

By: Senator(s) Nunnelee, Bryan

To: Local and Private

SENATE BILL NO. 3103

1 AN ACT TO AUTHORIZE THE GOVERNING AUTHORITIES OF THE CITY OF
2 TUPELO, MISSISSIPPI, TO ERECT AUTOMATED TRAFFIC SIGNAL ENFORCEMENT
3 DEVICES WITHIN CITY LIMITS, AND TO IMPOSE AND ENFORCE CIVIL
4 PENALTIES FOR VIOLATIONS OF RED TRAFFIC SIGNALS AS EVIDENCED BY
5 SUCH DEVICES; TO PROVIDE FOR ADMINISTRATIVE ADJUDICATION HEARINGS;
6 AND FOR RELATED PURPOSES.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

8 **SECTION 1.** (1) The governing authorities of the City of
9 Tupelo, Mississippi, are authorized, in their discretion, to erect
10 automated traffic signal enforcement devices within the corporate
11 limits of the City of Tupelo, and to impose and enforce civil
12 penalties for violations of red traffic signals shown by such
13 devices.

14 (2) If this authorization is exercised, the City of Tupelo,
15 Mississippi, may amend Section 17-142 et seq. of its Code of
16 Ordinances to read as follows:

17 **ARTICLE V. AUTOMATED TRAFFIC SIGNAL ENFORCEMENT**

18 **Sec. 17-142. Definitions.**

19 In this article:

20 (1) Department shall mean the Police Department of the City
21 of Tupelo, Mississippi.

22 (2) Owner shall mean the owner of a motor vehicle as shown
23 on the motor vehicle registration records of the Mississippi
24 Department of Transportation or the analogous department or agency
25 of another state or country.

26 (3) Photographic Traffic Signal Enforcement System shall
27 mean a system that:

28 (a) consists of a camera system installed to work in
29 conjunction with an electrically operated traffic control signal;
30 and

31 (b) is capable of producing at least two recorded
32 images that depicts the license plate attached to the rear of a
33 motor vehicle that is not operated in compliance with the
34 instructions of the traffic control signal.

35 (4) Recorded Image means an image recorded by a photographic
36 traffic monitoring system that depicts the rear of a motor vehicle
37 and is automatically recorded on a photograph or digital image.

38 (5) System Location means the approach to an intersection
39 toward which a photographic traffic monitoring system is directed
40 and in operation.

41 (6) Traffic Control Signal shall mean a traffic control
42 device that displays alternating red, amber and green lights that
43 directs traffic when to stop at or proceed through an
44 intersection.

45 **Sec. 17-143. Imposition of Civil Penalty for Violations.**

46 (a) The City Council finds and determines that a vehicle
47 that proceeds into an intersection when the traffic control signal
48 for that vehicle's direction of travel is emitting a steady red
49 signal damages the public by endangering motor vehicle operators
50 and pedestrians alike, by decreasing the efficiency of traffic
51 control and traffic flow efforts, and by increasing the number of
52 serious accidents to which public safety agencies must respond at
53 the expense of the taxpayers.

54 (b) Except as provided in (c) and (d) below, the owner of a
55 motor vehicle is liable fore a civil penalty of Seventy-Five
56 Dollars (\$75) if the motor vehicle proceeds into an intersection
57 at a system location when the traffic control signal for that
58 motor vehicle's direction of travel is emitting a steady red
59 signal.

60 (c) For a third or subsequent violation committed by the
61 owner of the same motor vehicle during any 12-month period, the
62 amount of the civil penalty shall be One Hundred Fifty Dollars
63 (\$150).

64 (d) An owner who fails to timely pay the civil penalty shall
65 be subject to a late payment penalty of Twenty-Five Dollars (\$25).

66 **Sec. 17-144. Enforcement; procedures.**

67 (a) The Department is responsible for the enforcement and
68 administration of this article.

69 (b) In order to impose a civil penalty under this article,
70 the Department or its designee shall mail a notice of violation to
71 the owner of the motor vehicle liable for the civil penalty not
72 later than the 30th day after the date the violation is alleged to
73 have occurred, to:

74 (1) the owner's address as shown on the registration
75 records of the Mississippi Department of Transportation; or

76 (2) if the vehicle is registered in another state or
77 country, the owner's address as shown on the motor vehicle
78 registration records of the department or agency of the other
79 state or country analogous to the Mississippi Department of
80 Transportation.

