

I Mina'trentai Singko Na Liheslaturan Guåhan
BILL STATUS

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES	NOTES
274-35 (COR)	Jose "Pedo" Terlaje Tina Rose Muña Barnes By request of I Mago'hågan Guåhan, the Governor of Guam, in accordance with the Organic Act of Guam.	AN ACT TO ADD A NEW ARTICLE 3A TO CHAPTER 3 OF TITLE 16 AND A NEW CHAPTER 9.7 TO TITLE 7 BOTH OF THE GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING AN AUTOMATED TRAFFIC ENFORCEMENT PROGRAM ON DESIGNATED GUAM HIGHWAYS.	1/22/20 11:18 a.m.						

I MINA' TRENTAI SINGKO NA LIHESLATURAN GUÅHAN
2020 (SECOND) Regular Session

Bill No. 274-35(COR)

Introduced by:

Jose "Pedo" Terlaje
Tina Muña Barnes

By request of I Maga'hågan
Guåhan in accordance with the
Organic Act of Guam."

AN ACT TO ADD A NEW ARTICLE 3A TO CHAPTER 3 OF TITLE 16 AND A NEW CHAPTER 9.7 TO TITLE 7 BOTH OF THE GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING AN AUTOMATED TRAFFIC ENFORCEMENT PROGRAM ON DESIGNATED GUAM HIGHWAYS.

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1. Automated Traffic Enforcement and Safety Act.** A new Article 3A is hereby
3 added to Chapter 3 of Title 16, Guam Code Annotated, to read:

4

5 **"Article 3A. Automated Traffic Enforcement and Safety Act"**

6

7 § 33A001. Definitions.

8 § 33A002. Authority to Provide for Civil Penalty

9 § 33A003. Installation and Operation of Photographic Traffic Signal

10 § 33A004. Report of Accidents.

11 § 33A005. Minimum Change Interval.

12 § 33A006. General Surveillance Prohibited.

13 § 33A007. Amount of Civil Penalty; Late Payment Penalty

14 § 33A008. Deposit of Revenue from Certain Traffic Penalties

15 § 33A009. Required Ordinance Provisions.

16 § 33A010. Effect On Other Enforcement

17 § 33A011. Notice of Violations; Contents

18 § 33A012. Admission of Liability

2020 JAN 22 AM 11:18

- 1 § 33A013. Presumption.
- 2 § 33A014. Administrative Adjudication Hearing.
- 3 § 33A015. Untimely Request for Administrative Adjudication Hearing.
- 4 § 33A016. Appeal
- 5 § 33A017. Enforcement.
- 6 § 33A018. Imposition of Civil Penalty Not a Conviction
- 7 § 33A019. Failure to Pay Civil Penalty

8 **§ 33A001. Definitions.** Unless context otherwise requires, as used in this Article:

- 9 (1) “Department” means the Department of Public Works.
- 10 (2) “Owner of a motor vehicle” means the owner of a motor vehicle as shown on the motor
11 vehicle registration records of the Guam Department of Revenue and Taxation.
- 12 (3) “Photographic traffic signal enforcement system” means a system that:
 - 13 a. consists of a camera system and vehicle sensor installed to exclusively work in
14 conjunction with an electrically operated traffic-control signal; and
 - 15 b. is capable of producing at least two recorded images that depict the license plate
16 attached to the front or the rear of a motor vehicle that is not operated in
17 compliance with the instructions of the traffic-control signal.
- 18 (4) “Recorded image” means a photographic or digital image that depicts the front or the rear
19 of a motor vehicle
- 20 (5) “Traffic-control signal” means a mechanical light signal by which traffic is alternatively
21 directed to stop and permitted to proceed in a manner consistent with 16 G.C.A. §3339.

22 **§ 33A002. Authority to Provide for Civil Penalty.** The Department of Public Works may
23 implement a photographic traffic signal enforcement system and provide that the owner of a motor
24 vehicle is liable to the local authority for a civil penalty if, while facing signal displayed by an
25 electrically operated traffic-control signal located in Guam, the vehicle is operated in violation of:

- 26 (1) failure to yield at an intersection left turn pursuant to 16 GCA §3325(c);
- 27 (2) failure to obey the requirements of a flashing traffic light pursuant to 16 GCA §3335;
- 28 (3) failure to obey the requirements of traffic signals pursuant to 16 GCA §3339;
- 29 (4) failure to yield at an intersection left turn pursuant to 16 GCA §3325(c);

1 (5) failure to obey the requirements of a flashing traffic light pursuant to 16 GCA §3335;
2 and

3 (6) failure to maintain a license plate pursuant to 16 GCA §7120;

4 **§ 33A003. Installation and Operation of Photographic Traffic Signal Enforcement**
5 **System.**

6 (1) The Department may:

7 a. Contract for the administration and enforcement of the system; and

8 b. Install and operate the system or contract for the installation or operation of the
9 system.

