

LUCAS COUNTY COMMON PLEAS COURT  
CASE DESIGNATION

TO: Bernie Quilter, Clerk of Courts

CASE NO. CI 201501828  
**ASSIGNED TO JUDGE ENGLISH**

JUDGE \_\_\_\_\_

The following type of case is being filed:

**Professional Malpractice**

- Legal Malpractice (L)
- Medical Malpractice (M)

**Product Liability (B)**

**Other Tort (C)**

**Workers' Compensation**

- State Funded (D)
- Self Insured (K)

**Administrative Appeal (F)**

**Commercial Docket**

By submitting the complaint, with the signature of the Attorney, the Attorney affirms that the name of person with settlement authority and his/her direct phone number will be provided upon request to a party or counsel in this matter

**Other Civil**

- Consumer Fraud (N)  Forfeiture
- Appropriation (P)  Court Ordered Certificate of Title
- Other Civil (H)

This case was previously dismissed pursuant to CIVIL RULE 41 and is to be assigned to Judge \_\_\_\_\_, the original Judge at the time of dismissal. The previously filed case number was CI \_\_\_\_\_.

This case is a Declaratory Judgment case with a personal injury or related case currently pending. The pending case number is \_\_\_\_\_, assigned to Judge \_\_\_\_\_.

This case is to be reviewed for consolidation in accordance with Local Rule 5.02 as a companion or related case. This designation sheet will be sent by the Clerk of Courts to the newly assigned Judge for review with the Judge who has the companion or related case with the lowest case number. The Judge who would receive the consolidated case may accept or deny consolidation of the case. Both Judges will sign this designation sheet to indicate the action taken. If the Judge with the lowest case number agrees to accept, the reassignment of the case by the Administration Judge shall be processed. If there is a disagreement between the Judges regarding consolidation, the matter may be referred to the Administrative Judge.

Related/companion case number \_\_\_\_\_ Assigned Judge \_\_\_\_\_

Approve/Deny \_\_\_\_\_ Date \_\_\_\_\_ Approve/Deny \_\_\_\_\_ Date \_\_\_\_\_

Attorney Adam Louk  
Address One Government Center, Ste 2250  
Toledo OH 43604  
Telephone 419 245-1020

FILED  
LUCAS COUNTY  
IN THE COURT OF COMMON PLEAS  
LUCAS COUNTY, OHIO  
2015 MAR 13 P 1:41

**CITY OF TOLEDO**  
**One Government Center, Ste 2250**  
**Toledo, Ohio 43604**

COMMON PLEAS COURT Case No.  
JORNIE GUILIER  
CLERK OF COURTS Judge

CI 201501828

ASSIGNED TO JUDGE ENGLISH

Plaintiff,

v.

**STATE OF OHIO**  
**c/o Ohio Attorney General**  
**77 South High Street**  
**Columbus, Ohio 43215-6117**

and

**MICHAEL DEWINE**  
**Ohio Attorney General**  
**State Office Tower**  
**30 E. Broad Street, 17<sup>th</sup> Fl.**  
**Columbus, OH 43615-3428**

Defendants.

**PLAINTIFF'S VERIFIED COMPLAINT SEEKING DECLARATORY JUDGMENT,**  
**TEMPORARY RESTRAINING ORDER, PRELIMINARY AND PERMANENT**  
**INJUNCTION**

For its complaint against the Defendants, Plaintiff City of Toledo ("City") hereby states as follows:

**Nature of the Case**

1. This action involves the State of Ohio's ("State") enactment of several statutes that were not designed to advance the safety and welfare of the public. Rather, they were solely designed to destroy or cripple (a) the Home Rule rights of cities in their efforts allocate police

and safety resources, (b) the enforcement of local, civil traffic ordinances that do not conflict with state traffic laws, and (c) the local efforts of cities to reduce deaths and injuries at local traffic intersections, on roadways, and in school zones.

2. This action is brought seeking a declaration that all or part of recent legislation designed to limit the City's exercise of home rule authority violates the Ohio Constitution. Moreover, this action seeks injunctive relief to preserve *status quo* prevent those unconstitutional enactments from taking effect.

### **Parties, Jurisdiction, and Venue**

3. Plaintiff is an Ohio municipal corporation that has enacted certain traffic laws pursuant to the authority granted to it by the Home Rule Amendment of the Ohio Constitution for the health, safety, and welfare of its residents.

4. Defendant State is the statewide government body that passes legislation through its General Assembly, which is then signed into law by its Governor.

5. Defendant Mike DeWine is the Attorney General of the State of Ohio and is charged with enforcement of the laws of Ohio including the laws being challenged as unconstitutional herein.

6. Jurisdiction in this Court is proper as all parties hereto and actions complained of took place in the State of Ohio. Venue in this Court is proper pursuant to Ohio Civil Rule 3(B)(1), (2), (3), and (6).

7. Automated traffic photo enforcement programs (the “Photo Enforcement Programs”) are used in cities across Ohio and the rest of the United States to regulate speeding and red light violations, without requiring the physical presence of a law enforcement officer.

8. Photo Enforcement Programs have been shown to reduce injury and fatal motor vehicle accidents where employed.

9. Prior to December 2014, Ohio has not substantially interfered with municipalities’ ability to operate Photo Enforcement Programs despite the introduction of proposed legislation from time to time that sought to ban or limit municipal exercise of home rule power in regards to photo-enforcement programs.

10. In fact, the Ohio Legislative Service Commission has opined that at least one prior proposed House Bill (Proposed Am H.B 69) that sought to ban municipal photo enforcement programs would likely violate the home rule provisions of the Ohio Constitution. A staff attorney for the Commission advised the Ohio Senate that the proposed bill (H.B. 69) “... appears likely to fail the second two requirements of the *Canton* [*Canton v State*, 95 Ohio St.3d 149 (2002)] test. Specifically, *the bill appears to limit the power of a municipal corporation to set forth police, sanitary or similar regulations and also appears not to prescribe a rule of conduct on citizens generally. If the court applied the same rationale as it applied in the aforementioned cases, the bill’s provisions would not be construed as a general law and therefore would not prevail over a contrary municipal ordinance.*” See Exhibit A, attached. [Emphasis added.] H.B. 69 was not enacted.

11. The City Council unanimously passed Ordinance 125-99 providing for “Civil penalties for automated red light system violations” on March 16, 1999. (“Ordinance”). See, Exhibit B, attached. The Ordinance was approved and signed by the Mayor of the City on March

21, 1999. The Ordinance was codified as Section 313.12 of Toledo Municipal Code (“TMC § 313.12”). TMC has been amended from time to time and presently also provides for photo enforcement of speed as well. A copy of TMC § 313.12, in its current form, is attached as Exhibit C.

12. The stated purpose of the Ordinance was set forth as follows:

“WHEREAS, the frequency of red light running within the city of Toledo continues to increase as the number of vehicles on our roads increases; and

WHEREAS, an automated red light camera system will assist the Toledo Police Department by alleviating the necessity for conducting extensive conventional traffic enforcement at heavily traveled, high risk intersections; and

WHEREAS, the adoption of an automated red light camera system will result in a significant reduction in the number of red light violations and/or accidents within the city of Toledo\*\*\*\*”

13. TMC §313.12 provides for civil enforcement imposing monetary liability upon the owner of a vehicle for the vehicle’s failure to comply with traffic signals at intersections and posted speed limits.

14. Pursuant to TMC 313.12, the criminal justice system is not involved with the City’s Photo Enforcement Program, the offender is not issued a criminal traffic citation by a police officer, the offender is not summoned to the traffic court in the Municipal Court, and points are not assessed against the driver or owner’s driving record by the Bureau of Motor Vehicles.

15. Under the Ordinance and the City Photo Enforcement Program, if a vehicle passes through a red light at an intersection or exceeds the posted speed limit, the owner of the vehicle is issued a “notice of liability.” The notice of liability includes photographs of the vehicle, the vehicle’s speed (if applicable), and the amount of the civil penalty.

16. If the owner or the vehicle receiving a notice of liability wishes to challenge his or her notice of liability, the owner may complete and mail a notice of appeal within 21 days of the date listed on the notice of liability. In such cases, an independent hearing officer is assigned and conducts a review.

17. Persons dissatisfied with the finding of the independent hearing office may file an administrative appeal pursuant to R.C. Chapter 2506.

18. In fact, motor vehicle accidents resulting in injuries and/or deaths declined at monitored intersections and roadways as a result of the City's photo enforcement program. Moreover, after devices are installed, the Toledo Police Department has noticed an increased compliance with red light and speed laws at device locations.

19. On December 18, 2014, the Ohio Supreme Court issued an opinion reaffirming that, in Ohio "municipalities have Home Rule Authority under Article XVIII of the Ohio Constitution to impose civil liability on traffic violators through an administrative enforcement system."

20. The Court further held "that Ohio municipalities have Home Rule Authority to establish administrative proceedings, including administrative hearings, related to civil enforcement of traffic ordinances and that these administrative proceedings must be exhausted before offenders or the municipality can pursue judicial remedies." *Walker v. City of Toledo*, Slip Op. 2014 – Ohio – 5461 (Ohio Dec. 18, 2014).

