

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

1 SB411

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4 With Notice and Proof

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6 ENROLLED, An Act,

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

23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

3 Section 2. The Legislature finds and declares the
4 following:

5 (1) Accident data establishes that vehicles running
6 red lights have been and are a dangerous problem in Opelika,
7 Alabama.

8 (2) Studies have found that automated traffic camera
9 enforcement in a municipal area is a highly accurate method
10 for detecting red light violations and is very effective in
11 reducing the number of red light violations and decreasing the
12 number of traffic accidents, deaths, and injuries.

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

20 (4) Many jurisdictions have adopted laws that allow
21 use of automated photographic traffic enforcement, and the
22 Legislature finds that it should adopt legislation
23 implementing a program for automated photographic enforcement
24 of traffic signal violations; which the Legislature finds is
25 consistent with this act.

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

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

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

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

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

24 (4) OWNER. The owner of a motor vehicle as shown on
25 the motor vehicle registration records of the Alabama

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

13 (5) PHOTOGRAPHIC TRAFFIC SIGNAL ENFORCEMENT SYSTEM.

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

21 (6) TRAFFIC-CONTROL SIGNAL. Any device, whether
22 manually, electrically, or mechanically operated, by which
23 traffic is alternately directed to stop and permitted to
24 proceed as defined in Section 32-1-1.1, Code of Alabama 1975.
25 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

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

21 (b) The City of Opelika shall cause a sign to be
22 posted at each of a minimum of five roadway entry points to
23 the city to provide motorists with notice that photographic
24 traffic signal enforcement systems are in use. The sign will
25 comply with this requirement if it states substantially the

1 following: "AUTOMATED CAMERAS USED IN RED LIGHT ENFORCEMENT,"
2 or if it otherwise gives sufficient notice.

3 (c) Prior to operating a photographic traffic signal
4 enforcement system, the City of Opelika shall make a public
5 announcement and conduct a public awareness campaign of the
6 use of a photographic traffic signal enforcement system a
7 minimum of 30 days before using the devices. The City of
8 Opelika may place photographic traffic signal enforcement
9 systems at locations without notice of the specific location,
10 may change locations without public notice, and may install
11 and move as needed decoy devices designed to resemble
12 photographic traffic signal enforcement systems.

13 (d) The city shall post a sign or signs at each
14 intersection at which a device is located informing motorists
15 that a photographic traffic signal enforcement system is in
16 operation at the intersection.

17 Section 5. (a) Prior to imposing a civil penalty
18 under this act, the City of Opelika shall first mail via first
19 class United States mail a notice of violation to the owner of
20 the motor vehicle which is recorded by the photographic
21 traffic signal enforcement system while committing a traffic
22 signal violation. The notice shall be sent not later than the
23 30th day after the date the traffic signal violation is
24 recorded to:

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

3 (2) If the vehicle is registered in another state or
4 country, to the owner's address as shown on the motor vehicle
5 registration records of the department or agency of the other
6 state or country analogous to the Alabama Department of
7 Revenue.

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

10 (1) A description of the violation alleged.

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

12 (3) A copy of recorded images of the vehicle
13 involved in the violation.

14 (4) The amount of the civil penalty to be imposed
15 for the violation.

16 (5) The date by which the civil penalty must be
17 paid.

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

21 (7) Information that informs the person named in the
22 notice of violation:

23 a. Of the right to contest the imposition of the
24 civil penalty in an administrative adjudication.

1 b. Of the manner and time in which to contest the
2 imposition of the civil penalty.

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

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

7 (9) A statement that failure to pay the civil
8 penalty within the time allowed shall result in the imposition
9 of a late penalty not exceeding twenty-five dollars (\$25) for
10 each month after the issuance of the order imposing the civil
11 penalty.

12 (10) Any other information deemed necessary by the
13 department or the city.

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

17 (d) The civil penalty imposed shall be paid within
18 30 days of the 10th day after the date the notice of violation
19 is mailed.

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

1 (2) Under no circumstances shall the salary or other
2 compensation of the trained technician be related to the
3 number of notices of violation issued or amount of fines
4 collected.

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

9 (b) A person who receives a violation may contest
10 the imposition of the civil fine by submitting a request for a
11 hearing on the adjudication of the civil violation, in
12 writing, within 15 days of the 10th day after the date the
13 notice of violation is mailed. Upon receipt of a timely
14 request, the city shall notify the person of the date and time
15 of the adjudicative hearing.

16 (c) Failure to pay a civil penalty or to contest
17 liability in a timely manner is an admission of liability in
18 the full amount of the civil fine assessed in the notice of
19 violation.

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

23 (e) If an adjudicative hearing is requested, the
24 city shall have the burden of proving the traffic signal
25 violation by a preponderance of the evidence. The reliability

1 of the photographic traffic signal enforcement system used to
2 produce the recorded image of the violation may be attested to
3 by affidavit of a trained technician. An affidavit of a
4 trained technician that alleges a violation based on an
5 inspection of the pertinent recorded image is admissible in a
6 proceeding under this act and is evidence of the facts
7 contained in the affidavit.