10 (2) The Department may not agree to pay the contractor a specified percentage of, or dollar
11 amount from, each civil penalty collected.

12 (3) An intersection approach may be selected for the installation of a photographic traffic
13 signal enforcement system based on traffic volume, the history of accidents at the
14 approach, the number or frequency of red lights at the intersection, and similar traffic
15 engineering and safety criteria, without regard to the ethnic or socioeconomic
16 characteristics of the area in which the approach is located.

17 (4) The Department may not impose a civil penalty under this Section on the owner of a
18 motor vehicle if the Department violates Subsection (b) or (c).

19 (5) The Department shall install signs along each roadway that leads to an intersection at
20 which a photographic traffic signal enforcement is in active use. The signs must be at
21 least 100 feet from the intersection or located according to standards established by
22 the Department of Revenue and Taxation, be easily readable to any operator
23 approaching the intersection, and clearly indicate the presence of a photographic
24 monitoring system that records violations that may result in the issuance of a notice of
25 violation and the imposition of a monetary penalty.

26 (6) The Department or the person with which the Department contracts for the
27 administration and enforcement of a photographic traffic signal enforcement system
28 may not provide information about a civil penalty imposed under this chapter to a
29 credit bureau or consumer reporting agency.

1 **§ 33A004. Report of Violations.** Upon one (1) year from the date the Department implements
2 an automated traffic enforcement safety device program, and each year thereafter, the Department
3 shall post on its website a report that includes comparison and analysis of the number of violations
4 issued under the program.

5 **§ 33A005. Minimum Change Interval.** At an intersection at which a photographic traffic
6 monitoring system is in use, the minimum change interval for a steady yellow signal must be
7 established in accordance with local and federal laws.

8 **§ 33A006. General Surveillance Prohibited; Offense.** The Department shall operate a
9 photographic traffic control signal enforcement system only for the purpose of detecting a violation or
10 suspected violation of a traffic control signal.

11 (1) A person commits an offense if the person uses a photographic traffic signal
12 enforcement system to produce a recorded image other than in the manner and for the
13 purpose specified by this chapter.

14 (2) An offense under this section is a misdemeanor.

15 **§ 33A007. Amount of Civil Penalty; Late Payment Penalty.**

16 (1) the civil or administrative penalty shall be \$200; and

17 (2) a late payment penalty may not exceed \$50.

18 **§ 33A008. Deposit of Revenue from Certain Traffic Penalties**

19 (a) The Department shall deposit all funds collected pursuant to this Chapter in the Automated
20 Traffic Enforcement Fund.

21 (b) The Department may utilize funds from the Automated Traffic Enforcement Fund in an
22 amount necessary to cover the costs of:

23 (1) Purchasing or leasing equipment that is part of or used in connection with the
24 photographic traffic signal enforcement system;

25 (2) Installing the photographic traffic enforcement system at other sites in Guam,
26 including the costs of installing cameras, flashes, computer equipment, loop
27 sensors, detectors, utility lines, data lines, poles and mounts, networking
28 equipment, and associated labor costs;

29 (3) Operating the photographic traffic signal enforcement system, including the costs
30 of creating, distributing, and delivering violation notices, review of violations

1 conducted by employees of the Department, the processing of fine payments and
2 collections, and the costs associated with administrative adjudications and appeals;
3 and

4 (4) Maintaining the general upkeep and functioning of the photographic traffic signal
5 enforcement system.

6 **§ 33A009. Effect on Other Enforcement.**

7 (a) The implementation of a photographic traffic signal enforcement system by a local
8 authority under this chapter does not:

9 (1) Preclude the application or enforcement of any other

10 (2) Prohibit a peace officer from conducting an otherwise lawful arrest or from issuing
11 a citation

12 (b) The Department may not impose a civil penalty under this chapter on the owner of a motor
13 vehicle if the operator of the vehicle was arrested or issued a citation and notice to appear
14 by a peace officer for the same violation recorded by the photographic traffic signal
15 enforcement system.

16 **§ 33A010. Notice of Violation; Contents.**

17 (a) The imposition of a civil penalty under this chapter is initiated by the mailing of a notice
18 of violation to the owner of the motor vehicle whom the local authority seeks to impose
19 the civil penalty.

