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## **OLR Bill Analysis**

### **sHB 5458**

#### ***AN ACT CONCERNING MUNICIPAL AUTOMATED TRAFFIC ENFORCEMENT SAFETY DEVICES AT CERTAIN INTERSECTIONS.***

#### **SUMMARY:**

This bill permits, until September 30, 2018, towns with at least 48,000 people to use “automated traffic enforcement safety devices” (red light cameras) to record vehicles that illegally drive through traffic signals.

The cameras must be capable of recording a still photograph, video image, or combination, of the rear of a motor vehicle, or a vehicle being towed by another vehicle, including an image of the rear license plate. The cameras must indicate on at least one such image the date, time, and camera location.

The bill specifies how towns may operate and enforce a red light camera program, establishes legal defenses to charges based on images the cameras record, describes a hearing process, and requires that towns report data they collect to the Transportation Committee.

EFFECTIVE DATE: October 1, 2012

#### **ORDINANCES ESTABLISHING CAMERA PROGRAMS**

Under the bill, a municipality may, by ordinance, authorize the use of red light cameras to enforce the traffic control signal law (CGS § 14-299). This law governs the behavior of vehicles and pedestrians at red, yellow, green, and other traffic signals (e.g., “Walk” and “Don’t Walk” signs). Among other things, it requires vehicles to stop, and pedestrians not to cross, at red lights, and allows vehicles to make right turns on red at certain intersections.

A contract between a town and a camera system vendor (see below)

cannot provide for payment on a contingency basis. This apparently means that the amount of money vendors receive cannot depend on the number of violations.

The bill requires (1) a municipality's police chief to approve the siting of any red light camera before it is installed and (2) the cameras to be installed only at intersections where the yellow signal light interval is at least as long as recommended in regulation (see BACKGROUND). Municipalities must install warning signs on all roads approaching intersections where the cameras have been placed, alerting drivers to their presence. The signs must be placed between 100 and 110 feet from the intersections.

The ordinance must specify that:

1. a motor vehicle owner (the person to whom the vehicle is registered) commits a violation if a red light camera produces a recorded image or images of a motor vehicle (apparently the owner's) or of a vehicle towing another vehicle, driving through an intersection in violation of the law;
2. the vehicle owner may claim as a defense that, at the time the violation occurred, he or she was not (a) the person having care, custody, or control of the vehicle or (b) the driver;
3. violators may pay the penalty and associated costs and fees electronically; and
4. both a local police officer and designated employee of a vendor must review and approve the recorded images taken by the camera before a notice of violation can be mailed to a vehicle owner.

Under the bill, a vendor is someone who (1) provides the program services to a municipality; (2) operates, maintains, leases, or licenses red light camera systems; or (3) is authorized to review and assemble the recorded images the cameras take.

The bill bars the state or any traffic authority from regarding a vendor as providing or taking part in private investigative services. It is not clear what effect this provision has.

**Penalties**

An ordinance adopted under the bill (1) must impose a civil penalty of no more than \$50 and (2) may impose fees of up to \$15 for the electronic processing of the penalty. Under the ordinance, a municipality may use revenue from the penalty to defray the costs of installing, operating, and maintaining red light cameras. It must apply any remaining penalty funds to improving local transportation infrastructure.

Under the bill, a legal challenge to an ordinance or to implementation of a red light camera program must be filed within 30 days of the ordinance's passage. It is not clear who would have standing to challenge the ordinance or where the challenge would be filed.

**NOTIFICATION AND PAYMENT PROCEDURE**

The municipal traffic authority or its authorized agent must notify a vehicle owner of a violation by first class mail, postmarked no later than (1) 30 days after it obtains the vehicle owner's name and address or (2) 60 days after the date of the alleged violation. It is not clear which of these deadlines controls. The notice must include:

1. the owner's name and address;
2. the vehicle's license plate number;
3. the violation charged;
4. the date, time, and location of the violation;
5. a copy of the recorded image or information on how to view the recorded image electronically;
6. a statement or electronically generated affirmation by a vendor's designated employee and local police officer who have

reviewed the image and determined that a violation occurred;

7. the amount of the penalty; and
8. the deadline for paying the penalty if the owner elects not to contest the violation.

