

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas  
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As Engrossed: H4/11/13 H4/12/13  
**A Bill**

HOUSE BILL 2158

By: Representative E. Armstrong

### **For An Act To Be Entitled**

AN ACT TO ALLOW A CITY OF THE FIRST CLASS TO USE AN  
AUTOMATED ENFORCEMENT DEVICE TO ENFORCE TRAFFIC  
CONTROL DEVICE LAWS; AND FOR OTHER PURPOSES.

### **Subtitle**

TO ALLOW A CITY OF THE FIRST CLASS TO USE  
AN AUTOMATED ENFORCEMENT DEVICE TO  
ENFORCE TRAFFIC CONTROL DEVICE LAWS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 27-52-111(b)-(c), concerning automated traffic enforcement devices operated by a municipality or department of state government operating within the boundaries of a municipality, is amended to read as follows:

(b) Except as used under subsection (c) of this section or under § 27-52-301 et seq., an automated enforcement device shall not be used by a law enforcement agency of a municipality or a department of state government that is operating within the boundaries of the municipality to detect or enforce:

- (1) A violation of the traffic laws or regulations of the State of Arkansas; or
- (2) An ordinance of the municipality.

(c)(1) A municipality or a department of state government that is operating within the boundaries of the municipality may use an automated enforcement device to detect and enforce a violation of traffic laws or ordinances:

- (A) In a school zone; or



(B) At a railroad crossing.

(2) If a municipality or a department of state government that is operating within the boundaries of the municipality uses an automated enforcement device under this section, then a certified law enforcement officer ~~must~~ shall:

(A) Be present with the automated enforcement device; and

(B) Issue the citation to the violator at the time and place of the violation.

SECTION 2. Arkansas Code Title 27, Chapter 52, is amended to add an additional subchapter to read as follows:

27-52-301. Title.

This subchapter will be known and may be cited as the "Civil Penalties for Traffic Signal Violations Act".

27-52-302. Use by city with a population of at least fifty thousand (50,000) of an automated enforcement device for enforcement of traffic control device laws.

Notwithstanding any law to the contrary, a city with a population of at least fifty thousand (50,000) may by ordinance use an automated enforcement device as defined in § 27-52-111 to impose a civil penalty for the violation of traffic control laws set out in this chapter as provided under this subchapter.

27-52-303. Enabling ordinance.

An ordinance adopted under this section shall:

(1) State that a person against whom the city seeks to impose a civil penalty is entitled to a hearing;

(2) Provide for the period in which the hearing shall be held;

(3) Provide for the appointment of a hearing officer with authority to:

(A) Administer oaths; and

(B) Subpoena witnesses and documents; and

(4) Designate the department, agency, or office of the city responsible for the enforcement and administration of the ordinance.

27-52-304. Notice.

(a) The imposition of a civil penalty under this subchapter is initiated by mailing a notice of violation to the owner of the motor vehicle against whom the city seeks to impose the civil penalty.

(b) Within thirty (30) days of the date the violation is alleged to have occurred, the designated department, agency, or office of the city shall mail the notice of violation to the owner at:

(1) The owner's address as shown on the registration records of the Office of Motor Vehicle or the Arkansas Crime Information Center; or

(2) If the vehicle is registered in another state or country, the owner's address as shown on the motor vehicle registration records of the department or agency of the other state or country analogous to the Office of Motor Vehicle.

(c) The notice of violation shall contain:

(1) A description of the violation;

(2) The location of the intersection where the violation occurred;

(3) The date and time of the violation;

(4) The registration number displayed on the license plate of the vehicle involved in the violation;

(5) A copy of a recorded image of the violation limited solely to a depiction of the area of the registration number displayed on the license plate of the vehicle involved in the violation;

(6) The amount of the civil penalty for which the owner is liable;

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

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

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

(A) Of the owner's right to contest the imposition of the

civil penalty against the person in an administrative adjudication hearing;

(B) That imposition of the civil penalty may be contested by submitting a written request for an administrative adjudication hearing before the expiration of the period specified under subdivision (c)(8) of this section;

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

(D) That failure to pay the civil penalty or to contest liability for the penalty in a timely manner is an admission of liability.

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

27-52-305. Administrative hearing.

(a) A person who receives a notice of violation under this chapter may contest the imposition of the civil penalty by filing a written request for an administrative hearing with the designated department, agency, or office of the city within thirty (30) days after the date the notice of violation was mailed.

(b) On receipt of a timely request for an administrative adjudication hearing, the designated department, agency, or office of the city shall notify the person of the location, date, and time of the hearing.

(c) A hearing officer designated by the governing body of the city shall conduct the administrative hearing.

