

By: Carona

S.B. No. 1119

A BILL TO BE ENTITLED

AN ACT

relating to the authority of a local authority to implement a photographic traffic signal enforcement system; providing for the imposition of civil penalties.

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) "Local authority" has the meaning assigned by Section 541.002.

(2) "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.

(3) "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

1 instructions of the traffic-control signal.

2 (4) "Recorded image" means a photographic or digital
3 image that depicts the front or the rear of a motor vehicle.

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

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

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

19 (1) contract for the administration and enforcement of
20 the system; and

21 (2) install and operate the system or contract for the
22 installation or operation of the system.

23 (b) A local authority that contracts for the administration
24 and enforcement of a photographic traffic signal enforcement system
25 may not agree to pay the contractor a specified percentage of, or
26 dollar amount from, each civil penalty collected.

27 (c) Before installing a photographic traffic signal

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

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

14 (e) A local authority may not impose a civil penalty under
15 this chapter on the owner of a motor vehicle if the local authority
16 violates Subsection (b) or (c).

17 Sec. 707.004. REQUIRED ORDINANCE PROVISIONS. An ordinance
18 adopted under Section 707.002 must provide that a person against
19 whom the local authority seeks to impose a civil penalty is entitled
20 to a hearing and shall:

21 (1) provide for the period in which the hearing must be
22 held;

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

26 (3) designate the department, agency, or office of the
27 local authority responsible for the enforcement and administration

1 of the ordinance or provide that the entity with which the local
2 authority contracts under Section 707.003(a)(1) is responsible for
3 the enforcement and administration of the ordinance.

4 Sec. 707.005. EFFECT ON OTHER ENFORCEMENT. (a) The
5 implementation of a photographic traffic signal enforcement system
6 by a local authority under this chapter does not:

7 (1) preclude the application or enforcement in the
8 local authority of Section 544.007(d) in the manner prescribed by
9 Chapter 543; or

10 (2) prohibit a peace officer from arresting a violator
11 of Section 544.007(d) as provided by Chapter 543 or from issuing the
12 violator a citation and notice to appear as provided by that
13 chapter.

14 (b) A local authority may not impose a civil penalty under
15 this chapter on the owner of a motor vehicle if the operator of the
16 vehicle was arrested or issued a citation and notice to appear by a
17 peace officer for the same violation of Section 544.007(d) recorded
18 by the photographic traffic signal enforcement system.

19 Sec. 707.006. NOTICE OF VIOLATION; CONTENTS. (a) The
20 imposition of a civil penalty under this chapter is initiated by the
21 mailing of a notice of violation to the owner of the motor vehicle
22 against whom the local authority seeks to impose the civil penalty.

23 (b) Not later than the 30th day after the date the violation
24 is alleged to have occurred, the designated department, agency, or
25 office of the local authority or the entity with which the local
26 authority contracts under Section 707.003(a)(1) shall mail the
27 notice of violation to the owner at:

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

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

7 (c) The notice of violation must contain:

8 (1) a description of the violation alleged;

9 (2) the location of the intersection where the
10 violation occurred;

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

12 (4) the name and address of the owner of the vehicle
13 involved in the violation;

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

16 (6) a copy of a recorded image of the violation limited
17 solely to a depiction of the area of the registration number
18 displayed on the license plate of the vehicle involved in the
19 violation;

20 (7) the amount of the civil penalty for which the owner
21 is liable;

22 (8) the number of days the person has in which to pay
23 or contest the imposition of the civil penalty and a statement that
24 the person incurs a late payment penalty if the civil penalty is not
25 paid or imposition of the penalty is not contested within that
26 period;

27 (9) a statement that the owner of the vehicle in the

1 notice of violation may elect to pay the civil penalty by mail sent
2 to a specified address instead of appearing at the time and place of
3 the administrative adjudication hearing; and

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

6 (A) of the owner's right to contest the
7 imposition of the civil penalty against the person in an
8 administrative adjudication hearing;

9 (B) that imposition of the civil penalty may be
10 contested by submitting a written request for an administrative
11 adjudication hearing before the expiration of the period specified
12 under Subdivision (8); and

13 (C) that failure to pay the civil penalty or to
14 contest liability for the penalty in a timely manner is an admission
15 of liability and a waiver of the owner's right to appeal the
16 imposition of the civil penalty.

