

1-1 By: Carona S.B. No. 1119
1-2 (In the Senate - Filed March 5, 2007; March 14, 2007, read
1-3 first time and referred to Committee on Transportation and Homeland
1-4 Security; March 26, 2007, reported favorably by the following
1-5 vote: Yeas 6, Nays 0; March 26, 2007, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the authority of a local authority to implement a
1-9 photographic traffic signal enforcement system; providing for the
1-10 imposition of civil penalties.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Subtitle I, Title 7, Transportation Code, is
1-13 amended by adding Chapter 707 to read as follows:

1-14 CHAPTER 707. PHOTOGRAPHIC TRAFFIC SIGNAL
1-15 ENFORCEMENT SYSTEM

1-16 Sec. 707.001. DEFINITIONS. In this chapter:

1-17 (1) "Local authority" has the meaning assigned by
1-18 Section 541.002.

1-19 (2) "Owner of a motor vehicle" means the owner of a
1-20 motor vehicle as shown on the motor vehicle registration records of
1-21 the Texas Department of Transportation or the analogous department
1-22 or agency of another state or country.

1-23 (3) "Photographic traffic signal enforcement system"
1-24 means a system that:

1-25 (A) consists of a camera system and vehicle
1-26 sensor installed to exclusively work in conjunction with an
1-27 electrically operated traffic-control signal; and

1-28 (B) is capable of producing at least two recorded
1-29 images that depict the license plate attached to the front or the
1-30 rear of a motor vehicle that is not operated in compliance with the
1-31 instructions of the traffic-control signal.

1-32 (4) "Recorded image" means a photographic or digital
1-33 image that depicts the front or the rear of a motor vehicle.

1-34 (5) "Traffic-control signal" has the meaning assigned
1-35 by Section 541.304.

1-36 Sec. 707.002. AUTHORITY TO PROVIDE FOR CIVIL PENALTY. The
1-37 governing body of a local authority by ordinance may implement a
1-38 photographic traffic signal enforcement system and provide that the
1-39 owner of a motor vehicle is liable to the local authority for a
1-40 civil penalty if, while facing only a steady red signal displayed by
1-41 an electrically operated traffic-control signal located in the
1-42 local authority, the vehicle is operated in violation of the
1-43 instructions of that traffic-control signal, as specified by
1-44 Section 544.007(d).

1-45 Sec. 707.003. INSTALLATION AND OPERATION OF PHOTOGRAPHIC
1-46 TRAFFIC SIGNAL ENFORCEMENT SYSTEM. (a) A local authority that
1-47 implements a photographic traffic signal enforcement system under
1-48 this chapter may:

1-49 (1) contract for the administration and enforcement of
1-50 the system; and

1-51 (2) install and operate the system or contract for the
1-52 installation or operation of the system.

1-53 (b) A local authority that contracts for the administration
1-54 and enforcement of a photographic traffic signal enforcement system
1-55 may not agree to pay the contractor a specified percentage of, or
1-56 dollar amount from, each civil penalty collected.

1-57 (c) Before installing a photographic traffic signal
1-58 enforcement system at an intersection approach, the local authority
1-59 shall conduct a traffic engineering study of the approach to
1-60 determine whether, in addition to or as an alternative to the
1-61 system, a design change to the approach or a change in the
1-62 signalization of the intersection is likely to reduce the number of
1-63 red light violations at the intersection.

1-64 (d) An intersection approach must be selected for the

2-1 installation of a photographic traffic signal enforcement system
 2-2 based on traffic volume, the history of accidents at the approach,
 2-3 the number or frequency of red light violations at the
 2-4 intersection, and similar traffic engineering and safety criteria,
 2-5 without regard to the ethnic or socioeconomic characteristics of
 2-6 the area in which the approach is located.

2-7 Sec. 707.004. REQUIRED ORDINANCE PROVISIONS. An ordinance
 2-8 adopted under Section 707.002 must provide that a person against
 2-9 whom the local authority seeks to impose a civil penalty is entitled
 2-10 to a hearing and shall:

2-11 (1) provide for the period in which the hearing must be
 2-12 held;

2-13 (2) provide for the appointment of a hearing officer
 2-14 with authority to administer oaths and issue orders compelling the
 2-15 attendance of witnesses and the production of documents; and

2-16 (3) designate the department, agency, or office of the
 2-17 local authority responsible for the enforcement and administration
 2-18 of the ordinance or provide that the entity with which the local
 2-19 authority contracts under Section 707.003(a)(1) is responsible for
 2-20 the enforcement and administration of the ordinance.