21. The decision in *Walker v. City of Toledo* reaffirmed the Court's prior holding in *Mendenhall v. Akron*, 117 Ohio St.3d 33 (Ohio 2008), where the Court answered the certified question presented to it:

An Ohio municipality does not exceed its home rule authority when it creates an automated system for enforcement of traffic

laws that imposes civil liability upon violators, provided that the municipality does not alter statewide traffic regulations.

22. On December 19, 2014, the Governor signed into law Amended Senate Bill 342 (“S.B 342”), which purported to add and revise provisions to the Ohio Revised Code related exclusively to Photo Enforcement Programs. A copy of S.B. 342 is attached as Exhibit D.

23. Unless stayed S.B. 342 will take effect on or about March 23, 2015.

24. S.B. 342 recognized that “a law enforcement officer who is present at the location of any traffic law photo-monitoring device” and who personally witnesses a traffic law violation may issue a “ticket for such violation,” which is a ticket for a criminal violation issued to the driver. R.C. 4511.093(B)(2). This was the case prior to enactment of S.B. 342.

25. This provision in the S.B.342 does not relate to the civil enforcement of photo-monitoring devices.

26. As has been the case since the original enactment of the Ordinance, “a person who speeds and is observed by a police officer remains subject to the usual traffic laws.” *Mendenhall*, at 36.

27. But several other sections of Amended Senate Bill 342 plainly violate Section 3, Article XVIII of the Ohio Constitution, the “Home Rule” Clause.

28. S.B. 342 includes R.C. 4511.093 (B)(1) (“Statute”) and requires that a local authority “may utilize a traffic law photo-monitoring device for the purpose of detecting traffic law violations . . . *only if* a law enforcement officer is present at the location of the device at all times during the operation of the device and if the local authority complies with sections 4511.094 and 4511.095 of the Revised Code.” (Emphasis added.)

29. By the express provisions of R.C. 4511.093 (B)(1), the officer is required only to be “at the location of the device.”

30. The statute does not require that the officer be in a marked patrol car.
31. The statute does not require that the officer be looking at the street or, for that matter, even be able to see the street.
32. The statute does not require that the officer be looking at any automobiles.
33. The statute does not require that the officer be looking at the traffic signal.
34. The statute does not require that the officer be conscious or awake.
35. The statute does not even require that the officer even have a clear line of sight to the intersection or other area where the civil violation occurs.
36. The Statute does not prohibit the officer from doing activities completely unrelated to the “device.”
37. The State has no intelligible safety, health or welfare basis for requiring that an officer have his or her physical body standing “at the location” of a photo-enforcement device. The requirement is not rationally related to any legitimate governmental purpose.
38. With no legitimate safety, health or welfare benefit to the citizens of the City resulting from an officer being “at the location of the device,” the “planted officer” requirement, intentionally imposes only burdensome choices on the City, which include:
  - a. Forcing the City to divert precious and limited police resources from tasks that actually support the safety, health, and welfare of its citizens to tasks that do not;
  - b. Forcing the City to incur extraordinary expenses to pay potentially thousands of hours of officer time to perform a function that does nothing to benefit the citizenry;
  - c. Forcing an officer to either block right-of-way with a vehicle or be located, somewhat impotently, without a vehicle; or

d. Forcing the City to materially reduce the scope of its photo-enforcement program or eliminate it altogether.

39. As a result of R.C. 4511.093 (B)(1), the State now attempts to force any city which has a photo-enforcement program to realign its public safety resources for no rational public safety purpose.

40. Indeed, the House sponsor of S.B. 342 stated plainly that the purpose of the legislation was to “force most cities to make hard choices about law enforcement priorities, and would likely reduce the number of operating cameras.” (William Sitz, December 12, 2014.)

41. The Statute is not a general law of the State; rather it was enacted solely to limit the legislative power of the City to exercise its police powers.

42. The provisions of S.B. 342 that dictate that a home rule municipality must have a law enforcement officer at the location of any active photo enforcement device violate the Ohio Constitution.

43. S.B. 342 also includes R.C. 4511.095(A)(1), which provides that cities must “conduct a safety study of intersections or locations under consideration for placement of fixed traffic law photo-monitoring devices.”

44. The safety study “*shall* include an accounting of incidents that have occurred in the designated area *over the previous three-year period* and shall be made available to the public upon request.” (Emphasis added.)

45. Pursuant to R.C. 4511.095(A)(1), if there is a confluence of several deaths and injuries in a short period of time at a new intersection comprised of new streets in a new development, and the City wants to install new photo-enforcement equipment at that intersection, it has to wait three years to study that new intersection (which has no history) before it can install

photo-enforcement devices, even if there is overwhelming evidence that the intersection is dangerous.

46. Under new R.C. 4511.095(A)(1), if a new school opens and the new school zone restrictions and traffic patterns are unfamiliar to the traveling public, so that there is an increased risk of harm to school children, the local authority has to do a three-year study before it can install photo-enforcement equipment.

47. Alternatively, if this section allows the City to publish a study which shows that over the last three years there have been no incidents because the intersection or school did not exist, such is just another example of why this requirement is gratuitous – having to publish a three-year study of traffic violations at a school or intersection that did not exist.

48. On its face R.C. 4511.095(A)(1) purports to bar the City from passing emergency legislation or respond to community emergencies evidenced by a spike in traffic deaths or injuries at intersections, on thoroughfares, or in school zones.

49. The Ohio Constitution empowers the City to enact legislation to respond to traffic problems provided such legislation does not conflict with a “general law” of the State.

50. R.C. 4511.095(A)(1), as set forth in S.B 342, is not a general law of the State and was enacted solely to limit the legislative power of the City to exercise its police powers.

51. R.C. 4511.095(A)(1), as set forth in S.B 342, violates the Ohio Constitution.

**Count I – Violation of Ohio Constitution Home Rule Amendment**  
**Declaratory Judgment**

52. Plaintiff incorporates its allegations in paragraphs 1 through 51 above as if fully re-written herein.

53. Section 3, Article XVIII of the Ohio Constitution provides that municipalities are authorized “to exercise all powers of local self-government and to adopt and enforce within their

limits such local police, sanitary and other similar regulations, as are not in conflict with general laws” (the “Home Rule Amendment”).

54. The sections of S.B 342 cited above violate the Home Rule Amendment because they are not part of a statewide and comprehensive legislative enactment, as required by the Ohio Supreme Court in *City of Canton v. State*, 95 Ohio St. 3d 149 (2002).

55. To the contrary, the sections target a specific activity – i.e., Photo Enforcement Programs – and not as part of any general regulatory scheme.

56. S.B. 342 violates the Home Rule Amendment because it only expressly limits the legislative power of municipal corporations to set forth police, sanitary, or similar regulations, which was prohibited by the Ohio Supreme Court in *City of Canton v. State*, 95 Ohio St. 3d 149 (2002).

57. S.B 342 also violates the Home Rule Amendment because it does not prescribe a rule of conduct upon citizens generally, in violation of the Ohio Supreme Court’s ruling in *City of Canton v. State*, 95 Ohio St. 3d 149 (2002).

58. S.B. 342 is intended only to circumscribe what municipalities can and cannot do.

59. Because S.B. 342 seeks merely to limit the City’s ability to exercise home rule powers, it is unconstitutional.

#### **Count II – Claim for Injunctive Relief**

60. Plaintiff re-alleges and incorporates herein each allegation set forth above.

61. If not enjoined, the State’s enforcement of S.B. 342 will not only violate the Home Rule Amendment, but will also cause irreparable harm to Plaintiff for which there is no adequate remedy at law.

62. Forcing the City to comply with Amended Senate Bill 342 will require some or all of the following:

- A re-deployment of police personnel resulting in no enhancement to the safety, health, and welfare of the citizenry;
- An increase in financial burden as a result of the forced re-deployment of police personnel; and
- A reduction or elimination of the City's Photo Enforcement Program, which will result in an increased risk of death and injury to the citizenry and a reduction of revenues to the City.

63. None of the irreparable injury described above is recoverable from the State at law so that there is no adequate remedy at law.

64. Moreover, the imposition of injunctive relief will impose no burden upon the State whatsoever where the State has allocated no resources to the City to pay for the new costs resulting from S.B. 342.

65. The issuance of injunctive relief will serve the public interest by avoiding a waste of precious police resources that are to be used to protect the public and would avoid irrational funding burdens on City taxpayers.

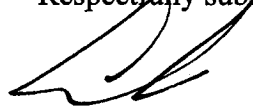
66. Moreover, injunctive relief will allow the City to serve the public interest by continuing a program that reduces the costs, potential of physical injury, and disruption to the residents of the City caused by motor vehicle accidents and promotes compliance with traffic laws.

**WHEREFORE**, Plaintiffs request that this Court grant the following relief:

- a. Grant Plaintiffs a temporary restraining order prohibiting and restraining S.B. 342 from going into effect on March 23, 2015 or until such time as otherwise set by this Court;
- b. Grant Plaintiffs a temporary restraining order preserving *status quo* by prohibiting and restraining the Defendants, from enforcing S.B. 342 until this matter is heard and decided by this Court;
- c. Grant Plaintiffs a preliminary and permanent injunction preserving *status quo ante* and prohibiting the Defendants from enforcing S.B. 342 in the future;

- d. Declare that S.B. 342 violates the Home Rule Amendments of the Ohio Constitution in whole or in part;
- e. Grant Plaintiffs such other and further relief as may be just and/or appropriate.