The bill does not explicitly require the notice to inform the recipient or his or her right to request a hearing.

Under the bill, the owner must pay the penalty no later than (1) 30 days after the “issuance date of the violation,” (apparently the date the notice of violation is mailed) if the owner is not raising a defense to the charge or (2) 45 days after the issuance date if his or her defense requires the notice to be sent to someone else. It is unclear why, if the owner has a valid defense (i.e., he or she did not have care, custody, or control of the vehicle, or was not driving it at the time of the violation) he or she would have to pay the penalty.

If the local authority that enforces the ordinance finds that a person has failed to pay a “violation” (apparently, the civil penalty and associated fee), within the 30 or 45 days, as applicable, without notifying the authority that he or she intends to contest the violation, the local authority must notify the vehicle owner that he or she has an outstanding unpaid bill.

## **DEFENSES TO AN ALLEGED VIOLATION**

### ***Operation by a Lessee***

Under the bill, it is a defense to an alleged violation if the owner provides the traffic authority or authorized municipal agent an affidavit, signed under penalty of perjury, that:

1. establishes him or her as the owner of a motor vehicle renting or leasing business at the time of the alleged violation;
2. establishes that someone other than the owner or the owner’s employee had custody of the vehicle under a written rental contract of 60 days or less at such time; and

3. gives the traffic authority or authorized agent the name and address of the lessee.

It is unclear whether the requirement for owners to “establish” the fact in numbers 1 and 2 above, constitutes more proof than an assertion of these facts, which is what most affidavits require.

Under the bill, the affidavit creates a rebuttable presumption that the lessee was operating the vehicle at the time the violation occurred. The municipal traffic authority or authorized agent must mail or electronically send the lessee a notice of the citation (apparently the same as a notice of violation). The notice must contain (1) the information included in the original notice sent to the vehicle owner; (2) a statement that the owner has identified the recipient as the person in control or custody of the vehicle at the time of the violation; and (3) a statement that the recipient may also claim, in his or her defense, that someone else had custody or control of the vehicle when the violation occurred.

#### ***Operation by Another Driver or Theft***

The owner can also defend against the charge by giving the traffic authority an affidavit, signed under penalty of perjury, that (1) he or she was not operating the vehicle at the time of the alleged violation and providing the name and address of the driver at the time or (2) either the vehicle or its license plate was stolen before the alleged violation occurred and was not under the owner’s control or possession at that time. The owner must submit proof that a police report has been filed in the case of a theft.

Under the bill, proving the above factors establishes a rebuttable presumption that the person identified in the affidavit was operating the vehicle at the time the violation occurred. The municipal traffic authority or its authorized agent must mail a notice of the citation to that person. The notice must contain all the information included in the original notice and a statement that the owner has identified the notice’s recipient as the person driving the vehicle at the time of the violation. It is not clear how this would apply in the event of a stolen

vehicle or license plate where the thief's identity is unknown.

### **Other Defenses**

The following are also defenses to allegations of violating a red light camera ordinance, provided the camera's recording verifies it:

1. the traffic signals were not working properly or
2. the driver was (a) obeying a lawful order or direction from a law enforcement officer, (b) yielding the right of way to an emergency vehicle, or (c) taking part in a funeral procession.

A driver of an authorized emergency vehicle also may claim as a defense that he or she drove through a red light after slowing down as necessary to operate safely. Finally, a driver may claim as a defense that a police officer has issued the driver a citation for the same violation for which he or she received notice under the bill.

