

1 SB411
2 127639-1
3 By Senators Whatley, Beasley and Dial (N & P)
4 RFD: Local Legislation No. 1
5 First Read: 19-APR-11

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9 A BILL
10 TO BE ENTITLED
11 AN ACT
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13 Relating to the City of Opelika, Alabama, in Lee
14 County; authorizing automated traffic light enforcement in the
15 City of Opelika, Alabama, as a civil violation; providing
16 certain procedures to be followed by the city using automated
17 photographic traffic light enforcement; providing that the
18 owner of the vehicle involved in running a traffic light is
19 presumptively liable for a civil violation and the payment of
20 a civil fine, but providing procedures to contest liability;
21 providing for jurisdiction in the Opelika Municipal Court over
22 the civil violations and allowing appeals to the Lee County
23 Circuit Court for trial de novo; creating a cause of action
24 for any person held responsible for payment of the civil fine
25 against the person who was actually operating a vehicle during
26 the running of a traffic light; and prohibiting the tampering

1 with a photographic traffic signal enforcement system, except
2 by authorized persons.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. (a) This act shall be known and may be
5 cited as the Opelika Red Light Safety Act.

6 (b) The City of Opelika, Alabama, by ordinance, may
7 adopt the procedures set out in this act.

8 Section 2. The Legislature finds and declares the
9 following:

10 (1) Accident data establishes that vehicles running
11 red lights have been and are a dangerous problem in Opelika,
12 Alabama.

13 (2) Studies have found that automated traffic camera
14 enforcement in a municipal area is a highly accurate method
15 for detecting red light violations and is very effective in
16 reducing the number of red light violations and decreasing the
17 number of traffic accidents, deaths, and injuries.

18 (3) Current Alabama law provides that failing to
19 stop and remain stopped at a traffic-control signal which is
20 emitting a steady red signal is a criminal misdemeanor. Under
21 Alabama law one who commits such a misdemeanor is subject to
22 prosecution only if the misdemeanor was witnessed by either a
23 duly empowered police officer or other witness who makes a
24 verified complaint to a sworn magistrate.

25 (4) Many jurisdictions have adopted laws that allow
26 use of automated photographic traffic enforcement, and the
27 Legislature finds that it should adopt legislation

1 implementing a program for automated photographic enforcement
2 of traffic signal violations; which the Legislature finds is
3 consistent with this act.

4 (5) By allowing a program for use of automated
5 traffic signal enforcement by the City of Opelika, the
6 Legislature hopes to both decrease the rate of traffic signal
7 violations and learn more about the effectiveness and fairness
8 involved in the use of the automated systems.

9 Section 3. As used in this act, the following terms
10 shall have the following meanings:

11 (1) CITY. The City of Opelika, Alabama.

12 (2) CIVIL FINE. The monetary amount assessed by the
13 City of Opelika pursuant to this act for an adjudication of
14 civil liability for a traffic signal violation, including
15 municipal court costs associated with the infraction.

16 (3) CIVIL VIOLATION. There is hereby created a
17 noncriminal category of law called a civil violation created
18 and existing for the sole purpose of carrying out the terms of
19 this act. The penalty for violation of a civil violation shall
20 be the payment of a civil fine, the enforceability of which
21 shall be accomplished through civil action. The prosecution of
22 a civil violation created hereby shall carry reduced
23 evidentiary requirements and burden of proof as set out in
24 Section 6, and in no event shall an adjudication of liability
25 for a civil violation be punishable by a criminal fine or
26 imprisonment.

1 (4) OWNER. The owner of a motor vehicle as shown on
2 the motor vehicle registration records of the Alabama
3 Department of Revenue or the analogous department or agency of
4 another state or country. The term shall not include a motor
5 vehicle rental or leasing company when a motor vehicle
6 registered by the company is rented or leased to another
7 person under a rental or lease agreement with the company, in
8 which event "owner" shall mean the person to whom the vehicle
9 is rented or leased; nor shall the term include motor vehicles
10 displaying dealer license plates, in which event "owner" shall
11 mean the person to whom the vehicle is assigned for use; nor
12 shall the term include the owner of any stolen motor vehicle,
13 in which event "owner" shall mean the person who is guilty of
14 stealing the motor vehicle.

15 (5) PHOTOGRAPHIC TRAFFIC SIGNAL ENFORCEMENT SYSTEM.
16 A camera system which is designed and installed to work in
17 conjunction with an electrically operated traffic-control
18 device using vehicle sensors synchronized to automatically
19 record, either by conventional film or digital imaging,
20 sequenced photographs or full motion video of the rear of a
21 motor vehicle while proceeding through a signalized
22 intersection.