2-21 Sec. 707.005. EFFECT ON OTHER ENFORCEMENT. (a) The
 2-22 implementation of a photographic traffic signal enforcement system
 2-23 by a local authority under this chapter does not:

2-24 (1) preclude the application or enforcement in the
 2-25 local authority of Section 544.007(d) in the manner prescribed by
 2-26 Chapter 543; or

2-27 (2) prohibit a peace officer from arresting a violator
 2-28 of Section 544.007(d) as provided by Chapter 543 or from issuing the
 2-29 violator a citation and notice to appear as provided by that
 2-30 chapter.

2-31 (b) A local authority may not impose a civil penalty under
 2-32 this chapter on the owner of a motor vehicle if the operator of the
 2-33 vehicle was arrested or issued a citation and notice to appear by a
 2-34 peace officer for the same violation of Section 544.007(d) recorded
 2-35 by the photographic traffic signal enforcement system.

2-36 Sec. 707.006. NOTICE OF VIOLATION; CONTENTS. (a) The
 2-37 imposition of a civil penalty under this chapter is initiated by the
 2-38 mailing of a notice of violation to the owner of the motor vehicle
 2-39 against whom the local authority seeks to impose the civil penalty.

2-40 (b) Not later than the 30th day after the date the violation
 2-41 is alleged to have occurred, the designated department, agency, or
 2-42 office of the local authority or the entity with which the local
 2-43 authority contracts under Section 707.003(a)(1) shall mail the
 2-44 notice of violation to the owner at:

2-45 (1) the owner's address as shown on the registration
 2-46 records of the Texas Department of Transportation; or

2-47 (2) if the vehicle is registered in another state or
 2-48 country, the owner's address as shown on the motor vehicle
 2-49 registration records of the department or agency of the other state
 2-50 or country analogous to the Texas Department of Transportation.

2-51 (c) The notice of violation must contain:

2-52 (1) a description of the violation alleged;

2-53 (2) the location of the intersection where the
 2-54 violation occurred;

2-55 (3) the date and time of the violation;

2-56 (4) the name and address of the owner of the vehicle
 2-57 involved in the violation;

2-58 (5) the registration number displayed on the license
 2-59 plate of the vehicle involved in the violation;

2-60 (6) a copy of a recorded image of the violation limited
 2-61 solely to a depiction of the area of the registration number
 2-62 displayed on the license plate of the vehicle involved in the
 2-63 violation;

2-64 (7) the amount of the civil penalty for which the owner
 2-65 is liable;

2-66 (8) the number of days the person has in which to pay
 2-67 or contest the imposition of the civil penalty and a statement that
 2-68 the person incurs a late payment penalty if the civil penalty is not
 2-69 paid or imposition of the penalty is not contested within that

3-1 period;

3-2 (9) a statement that the owner of the vehicle in the
 3-3 notice of violation may elect to pay the civil penalty by mail sent
 3-4 to a specified address instead of appearing at the time and place of
 3-5 the administrative adjudication hearing; and

3-6 (10) information that informs the owner of the vehicle
 3-7 named in the notice of violation:

3-8 (A) of the owner's right to contest the
 3-9 imposition of the civil penalty against the person in an
 3-10 administrative adjudication hearing;

3-11 (B) that imposition of the civil penalty may be
 3-12 contested by submitting a written request for an administrative
 3-13 adjudication hearing before the expiration of the period specified
 3-14 under Subdivision (8); and

3-15 (C) that failure to pay the civil penalty or to
 3-16 contest liability for the penalty in a timely manner is an admission
 3-17 of liability and a waiver of the owner's right to appeal the
 3-18 imposition of the civil penalty.

3-19 (d) A notice of violation is presumed to have been received
 3-20 on the fifth day after the date the notice is mailed.

3-21 Sec. 707.007. ADMISSION OF LIABILITY. A person who fails to
 3-22 pay the civil penalty or to contest liability for the penalty in a
 3-23 timely manner or who requests an administrative adjudication
 3-24 hearing to contest the imposition of the civil penalty against the
 3-25 person and fails to appear at that hearing is considered to:

3-26 (1) admit liability for the full amount of the civil
 3-27 penalty stated in the notice of violation mailed to the person; and

3-28 (2) waive the person's right to appeal the imposition
 3-29 of the civil penalty.

3-30 Sec. 707.008. PRESUMPTION. (a) It is presumed that the
 3-31 owner of the motor vehicle committed the violation alleged in the
 3-32 notice of violation mailed to the person if the motor vehicle
 3-33 depicted in a photograph or digital image taken by a photographic
 3-34 traffic signal enforcement system belongs to the owner of the motor
 3-35 vehicle.