Respectfully submitted,

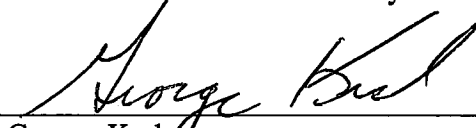



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**Verification Affidavit**

I, Chief George Kral, being first duly cautioned and sworn do hereby state that the facts contained herein are true as I verily believe.




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George Kral

State of Ohio            )  
                                   ) ss:  
 County of Lucas        )

Sworn to and subscribed in my presence this 13<sup>th</sup> day of March, 2015.



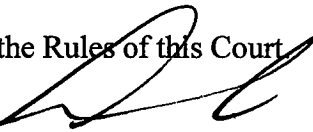

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Notary Public, State of Ohio  
*Adam Loukx date*  
*no exp. date*

**PRAECIPE**

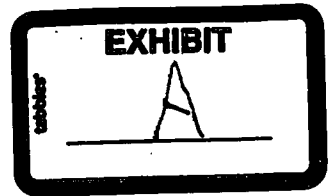
**To The Clerk:**

Please serve the named Defendants with a copy of Summons and Complaint by certified mail in accordance with the Civil Rules and the Rules of this Court




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Adam W. Loukx, Director of Law



Mark Flanders  
Director

# Ohio Legislative Service Commission

## SENATE MEMBERS

Keith Faber, Chairperson  
Edna Brown  
Cliff Hite  
Eric Kearney  
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Cheryl L. Grossman  
Tracy Maxwell Heard  
Matt Huffman  
Barbara R. Sears

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## Memorandum

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R-130-3032

**To:** The Honorable Kevin Bacon  
Ohio Senate

**From:** Amanda M. Ferguson, Staff Attorney

**Date:** February 5, 2014

**Subject:** Home rule issues in Am. H.B. 69

You recently asked for an analysis of the home rule provisions of the Ohio Constitution and how those provisions might affect Am. H.B. 69. That bill generally prohibits the use of traffic law photo-monitoring devices by local authorities and the state highway patrol, except in a school zone during specific hours. Home rule analysis is very fact specific and it is difficult to predict how a court might rule on any given issue. However, given the current state of the law as outlined by the Ohio Supreme Court, it appears that this bill could potentially be ineffective as applied to municipal corporations due to the municipal home rule provisions of the Ohio Constitution.

### Background on constitutional home rule authority

In Ohio, municipal corporations (cities and villages) have certain powers, commonly referred to as "home rule" authority, that are granted to them in Article XVIII of the Ohio Constitution. Specifically, Article XVIII, section 3 provides:

Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.

A statute enacted by the General Assembly that interferes with a municipal corporation's home rule authority may be invalid as applied to the municipal corporation unless the statute is sanctioned by another provision of the Ohio Constitution.

The Ohio Supreme Court uses a three-step test to determine if a state statute takes precedence over a municipal ordinance. First, the court determines whether the municipal ordinance at issue involves an exercise of local self-government or an exercise of local police power. Second, the court determines if the state statute that

relates to the same issue as the municipal ordinance constitutes a "general law" for purposes of home rule analysis. Third, the court determines if the municipal ordinance conflicts with the general law.<sup>1</sup>

#### **Exercise of local self-government or police power**

In a home rule analysis, the court first determines whether the municipal ordinance at issue involves an exercise of local self-government or an exercise of police power. Generally, if the ordinance relates solely to the exercise of local self-government, then the ordinance prevails over a conflicting state statute because a municipal corporation is constitutionally authorized to exercise all powers of local self-government.<sup>2</sup> However, if the ordinance relates to an exercise of police power, rather than local self-government, the court must determine if the municipal ordinance conflicts with a general law.<sup>3</sup>

#### **Existence of a general law**

The second step in the home rule analysis is to determine if the state statute is a general law. In order to constitute a general law for purpose of home rule analysis, a state statute must: (1) be part of a statewide and comprehensive legislative enactment, (2) apply to all parts of the state alike and operate uniformly throughout the state, (3) set forth police, sanitary, or similar regulations, rather than purport only to grant or limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations, and (4) prescribe a rule of conduct upon citizens generally. This is commonly referred to as the *Canton* test. If the court determines that the state statute is not a general law, then the statute does not prevail over the municipal ordinance. If the state statute is a general law, then the court proceeds to conduct a conflict analysis.<sup>4</sup>

#### **Conflict between the general law and the municipal ordinance**

In order to determine if a general law and a municipal ordinance conflict, the court generally determines whether the ordinance permits or licenses that which the general law forbids or prohibits, and vice versa. However, the court may conduct a

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<sup>1</sup> *Canton v. State*, 95 Ohio St.3d 149, 151 (2002).

<sup>2</sup> Where the court determines that the municipal ordinance conflicts with a state statute on a matter of statewide concern, the state statute prevails. *Am. Fin. Servs. Assn. v. Cleveland*, 112 Ohio St.3d 170 (2006). Also, please note that in order for a nonchartered municipal corporation to enact an ordinance pursuant to its authority to regulate local self-government, the municipal corporation is required to follow procedural statutes set out in the Revised Code. *Northern Ohio Patrolmen's Benevolent Assn. v. Parma*, 61 Ohio St.2d 375 (1980).

<sup>3</sup> *Ohioans for Concealed Carry, Inc. v. Clyde*, 120 Ohio St.3d 96, 99-100 (2008).

<sup>4</sup> *Canton v. State* at 153.

more nuanced analysis if necessary. The general law will only prevail over the municipal ordinance if the court determines that there is a conflict.<sup>5</sup>

### **Home rule issues with regard to Am. H.B. 69**

Am. H.B. 69, which generally prohibits the use of traffic law photo-monitoring devices by local authorities, could potentially be found invalid as applied to municipal corporations. The analysis of this bill is complex because the bill expressly states that the prohibition on the use of traffic law photo-monitoring devices is in furtherance of the ends provided in Article II, Section 34 of the Ohio Constitution. Article II, Section 34 of the Ohio Constitution provides as follows:

Laws may be passed fixing and regulating the hours of labor, establishing a minimum wage, and providing for the comfort, health, safety and general welfare of all employes [sic]; and no other provision of the constitution shall impair or limit this power.

Generally, a state statute that is enacted pursuant to the authority of the General Assembly to regulate the welfare of employees under Article II, Section 34 prevails over a home rule challenge because Article II, Section 34 expressly provides that no other constitutional provision may impair the power of the General Assembly to adopt such laws.<sup>6</sup> The authority of the General Assembly to enact laws under Article II, Section 34 has generally been broadly interpreted; however, the courts do consider whether the substance of a statute actually relates to hours of labor, minimum wage, or the general welfare of employees.<sup>7</sup> It is not apparent that a court would find a sufficiently significant connection between the general welfare of employees and the use of traffic law photo-monitoring devices by local authorities.

If the court determined that the prohibition in Am. H.B. 69 is not in furtherance of Article II, Section 34, the bill's provisions would be subject to challenge under the home rule provision of the Ohio Constitution. The Ohio Supreme Court has previously held that the regulation of traffic using a traffic law photo-monitoring device is a valid exercise of municipal police power.<sup>8</sup> Accordingly, if subject to a home rule challenge, Am. H.B. 69 would only prevail over a conflicting municipal ordinance if the bill's provisions were construed to be a general law under the *Canton* four-part test outlined above.

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<sup>5</sup> See, e.g., *Mendenhall v. Akron*, 117 Ohio St.3d 33, 40 (2008).

<sup>6</sup> *Lima v. State*, 122 Ohio St.3d 155, 159 (2009); *Rocky River v. State Employment Relations Board*, 43 Ohio St.3d 1 (1989).

<sup>7</sup> See *Dayton v. State*, 892 N.E. 2d 506, 510-18 (2008).

<sup>8</sup> *Mendenhall* at 37.

It is unclear if Am. H.B. 69 would meet the second two requirements of the *Canton* test: (1) that the statute must set forth police, sanitary, or similar regulations, rather than purport only to grant or limit the legislative power of a municipal corporation to set forth police, sanitary, or similar regulations, and (2) that the statute must prescribe a rule of conduct upon citizens generally. A municipal corporation likely would argue that the bill's provisions restrict the manner in which a municipal corporation may enforce its traffic laws rather than prescribe a rule of conduct on citizens generally. The Ohio Supreme Court previously has struck down an outright prohibition on the enforcement of certain traffic laws by a municipal corporation on similar grounds.<sup>9</sup> In *Linndale v. State*, the Ohio Supreme Court determined that a law which prohibited law enforcement officers, including those employed by municipal corporations, from enforcing certain traffic violations within specified areas was not a general law because it purported only to infringe on a municipal corporation's authority to regulate traffic, it was not a uniform statewide regulation, and it did not prescribe a rule of conduct upon citizens generally.<sup>10</sup>

The Court used a similar analysis recently to strike down a provision of state law governing the regulation of towing companies. In *Cleveland v. State* the court addressed R.C. 4921.25, which provides, in part, that entities engaged in the towing of motor vehicles are not subject to any ordinance of a municipal corporation that provides for the licensing, registering, or regulation of entities that tow motor vehicles.<sup>11</sup> The court determined that the provision was not a "general law" for purposes of the *Canton* test. Specifically, the court found that the provision failed the third prong of the *Canton* test by purporting to the limit legislative power of a municipal corporation to set forth police, sanitary, or similar regulations.