23 (6) TRAFFIC-CONTROL SIGNAL. Any device, whether
24 manually, electrically, or mechanically operated, by which
25 traffic is alternately directed to stop and permitted to
26 proceed as defined in Section 32-1-1.1, Code of Alabama 1975.
27 The device shall be capable of producing at least two recorded

1 images, at least one of which is capable of clearly depicting
2 the license plate of a motor vehicle that is not operated in
3 compliance with the instructions of the traffic-control
4 signal.

5 (7) TRAFFIC SIGNAL VIOLATION. Any violation of
6 Section 32-5A-31, 32-5A-32, or 32-5A-35, Code of Alabama 1975,
7 or any combination thereof, wherein a vehicle proceeds into a
8 signalized intersection at a time while the traffic-control
9 signal for that vehicle's lane of travel is emitting a steady
10 red signal. A traffic signal violation shall be a civil
11 violation as defined in this act.

12 (8) TRAINED TECHNICIAN. A sworn law enforcement
13 officer employed by the City of Opelika, who alternatively:

14 a. Is a professional engineer in the field of civil
15 engineering.

16 b. Has received instruction and training in the
17 proper use of the photographic traffic signal enforcement
18 system to be used by the city by the city's traffic engineer
19 or his or her designee.

20 c. Has been trained by the vendor installing the
21 equipment.

22 Section 4. (a) The City of Opelika is empowered to
23 utilize a photographic traffic signal enforcement system to
24 detect and record traffic signal violations, to issue notices
25 of civil violations by mail, and to prosecute civil violations
26 for the recorded traffic signal violations which may occur
27 within the corporate limits of the City of Opelika as provided

1 in this act. A civil fine assessed under this act shall not
2 exceed one hundred dollars (\$100), and municipal court costs
3 shall be assessed only in contested cases in the same manner
4 and in the same amounts prescribed for a municipal criminal
5 traffic-control device violation prosecuted as a misdemeanor
6 under Sections 32-5A-31, 32-5A-32, and 32-5A-35, Code of
7 Alabama 1975, or any combination thereof. An additional fee of
8 ten dollars (\$10) shall be collected in connection with
9 notices issued under this act. Court costs collected pursuant
10 to this act shall be distributed in the same manner as
11 prescribed by law for the distribution of municipal court
12 costs for misdemeanor violations. An additional fee of ten
13 dollars (\$10) shall be collected by the Opelika Municipal
14 Court in connection with notices issued under this act to be
15 paid to the Alabama Criminal Justice Information Center and
16 deposited in the State Treasury as compensation for record
17 keeping and transaction processing with respect to violation
18 notices issued under this act.

19 (b) The City of Opelika shall cause a sign to be
20 posted at each of a minimum of five roadway entry points to
21 the city to provide motorists with notice that photographic
22 traffic signal enforcement systems are in use. The sign will
23 comply with this requirement if it states substantially the
24 following: "AUTOMATED CAMERAS USED IN RED LIGHT ENFORCEMENT,"
25 or if it otherwise gives sufficient notice.

26 (c) Prior to operating a photographic traffic signal
27 enforcement system, the City of Opelika shall make a public

1 announcement and conduct a public awareness campaign of the
2 use of a photographic traffic signal enforcement system a
3 minimum of 30 days before using the devices. The City of
4 Opelika may place photographic traffic signal enforcement
5 systems at locations without notice of the specific location,
6 may change locations without public notice, and may install
7 and move as needed decoy devices designed to resemble
8 photographic traffic signal enforcement systems.

9 (d) The city shall post a sign or signs at each
10 intersection at which a device is located informing motorists
11 that a photographic traffic signal enforcement system is in
12 operation at the intersection.

13 Section 5. (a) Prior to imposing a civil penalty
14 under this act, the City of Opelika shall first mail via first
15 class United States mail a notice of violation to the owner of
16 the motor vehicle which is recorded by the photographic
17 traffic signal enforcement system while committing a traffic
18 signal violation. The notice shall be sent not later than the
19 30th day after the date the traffic signal violation is
20 recorded to:

21 (1) The owner's address as shown on the registration
22 records of the Alabama Department of Revenue.

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

1 (b) A notice of violation issued under this act
2 shall contain the following:

3 (1) A description of the violation alleged.