The bill indemnifies a designated employee (presumably, of the vendor) or local police officer for any loss while acting in the scope of his or her employment with regard to the bill or any ordinance enacted under it. The bill is silent on the type of loss to which it refers, and the indemnification appears more sweeping than is generally provided in law. By law, municipalities must indemnify municipal officers and employees from financial loss, including legal fees and costs arising from claims of negligence or infringement of civil rights by the officer or employee in the discharge of his or her duties. Indemnification does not extend to employees who act maliciously, wantonly, or willfully (CGS § 7-101a).

### **HEARING PROCESS**

The municipality's chief executive officer must appoint at least one traffic control signal violation hearing officer to conduct hearings. A hearing officer cannot be a police officer or police department employee.

Anyone asserting a defense and requesting a hearing must receive written notice of the hearing's date, time, and place. (The bill does not

specify how someone asserts a defense or requests a hearing.) A hearing must be held between 15 and 30 days after notice is mailed, but the hearing officer may continue or postpone it for good cause at the reasonable request of any interested party.

The bill deems an original or certified copy of the initial notice of violation a business record for evidentiary purposes and requires the town to file and retain it. A town official, other than the hearing officer, may present evidence on the town's behalf.

A person seeking to contest his or her liability must appear at the hearing and may present evidence on his or her behalf. The police officer who authorized issuance of the citation must attend the hearing if requested to do so. However, the bill does not require a police officer to authorize a citation. It requires a police officer and designated employee of the vendor to (1) review and approve the camera's recorded image before notice can be mailed and (2) review the image and determine that the motor vehicle violated the ordinance.

If a person who requested the hearing does not appear, the hearing officer may enter an assessment by default against him or her after finding that he or she was properly notified and committed the violation. But the bill also allows a hearing officer to accept copies of police reports, Department of Motor Vehicles (DMV) records, and other official documents by mail from the alleged violator before the hearing, and to determine that it is not necessary for the alleged violator to appear.

The hearing officer must conduct the hearing and accept offers of proof, as he or she deems appropriate and fair. Rules of evidence do not strictly apply, but all testimony must be given under oath or affirmation. The hearing officer must announce his or her decision at the end of the hearing. If the hearing officer finds the alleged violator is not liable, he or she must dismiss the matter and enter that finding in writing. If the hearing officer finds the person liable, the hearing officer must assess the applicable penalties, costs, or fees.

Under the bill, a violation captured by a red light camera is not an

infraction, moving violation, or violation. The Centralized Infraction Bureau cannot process it, nor can it be reported to DMV for inclusion on a driver's record. It also cannot be counted towards points on a person's driving record.

## **REPORTING REQUIREMENT**

Within 12 months after implementing a red light camera program, or by October 1, 2017, whichever is later, each municipality doing so must report to the Transportation Committee. The report must include a comparison and analysis of the number:

1. of violations that occurred at intersections where red light cameras were used, before and after the cameras were installed;
2. and type of related traffic violations and accidents at these intersections, before and after the cameras were installed; and
3. of traffic violations and related violations and accidents occurring at the intersections where cameras were used and at similar intersections where they were not used.

The report must also describe:

1. situations where camera results could not be, or were not, used;
2. the number of leased, out-of-state, or other vehicles, including trucks, where enforcement efforts failed;
3. the amount of revenue from fines the municipality retained;
4. the cost of the program to the municipality; and
5. any other information the municipality deems important.

## **BACKGROUND**

### ***Yellow Signal Interval***

By regulation (Conn. Agencies Reg. § 14-298-267 (i)), the State Traffic Commission approves various traffic regulatory measures as defined by the federal *Manual On Uniform Traffic Control Devices*

(MUTCD). Guidance provided by the 2009 edition of the MUTCD states that the yellow signal should last between three and six seconds, with the longer intervals reserved for use on approaches with higher speeds (MUTCD, § 4D.26).

**COMMITTEE ACTION**

Transportation Committee

Joint Favorable Substitute

Yea 26 Nay 11 (03/14/2012)