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

19 Sec. 707.007. ADMISSION OF LIABILITY. A person who fails to
20 pay the civil penalty or to contest liability for the penalty in a
21 timely manner or who requests an administrative adjudication
22 hearing to contest the imposition of the civil penalty against the
23 person and fails to appear at that hearing is considered to:

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

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

1 Sec. 707.008. PRESUMPTION. (a) It is presumed that the
2 owner of the motor vehicle committed the violation alleged in the
3 notice of violation mailed to the person if the motor vehicle
4 depicted in a photograph or digital image taken by a photographic
5 traffic signal enforcement system belongs to the owner of the motor
6 vehicle.

7 (b) If, at the time of the violation alleged in the notice of
8 violation, the motor vehicle depicted in a photograph or digital
9 image taken by a photographic traffic signal enforcement system was
10 owned by a person in the business of selling, renting, or leasing
11 motor vehicles or by a person who was not the person named in the
12 notice of violation, the presumption under Subsection (a) is
13 rebutted on the presentation of evidence establishing that the
14 vehicle was at that time:

15 (1) being test driven by another person;

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

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

20 (c) Notwithstanding Section 707.009, the presentation of
21 evidence under Subsection (b) by a person who is in the business of
22 selling, renting, or leasing motor vehicles or did not own the
23 vehicle at the time of the violation must be made by affidavit,
24 through testimony at the administrative adjudication hearing under
25 Section 707.009, or by a written declaration under penalty of
26 perjury. The affidavit or written declaration may be submitted by
27 mail to the local authority or the entity with which the local

1 authority contracts under Section 707.003(a)(1).

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

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

25 Sec. 707.009. ADMINISTRATIVE ADJUDICATION HEARING. (a) A
26 person who receives a notice of violation under this chapter may
27 contest the imposition of the civil penalty specified in the notice

1 of violation by filing a written request for an administrative
2 adjudication hearing. The request for a hearing must be filed on or
3 before the date specified in the notice of violation, which may not
4 be earlier than the 30th day after the date the notice of violation
5 was mailed.

6 (b) On receipt of a timely request for an administrative
7 adjudication hearing, the local authority shall notify the person
8 of the date and time of the hearing.

9 (c) A hearing officer designated by the governing body of
10 the local authority shall conduct the administrative adjudication
11 hearing.

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

14 (e) The reliability of the photographic traffic signal
15 enforcement system used to produce the recorded image of the motor
16 vehicle involved in the violation may be attested to by affidavit of
17 an officer or employee of the local authority or of the entity with
18 which the local authority contracts under Section 707.003(a)(1) who
19 is responsible for inspecting and maintaining the system.

20 (f) An affidavit of an officer or employee of the local
21 authority or entity that alleges a violation based on an inspection
22 of the applicable recorded image is:

23 (1) admissible in the administrative adjudication
24 hearing and in an appeal under Section 707.011; and

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

26 (g) At the conclusion of the administrative adjudication
27 hearing, the hearing officer shall enter a finding of liability for

1 the civil penalty or a finding of no liability for the civil
2 penalty. A finding under this subsection must be in writing and be
3 signed and dated by the hearing officer.

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

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

10 (1) be filed with the clerk or secretary of the local
11 authority or with a person designated by the governing body of the
12 local authority; and

13 (2) be recorded on microfilm or microfiche or using
14 data processing techniques.