81 (c) A notice of violation issued under this article shall
82 contain the following:

83 (1) a description of the violation alleged;

84 (2) the name and address of owner of the vehicle
85 involved in the violation;

86 (3) the date, time, and location of the violation;

87 (4) a copy of a recorded image of the vehicle involved
88 in the violation;

89 (5) the amount of the civil penalty to be imposed for
90 the violation;

91 (6) the date by which the civil penalty must be paid;

92 (7) a statement that the person named in the notice of
93 violation may pay the civil penalty in lieu of appearing at an
94 administrative adjudication hearing;

95 (8) information that informs the person named in the
96 notice of violation;

97 (A) of the right to contest the imposition of the
98 civil penalty in an administrative adjudication;

99 (B) of the manner and time in which to contest the
100 imposition of the civil penalty; and

101 (C) that failure to pay the civil penalty or to
102 contest liability is an admission of liability;

103 (9) a statement that a recorded image is evidence in a
104 proceeding for the imposition of a civil penalty;

105 (10) that payment in full is due no later than on the
106 20th day after the date of the notice, unless the violation is
107 contested in accordance with Section 17-145;

108 (11) a statement that failure to pay the civil penalty
109 within the time allowed shall result in the imposition of a late
110 penalty of Twenty-Five Dollars (\$25.00); and

111 (12) any other information deemed necessary by the
112 Department.

113 (d) A notice of violation under this article is presumed to
114 have been received on the 5th day after the date the notice of
115 violation is mailed.

116 (e) In lieu of issuing a notice of violation, the Department
117 may mail a warning notice to the owner.

118 **Sec. 17-145. Administrative Adjudication Hearing.**

119 (a) A person who receives notice of violation may contest
120 the imposition of the civil penalty by request in writing of an
121 administrative adjudication of the civil penalty within fifteen
122 (15) days after the receipt of the notice of violation (which, in
123 light of the presumption of receipt in Sec. 17-144(d), must be
124 received by the Department no later than the 20th day after the

125 date on the notice of violation). Upon receipt of a timely
126 request, the Department shall notify the person of the date and
127 time of the hearing on the administrative adjudication. The
128 administrative adjudication hearing shall be held before a hearing
129 officer appointed by the Mayor.

130 (b) Failure to pay a civil penalty or to contest liability
131 in a timely manner is an admission of liability in the full amount
132 of the civil penalty assessed in the notice of violation, and is a
133 waiver of the right to contest or appeal the notice of violation.

134 (c) The civil penalty shall not be assessed if after a
135 hearing, the hearing officer enters a finding of no liability.

136 (d) In an administrative adjudication hearing, the issues
137 must be proved at the hearing by a preponderance of the evidence.
138 The reliability of the photographic traffic signal enforcement
139 system used to produce the recorded image of the violation may be
140 attested to in an administrative adjudication hearing by affidavit
141 of an officer or employee of this City or the entity with which
142 the City contracts to install or operate the system and who is
143 responsible for inspecting and maintaining the system. An
144 affidavit of an officer or employee of the City that alleges a
145 violation based on an inspection of the pertinent recorded image
146 is admissible in a proceeding under this article and is evidence
147 of the facts contained in the affidavit.

148 (e) A person who is found liable under after an
149 administrative adjudication hearing or who requests an
150 administrative adjudication hearing and thereafter fails to appear
151 at the time and place of the hearing is liable for administrative
152 hearing costs in the amount of Twenty-Five Dollars (\$25.00) in
153 addition to the amount of the civil penalty assessed for the
154 violation. A person who is found liable for a civil penalty after
155 an administrative adjudication hearing, or who fails to appear,
156 shall pay the civil penalty and costs within ten (10) days of the
157 hearing, unless the person found liable timely files a notice of

158 appeal with the municipal court in accordance with Section
159 17-145(i). A person who fails to attend the administrative
160 hearing, however, forfeits any rights of appeal.