8 (f) The notice of violation, the recorded and
9 reproduced images of the traffic signal violation, regardless
10 of the media on which they are recorded, accompanied by a
11 certification of authenticity of a trained technician, and
12 evidence of ownership of a vehicle as shown by copies or
13 summaries of official records shall be admissible into
14 evidence without foundation unless the municipal court finds
15 there is an indication of untrustworthiness, in which case the
16 city shall be given a reasonable opportunity to lay an
17 evidentiary foundation.

18 (g) All other matters of evidence and procedure not
19 specifically addressed in this act shall be subject to the
20 rules of evidence and the rules of procedure as they apply in
21 the small claims courts of this state, except that on any
22 appeal to Lee County Circuit Court for trial de novo the
23 evidence and procedures shall be as for any civil case in the
24 circuit court except as otherwise provided in this act.

1 (h) A person who is found liable for the civil
2 violation after an adjudicative hearing or who requests an
3 adjudicative hearing and thereafter fails to appear at the
4 time and place of the hearing is liable for court costs and
5 fees set out herein in addition to the amount of the civil
6 fine assessed for the violation. A person who is found liable
7 for a civil violation after an adjudicative hearing shall pay
8 the civil fine and costs within 10 days of the hearing.

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

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

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

19 (2) The operator of the motor vehicle was acting in
20 compliance with the lawful order or direction of a police
21 officer.

22 (3) The operator of the motor vehicle violated the
23 instructions of the traffic-control signal so as to yield the
24 right-of-way to an immediately approaching authorized
25 emergency vehicle.

1 (4) The motor vehicle was being operated as an
2 authorized emergency vehicle under Sections 32-5A-7 and
3 32-5-213 of the Code of Alabama 1975, and that the operator
4 was acting in compliance with those chapters.

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

8 (6) The license plate depicted in the recorded image
9 of the violation was a stolen plate and being displayed on a
10 motor vehicle other than the motor vehicle for which the plate
11 had been issued.

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

16 (8) The person who received the notice of violation
17 was not the owner of the motor vehicle at the time of the
18 violation.

19 (k) To demonstrate that at the time of the violation
20 the motor vehicle was a stolen vehicle or the license plate
21 displayed on the motor vehicle was a stolen plate, the owner
22 must submit proof acceptable to the hearing officer that the
23 theft of the vehicle or license plate, prior to the time of
24 the violation, had been timely reported to the appropriate law
25 enforcement agency.

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

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

10 (2) Within the 15 days of the date of actual
11 receipt, the person requests an administrative adjudicative
12 hearing.

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

15 (1) Whether the person charged with the civil
16 violation is liable for the violation.

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

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

1 (c) A person who is found liable after an
2 adjudicative hearing may appeal that finding of civil
3 liability to the Circuit Court of Lee County, Alabama, by
4 filing a notice of appeal with the clerk of the municipal
5 court. The notice of appeal must be filed not later than the
6 14th day after the date on which the municipal court judge
7 entered the finding of civil liability. The filing of a notice
8 of appeal shall stay the enforcement of the civil fine
9 penalty. An appeal shall be determined by the circuit court by
10 trial de novo.

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

14 (1) The proceedings shall retain their civil nature
15 on appeal with the circuit court applying the preponderance of
16 the evidence standard.

17 (2) If the person is adjudicated by the circuit
18 court to be responsible for payment of the civil fine, circuit
19 court costs shall be owed by the person adjudicated
20 responsible, with 100 percent of those court costs retained by
21 the circuit court. Court costs in the circuit court shall be
22 calculated as are court costs for criminal appeals from the
23 municipal court, and in the event the circuit court finds the
24 person appealing to not be responsible, no municipal court
25 costs shall be owed to the city.

1 (3) Regardless of the civil nature of the
2 proceedings, the circuit court, in its discretion and for its
3 administrative convenience, may assign case numbers as for
4 criminal appeals and place the appeals on criminal dockets in
5 the same manner as criminal appeals from municipal court.

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

8 (5) The city shall be responsible for providing an
9 attorney to represent the city and to prosecute the civil
10 proceedings in the circuit court.

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

22 Section 10. The city may provide by ordinance that
23 late fees not exceeding twenty-five dollars (\$25) per month
24 for each month after the issuance of the order imposing the
25 civil fine shall attach to untimely paid civil fines that are

1 authorized in this act. No person may be arrested or
2 incarcerated for nonpayment of a civil fine or late fee. No
3 record of an adjudication of civil violation made under this
4 act shall be listed, entered, or reported on any criminal
5 record or driving record, whether the record is maintained by
6 the city or an outside agency. An adjudication of civil
7 violation provided for in this act shall not be considered a
8 conviction for any purpose, shall not be used to increase or
9 enhance punishment for any subsequent offense of a criminal
10 nature, shall not be considered a moving violation, and shall
11 not be used by any insurance company to determine or affect
12 premiums or rates. The fact that a person is held liable or
13 responsible for a civil fine for a red light violation shall
14 not be used as evidence that the person was guilty of
15 negligence or other culpable conduct, and any evidence in
16 other proceedings if it is or becomes admissible under the
17 rules of evidence applicable therein.

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

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

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

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

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB411
Senate 03-MAY-11
I hereby certify that the within Act originated in and passed
the Senate.

Patrick Harris
Secretary

House of Representatives
Passed: 31-MAY-11

By: Senator Whatley