Similar to the state laws addressed in *Linndale* and *Cleveland*, the outright prohibition against the use of traffic law photo-monitoring devices by municipal corporations in Am. H.B. 69 appears likely to fail the second two requirements of the *Canton* test. Specifically, the bill appears to limit the power of a municipal corporation to set forth police, sanitary, or similar regulations and also appears not to prescribe a rule of conduct on citizens generally. If the court applied the same rationale as it applied in the aforementioned cases, the bill's provisions would not be construed as a general law and therefore would not prevail over a contrary municipal ordinance.

Please do not hesitate to contact me if you have any additional questions.

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<sup>9</sup> *Linndale v. State*, 85 Ohio St.3d 52 (1999).

<sup>10</sup> *Id.*

<sup>11</sup> Slip Opinion No. 2014-Ohio-86.

**ORD. 125-99 Enacting a new Section 313.12 of the Toledo Municipal Code entitled "Civil penalties for automated red light system violations"; and declaring an emergency.**

WHEREAS, the frequency of red light running within the city of Toledo continues to increase as the number of vehicles on our roads increases; and

WHEREAS, an automated red light camera system will assist the Toledo Police Department by alleviating the necessity for conducting extensive conventional traffic enforcement at heavily traveled, high risk intersections; and

WHEREAS, the adoption of an automated red light camera system will result in a significant reduction in the number of red light violations and/or accidents within the city of Toledo; NOW, THEREFORE,

Be it ordained by the Council of the City of Toledo:

SECTION 1. That a new Section 313.12 of the Toledo Municipal Code be and the same is hereby enacted to read as follows:

**313.12. Civil penalties for automated red light system violations.**

(a) Automated red light system/civil violation - General.

(1) Notwithstanding any other provision of this Traffic Code, the City of Toledo hereby adopts a civil enforcement system for red light camera system violations as outlined in this section. Said system imposes monetary liability on the owner of a vehicle for failure of an operator thereof to comply with traffic control indications in the city of Toledo in accordance with the provisions of this Section.

(2) The City of Toledo Division of Transportation, the Toledo Police Department, and the Toledo Department of Law shall be responsible for administering the Automated Red Light System. Specifically, the Toledo Division of Transportation and the Toledo Police Department shall be empowered to install and operate red light camera systems within the city of Toledo. And, the Toledo Division of Transportation and the Toledo Police Department shall maintain a list of system locations where red light camera systems are installed. Said departments will make the determination as to which intersection locations will be utilized.

(3) Any citation for an automated red light system violation pursuant to this Section, known as a "Notice of Liability" shall:

A. Be processed by officials or agents of the City of Toledo;

B. Be forwarded by first-class mail or personal service to the vehicle's registered owner's address as given on the state's

motor vehicle registration, and

C. Clearly state the manner in which the violation may be appealed.

(b) Definitions.

(1) "Automated red light system" is the equivalent of "Traffic control signal monitoring device" or "Traffic control photographic system." Said system/device is an electronic system consisting of a photographic, video or electronic camera and a vehicle sensor installed to work in conjunction with an official traffic controller and to automatically produce photographs, video or digital images of each vehicle violating a standard traffic control.

(2) "In operation" means operating in good working condition.

(3) "System location" is the approach to an intersection toward which a photographic, video or electronic camera is directed and is in operation. It is the location where the automated camera system is installed to monitor offenses under this Section.

(4) "Vehicle owner" is the person or entity identified by the Ohio Bureau of Motor Vehicles, or registered with any other State vehicle registration office, as the registered owner of a vehicle.

(c) Offense.

(1) The owner of a vehicle shall be liable for a penalty imposed pursuant to this Section if such vehicle crosses a marked stop line or the intersection plane at a system location when the traffic signal for that vehicle's direction is emitting a steady red light.

(2) It is prima facie evidence that the person registered as the owner of the vehicle with the Ohio Bureau of Motor Vehicles (or with any other State vehicle registration office) was operating the vehicle at the time of the offense set out in subsection (c)(1) above.

(3) Notwithstanding subsection (c)(2) above, the owner of the vehicle shall not be responsible for the violation if, within twenty-one (21) days from the date listed on the "Notice of Liability," as set forth in subsection (d)(3) below, he furnishes the Hearing Officer:

A. An affidavit by him, stating the name and address of the person or entity who leased, rented, or otherwise had the care, custody and control of the vehicle at the time of the violation;  
OR

B. A law enforcement incident report/general offense report

from any state or local law enforcement agency/record bureau stating that the vehicle involved was reported as stolen before the time of the violation.

(4) An imposition of liability under the Section shall not be deemed a conviction as an operator and shall not be made part of the operating record upon whom such liability is imposed.

(5) Nothing in this Section shall be construed to limit the liability of an operator of a vehicle for any violation of subsection (c)(1) herein.

(6) This Section shall not apply to violations involving vehicle collisions.

(d) Penalty; Administrative Appeal.

(1) Any violation of subsection (c)(1) herein shall be deemed a noncriminal violation for which a civil penalty of \$75.00 shall be assessed and for which no points authorized by Ohio Revised Code Section 4507.021 ("Point system for license suspension") shall be assigned to the owner or driver of the vehicle.

(2) The City of Toledo, via its Division of Transportation, Police Department, Law Department and Municipal Court Clerk may establish procedures for the collection of the civil penalties imposed herein, and may enforce the penalties by a civil action in the nature of a debt.

(3) A notice of appeal shall be filed with the Hearing Officer within twenty-one (21) days from the date listed on the "Notice of Liability." The failure to give notice of appeal or pay the civil penalty within this time period shall constitute a waiver of the right to contest the citation and will be considered an admission. Appeals shall be heard through an administrative process established by the City of Toledo Police Department. An individual desiring a hearing must post a bond equal to the amount of the civil penalty before an appeal hearing will be scheduled. In the event that the decision of the hearing officer is in favor of the City of Toledo, the bond monies previously posted shall be paid to the City of Toledo. A decision in favor of the City of Toledo may be enforced by means of a civil action.

SECTION 2. That this Ordinance hereby is declared to be an emergency measure and shall be in force and effect from and after its passage. The reason for the emergency lies in the fact that same is necessary for the immediate preservation of the public peace, health, safety, and property.

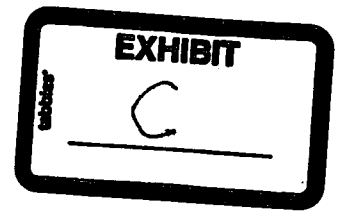
Vote on emergency clause: yeas 11, nays 0.

Passed: March 16, 1999, as an emergency measure: yeas 11, nays 0.

ATTEST:  
MICHAEL J. BEAZLEY  
Clerk of Council  
President of Council

PETER UJVAGI

Approved: March 21, 1999  
CARLETON S. FINKBEINER  
Mayor



**313.12. Civil penalties for automated red light system violations.**

**(a) Automated red light and speeding system/civil violation – General.**

(1) Notwithstanding any other provision of this Traffic Code, the City of Toledo hereby adopts a civil enforcement system for red light and speeding camera system violations as outlined in this Section. Said system imposes monetary liability on the owner of a vehicle for failure of an operator thereof to comply with traffic control indications in the City of Toledo in accordance with the provisions of this Section.

(2) The City of Toledo Division of Transportation, the Toledo Police Department, and the Toledo Department of Law shall be responsible for administering the Automated Red Light and Speeding System. Specifically, the Toledo Division of Transportation and the Toledo Police Department shall be empowered to install and operate red light and speeding camera systems within the city of Toledo. And, the Toledo Division of Transportation and the Toledo Police Department shall maintain a list of system locations where red light and speeding camera systems are installed. Said departments will make the determination as to which locations will be utilized.

(3) Any citation for an automated red light and speeding system violation pursuant to this Section, known as a "Notice of Liability" shall:

- A. Be processed by officials or agents of the City of Toledo;
- B. Be forwarded by first-class mail or personal service to the vehicle's registered owner's address as given on the state's motor vehicle registration, and
- C. Clearly state the manner in which the violation may be appealed.

**(b) Definitions.**

(1) "Automated red light and speeding system" is the equivalent of "Traffic control signal monitoring device" or "Traffic control photographic system." Said system/device is an electronic system consisting of a photographic, video or electronic camera and a vehicle sensor installed to work alone or in conjunction with an official traffic controller and to automatically produce photographs, video or digital images of each vehicle violating a standard traffic control.

(2) "In operation" means operating in good working condition.

(3) "System location" is the approach to an intersection or a street toward which a photographic, video or electronic camera is directed and is in operation. It is the location where the automated camera system is installed to monitor offenses under this Section.