20 (b) Not later than the 60th day after the date the violation is alleged to have occurred, the
21 Department or the entity with which the local authority contracts shall mail the notice of
22 violation to the owner at:

23 (1) The owner's address as shown on the registration records of the Department of
24 Revenue and Taxation; or

25 (2) If the vehicle is registered in another state or country, the owner's address as shown
26 on the motor vehicle registration records of the department or agency of the other
27 state or country analogous to the Department of Revenue and Taxation.

28 (c) The notice of violation must contain:

29 (1) A description of the violation alleged;

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

- 1 (3) The date and time of the violation;
- 2 (4) The name and address of the owner of the vehicle involved in the violation;
- 3 (5) The registration number displayed on the license plate of the vehicle involved in
- 4 the violation;
- 5 (6) A copy of a recorded image of the violation limited solely to a depiction of the area
- 6 of the registration number displayed on license plate of the vehicle involved in the
- 7 violation;
- 8 (7) The amount of the civil penalty for which the owner is liable;
- 9 (8) The number of days the person has in which to pay or contest the imposition of the
- 10 civil penalty and a statement that the person incurs a late payment penalty if the
- 11 civil penalty is not paid or imposition of the penalty is not contested within that
- 12 period;
- 13 (9) A statement that the owner of the vehicle in the notice of violation may elect to pay
- 14 the civil penalty by mail sent to a specified address instead of appearing at the time
- 15 and place of the administrative adjudicative hearing; and
- 16 (10) Information that informs the owner of the vehicle named in the notice of
- 17 violation:
- 18 (A) Of the owner's rights to contest the imposition of the civil penalty
- 19 against the person in an administrative adjudication hearing;
- 20 (B) That the imposition of the civil penalty may be contested by submitting
- 21 a written request for an administrative adjudication hearing before the
- 22 expiration of the period specified in Subdivision (8); and
- 23 (C) That failure to pay the civil penalty or to contest liability for the penalty
- 24 in a timely manner is an admission of liability and a waiver of the owner's
- 25 right to appeal the imposition of the civil penalty.

26 (d) A notice of violation is presumed to have been received on the fifth day after the date the

27 notice is mailed.

28 **§ 33A009. Entitlement to an Administrative Hearing.** All persons against whom the

29 Department seeks to impose a civil penalty is entitled to an administrative adjudicative hearing

30 pursuant to the Administrative Adjudication Law.

1 **§ 33A012. Admission of Liability.** A person who fails to pay the civil penalty or to contest
2 liability for the penalty in a timely manner or who requests an administrative adjudication hearing for
3 the penalty in a timely manner or who requests an administrative adjudication hearing to contest the
4 imposition of the civil penalty against the person and fails to appear at the hearing is considered to:

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

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

8 **§ 33A013. Presumption.**

9 (a) It is presumed that the owner of the motor vehicle committed the violation alleged in the
10 notice of violation mailed to the person if the motor vehicle depicted in a photograph or
11 digital image taken by a photographic traffic signal enforcement system belongs to the
12 owner of the motor vehicle.

13 (b) If, at the time of the violation alleged in the notice of violation, the motor vehicle depicted
14 in a photograph or digital image taken by a photographic traffic signal enforcement system
15 was owned by a person in the business of selling, renting, or leasing motor vehicles or by
16 a person who was not the same person named in the notice of violation, the presumption
17 under Subsection (a) is rebutted on the presentation of evidence establishing that the
18 vehicle was at the time:

19 a. Being test driven by another person;

20 b. Being rented or leased by the vehicle's owner to another person; or

21 c. Owned by a person who was not the person named in the notice of violation.

22 (c) Notwithstanding Section 33A014, the presentation of evidence under Subsection (b) by a
23 person who is in the business of selling, renting, or leasing motor vehicles or did not own
24 the vehicle at the time of the violation must be made by affidavit or thorough testimony at
25 the administrative adjudication hearing under Section 33A014. The affidavit may be
26 submitted by mail to the Department or the entity with which the Department contracts.

27 (d) If the presumption established by Subsection (a) is rebutted under Subsection (b), a civil
28 penalty may not be imposed on the owner of the vehicle or the person named in the notice
29 of violation, as applicable.

