipality.

4 (b) A municipality may retain an amount equal to 50 percent
5 of the penalty to cover the costs of:

6 (1) purchasing or leasing equipment that is part of or
7 used in connection with the photographic traffic signal enforcement
8 system in the municipality;

9 (2) installing the photographic traffic signal
10 enforcement system at sites in the municipality, including the
11 costs of installing cameras, flashes, computer equipment, loop
12 sensors, detectors, utility lines, data lines, poles and mounts,
13 networking equipment, and associated labor costs;

14 (3) operating the photographic traffic signal
15 enforcement system in the municipality, including the costs of
16 creating, distributing, and delivering violation notices, any
17 review of violations by trained police officers, and the processing
18 of fine payments and collections, and the costs associated with
19 administrative adjudications and appeals; and

20 (4) maintaining the general upkeep and functioning of
21 the photographic traffic signal enforcement system.

22 (c) Any amount retained by the municipality under
23 Subsection (b) that is not necessary to provide funding for
24 Subsections (b)(1)-(4) may be used only to fund programs that
25 provide public improvements related to public safety.

26 (d) The executive commissioner of the Health and Human
27 Services Commission and the comptroller shall adopt rules to

1 implement and enforce this section.

2 Sec. 707.017 MINIMUM CHANGE INTERVAL. At an intersection
3 at which a photographic traffic monitoring system is in use, the
4 minimum change interval for a steady yellow signal must be
5 established in accordance with the Texas Manual on Uniform Traffic
6 Control Devices.

7 SECTION 2. Section 702.001(3), Transportation Code, is
8 amended to read as follows:

9 (3) "Traffic law" means a statute or ordinance, a
10 violation of which is:

11 (A) a misdemeanor punishable by a fine not to
12 exceed \$200, that regulates, on a street, road, or highway of this
13 state:

14 (i) [~~(A)~~] the conduct or condition of a
15 person while operating a motor vehicle; or

16 (ii) [~~(B)~~] the condition of a motor vehicle
17 being operated; or

18 (B) punishable by a civil or administrative
19 penalty authorized by Section 707.002.

20 SECTION 3. Section 29.003, Government Code, is amended by
21 adding Subsection (g) to read as follows:

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

26 SECTION 4. Section 780.003(b), Health and Safety Code, is
27 amended to read as follows:

1 (b) The account is composed of money deposited to the credit
2 of the account under:

3 (1) Section 780.002;

4 (2) Section 707.016, Transportation Code; [~~7~~] and

5 (3) the earnings of the account.

6 SECTION 5. This Act applies to revenue received by a local
7 authority unit of this state from the imposition of a civil or
8 administrative penalty on or after the effective date of this Act,
9 regardless of whether the penalty was imposed before, on, or after
10 the effective date of this Act.

11 SECTION 6. Section 707.003, Transportation Code, as added
12 by this Act, applies only to a contract entered into on or after the
13 effective date of this Act.

14 SECTION 7. This Act takes effect September 1, 2007.