(4) "Vehicle owner" is the person or entity identified by the Ohio Bureau of Motor Vehicles, or registered with any other State vehicle registration office, as the registered owner of a vehicle.

(5) "Responsible party" is the person or entity named per TMC Subsection (c) (4) A.

**(c) Offense.**

(1) The owner of a vehicle, or the party named per TMC Subsection 313.12 (c)(4)A, shall be liable for the penalty imposed pursuant to this Section if such vehicle crosses a marked stop line or the intersection plane at a system location when the traffic signal for that vehicle's direction is emitting a steady red light.

(2) The owner of a vehicle, or the party named per TMC Subsection 313.12 (c)(4)A, shall be liable for a penalty imposed pursuant to this Section if such vehicle is operated at a speed in excess of those set forth in TMC Section 333.03.

(3) It is prima-facie evidence that the person registered as the owner of the vehicle with the Ohio Bureau of Motor Vehicles (or with any other State vehicle registration office) was operating the vehicle at the time of the offense set out in subsection (c)(1) or (c)(2) above.

(4) Notwithstanding subsection (c)(3) above, the owner of the vehicle shall not be responsible for the violation if, within twenty-one (21) days from the date listed on the "Notice of Liability", as set forth in subsection (d)(4) below, the owner of the vehicle furnishes the Hearing Officer:

A. An affidavit by him, stating the name and address of the person or entity who leased, rented, or otherwise had the care, custody and control of the vehicle at the time of the violation; OR

B. A law enforcement incident report/general offense report from any state or local law enforcement agency/record bureau stating that the vehicle involved was reported as stolen before the time of the violation.

(5) An imposition of liability under the Section shall not be deemed a conviction as an operator and shall not be made part of the operating record upon whom such liability is imposed.

(6) Nothing in this Section shall be construed to limit the liability of an operator of a vehicle for any violation of subsection (c)(1) or (c)(2) herein.

(7) This Section shall not apply to violations involving vehicle collisions.

**(d) Penalty; Administrative Appeal.**

(1) Any violation of subsection (c)(1) herein shall be deemed a noncriminal violation for which a civil penalty of \$120.00 shall be assessed and for which no points authorized by Ohio R. C. 4507.021 ("Point system for license suspension") shall be assigned to the owner or driver of the vehicle.

(2) Any violation of subsection (c)(2) herein shall be deemed a noncriminal violation for which a civil penalty of \$120.00 shall be assessed and for which no points authorized by Ohio R.C. 4507.021 ("Point system for license suspension") shall be assigned to the owner or driver of the vehicle.

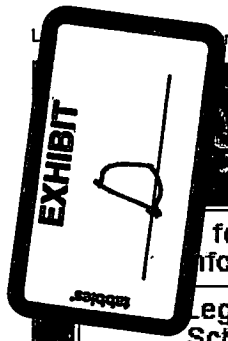
(3) The City of Toledo, via its Division of Transportation, Police Department, Law Department and Municipal Court Clerk may establish procedures for the collection of the civil penalties imposed herein, and may enforce the penalties by a civil action in the nature of a debt.

(4) A notice of appeal shall be filed with the Hearing Officer within twenty-one (21) days from the date listed on the "Notice of Liability." The failure to give notice of appeal or pay the civil penalty within this time period shall constitute a waiver of the right to contest the citation and will be considered an admission. Appeals shall be heard through an administrative process established by the City of Toledo Police Department. A decision in favor of the City of Toledo may be enforced by means of a civil action or any other means provided by the Ohio Revised Code.

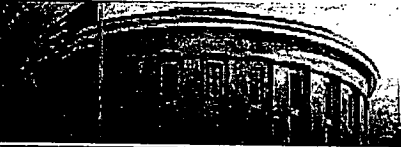
(5) The failure to respond to a Notice of Liability in a timely fashion as set forth in subsection (d)(4) of this section shall result in an additional penalty of twenty-five dollars (\$25.00).

(6) In lieu of assessing an additional penalty, pursuant to subsection (d)(5) above, the City of Toledo may (i) immobilize the vehicle by placing an immobilization device (e.g. a "boot") on the tires of the vehicle pending the owners compliance with the Notice

of Liability, or (ii) impound the vehicle, pursuant to TMC Section 303.08(a)(12). Furthermore, the owner of the vehicle shall be responsible for any outstanding fines, the fee for removal of the immobilization device, and any costs associated with the impoundment of the vehicle.



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**130<sup>TH</sup> GENERAL ASSEMBLY**  
*of the State of Ohio*



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**SB 342**

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**As Passed by the Senate**

**130th General Assembly**  
**Regular Session**  
**2013-2014**

**Sub. S. B. No. 342**

**Senator Seitz**

**Cosponsors: Senators Eklund, Faber, Jones, Jordan, Kearney, Patton, Schaffer, Tavares, Uecker**

**A BILL**

To amend sections 1901.20, 1907.02, and 4511.094; to amend, for the purpose of adopting a new section number as indicated in parentheses, section 4511.093 (4511.043); to enact sections 3937.411, 4511.095, 4511.096, 4511.097, 4511.098, 4511.099, 4511.0910, 4511.0911, 4511.0912, and 4511.0913; to enact new sections 4511.092 and 4511.093; and to repeal section 4511.092 of the Revised Code to establish conditions for the use by local authorities of traffic law photo-monitoring devices to detect certain traffic law violations.

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 1901.20, 1907.02, and 4511.094 be amended, section 4511.093 (4511.043) be amended for the purpose of adopting a new section number as indicated in parentheses, and sections 3937.411, 4511.095, 4511.096, 4511.097, 4511.098, 4511.099, 4511.0910, 4511.0911, 4511.0912, and 4511.0913 and new sections 4511.092 and 4511.093 of the Revised Code be enacted to read as follows:

**Sec. 1901.20.** (A)(1) The municipal court has jurisdiction of to hear misdemeanor cases committed within its territory and has

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jurisdiction over the violation of any ordinance of any municipal corporation within its territory, unless the violation is a civil violation based upon evidence recorded by a traffic law photo-monitoring device and issued pursuant to division (B)(3) of section 4511.093 of the Revised Code or the violation is required to be handled by a parking violations bureau or joint parking violations bureau pursuant to Chapter 4521. of the Revised Code, ~~and of the violation of any misdemeanor committed within the limits of its territory. The. However, the~~ municipal court has jurisdiction of over the violation of a vehicle parking or standing resolution or regulation if a local authority, as defined in division (D) of section 4521.01 of the Revised Code, has specified that it is not to be considered a criminal offense, if the violation is committed within the limits of the court's territory, and if the violation is not required to be handled by a parking violations bureau or joint parking violations bureau pursuant to Chapter 4521. of the Revised Code. ~~The~~

The municipal court, if it has a housing or environmental division, has jurisdiction of over any criminal action over which the housing or environmental division is given jurisdiction by section 1901.181 of the Revised Code, provided that, except as specified in division (B) of that section, no judge of the court other than the judge of the division shall hear or determine any action over which the division has jurisdiction. In all such prosecutions and cases, the court shall proceed to a final determination of the prosecution or case.

(2) A judge of a municipal court does not have the authority to dismiss a criminal complaint, charge, information, or indictment solely at the request of the complaining witness and over the objection of the prosecuting attorney, village solicitor, city director of law, or other chief legal officer who is responsible for the prosecution of the case.

(B) The municipal court has jurisdiction to hear felony cases committed within its territory. In all felony cases, the court may conduct preliminary hearings and other necessary hearings prior to the indictment of the defendant or prior to the court's finding that there is probable and reasonable cause to hold or recognize the defendant to appear before a court of common pleas and may discharge, recognize, or commit the defendant.

(C)(1) A municipal court has jurisdiction of over an appeal from a judgment or default judgment entered pursuant to Chapter 4521. of the Revised Code, as authorized by division (D) of section 4521.08 of the Revised Code. The appeal shall be placed on the regular docket of the court and shall be determined by a judge of the court.

(2) A municipal court has jurisdiction over an appeal of a written decision rendered by a hearing officer under section 4511.099 of the Revised Code if the hearing officer that rendered the decision was appointed by a local authority within the jurisdiction of the court.

**Sec. 1907.02.** (A)(1) In addition to other jurisdiction granted a county court in the Revised Code, a county court has jurisdiction of all misdemeanor cases. A county court has jurisdiction to conduct preliminary hearings in felony cases, to bind over alleged felons to the court of common pleas, and to take other action in felony cases as authorized by Criminal Rule 5.

(2) A judge of a county court does not have the authority to dismiss a criminal complaint, charge, information, or indictment solely at the request of the complaining witness and over the objection of the prosecuting attorney, village solicitor, city director of law, or other chief legal officer who is responsible for the prosecution of the case.

(B) A county court has jurisdiction of the violation of a vehicle parking or standing ordinance, resolution, or regulation if a local authority, as defined in division (D) of section 4521.01 of the Revised Code, has specified that it is not to be considered a criminal offense, if the violation is committed within the limits of the court's territory, and if the violation is not required to be handled by a parking violations bureau or joint parking violations bureau pursuant to Chapter 4521. of the Revised Code. A county court does not have jurisdiction over violations of ordinances, resolutions, or regulations that are required to be handled by a parking violations bureau or joint parking violations bureau pursuant to that chapter.