(d) In an administrative hearing:

(1) The city bears the burden of proof of an offense;

(2) The person alleged to be responsible for the civil penalty bears the burden of proof on any defense; and

(3) The issues shall be proven by a preponderance of the evidence.

27-52-306. Evidence.

(a) The reliability of the automated enforcement device used to produce the recorded image of the motor vehicle involved in the violation may be attested to by affidavit of a law enforcement officer, employee, or agent

of the city who is responsible for inspecting and maintaining the system.

(b) An affidavit of a law enforcement officer of the city or entity that alleges a violation based on an inspection of the applicable recorded image is:

- (1) Admissible in the administrative hearing; and
- (2) Evidence of the facts contained in the affidavit.

27-52-307. Liability determination.

(a) At the conclusion of the administrative hearing, the hearing officer shall enter a finding of liability or a finding of no liability. A finding under this subsection shall be in writing and be signed and dated by the hearing officer.

(b) A finding of liability shall:

- (1) Be based only upon evidence that the vehicle involved in the violation entered the intersection after the signal light turned red; and
- (2) Specify the amount of the civil penalty for which the person is liable.

(c) If the hearing officer enters a finding of no liability, a civil penalty for the violation may not be imposed against the person.

(d) A finding of liability or a finding of no liability entered under this subchapter may:

- (1) Be filed with the clerk or secretary of the city or with a person designated by the governing body of the city; and
- (2) Be recorded on microfilm or microfiche or using data processing techniques.

27-52-308. Defenses and rebuttable presumptions.

(a) A city may not impose a civil penalty under this section on the owner of a motor vehicle if the operator of the vehicle was arrested or issued a citation and notice to appear by a law enforcement officer for the same violation of this chapter recorded by the automated enforcement device.

(b) There is created a rebuttable presumption in any enforcement action under this subchapter that the registered owner of a vehicle in violation of this subchapter is presumed to have been the driver of the vehicle at the time of the violation.

(c)(1) No person who is the lessor of a motor vehicle pursuant to a

written lease agreement shall be liable for an automated traffic enforcement device violation involving such motor vehicle during the period of the lease; provided that upon request of the appropriate authority received within 30 days after the notice of violation the lessor provides the name and address of the lessee on the date of the violation. The driver's license number of the lessee may be subsequently individually requested by the appropriate authority if needed for enforcement of this Section.

(2) Upon the provision of information by the lessor under this subsection (c) of this section, the City may issue the notice of violation to the lessee of the vehicle in the same manner it would issue a violation to a registered owner pursuant to this subchapter, and the lessee may be held liable for the violation.

27-52-309. Penalty – Failure to appear.

(a)(1) The civil penalty provided under this subchapter may not exceed seventy-five dollars (\$75.00).

(2) A late payment penalty may not exceed twenty-five dollars (\$25.00).

(b) A person who fails to pay the civil penalty, fails to contest liability for the penalty in a timely manner, or who requests an administrative hearing and fails to appear at that hearing is considered to:

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

(2) Waive the person's right to appeal the imposition of the civil penalty.

27-52-310. Appeal.

(a) If the owner of the motor vehicle is found liable for a civil penalty at a hearing under this subchapter, he or she may appeal that determination to the district court by filing a petition with the clerk.

(b) The petition shall be:

(1) Filed on or before thirty (30) days after the date on which the administrative hearing officer entered the finding of liability for the civil penalty; and

(2) Accompanied by payment of the costs required by law for the court.

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

(d) If the owner of a motor vehicle files an appeal under this section, the enforcement and collection of the civil penalty shall be stayed.

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

27-52-311. Feasibility study.

(a) A city that chooses to use an enforcement device under this subchapter shall evaluate annually the general effectiveness of the use of an automated enforcement device under this subchapter and determine if any additional enforcement steps can be utilized to improve effectiveness.

(b) The city will report its findings to the House Committee on Public Transportation and the Senate Committee on Public Transportation, Technology, and Legislative Affairs on the date of their last scheduled meetings before December 1 of any year immediately prior to the next meeting of the Regular Session of the General Assembly.

27-52-312. Violations for misuse.

(a) Other than as provided in this section a person shall not use an automated enforcement device to produce a recorded image other than in the manner and for the purpose specified by this subchapter.

(b) A violation of subsection (a) is a Class A misdemeanor.

(c) Recorded images from an automated enforcement device shall be available for review as part of an investigation performed under the laws of this state.

27-52-313. Effect of civil penalty.

The imposition of a civil penalty under this subchapter is not a conviction and may not be considered a conviction for any purpose.

*/s/E. Armstrong*