3-36 (b) If, at the time of the violation alleged in the notice of
 3-37 violation, the motor vehicle depicted in a photograph or digital
 3-38 image taken by a photographic traffic signal enforcement system was
 3-39 owned by a person in the business of selling, renting, or leasing
 3-40 motor vehicles or by a person who was not the person named in the
 3-41 notice of violation, the presumption under Subsection (a) is
 3-42 rebutted on the presentation of evidence establishing that the
 3-43 vehicle was at that time:

3-44 (1) being test driven by another person;

3-45 (2) being rented or leased by the vehicle's owner to
 3-46 another person; or

3-47 (3) owned by a person who was not the person named in
 3-48 the notice of violation.

3-49 (c) Notwithstanding Section 707.009, the presentation of
 3-50 evidence under Subsection (b) by a person who is in the business of
 3-51 selling, renting, or leasing motor vehicles or did not own the
 3-52 vehicle at the time of the violation must be made by affidavit,
 3-53 through testimony at the administrative adjudication hearing under
 3-54 Section 707.009, or by a written declaration under penalty of
 3-55 perjury. The affidavit or written declaration may be submitted by
 3-56 mail to the local authority or the entity with which the local
 3-57 authority contracts under Section 707.003(a)(1).

3-58 (d) If the presumption established by Subsection (a) is
 3-59 rebutted under Subsection (b), a civil penalty may not be imposed on
 3-60 the owner of the vehicle or the person named in the notice of
 3-61 violation, as applicable.

3-62 (e) If, at the time of the violation alleged in the notice of
 3-63 violation, the motor vehicle depicted in the photograph or digital
 3-64 image taken by the photographic traffic signal enforcement system
 3-65 was owned by a person in the business of renting or leasing motor
 3-66 vehicles and the vehicle was being rented or leased to an
 3-67 individual, the owner of the motor vehicle shall provide to the
 3-68 local authority or the entity with which the local authority
 3-69 contracts under Section 707.003(a)(1) the name and address of the

4-1 individual who was renting or leasing the motor vehicle depicted in
 4-2 the photograph or digital image and a statement of the period during
 4-3 which that individual was renting or leasing the vehicle. The owner
 4-4 shall provide the information required by this subsection not later
 4-5 than the 30th day after the date the notice of violation is
 4-6 received. If the owner provides the required information, it is
 4-7 presumed that the individual renting or leasing the motor vehicle
 4-8 committed the violation alleged in the notice of violation and the
 4-9 local authority or contractor may send a notice of violation to that
 4-10 individual at the address provided by the owner of the motor
 4-11 vehicle.

4-12 Sec. 707.009. ADMINISTRATIVE ADJUDICATION HEARING. (a) A
 4-13 person who receives a notice of violation under this chapter may
 4-14 contest the imposition of the civil penalty specified in the notice
 4-15 of violation by filing a written request for an administrative
 4-16 adjudication hearing. The request for a hearing must be filed on or
 4-17 before the date specified in the notice of violation, which may not
 4-18 be earlier than the 30th day after the date the notice of violation
 4-19 was mailed.

4-20 (b) On receipt of a timely request for an administrative
 4-21 adjudication hearing, the local authority shall notify the person
 4-22 of the date and time of the hearing.

4-23 (c) A hearing officer designated by the governing body of
 4-24 the local authority shall conduct the administrative adjudication
 4-25 hearing.

4-26 (d) In an administrative adjudication hearing, the issues
 4-27 must be proven by a preponderance of the evidence.

4-28 (e) The reliability of the photographic traffic signal
 4-29 enforcement system used to produce the recorded image of the motor
 4-30 vehicle involved in the violation may be attested to by affidavit of
 4-31 an officer or employee of the local authority or of the entity with
 4-32 which the local authority contracts under Section 707.003(a)(1) who
 4-33 is responsible for inspecting and maintaining the system.

4-34 (f) An affidavit of an officer or employee of the local
 4-35 authority or entity that alleges a violation based on an inspection
 4-36 of the applicable recorded image is:

4-37 (1) admissible in the administrative adjudication
 4-38 hearing and in an appeal under Section 707.011; and

4-39 (2) evidence of the facts contained in the affidavit.

4-40 (g) At the conclusion of the administrative adjudication
 4-41 hearing, the hearing officer shall enter a finding of liability for
 4-42 the civil penalty or a finding of no liability for the civil
 4-43 penalty. A finding under this subsection must be in writing and be
 4-44 signed and dated by the hearing officer.