A county court also has jurisdiction of an appeal from a judgment or default judgment entered pursuant to Chapter 4521. of the Revised Code, as authorized by division (D) of section 4521.08 of the Revised Code. Any such appeal shall be placed on the regular docket of the court and shall be determined by a judge of the court.

(C) A county court has jurisdiction over an appeal of a written decision rendered by a hearing officer under section 4511:099 of the Revised Code if the hearing officer that rendered the decision was appointed by a local authority within the jurisdiction of the

court.

**Sec. 3937.411.** No insurer shall consider the issuance of a ticket for a civil violation under section 4511.097 of the Revised Code to an applicant or policyholder, or an admission or finding of liability related to such a ticket, as a basis for doing either of the following:

(A) Refusing to issue or deliver a policy of insurance upon a private automobile or increasing the rate to be charged for such a policy;

(B) Increasing the premium rate, canceling, or failing to renew an existing policy of insurance upon a private automobile.

**Sec. 4511.093 4511.043.** (A)(1) No law enforcement officer who stops the operator of a motor vehicle in the course of an authorized sobriety or other motor vehicle checkpoint operation or a motor vehicle safety inspection shall issue a ticket, citation, or summons for a secondary traffic offense unless in the course of the checkpoint operation or safety inspection the officer first determines that an offense other than a secondary traffic offense has occurred and either places the operator or a vehicle occupant under arrest or issues a ticket, citation, or summons to the operator or a vehicle occupant for an offense other than a secondary offense.

(2) A law enforcement agency that operates a motor vehicle checkpoint for an express purpose related to a secondary traffic offense shall not issue a ticket, citation, or summons for any secondary traffic offense at such a checkpoint, but may use such a checkpoint operation to conduct a public awareness campaign and distribute information.

(B) As used in this section, "secondary traffic offense" means a violation of division (A) or (F)(2) of section 4507.05, division (B) (1)(a) or (b) or (E) of section 4507.071, division (A) of section 4511.204, division (C) or (D) of section 4511.81, division (A)(3) of section 4513.03, or division (B) of section 4513.263 of the Revised Code.

**Sec. 4511.092.** As used in sections 4511.092 to 4511.0912 of the Revised Code:

(A) "Designated party" means the person whom the registered owner of a motor vehicle, upon receipt of a ticket based upon images recorded by a traffic law photo-monitoring device that indicate a traffic law violation, identifies as the person who was operating the vehicle of the registered owner at the time of the violation.

(B) "Hearing officer" means any person appointed by the mayor, board of county commissioners, or board of township trustees of a local authority, as applicable, to conduct administrative hearings on violations recorded by traffic law photo-monitoring devices, other than a person who is employed by a law enforcement agency as defined in section 109.573 of the Revised Code.

(C) "Law enforcement officer" means a sheriff, deputy sheriff, marshal, deputy marshal, police officer of a police department of any municipal corporation, police constable of any township, or police officer of a township or joint police district, who is employed on a permanent, full-time basis by the law enforcement agency of a local authority that assigns such person to the location of a traffic law photo-monitoring device.

(D) "Local authority" means a municipal corporation, county, or township.

(E) "Motor vehicle leasing dealer" has the same meaning as in section 4517.01 of the Revised Code.

(F) "Motor vehicle renting dealer" has the same meaning as in section 4549.65 of the Revised Code.

(G) "Recorded images" means any of the following images recorded by a traffic law photo-monitoring device that show, on at least one image or on a portion of the videotape, the rear of a motor vehicle and the letters and numerals on the rear license plate of the vehicle:

(1) Two or more photographs, microphotographs, electronic images, or digital images;

(2) Videotape.

(H) "Registered owner" means all of the following:

(1) Any person or entity identified by the bureau of motor vehicles or any other state motor vehicle registration bureau, department, or office as the owner of a motor vehicle;

(2) The lessee of a motor vehicle under a lease of six months or longer;

(3) The renter of a motor vehicle pursuant to a written rental agreement with a motor vehicle renting dealer.

(I) "System location" means the approach to an intersection or area of roadway toward which a traffic law photo-monitoring device is directed and is in operation.

(J) "Ticket" means any traffic ticket, citation, summons, or other ticket issued in response to an alleged traffic law violation detected by a traffic law photo-monitoring device, that represents a civil violation.

(K) "Traffic law photo-monitoring device" means an electronic system consisting of a photographic, video, or electronic camera and a means of sensing the presence of a motor vehicle that automatically produces recorded images.

(L) "Traffic law violation" means either of the following:

(1) A violation of section 4511.12 of the Revised Code based on the failure to comply with section 4511.13 of the Revised Code or a substantially equivalent municipal ordinance that occurs at an intersection due to failure to obey a traffic control signal;

(2) A violation of section 4511.21 or 4511.211 of the Revised Code or a substantially equivalent municipal ordinance due to failure to observe the applicable speed limit.

**Sec. 4511.093.** (A) A local authority may utilize a traffic law photo-monitoring device for the purpose of detecting traffic law violations. If the local authority is a county or township, the board of county commissioners or the board of township trustees may adopt such resolutions as may be necessary to enable the county or township to utilize traffic law photo-monitoring devices.

(B) The use of a traffic law photo-monitoring device is subject to the following conditions:

(1) A local authority shall use a traffic law photo-monitoring device to detect and enforce traffic law violations only if a law enforcement officer is present at the location of the device at all times during the operation of the device and if the local authority complies with sections 4511.094 and 4511.095 of the Revised Code.

(2) A law enforcement officer who is present at the location of any traffic law photo-monitoring device and who personally witnesses a traffic law violation may issue a ticket for the violation. Such a ticket shall be issued in accordance with section 2935.25 of the Revised Code and is not subject to sections 4511.096 to 4511.0910 and section 4511.912 of the Revised Code.

(3) If a traffic law photo-monitoring device records a traffic law violation and the law enforcement officer who was present at the location of the traffic law photo-monitoring device does not issue a ticket as provided under division (B)(2) of this section, the local authority may only issue a ticket in accordance with sections 4511.096 to 4511.0912 of the Revised Code.

**Sec. 4511.094.** (A) As used in this section:

(1) "Local authority" means a municipal corporation, county, or township.

(2) "Traffic law photo-monitoring device" means an electronic system consisting of a photographic, video, or electronic camera and a means of sensing the presence of a motor vehicle that automatically produces photographs, videotape, or digital images of the vehicle or its license plate.

~~(B)(1)~~ No local authority shall use traffic law photo-monitoring devices to detect or enforce any traffic law violation until after it has erected ~~done~~ both of the following:

(1) Erected signs on every highway that is not a freeway that is part of the state highway system and that enters that local authority. ~~The signs shall inform~~ informing inbound traffic that the local authority utilizes traffic law photo-monitoring devices to enforce traffic laws. ~~The~~;

(2) Beginning on the effective date of this amendment, erected signs at each fixed system location informing motorists that a traffic law photo-monitoring device is present at the location.

~~The local authority shall erect the signs shall be erected~~ within the first three hundred feet of the boundary of the local authority or, ~~if within three hundred feet of the fixed system location, as applicable.~~ If the signs cannot be located within the first three hundred feet of the boundary of the local authority ~~or within three hundred feet of the fixed system location, the local authority shall erect the signs~~ as close to that distance as possible, ~~provided that if, if a particular highway enters and exits the territory of a local authority multiple times, the local authority shall erect the signs as required by this division (A)(1) of this section at the locations in each direction of travel where inbound traffic on the highway first enters the territory of the local authority and is not required to erect additional signs along such highway each time the highway reenters the territory of the local authority. The local authority is responsible for all costs associated with the erection, maintenance, and replacement, if necessary, of the signs.~~ ~~All~~ The local authority shall ensure that all signs erected under this division shall conform in size, color, location, and content to standards contained in the manual adopted by the department of transportation pursuant to section 4511.09 of the Revised Code and shall remain in place for as long as the local authority utilizes traffic law photo-monitoring devices to enforce any traffic law. Any

~~(B)~~ A ticket, citation, or summons issued by or on behalf of the local authority for any traffic law violation based upon evidence gathered recorded by a traffic law photo-monitoring device ~~after the effective date of this section~~ is invalid under the following circumstances:

(1) If the ticket was issued after March 12, 2009, but before the signs have been required under division (A)(1) of this section were erected is invalid; provided that no ticket, citation, or summons is invalid if the;

(2) If the ticket was issued after the effective date of this amendment but before the signs required under division (A)(2) of this section were erected.

However, if a local authority is in substantial compliance with the requirement requirements of this division to erect the signs (A)(1) or (2) of this section, as applicable, a ticket issued by the local authority under sections 4511.096 to 4511.0912 of the Revised Code is valid.

~~(2)(C)~~ A local authority is deemed to be in substantial compliance with the requirement of division ~~(B)(A)(1) or (2)~~ of this section, as applicable, to erect the advisory signs if the authority does both of the following:

~~(a)~~ (1) First erects all signs as required by division ~~(B)(1)(A)(1) or (2)~~ of this section, as applicable, and subsequently maintains and replaces the signs as needed so that at all times at least ninety per cent of the required signs are in place and functional;

~~(b)~~ (2) Annually documents and upon request certifies its compliance with division ~~(B)(2)(a)(C)(1)~~ of this section.

