

1 State of Arkansas  
2 89th General Assembly  
3 Regular Session, 2013  
4

# A Bill

HOUSE BILL 2158

5 By: Representative E. Armstrong  
6

## For An Act To Be Entitled

8 AN ACT TO ALLOW A CITY OF THE FIRST CLASS TO USE AN  
9 AUTOMATED ENFORCEMENT DEVICE TO ENFORCE TRAFFIC  
10 CONTROL DEVICE LAWS; AND FOR OTHER PURPOSES.  
11

## Subtitle

12  
13 TO ALLOW A CITY OF THE FIRST CLASS TO USE  
14 AN AUTOMATED ENFORCEMENT DEVICE TO  
15 ENFORCE TRAFFIC CONTROL DEVICE LAWS.  
16  
17  
18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
20

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

25 (b) Except as used under subsection (c) of this section or under § 27-  
26 52-301 et seq., an automated enforcement device shall not be used by a law  
27 enforcement agency of a municipality or a department of state government that  
28 is operating within the boundaries of the municipality to detect or enforce:

29 (1) A violation of the traffic laws or regulations of the State  
30 of Arkansas; or

31 (2) An ordinance of the municipality.

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

36 (A) In a school zone; or



1 (B) At a railroad crossing.

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

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

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

9

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

12 27-52-301. Title.

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

15

16 27-52-302. Use by city of the first class of automated enforcement  
 17 device for enforcement of traffic control device laws.

18 Notwithstanding any law to the contrary, a city of the first class may  
 19 by ordinance use an automated enforcement device as defined in § 27-52-111 to  
 20 impose a civil penalty for the violation of traffic control laws set out in  
 21 this chapter as provided under this subchapter.

22

23 27-52-303. Enabling ordinance.

24 An ordinance adopted under this section shall:

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

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

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

30 (A) Administer oaths; and

31 (B) Subpoena witnesses and documents; and

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

34

35 27-52-304. Notice.

36 (a) The imposition of a civil penalty under this subchapter is

1 initiated by mailing a notice of violation to the owner of the motor vehicle  
2 against whom the city seeks to impose the civil penalty.

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

6 (1) The owner's address as shown on the registration records of  
7 the Office of Motor Vehicle; or

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

12 (c) The notice of violation shall contain:

13 (1) A description of the violation;

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

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

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

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

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

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

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

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

34 (A) Of the owner's right to contest the imposition of the  
35 civil penalty against the person in an administrative adjudication hearing;

36 (B) That imposition of the civil penalty may be contested

1 by submitting a written request for an administrative adjudication hearing  
2 before the expiration of the period specified under subdivision (c)(8) of  
3 this section;

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

8 (D) That failure to pay the civil penalty or to contest  
9 liability for the penalty in a timely manner is an admission of liability  
10 and shall result denial of motor vehicle registration or renewal of motor  
11 vehicle registration until such time as the penalty is resolved.

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

14  
15 27-52-305. Administrative hearing.

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

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

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

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

28  
29 27-52-306. Evidence.

30 (a) The reliability of the automated enforcement device used to  
31 produce the recorded image of the motor vehicle involved in the violation may  
32 be attested to by affidavit of a law enforcement officer, employee, or agent  
33 of the city who is responsible for inspecting and maintaining the system.

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

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

3

4           27-52-307. Liability determination.

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

9           (b) A finding of liability shall:

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

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

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

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

22

23           27-52-308. Defenses and rebuttable presumptions.

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

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

32           (c)(1) No person who is the lessor of a motor vehicle pursuant to a  
 33 written lease agreement shall be liable for an automated traffic enforcement  
 34 device violation involving such motor vehicle during the period of the lease;  
 35 provided that upon request of the appropriate authority received within 30  
 36 days after the notice of violation the lessor provides the name and address

1 of the lessee on the date of the violation. The driver's license number of  
2 the lessee may be subsequently individually requested by the appropriate  
3 authority if needed for enforcement of this Section.

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

9  
10 27-52-309. Penalty – Failure to appear.

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

13 (2) A late payment penalty may not exceed twenty-five dollars  
14 (\$25.00).

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

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

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

22  
23 27-52-310. Appeal.

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

27 (b) The petition shall be:

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

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

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

36 (d) If the owner of a motor vehicle files an appeal under this

1 section, the enforcement and collection of the civil penalty shall be stayed.

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

4  
5 27-52-311. Enforcement.

6 If the owner of a motor vehicle is delinquent in the payment of a civil  
7 penalty imposed under this subchapter, the Office of Motor Vehicle of the  
8 Revenue Division of the Department of Finance and Administration shall refuse  
9 to register a motor vehicle involved in the violation.

10  
11 27-52-312. Violations for misuse.

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

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

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

19  
20 27-52-313. Effect of civil penalty.

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