4 (2) The date, time, and location of the violation.

5 (3) A copy of recorded images of the vehicle
6 involved in the violation.

7 (4) The amount of the civil penalty to be imposed
8 for the violation.

9 (5) The date by which the civil penalty must be
10 paid.

11 (6) A statement that the person named in the notice
12 of violation may pay the civil penalty in lieu of appearing at
13 an administrative adjudication hearing.

14 (7) Information that informs the person named in the
15 notice of violation:

16 a. Of the right to contest the imposition of the
17 civil penalty in an administrative adjudication.

18 b. Of the manner and time in which to contest the
19 imposition of the civil penalty.

20 c. That failure to pay the civil penalty or to
21 contest liability is an admission of liability.

22 (8) A statement that a recorded image is evidence in
23 a proceeding for the imposition of a civil penalty.

24 (9) A statement that failure to pay the civil
25 penalty within the time allowed shall result in the imposition
26 of a late penalty not exceeding twenty-five dollars (\$25) for

1 each month after the issuance of the order imposing the civil
2 penalty.

3 (10) Any other information deemed necessary by the
4 department or the city.

5 (c) A notice of violation under this act is presumed
6 to have been received on the 10th day after the date the
7 notice of violation is placed in the United States mail.

8 (d) The civil penalty imposed shall be paid within
9 30 days of the 10th day after the date the notice of violation
10 is mailed.

11 (e) (1) It shall be within the discretion of the
12 trained technician to determine which of the recorded traffic
13 signal violations are prosecuted based upon the quality and
14 legibility of the recorded image. In lieu of issuing a notice
15 of violation, the city may mail a warning notice to the owner.

16 (2) Under no circumstances shall the salary or other
17 compensation of the trained technician be related to the
18 number of notices of violation issued or amount of fines
19 collected.

20 Section 6. (a) The Opelika Municipal Court is vested
21 with the power and jurisdiction to hear and adjudicate the
22 civil violations provided for in this act, and to issue orders
23 imposing the civil fines and costs set out in this act.

24 (b) A person who receives a violation may contest
25 the imposition of the civil fine by submitting a request for a
26 hearing on the adjudication of the civil violation, in
27 writing, within 15 days of the 10th day after the date the

1 notice of violation is mailed. Upon receipt of a timely
2 request, the city shall notify the person of the date and time
3 of the adjudicative hearing.

4 (c) Failure to pay a civil penalty or to contest
5 liability in a timely manner is an admission of liability in
6 the full amount of the civil fine assessed in the notice of
7 violation.

8 (d) The civil fine and court costs shall not be
9 assessed if, after a hearing, the Opelika Municipal Judge
10 enters a finding of no liability.

11 (e) If an adjudicative hearing is requested, the
12 city shall have the burden of proving the traffic signal
13 violation by a preponderance of the evidence. The reliability
14 of the photographic traffic signal enforcement system used to
15 produce the recorded image of the violation may be attested to
16 by affidavit of a trained technician. An affidavit of a
17 trained technician that alleges a violation based on an
18 inspection of the pertinent recorded image is admissible in a
19 proceeding under this act and is evidence of the facts
20 contained in the affidavit.

21 (f) The notice of violation, the recorded and
22 reproduced images of the traffic signal violation, regardless
23 of the media on which they are recorded, accompanied by a
24 certification of authenticity of a trained technician, and
25 evidence of ownership of a vehicle as shown by copies or
26 summaries of official records shall be admissible into
27 evidence without foundation unless the municipal court finds

1 there is an indication of untrustworthiness, in which case the
2 city shall be given a reasonable opportunity to lay an
3 evidentiary foundation.

4 (g) All other matters of evidence and procedure not
5 specifically addressed in this act shall be subject to the
6 rules of evidence and the rules of procedure as they apply in
7 the small claims courts of this state, except that on any
8 appeal to Lee County Circuit Court for trial de novo the
9 evidence and procedures shall be as for any civil case in the
10 circuit court except as otherwise provided in this act.

11 (h) A person who is found liable for the civil
12 violation after an adjudicative hearing or who requests an
13 adjudicative hearing and thereafter fails to appear at the
14 time and place of the hearing is liable for court costs and
15 fees set out herein in addition to the amount of the civil
16 fine assessed for the violation. A person who is found liable
17 for a civil violation after an adjudicative hearing shall pay
18 the civil fine and costs within 10 days of the hearing.