~~(C)(D)~~ A local authority that uses traffic law photo-monitoring devices to detect or enforce any traffic law violation at an intersection where traffic is controlled by traffic control signals that exhibit different colored lights or colored lighted arrows shall

time the operation of the yellow lights and yellow arrows of those traffic control signals so that the steady yellow indication exceeds by one second the minimum duration for yellow indicators at similar intersections as established by the provisions of the manual adopted by the department of transportation under section 4511.09 of the Revised Code.

**Sec. 4511.095.** (A) Prior to deploying any traffic law photo-monitoring device, a local authority shall do all of the following:

(1) Conduct a safety study of intersections or locations under consideration for placement of fixed traffic law photo-monitoring devices. The study shall include an accounting of incidents that have occurred in the designated area over the previous three-year period and shall be made available to the public upon request.

(2) Conduct a public information campaign to inform motor vehicle operators about the use of traffic law photo-monitoring devices at system locations prior to establishing any of those locations;

(3) Publish at least one notice in a local newspaper of general circulation that announces the local authority's intent to utilize traffic law photo-monitoring devices, the locations of those devices, if known, and the date on which the first traffic law photo-monitoring device will be operational;

(4) Refrain from levying any civil fines on any person found to have committed a traffic law violation based upon evidence gathered by a fixed location traffic law photo-monitoring device until the local authority observes a public awareness warning period of not less than thirty days prior to the first issuance of any ticket based upon images recorded by the device. During the warning period, the local authority shall take reasonable measures to inform the public of the location of the device and the date on which tickets will be issued for traffic law violations based upon evidence gathered by the device. A warning notice may be sent to violators during the public awareness warning period.

(B)(1) A local authority that deploys its first traffic law photo-monitoring device after the effective date of this section shall do so only after complying with division (A) of this section. If such a local authority thereafter wishes to deploy an additional traffic law photo-monitoring device, the local authority shall comply with that division prior to deploying the additional device.

A local authority that is operating or has operated on its behalf a traffic law photo-monitoring device on the effective date of this section may continue to operate the device after that date without the need to comply with division (A) of this section. However, if such a local authority wishes to deploy an additional traffic law photo-monitoring device after the effective date of this section, the local authority shall comply with division (A) of this section prior to deploying the additional device.

(2) All tickets that result from evidence recorded by a traffic law photo-monitoring device and that are issued prior to the effective date of this section by or on behalf of a local authority may be processed and adjudicated in accordance with the rules and procedures that were in effect for such tickets prior to the effective date of this section. On and after the effective date of this section, no ticket for a traffic law violation that is based upon evidence recorded by a traffic law photo-monitoring device shall be processed and adjudicated in any manner other than in accordance with sections 4511.096 to 4511.0912 of the Revised Code.

**Sec. 4511.096.** (A) A law enforcement officer employed by a local authority utilizing a traffic law photo-monitoring device shall examine evidence of alleged traffic law violations recorded by the device to determine whether such a violation has occurred. If the image recorded by the traffic law photo-monitoring device shows such a violation, contains the date and time of the violation, and shows the letter and numerals on the license plate of the vehicle involved as well as the state that issued the license plate, the officer may use any lawful means to identify the registered owner.

(B) The fact that a person or entity is the registered owner of a motor vehicle is prima facie evidence that that person or entity is the person who was operating the vehicle at the time of the traffic law violation.

(C) Within thirty days of the traffic law violation, the local authority or its designee may issue and send by regular mail a ticket charging the registered owner with the violation. The ticket shall comply with section 4511.097 of the Revised Code.

(D) A certified copy of the ticket alleging a traffic law violation, sworn to or affirmed by a law enforcement officer employed by

the local authority, including by electronic means, and the recorded images produced by the traffic law photo-monitoring device, is prima facie evidence of the facts contained therein and is admissible in a proceeding for review of the ticket issued under this section.

**Sec. 4511.097.** (A) A traffic law violation for which a ticket is issued by a local authority pursuant to division (B)(3) of section 4511.093 of the Revised Code is a civil violation. If a local authority issues a ticket for such a violation, the ticket shall comply with the requirements of this section and the fine for such a ticket shall not exceed the amount of the fine that may be imposed for a substantially equivalent criminal traffic law violation.

(B) A local authority or its designee shall process such a ticket for a civil violation and shall send the ticket by ordinary mail to any registered owner of the motor vehicle that is the subject of the traffic law violation. The local authority or designee shall ensure that the ticket contains all of the following:

(1) The name and address of the registered owner;

(2) The letters and numerals appearing on the license plate issued to the motor vehicle;

(3) The traffic law violation charged;

(4) The system location;

(5) The date and time of the violation;

(6) A copy of the recorded images;

(7) The name and badge number of the law enforcement officer who was present at the system location at the time of the violation;

(8) The amount of the civil penalty imposed, the date by which the civil penalty is required to be paid, and the address to which the payment is to be sent;

(9) A statement signed by a law enforcement officer employed by the local authority indicating that, based on an inspection of recorded images, the motor vehicle was involved in a traffic law violation, and a statement indicating that the recorded images are prima facie evidence of that traffic law violation both of which may be signed electronically;

(10) Information advising the person or entity alleged to be liable of the options prescribed in section 4511.098 of the Revised Code, specifically to include the time, place, and manner in which an administrative appeal may be initiated and the procedure for disclaiming liability by submitting an affidavit as prescribed in that section;

(11) A warning that failure to exercise one of the options prescribed in section 4511.098 of the Revised Code is deemed to be an admission of liability and waiver of the opportunity to contest the violation.

(C) A local authority or its designee shall send a ticket not later than thirty days after the date of the alleged traffic law violation.

(D) The local authority or its designee may elect to send by ordinary mail a warning notice in lieu of a ticket under this section.

**Sec. 4511.098.** (A) A person or entity who receives a ticket for a civil violation sent in compliance with section 4511.097 of the Revised Code shall elect to do one of the following:

(1) In accordance with instructions on the ticket, pay the civil penalty, thereby failing to contest liability and waiving the opportunity to contest the violation;

(2)(a) Within thirty days after receipt of the ticket, provide the law enforcement agency of the local authority with either of the following affidavits:

(i) An affidavit executed by the registered owner stating that another person was operating the vehicle of the registered owner at the time of the violation, identifying that person as a designated party who may be held liable for the violation, and containing at a minimum the name and address of the designated party;

(ii) An affidavit executed by the registered owner stating that at the time of the violation, the motor vehicle or the license plates issued to the motor vehicle were stolen and therefore were in the care, custody, or control of some person or entity to whom the registered owner did not grant permission to use the motor vehicle. In order to demonstrate that the motor vehicle or the license plates were stolen prior to the traffic law violation and therefore were not under the control or possession of the registered owner at the time of the violation, the registered owner shall submit proof that a report about the stolen motor vehicle or license plates was filed with the appropriate law enforcement agency prior to the violation or within forty-eight hours after the violation occurred.

(b) A registered owner is not responsible for a traffic law violation if, within thirty days after the date of mailing of the ticket, the registered owner furnishes an affidavit specified in division (A)(2)(a)(i) or (ii) of this section to the local authority in a form established by the local authority and the following conditions are met:

(i) If the registered owner submits an affidavit as specified in division (A)(2)(a)(i) of this section, the designated party either accepts liability for the violation by paying the civil penalty or failing to request an administrative hearing within thirty days or is determined liable in an administrative hearing;

(ii) If the registered owner submits an affidavit as specified in division (A)(2)(a)(ii) of this section, the affidavit is supported by a stolen vehicle or stolen license plate report as required in that division.

(3) If the registered owner is a motor vehicle leasing dealer or a motor vehicle renting dealer, notify the law enforcement agency of the local authority of the name and address of the lessee or renter of the motor vehicle at the time of the traffic law violation. A motor vehicle leasing dealer or motor vehicle renting dealer who receives a ticket for an alleged traffic law violation detected by a traffic law photo-monitoring device is not liable for a ticket issued for a motor vehicle that was in the care, custody, or control of a lessee or renter at the time of the alleged violation. The dealer shall not pay such a ticket and subsequently attempt to collect a fee or assess the lessee or renter a charge for any payment of such a ticket made on behalf of the lessee or renter.

(4) If the vehicle involved in the traffic law violation is a commercial motor vehicle and the ticket is issued to a corporate entity, provide to the law enforcement agency of the local authority an affidavit, sworn to or affirmed by an agent of the corporate entity, that provides the name and address of the employee who was operating the motor vehicle at the time of the alleged violation and who is the designated party.

(5) Contest the ticket by filing a written request for an administrative hearing to review the ticket. The person or entity shall file the written request not later than thirty days after receipt of the ticket. The failure to request a hearing within this time period constitutes a waiver of the right to contest the violation and ticket, and is deemed to constitute an admission of liability and waiver of the opportunity to contest the violation.