1 (e) If, at the time of the violation alleged in the notice of violation, the motor vehicle depicted
2 in the photograph or digital image taken by the photographic traffic signal system was
3 owned by a person in the business of renting or leasing motor vehicles and the vehicle was
4 being rented or leased to an individual, the owner of the motor vehicle shall be provided to
5 the Department or the entity with which the Department contracts the name and address of
6 the individual who was renting or leasing the motor vehicle depicted in the photograph or
7 digital image and a statement of the period during which that individual was renting or
8 leasing the vehicle. The owner shall provide the information required by this subsection
9 not later than the 30th day after the date the notice of violation is received. If the owner
10 provides the required information, it is presumed that the individual renting or leasing the
11 motor vehicle committed the violation alleged in the notice of violation and the Department
12 or contractor may send a notice of violation to that individual at the address provided by
13 the owner of the motor vehicle.

14 **§ 33A014. Administrative Adjudication Hearing.**

- 15 (a) A person who receives a notice of violation under this chapter may contest the imposition
16 of the civil penalty specified in the notice of violation by filing a written request for an
17 administrative adjudication hearing. The request for a hearing must be filed on or before
18 the date specified in the notice of violation, which may not be earlier than the thirtieth (30th)
19 day after the date the notice of violation was mailed.
- 20 (b) On receipt of a timely request for an administrative adjudicative hearing, the Department
21 shall notify the person of the date and time of the hearing.
- 22 (c) A hearing officer designated by the Department shall conduct the administrative
23 adjudicative hearing.
- 24 (d) In an administrative adjudicative hearing, the issues must be proven by a preponderance of
25 the evidence.
- 26 (e) The reliability of the photographic traffic signal enforcement system used to produce the
27 recorded image of the motor vehicle involved in the violation may be attested to by
28 affidavit of an officer or employee of the Department or of the entity with which the
29 Department contracts who is responsible for inspecting and maintain the system.

- 1 (f) An affidavit of an officer or employee of the Department or entity that alleges a violation
2 based on an inspection of the applicable recorded image is:
- 3 a. Admissible in the administrative adjudication hearing and in an appeal under
4 Section 33A017; and
 - 5 b. Evidence of the facts contained in the affidavit.
- 6 (g) At the conclusion of the administrative adjudication hearing, the hearing officer shall enter
7 a finding of liability for the civil penalty or a finding of no liability for the civil penalty. A
8 funding under this subsection must be in writing and be signed and dated by the hearing
9 officer.
- 10 (h) A finding of liability for a civil penalty must specify the amount of the civil penalty for
11 which the person is liable. If the hearing officer enters a finding of no liability, a civil
12 penalty for the violation may not be imposed against the person.

13 **§ 33A015. Untimely Request for Administrative Adjudication Hearing.** Notwithstanding
14 any other provision of this chapter, a person who receives a notice of violation under this chapter and
15 who fails to timely pay the amount of the civil penalty or fails to timely request an administrative
16 adjudication hearing is entitled to an administrative adjudication hearing if:

- 17 (1) The person submits a written request for the hearing to the designated hearing officer,
18 accompanied by an affidavit that attests to the date on which the person received the notice
19 of violation; and
- 20 (2) The written request and affidavit are submitted to the hearing officer with the same number
21 of days after the date the person received the notice of violation as specified under Section
22 33A010(c)(8).

23 **§ 33A016. Appeal.**

- 24 (a) The owner of a motor vehicle determined by a hearing officer to be liable for a civil penalty
25 may appeal that determination to a judge by filing an appeal petition with the clerk of the
26 court. The petition must be filed with the clerk of the Superior Court of Guam.
- 27 (b) The petition must be:
 - 28 a. Filed before the 31st day after the date on which the administrative adjudication
29 hearing officer entered the finding of liability for the civil penalty; and
 - 30 b. Accompanied by payment of the costs required by the court.

1 (c) The court clerk shall schedule a hearing and notify the owner of the motor vehicle and the
2 appropriate department, agency or office of the Government of Guam of the date, time, and
3 place of hearing.

4 (d) An appeal stays the enforcement and collection of the civil penalty imposed against the
5 owner of the motor vehicle. The owner shall file a notarized statement of personal financial
6 obligation to perfect the owner's appeal.

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

8 **§ 33A017. Enforcement.** If the owner of a motor vehicle is delinquent in the payment of a
9 civil penalty imposed under this chapter, the Department of Revenue and Taxation may refuse to
10 register a motor vehicle alleged to have been involved in the violation.

11 **§ 33A018. Imposition of Civil Penalty Not a Conviction.** The imposition of a civil penalty
12 under this chapter is not a conviction and may not be considered a conviction for any purpose.

13 **§ 33A019. Failure to Pay Civil Penalty.**

14 (a) If the owner of the motor vehicle fails to timely pay the amount of the civil penalty imposed
15 against the owner:

16 a. An arrest warrant may not be issued for the owner; and

17 b. The imposition of the civil penalty may not be recorded on the owner's driving
18 record.