19 (i) Whenever payment of a civil fine is owed to the
20 city, the amount of the civil fine as set by ordinance may not
21 be increased, decreased, or remitted by the municipal court,
22 and the liability may be satisfied only by payment.

23 (j) It shall be an affirmative defense to the
24 imposition of civil liability under this act, to be proven by
25 a preponderance of the evidence, that:

1 (1) The traffic-control signal was not in proper
2 position and sufficiently visible to an ordinarily observant
3 person.

4 (2) The operator of the motor vehicle was acting in
5 compliance with the lawful order or direction of a police
6 officer.

7 (3) The operator of the motor vehicle violated the
8 instructions of the traffic-control signal so as to yield the
9 right-of-way to an immediately approaching authorized
10 emergency vehicle.

11 (4) The motor vehicle was being operated as an
12 authorized emergency vehicle under Sections 32-5A-7 and
13 32-5-213 of the Code of Alabama 1975, and that the operator
14 was acting in compliance with those chapters.

15 (5) The motor vehicle was stolen or being operated
16 by a person other than the owner of the vehicle without the
17 effective consent of the owner.

18 (6) The license plate depicted in the recorded image
19 of the violation was a stolen plate and being displayed on a
20 motor vehicle other than the motor vehicle for which the plate
21 had been issued.

22 (7) The presence of ice, snow, unusual amounts of
23 rain, or other unusually hazardous road conditions existed
24 that would make compliance with this act more dangerous under
25 the circumstances than noncompliance.

1 (8) The person who received the notice of violation
2 was not the owner of the motor vehicle at the time of the
3 violation.

4 (k) To demonstrate that at the time of the violation
5 the motor vehicle was a stolen vehicle or the license plate
6 displayed on the motor vehicle was a stolen plate, the owner
7 must submit proof acceptable to the hearing officer that the
8 theft of the vehicle or license plate, prior to the time of
9 the violation, had been timely reported to the appropriate law
10 enforcement agency.

11 (1) Notwithstanding anything in this act to the
12 contrary, a person who fails to pay the amount of a civil fine
13 or to contest liability in a timely manner is entitled to an
14 adjudicative hearing on the violation if:

15 (1) The person files an affidavit with the hearing
16 officer stating the date on which the person received the
17 notice of violation that was mailed to the person, if not
18 received by the 10th day after same is mailed as set out in
19 subsection (a) of Section 5.

20 (2) Within the 15 days of the date of actual
21 receipt, the person requests an administrative adjudicative
22 hearing.

23 Section 7. (a) Following an adjudicative hearing,
24 the municipal court judge shall issue an order stating:

25 (1) Whether the person charged with the civil
26 violation is liable for the violation.

1 (2) If charged with a civil violation the amount of
2 the civil fine assessed against the person, along with the
3 fees and costs of court provided for herein.

4 (b) The orders issued under this section may be
5 filed in the office of the Judge of Probate of Lee County,
6 Alabama, and shall operate as a judicial lien in the same
7 manner and with the same weight and effect as any other civil
8 judgment filed therein.

9 (c) A person who is found liable after an
10 adjudicative hearing may appeal that finding of civil
11 liability to the Circuit Court of Lee County, Alabama, by
12 filing a notice of appeal with the clerk of the municipal
13 court. The notice of appeal must be filed not later than the
14 14th day after the date on which the municipal court judge
15 entered the finding of civil liability. The filing of a notice
16 of appeal shall stay the enforcement of the civil fine
17 penalty. An appeal shall be determined by the circuit court by
18 trial de novo.

19 Section 8. The circuit court hearing an appeal shall
20 use the procedures that apply to criminal convictions in
21 municipal court with the following qualifications:

22 (1) The proceedings shall retain their civil nature
23 on appeal with the circuit court applying the preponderance of
24 the evidence standard.

25 (2) If the person is adjudicated by the circuit
26 court to be responsible for payment of the civil fine, circuit
27 court costs shall be owed by the person adjudicated

1 responsible, with 100 percent of those court costs retained by
2 the circuit court. Court costs in the circuit court shall be
3 calculated as are court costs for criminal appeals from the
4 municipal court, and in the event the circuit court finds the
5 person appealing to not be responsible, no municipal court
6 costs shall be owed to the city.

7 (3) Regardless of the civil nature of the
8 proceedings, the circuit court, in its discretion and for its
9 administrative convenience, may assign case numbers as for
10 criminal appeals and place the appeals on criminal dockets in
11 the same manner as criminal appeals from municipal court.