(B) A local authority that receives an affidavit described in division (A)(2)(a)(i) or (A)(4) of this section or a notification under division (A)(3) of this section from a registered owner may proceed to send a ticket that conforms with division (B) of section 4511.097 of the Revised Code to the designated party. The local authority shall send the ticket to the designated party by ordinary mail not later than twenty-one days after receipt of the affidavit or notification.

**Sec. 4511.099.** (A) When a person or entity named in a ticket for a civil violation under division (A) of section 4511.097 of the Revised Code elects to contest the ticket and completes the requirements prescribed in division (A)(5) of section 4511.098 of the Revised Code in a timely manner, all of the following apply:

(1) A hearing officer appointed by the local authority shall hear the case. The hearing officer shall conduct a hearing not sooner than twenty-one but not later than forty-five days after the filing of a written request for the hearing. The hearing officer may extend the time period by which a hearing must be conducted upon a request for additional time by the person or entity who requested the hearing.

(2) The hearing officer shall ensure that the hearing is open to the public. The hearing officer shall post a docket in a conspicuous place near the entrance to the hearing room. The hearing officer shall identify on the docket, by respondent, the hearings scheduled for that day and the time of each hearing. The hearing officer may schedule multiple hearings for the same time to allow for occurrences such as nonappearances or admissions of liability.

(3) The person who requested the administrative hearing or a representative of the entity that requested the hearing shall appear for the hearing and may present evidence at the hearing.

(4) The hearing officer shall determine whether a preponderance of the evidence establishes that the violation alleged in the ticket did in fact occur and that the person or entity requesting the review is the person who was operating the vehicle at the time of the violation.

(B)(1) If the hearing officer finds by a preponderance of the evidence that the alleged traffic law violation did in fact occur and that the person or entity named in the ticket is the person who was operating the vehicle at the time of the violation, the hearing officer shall issue a written decision imposing liability for the violation upon the individual or entity and submit it to the local authority or its designee and the person or entity named in the ticket.

(2) If the hearing officer finds by a preponderance of the evidence that the alleged traffic law violation did not occur or did in fact occur but the person or entity named in the ticket is not the person who was operating the vehicle at the time of the violation, the hearing officer shall issue a written decision finding that the individual or entity is not liable for the violation and submit it to the local authority or its designee and the person or entity named in the ticket.

(3) If the person who requested the administrative hearing or a representative of the entity that requested the hearing fails to appear at the hearing, the hearing officer shall determine that the person or entity is liable for the violation. In such a case, the hearing officer shall issue a written decision imposing liability for the violation upon the individual or entity and submit it to the local authority or its designee and the person or entity named in the ticket.

(4) The hearing officer shall render a decision on the day a hearing takes place.

(C)(1) In determining whether the person or entity named in the ticket is liable, the hearing officer may consider any of the following as an affirmative defense to a traffic law violation:

(a) That the vehicle passed through the intersection in order to yield the right-of-way to either of the following:

(i) A public safety vehicle or coroner's vehicle in accordance with section 4511.45 of the Revised Code or a substantially equivalent municipal ordinance;

(ii) A funeral procession in accordance with section 4511.451 of the Revised Code or a substantially equivalent municipal ordinance.

(b) That the motor vehicle or license plates of the motor vehicle were stolen prior to the occurrence of the violation and were not under the control or possession of the registered owner at the time of the violation. In order to demonstrate that the motor vehicle or license plates were stolen prior to the occurrence of the violation and were not under the control or possession of the registered owner at the time of the violation, the registered owner shall submit proof that a report about the stolen motor vehicle or license plates was filed with the appropriate law enforcement agency prior to the traffic law violation or within forty-eight hours after the traffic law violation occurred.

(c) At the time and place of the alleged traffic law violation, the traffic control signal was not operating properly or the traffic law

photo-monitoring device was not in proper position and the recorded image is not of sufficient legibility to enable an accurate determination of the information necessary to impose liability.

(d) That the registered owner or person or entity named in the ticket was not the person operating the motor vehicle at the time of the violation. In order to meet the evidentiary burden imposed under division (C)(1)(d) of this section, the registered owner or person or entity named in the ticket shall provide to the hearing officer the identity of the designated party, that person's name and current address, and any other evidence that the hearing officer determines to be pertinent.

(2) A hearing officer also may consider the totality of the circumstances when determining whether to impose liability upon the person or entity named in the ticket.

(D)(1) If the hearing officer finds that the person or entity named in the ticket was not the person who was operating the vehicle at the time of the violation or receives evidence identifying the designated party, the hearing officer shall provide to the local authority or its designee, within five days of the hearing, a copy of any evidence substantiating the identity of the designated party.

(2) Upon receipt of evidence of the identity of the designated party, the local authority or its designee may issue a ticket to the designated party.

A local authority shall ensure that a ticket issued under division (D)(2) of this section conforms with division (B) of section 4511.097 of the Revised Code. The local authority shall send the ticket by ordinary mail not later than twenty-one days after receipt of the evidence from the hearing officer or the registered owner of the identity of the designated party.

(E) If a designated party who is issued a ticket under division (D)(2) of this section or division (B) of section 4511.098 of the Revised Code contests the ticket by filing a written request for an administrative hearing to review the ticket not later than thirty days after receipt of the ticket; the local authority shall require the registered owner of the motor vehicle also to attend the hearing. If at the hearing involving the designated party the hearing officer cannot determine the identity of the operator of the vehicle at the time of the violation, the registered owner is liable for the violation. The hearing officer then shall issue a written decision imposing liability for the violation on the registered owner and submit it to the local authority or its designee and to the registered owner. If the designated party also is a registered owner of the vehicle, liability for the violation shall follow the order of registered owners as listed on the title to the vehicle.

(F) A person who is named in a ticket for a civil violation may assert a testimonial privilege in accordance with division (D) of section 2317.02 of the Revised Code.

(G) A person or entity may appeal a written decision rendered by a hearing officer under this section to the municipal court or county court with jurisdiction over the location where the violation occurred.

(H) No decision rendered under this section, and no admission of liability under this section or section 4511.098 of the Revised Code, is admissible as evidence in any other judicial proceeding in this state.

**Sec. 4511.0910.** A traffic law violation for which a civil penalty is imposed under sections 4511.097 to 4511.099 of the Revised Code is not a moving violation and points shall not be assessed against a person's driver's license under section 4510.036 of the Revised Code. In no case shall such a violation be reported to the bureau of motor vehicles or motor vehicle registration bureau, department, or office of any other state, nor shall such a violation be recorded on the driving record of the owner or operator of the vehicle involved in the violation.

**Sec. 4511.0911.** (A) Upon request, each manufacturer of a traffic law photo-monitoring device shall provide to a local authority utilizing its devices the maintenance record of any such device used in that local authority.

(B)(1) Commencing January 2015, not later than the last day of January of each year, the manufacturer of a traffic law photo-monitoring device shall provide to the applicable local authority a certificate of proper operation that attests to the accuracy of the device in recording a traffic law violation.

(2) In addition to the requirement prescribed in division (B)(1) of this section, for every such device that is considered mobile, meaning it is attached to a trailer, vehicle, or other wheeled apparatus so that it is easily moved to different system locations, both of the following apply:

(a) Each local authority shall test the accuracy of each such device with an independent, certified speed measuring device or some other commonly accepted method prior to its use at each system location.

(b) Each local authority shall clearly and conspicuously mark on the outside of the trailer, vehicle, or wheeled apparatus that contains the traffic law photo-monitoring device that the device is contained therein and that the trailer, vehicle, or wheeled apparatus is the property of the local authority.

(C) In the case of a traffic law photo-monitoring device that is used at an intersection to detect violations of section 4511.12 of the Revised Code based on the failure to comply with section 4511.13 of the Revised Code or a substantially equivalent municipal ordinance, the local authority shall not issue a ticket for a violation based upon evidence recorded by a traffic law photo-monitoring device when a vehicle makes a legal right or left turn on red signal if all of the following apply:

(1) The vehicle can make the turn safely.

(2) The vehicle comes to a complete stop at any point prior to completing the turn.

(3) No pedestrians are in the crosswalk, or are about to enter the crosswalk, of any approach to the intersection the vehicle occupies while commencing or making the turn.

**Sec. 4511.0912.** A local authority shall not issue a ticket for a violation of section 4511.21 or 4511.211 of the Revised Code or a substantially equivalent municipal ordinance due to failure to observe the applicable speed limit based upon evidence recorded by a traffic law photo-monitoring device unless one of the following applies:

(A) For a system location that is located within a school zone or within the boundaries of a state or local park or recreation area, the vehicle involved in the violation is traveling at a speed that exceeds the posted speed limit by not less than six miles per hour.

(B) For a system location that is located at any other location, the vehicle involved in the violation is traveling at a speed that exceeds the posted speed limit by not less than ten miles per hour.

**Sec. 4511.0913.** Sections 4511.092 to 4511.0912 of the Revised Code do not apply to the use of a traffic law photo-monitoring device that is placed on a school bus for the purpose of detecting violations of section 4511.75 of the Revised Code or a substantially equivalent municipal ordinance.

**Section 2.** That existing sections 1901.20, 1907.02, 4511.093, and 4511.094 and section 4511.092 of the Revised Code are hereby repealed.

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