161 (f) It shall be an affirmative defense to the imposition of
162 civil liability under this article, to be proven by a
163 preponderance of the evidence, that:

164 (1) the traffic-control signal was not in proper
165 position and sufficiently legible to an ordinarily observant
166 person;

167 (2) the operator of the motor vehicle was acting in
168 compliance with the lawful order or direction of a police officer;

169 (3) the operator of the motor vehicle violated the
170 instructions of the traffic-control signal so as to yield the
171 right-of-way to an immediately approaching authorized emergency
172 vehicle;

173 (4) the motor vehicle was being operated as an
174 authorized emergency vehicle and that the operator was acting in
175 compliance with state statutes in operation thereof.

176 (5) the motor vehicle was a stolen vehicle and being
177 operated by a person other than the owner of the vehicle without
178 the effective consent of the owner;

179 (6) the license plate depicted in the recorded image of
180 the violation was a stolen plate and being displayed on the motor
181 vehicle other than the motor vehicle for which the plate had been
182 issued;

183 (7) the presence of ice, snow, unusual amounts of rain
184 or other unusually hazardous road conditions existed that would
185 make compliance with this article more dangerous under the
186 circumstances than non-compliance; or

187 (8) the person who received the notice of violation was
188 not the owner of the motor-vehicle at the time of the violation.

189 (g) To demonstrate that at the time of the violation the
190 motor vehicle was a stolen vehicle or the license plate displayed

191 on the motor vehicle was a stolen plate, the owner must submit
192 proof acceptable to the hearing officer that the theft of the
193 vehicle or license plate had not been timely reported to the
194 appropriate law enforcement agency.

195 (h) Notwithstanding anything in this article to the
196 contrary, a person who fails to pay the amount of a civil penalty
197 or to contest liability in a timely manner is entitled to an
198 administrative adjudication hearing on the violation if:

199 (1) the person files an affidavit with the hearing
200 officer stating the date on which the person received the notice
201 of violation that was mailed to the person, if such date was later
202 than five (5) days from the date o the notice; and

203 (2) within the same period required by Sec.
204 17-144(c)(7)(B) for a hearing to be timely requested but measured
205 from the date the mailed notice was received as stated in the
206 affidavit filed under subsection (h)(1), the person requests an
207 administrative adjudication hearing.

208 (i) A person who is found liable after an administrative
209 adjudication hearing may appeal that finding of civil liability to
210 the Municipal Court by filing a notice of appeal with the clerk of
211 the Municipal Court. The notice of appeal must be filed not later
212 than the 3 1st day after the date on which the administrative
213 adjudication hearing officer entered the finding of civil
214 liability. Unless the person, on or before the filing of the
215 notice of appeal, posts a bond in the amount of the civil penalty
216 and any late fees, an appeal does not stay the enforcement of the
217 civil penalty. An appeal shall be determined by the Municipal
218 Court by trial de novo. The affidavits submitted under Section
219 17-145(d) shall be admitted by the municipal judge in the trial de
220 novo, and the issues must be proved by a preponderance of the
221 evidence. A person found liable by the Municipal Court shall pay
222 an appellate filing fee of Fifty Dollars (\$50.00) in addition to
223 the civil penalty and any other fees due the City.

224 **Sec. 17-146. Order.**

225 (a) The hearing officer at any administrative adjudication
226 hearing under this article shall issue an order stating:

227 (1) whether the person charged with the violation is
228 liable for the violation;\

229 (2) if liable, the amount of any civil penalty, late
230 penalty, and administrative adjudication cost assessed against the
231 person.

232 (b) The orders issued under subsection (a) may be filed with
233 the office of the hearing examiner. The hearing examiner shall
234 keep the orders in a separate index and file. The orders may be
235 recorded using microfilm, microfiche, or data processing
236 techniques.

237 **Sec. 17-147. Effect of Liability, exclusion of civil remedy.**

238 (a) The imposition of civil penalty under this article is
239 not a criminal conviction for any purpose, and is not reflected on
240 the owner's permanent driving record.

241 (b) A civil penalty may not be imposed under this article on
242 the owner of a motor vehicle if the operator of the vehicle was
243 arrested or was issued a citation and notice to appear by a law
244 enforcement officer for the same violation.

245 (e) An owner who fails to pay the civil penalty or to timely
246 contest liability for the penalty is considered to admit liability
247 for the full amount of the civil penalty stated in the notice of
248 violation mailed to the person.

249 (d) The City Attorney is authorized to file suit to enforce
250 collection of a civil penalty imposed under this article."

251 **SECTION 2.** This act shall take effect and be in force from
252 and after its passage.