19 (b) Notice of the Subsection (a) must be included in the notice of violation required by Section
20 33A011.

21 **§ 33A020. Elimination of Recorded Images.** Unless otherwise ordered by a court of
22 competent jurisdiction, the recorded images and videos produced by a device shall be destroyed within
23 ninety (90) days of the final disposition of the case to which it pertains, including any appeals. In
24 addition, all recorded images and videos produced by a device that do not identify a civil violation
25 would need to be destroyed by the Department or an agent within ninety (90) days of the date the
26 image was recorded, unless otherwise ordered by a court.

27 **§ 33A021. Rules and Regulations.** The Department, in consultation with the Guam Police
28 Department, may promulgate such rules and regulations as are necessary to carry out the
29 implementation of this Act. Such rules and regulations shall be adopted pursuant to the Administrative
30 Adjudication Law.

1 **Section 2. Authorization to Request for Interest.** The Department of Public Works is
2 hereby authorized to issue a Request for Interest (RFI) to implement the Program described in Section
3 2 of this Act. The RFI shall include a reference to the National Highway Traffic Safety Administration
4 standards for "across the road radar," stating that "If the ATR device is to be considered for unattended
5 operation, the manufacturer shall provide a secondary method for verifying that the evidential recorded
6 image properly identifies the target vehicle and reflects this vehicle's location within the roadway.
7 This may be accomplished by means of a second, appropriately delayed image showing the target
8 vehicle crossing a specified reference line. After a review of responses to the RFI, the department shall
9 prepare a report on the estimated costs to implement the program, proposed methods of financing the
10 startup costs and the annual operating costs of the program, and any other information pertinent to the
11 successful implementation of the proposed program. Copies of the report shall be transmitted to *I*
12 *Maga'haga Guåhan* and the Speaker of *I Liheslaturan Guåhan*.

13 **Section 3. Establishment of Traffic Camera Violations Fund.** A new Chapter 9.7 is
14 added to Title 7, Guam Code Annotated, to read:

15 **"Chapter 9.7 Automated Traffic Enforcement Fund."**

16
17 **§ 9700. Automated Traffic Enforcement Fund.**

18 **§ 9701. Fund Sources.**

19 **§ 9702. Separation of Accounts.**

20 **§ 9703. Reporting Requirements.**

21
22 **§ 9700. Automated Traffic Enforcement Fund.** There is hereby created an Automated
23 Traffic Enforcement Fund (ATEF) which shall be maintained separate and apart from other funds of
24 the government of Guam. The ATEF shall be under the control of the Department of Public Works
25 and the Director of Administration. The Director of Administration shall administer the ATEF and
26 release the necessary monies upon request by the Director of the Department of Public Works for
27 expenditures authorized by this Section. All money collected for the Fund shall be deposited in
28 interest-earning bank accounts as provided in § 9702 and § 9704 of this Chapter. Interest and
29 investment earnings credited to the assets of the Automated Traffic Fund shall become part of the
30 Automated Traffic Fund. Any remaining balance at the end of the fiscal year shall be carried over to

1 the next fiscal year and be continuously appropriated for the purposes provided in § 9704 of this
2 Chapter.

3 **§ 9701. Fund Sources.** All penalties assessed on violations as a result of the Automated Traffic
4 Enforcement Program established by Article 3A of 16 GCA, Chapter 3 shall be deposited into the
5 Automated Traffic Enforcement Fund.

6 **§ 9702. Authorized Uses of Funds.**

7 (a) The new account or accounts established for the Fund together with the interest earned
8 thereon shall be made available for the purposes outlined in 16 GCA § 33A008.

9 (b) All remaining funds shall be made available to and for the benefit of the Guam Police
10 Department, Guam Fire Department, Guam Customs & Quarantine Agency, Department
11 of Corrections, and the Department of Youth affairs for public safety purposes including,
12 but not limited to: procurement of services and supplies; recruitment and retention of
13 additional public safety personnel; and for the construction and maintenance of public
14 safety facilities.

15 **§ 9703. Reporting Requirements.** The Department of Administration shall prepare, or cause
16 to be prepared, full statements of accounts of all money received and expended out of the account or
17 accounts of the ATEF, and shall transmit such report to *I Liheslatura* on a quarterly basis. Such report
18 shall also be posted on the Department of Administration’s website.

19 **Section 4. Severability.** If any provision of this Act or its application to any person or
20 circumstance is found to be invalid or contrary to law, such invalidity shall not affect other provisions
21 or applications of this Act which can be given effect without the invalid provisions or applications,
22 and to this end the provisions of this Act are severable.”