4-45 (h) A finding of liability for a civil penalty must specify
 4-46 the amount of the civil penalty for which the person is liable. If
 4-47 the hearing officer enters a finding of no liability, a civil
 4-48 penalty for the violation may not be imposed against the person.

4-49 (i) A finding of liability or a finding of no liability
 4-50 entered under this section may:

4-51 (1) be filed with the clerk or secretary of the local
 4-52 authority or with a person designated by the governing body of the
 4-53 local authority; and

4-54 (2) be recorded on microfilm or microfiche or using
 4-55 data processing techniques.

4-56 Sec. 707.010. UNTIMELY REQUEST FOR ADMINISTRATIVE
 4-57 ADJUDICATION HEARING. Notwithstanding any other provision of this
 4-58 chapter, a person who receives a notice of violation under this
 4-59 chapter and who fails to timely pay the amount of the civil penalty
 4-60 or fails to timely request an administrative adjudication hearing
 4-61 is entitled to an administrative adjudication hearing if:

4-62 (1) the person submits a written request for the
 4-63 hearing to the designated hearing officer, accompanied by an
 4-64 affidavit that attests to the date on which the person received the
 4-65 notice of violation; and

4-66 (2) the written request and affidavit are submitted to
 4-67 the hearing officer within the same number of days after the date
 4-68 the person received the notice of violation as specified under
 4-69 Section 707.006(c)(8).

5-1 Sec. 707.011. APPEAL. (a) The owner of a motor vehicle
5-2 determined by a hearing officer to be liable for a civil penalty may
5-3 appeal that determination to a judge by filing an appeal petition
5-4 with the clerk of the court. The petition must be filed with:

- 5-5 (1) a justice court of the county in which the local
- 5-6 authority is located; or
- 5-7 (2) if the local authority is a municipality, the
- 5-8 municipal court of the municipality.

5-9 (b) The petition must be:

- 5-10 (1) filed before the 31st day after the date on which
- 5-11 the administrative adjudication hearing officer entered the
- 5-12 finding of liability for the civil penalty; and
- 5-13 (2) accompanied by payment of the costs required by
- 5-14 law for the court.

5-15 (c) The court clerk shall schedule a hearing and notify the
5-16 owner of the motor vehicle and the appropriate department, agency,
5-17 or office of the local authority of the date, time, and place of the
5-18 hearing.

5-19 (d) Unless the owner of the vehicle, before filing the
5-20 appeal petition, posts a bond in the amount of the civil penalty
5-21 with the clerk of the court, an appeal does not stay enforcement or
5-22 collection of the civil penalty imposed against that owner.

5-23 (e) An appeal under this section shall be determined by the
5-24 court by trial de novo.

5-25 Sec. 707.012. MINIMUM CHANGE INTERVAL. At an intersection
5-26 at which a photographic traffic monitoring system is in use, the
5-27 minimum change interval for a steady yellow signal must be
5-28 established in accordance with the Texas Manual on Uniform Traffic
5-29 Control Devices.

5-30 SECTION 2. Subsection (a), Section 27.031, Government Code,
5-31 is amended to read as follows:

5-32 (a) In addition to the jurisdiction and powers provided by
5-33 the constitution and other law, the justice court has original
5-34 jurisdiction of:

5-35 (1) civil matters in which exclusive jurisdiction is
5-36 not in the district or county court and in which the amount in
5-37 controversy is not more than \$5,000, exclusive of interest;

5-38 (2) cases of forcible entry and detainer; ~~and~~

5-39 (3) foreclosure of mortgages and enforcement of liens
5-40 on personal property in cases in which the amount in controversy is
5-41 otherwise within the justice court's jurisdiction; and

5-42 (4) cases arising under Chapter 707, Transportation
5-43 Code, outside a municipality's territorial limits.

5-44 SECTION 3. Section 29.003, Government Code, is amended by
5-45 adding Subsection (g) to read as follows:

5-46 (g) A municipal court, including a municipal court of
5-47 record, shall have exclusive appellate jurisdiction within the
5-48 municipality's territorial limits in a case arising under Chapter
5-49 707, Transportation Code.

5-50 SECTION 4. Section 707.003, Transportation Code, as added
5-51 by this Act, applies only to a contract entered into on or after the
5-52 effective date of this Act.

5-53 SECTION 5. (a) Except as provided by Subsection (b) of
5-54 this section, this Act takes effect September 1, 2007.

5-55 (b) This Act takes effect only if Senate Bill No. 125, Acts
5-56 of the 80th Legislature, Regular Session, 2007, is enacted and
5-57 becomes law.

5-58 * * * * *