15 Sec. 707.010. UNTIMELY REQUEST FOR ADMINISTRATIVE
16 ADJUDICATION HEARING. Notwithstanding any other provision of this
17 chapter, a person who receives a notice of violation under this
18 chapter and who fails to timely pay the amount of the civil penalty
19 or fails to timely request an administrative adjudication hearing
20 is entitled to an administrative adjudication hearing if:

21 (1) the person submits a written request for the
22 hearing to the designated hearing officer, accompanied by an
23 affidavit that attests to the date on which the person received the
24 notice of violation; and

25 (2) the written request and affidavit are submitted to
26 the hearing officer within the same number of days after the date
27 the person received the notice of violation as specified under

1 Section 707.006(c)(8).

2 Sec. 707.011. APPEAL. (a) The owner of a motor vehicle
3 determined by a hearing officer to be liable for a civil penalty may
4 appeal that determination to a judge by filing an appeal petition
5 with the clerk of the court. The petition must be filed with:

6 (1) a justice court of the county in which the local
7 authority is located; or

8 (2) if the local authority is a municipality, the
9 municipal court of the municipality.

10 (b) The petition must be:

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

14 (2) accompanied by payment of the costs required by
15 law for the court.

16 (c) The court clerk shall schedule a hearing and notify the
17 owner of the motor vehicle and the appropriate department, agency,
18 or office of the local authority of the date, time, and place of the
19 hearing.

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

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

26 Sec. 707.012. ENFORCEMENT. If the owner of a motor vehicle
27 is delinquent in the payment of a civil penalty imposed under this

1 chapter, the county assessor-collector or the Texas Department of
2 Transportation may refuse to register a motor vehicle alleged to
3 have been involved in the violation.

4 Sec. 707.013. IMPOSITION OF CIVIL PENALTY CONVICTION FOR
5 PURPOSES OF DRIVER RESPONSIBILITY PROGRAM. (a) Except as provided
6 by Subsection (b), the imposition of a civil penalty under this
7 chapter is not a conviction and may not be considered a conviction
8 for any purpose.

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

11 Sec. 707.014. MINIMUM CHANGE INTERVAL. At an intersection
12 at which a photographic traffic monitoring system is in use, the
13 minimum change interval for a steady yellow signal must be
14 established in accordance with the Texas Manual on Uniform Traffic
15 Control Devices.

16 Sec. 707.015. FAILURE TO PAY CIVIL PENALTY. (a) If the
17 owner of the motor vehicle fails to timely pay the amount of the
18 civil penalty imposed against the owner:

19 (1) an arrest warrant may not be issued for the owner;
20 and

21 (2) the imposition of the civil penalty may not be
22 recorded on the owner's driving record.

23 (b) Notice of Subsection (a) must be included in the notice
24 of violation required by Section 707.006(c).

25 SECTION 2. Subsection (a), Section 27.031, Government Code,
26 is amended to read as follows:

27 (a) In addition to the jurisdiction and powers provided by

1 the constitution and other law, the justice court has original
2 jurisdiction of:

3 (1) civil matters in which exclusive jurisdiction is
4 not in the district or county court and in which the amount in
5 controversy is not more than \$5,000, exclusive of interest;

6 (2) cases of forcible entry and detainer; ~~and~~

7 (3) foreclosure of mortgages and enforcement of liens
8 on personal property in cases in which the amount in controversy is
9 otherwise within the justice court's jurisdiction; and

10 (4) cases arising under Chapter 707, Transportation
11 Code, outside a municipality's territorial limits.

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

14 (g) A municipal court, including a municipal court of
15 record, shall have exclusive appellate jurisdiction within the
16 municipality's territorial limits in a case arising under Chapter
17 707, Transportation Code.

18 SECTION 4. Section 707.003, Transportation Code, as added
19 by this Act, applies only to a contract entered into on or after the
20 effective date of this Act.

21 SECTION 5. (a) Except as provided by Subsection (b) of
22 this section, this Act takes effect September 1, 2007.

23 (b) This Act takes effect only if Senate Bill No. 125, Acts
24 of the 80th Legislature, Regular Session, 2007, is enacted and
25 becomes law.