12 (4) The circuit court shall sit as trier of both
13 fact and law in the civil proceedings in the circuit court.

14 (5) The city shall be responsible for providing an
15 attorney to represent the city and to prosecute the civil
16 proceedings in the circuit court.

17 Section 9. In the event the evidence produced by a
18 photographic traffic signal enforcement system does not
19 produce an image of the license plate with sufficient clarity
20 for a trained technician to determine the identity of the
21 owner, and if the identity cannot otherwise be reliably
22 established, then no notice of violation may be issued
23 pursuant to this act. If, however, a notice of violation is
24 issued, to the degree constitutionally allowed, those issues
25 related to the identity of the vehicle or its owner shall
26 affect the weight to be accorded the evidence and shall not
27 affect its admissibility.

1 Section 10. The city may provide by ordinance that
2 late fees not exceeding twenty-five dollars (\$25) per month
3 for each month after the issuance of the order imposing the
4 civil fine shall attach to untimely paid civil fines that are
5 authorized in this act. No person may be arrested or
6 incarcerated for nonpayment of a civil fine or late fee. No
7 record of an adjudication of civil violation made under this
8 act shall be listed, entered, or reported on any criminal
9 record or driving record, whether the record is maintained by
10 the city or an outside agency. An adjudication of civil
11 violation provided for in this act shall not be considered a
12 conviction for any purpose, shall not be used to increase or
13 enhance punishment for any subsequent offense of a criminal
14 nature, shall not be considered a moving violation, and shall
15 not be used by any insurance company to determine or affect
16 premiums or rates. The fact that a person is held liable or
17 responsible for a civil fine for a red light violation shall
18 not be used as evidence that the person was guilty of
19 negligence or other culpable conduct, and any evidence in
20 other proceedings if it is or becomes admissible under the
21 rules of evidence applicable therein.

22 Section 11. The city shall adopt the procedures
23 authorized by this act, and shall keep statistical data
24 regarding the effectiveness of photographic traffic signal
25 enforcement systems in reducing traffic-control device
26 violations and intersectional collisions and shall communicate
27 the data on an annual basis to the Alabama Department of

1 Transportation and the Alabama Criminal Justice Information
2 Center.

3 Section 12. The placement of control devices and
4 timing of yellow lights and red light clearance intervals,
5 adopted by the city, shall conform to the most recent edition
6 of the Traffic Engineering Handbook. It shall be presumed that
7 the city is in compliance with this section unless the
8 contrary is shown by a preponderance of the evidence.

9 Section 13. No civil penalty may be imposed and no
10 adjudication of liability for a civil violation may be made
11 under this act if the operator of the vehicle was arrested or
12 was issued a citation and notice to appear by a sworn police
13 officer for a criminal violation of any portion of Article 2,
14 Chapter 5A, Title 32, including, but not limited to, Sections
15 32-5A-31, 32-5A-34, and 32-5A-35 of the Code of Alabama 1975,
16 or any other municipal ordinance which embraces and
17 incorporates the statutes contained in that article, and which
18 occurred simultaneously with and under the same set of
19 circumstances which were recorded by the photographic traffic
20 signal enforcement system.

21 Section 14. Any person against whom an adjudication
22 of liability for a civil violation is made under this act, or
23 the ordinance passed pursuant hereto, and who actually pays
24 the civil fine imposed thereby shall have a cause of action
25 against any person who may be shown to have been operating a
26 vehicle recorded at the time of the violation for the amount
27 of the civil fine actually paid plus any consequential or

1 compensatory damages and a reasonable attorney fee, without
2 regard to the rules regarding joint and several liability,
3 contribution, or indemnity. Provided, however, that as a
4 condition precedent to the bringing of a civil action, that
5 the person held responsible for payment of a civil fine must
6 first make written demand on the other person for
7 reimbursement of the civil fine, giving a minimum of 60 days
8 to remit payment, and if reimbursement is fully made within
9 the 60-day period then the cause of action shall be
10 extinguished and no attorney fees or other damages shall
11 attach to the reimbursement. Any cause of action brought
12 pursuant to this section must be commenced within two years
13 from the date of the payment of the civil fine for a red light
14 violation.

15 Section 15. The provisions of this act are
16 severable. If any part of this act is declared invalid or
17 unconstitutional, that declaration shall not affect the part
18 which remains.

19 Section 16. This act shall become effective
20 immediately following its passage and approval by the
21 Governor, or its otherwise becoming law.