

Department of Finance and Administration

Legislative Impact Statement

Bill: HB2158

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

Basic Change :

Representative E. Armstrong

The bill adds a new subchapter to the Arkansas Code to be known as the "Civil Penalties for Traffic Signal Violation Act". The bill provides that by ordinance, a first class city may use an automated enforcement device to impose a civil penalty for the violation of a traffic control laws set forth in the bill. The city must provide notice of violation to the owner as set forth in the bill. The bill provides that failure to pay a penalty for, or contest liability for the penalty in a timely manner will result in denial of motor vehicle registration or renewal, until the penalty is resolved. The bill provides an administrative hearing process if a person to whom a penalty has been imposed wishes to contest the penalty.

Revenue Impact :

None

Taxpayer Impact :

Taxpayers to whom a civil penalty has been imposed would not be allowed to register or renew their vehicle registrations. If a vehicle is jointly owned, innocent owners would not be able to operate a motor vehicle that was involved in a violation.

Taxpayers who give consent to non owners of a motor vehicle would be inconvenienced. For example a child using a parent's motor vehicle commuting back and forth to college, work, etc. would not be able to operate a vehicle owned by a parent whose registration had been suspended for a civil violation.

A taxpayer is provided thirty (30) days for registration of a motor vehicle and may display a license plate registered to a vehicle he or she previously owned. Therefore, the information provided by the Office of Motor Vehicle for a license plate may not be for the motor vehicle to which that plate is assigned.

A person who purchases a motor vehicle from a dealer is issued a temporary tag for the period allowed for registration, which does not create a record in the Office of Motor Vehicle system. An automated device would not be effective in these situations.

Taxpayers who purchase vehicles from individuals are not required to display a license plate during the thirty (30) day period allowed for registration. A stationary automated device would not be effective in these situations.

This bill places additional burdens on companies renting and leasing motor vehicles.

Resources Required :

If the bill is enacted to have an effective date prior to 9/30/2013, the estimated cost would be fifty one thousand dollars (\$51,000). If the bill is enacted to have an effective date on or after 9/30/2013, the estimated programming costs would be sixteen thousand dollars (\$16,000).

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Time Required :

An effective date earlier than 9/30/2013 would not be adequate time for implementation.

Procedural Changes :

Program the motor vehicle computer system for a method to receive notifications and resolutions of civil penalties and place a suspension on the record of the motor vehicle involved in the violation.

Other Comments :

One (1) Arkansas license plate is issued for a motor vehicle and must be displayed on the back of the motor vehicle. A stationary automated device would be effective only if placed in a location to focus on the rear of motor vehicles.

If an owner has a dependent attending college in a city other than the owner's city of residence, and the vehicle being operated by that child is ticketed, then the owner must make a trip to the city where the violation occurred to present a cause for dismissal. Also, there is currently no process in place for the state to be notified when a penalty has been assessed under this bill or if that penalty was not paid. Therefore, there is no method of preventing a registration or renewal

Legal Analysis :

HB2158 creates the Civil Penalties for Traffic Signal Violations Act, to be codified at §27-52-301, et seq. Under specific restrictions provided in the bill, the Act would permit certain municipalities to utilize an automated enforcement device for traffic control devices. Under existing law, a municipality may only use such a device in a school zone or railroad crossing and a law enforcement officer must be present to issue a citation at the time and place of the violation.

Under this bill, a city of the first class may, by ordinance, permit the city to utilize automated devices for traffic control enforcement. If the device records a violation, the city provides a notice to the registered owner or lessee of the vehicle pursuant to the records kept by the Office of Motor Vehicle of DFA. If a person receives a notice of a traffic violation, the person may pay a "civil penalty" or contest the matter in an administrative hearing held by the city. If the person receives an adverse ruling in an administrative hearing, the person may appeal to district court.

Under the bill, a "civil penalty ... is not a conviction and may not be considered a conviction for any purpose." Also, if a person does not pay a civil penalty, DFA is directed not to allow the person to renew his or her motor vehicle registration. The bill does not state how DFA will be notified by the city to refuse to renew a person's motor vehicle registration. Likewise, the bill does not specify how DFA will be notified by the city when a person has cleared the civil penalty debt.

The bill authorizes law enforcement to compare data obtained from a license reader system to the motor vehicle records of DFA. Any records of DFA that constitute "personal information" or "highly restricted personal information" are subject to protection under the Driver Privacy Protection Act, 18 U.S.C. § 2721, et seq (DPPA). The DPPA prohibits DFA from releasing "personal information" or "highly restricted personal information" from a person's "motor vehicle record". See 18 U.S.C. §

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2721(a).

"Personal information" means information that identifies an individual, including an individual's photograph, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, and medical or disability information, but does not include information on vehicular accidents, driving violations, and driver's status. See 18 U.S.C. § 2725(3). "Highly restricted personal information" means an individual's photograph or image, social security number, medical or disability information. See 18 U.S.C. § 2725(4). "Motor vehicle record" means any record that pertains to a motor vehicle operator's permit, motor vehicle title, motor vehicle registration, or identification card issued by a department of motor vehicles. See 18 U.S.C. § 2725(1).

The disclosure of personal information "[f]or use by any government agency, *including any court or law enforcement agency*, in carrying out its functions, or any private person or entity acting on behalf of a Federal, State, or local agency in carrying out its functions" is permitted by the DPPA. See 18 U.S.C. § 2721(b). Therefore, the obtaining or use of DFA confidential information or records by law enforcement appears to be consistent with the DPPA. However, of importance to DFA is that the redisclosure of protected information by a recipient of protected information is also restricted by the DPPA. See 18 U.S.C. § 2721(c). A recipient of protected information may only redisclose the information only for a use permitted under subsection (b) of § 2721. In addition, the recipient of information must keep for a period of five (5) years records identifying each person or entity that receives information and the permitted purpose for which the information will be used and must make such records available to the motor vehicle department upon request. *Id.*

This bill does not place any restrictions upon a city that receives protected motor vehicle record information from DFA. The bill should be amended to state that a city or law enforcement entity that obtains or compares DFA confidential records in order to enforce this Act shall only be permitted to redisclose confidential information for a permissible purpose that is authorized by the DPPA.

Another concern of the bill relates to the administrative hearing process, which states, "In an administrative hearing, the issues shall be proven by a preponderance of the evidence." The bill, however, does not state whether or not the city bears the burden or proof or the owner of the vehicle as to whether the person charged committed a traffic violation. The bill should be amended to clarify this issue.

Also, a typographical error is located on Page 4, Line 10 of the bill. This line states, "and shall result denial of motor vehicle registration or renewal of motor". The word "in" should be inserted between "result" and "denial" in this sentence.

The bill does not have an emergency clause or effective date.