

1 HB183
2 144656-3
3 By Representative Vance
4 RFD: Public Safety and Homeland Security
5 First Read: 07-FEB-13

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8 SYNOPSIS: This bill would enable county and municipal
9 boards of education to approve in their
10 jurisdiction a process of civil enforcement of
11 offenses related to overtaking a school bus by
12 using automated detection devices, and allowing a
13 civil notice of violation to be issued by mail. It
14 would provide that the owner of the vehicle is
15 presumptively responsible but provide procedures to
16 transfer responsibility or to contest the notice of
17 violation. The bill would allow a law enforcement
18 agency or a local governing entity, in consultation
19 with a school system, to enter an agreement with a
20 private vendor for the installation, operation,
21 notice processing, and administration of a school
22 bus automated device. District and municipal courts
23 would be granted subject matter jurisdiction to
24 adjudicate the civil notice. The bill would provide
25 procedures for civil action taken pursuant to this
26 act. The bill would provide for the destruction of
27 all images and other recorded information within

1 certain time periods. The bill would provide for
2 appeals. Civil fines would be authorized. Any
3 person who becomes responsible for payment of the
4 civil fine would not have the violation entered on
5 the driver's history, not suffer other adverse
6 consequences so long as the civil fine is timely
7 paid, and insurance companies could not use a
8 violation to set or change insurance rates. Failure
9 to timely pay a civil fine would result in civil
10 collection efforts by a county or a municipal board
11 of education.

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13 A BILL
14 TO BE ENTITLED
15 AN ACT
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17 Authorizing automated enforcement related to
18 overtaking a school bus in counties and municipalities as a
19 civil offense; authorizing a county or municipal board of
20 education to approve, in their respective jurisdiction, a
21 civil process of automated detection device of a school bus
22 violation enforcement; requiring certain procedures to be
23 followed by a county or municipal board of education using
24 automated school bus enforcement; making the owner of the
25 vehicle involved in a violation presumptively responsible for
26 payment of a civil fine, but providing procedures to contest
27 responsibility or transfer responsibility to another person;

1 providing for jurisdiction in district courts and in municipal
2 courts over the civil offenses; providing for procedures for
3 administrating this act; allowing a law enforcement agency or
4 a local governing entity to enter agreements with vendors of
5 automated devices; providing for the destruction of recorded
6 information after certain time periods; and allowing appeals
7 to the circuit court; providing enforcement regarding
8 licensing, titling and driver's license issuance and renewal
9 until the civil fine is paid.

10 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

11 Section 1. (a) This act shall be known and may be
12 cited as the "Alabama School Bus Safety Act."

13 (b) Any county or municipal board of education may
14 authorize a process of civil enforcement of a school bus
15 violation pursuant to the procedures set out in this act.

16 Section 2. The following definitions and provisions
17 shall apply to this act:

18 (1) AUTOMATED DEVICE. Any camera or recording device
19 that uses a vehicle sensor and camera synchronized to
20 automatically record by video, photograph, or full motion
21 streaming video, a motor vehicle approaching or overtaking a
22 school bus that is stopped for the purpose of receiving or
23 discharging school children in violation of Section 32-5A-154,
24 Code of Alabama 1975.

25 (2) BOARD. A county or municipal board of education,
26 or the governing body of a school system.

1 (3) COURT. A district court, if a school bus
2 violation occurs in an unincorporated area, or a municipal
3 court if a violation occurs in an incorporated municipality.

4 (4) LAW ENFORCEMENT AGENCY. A law enforcement agency
5 of a local political subdivision or local governing body, or a
6 school system that is authorized to issue a citation for a
7 violation of the state vehicle law or of local traffic laws or
8 regulations.

9 (5) OWNER. The meaning ascribed to "owner" in
10 Section 32-1-1.1, Code of Alabama 1975, except that the term
11 shall not include a motor vehicle rental or leasing company
12 when a motor vehicle registered by the company is being
13 operated by another person under a rental or lease agreement
14 with the company, in which event "owner" shall mean the person
15 to whom the vehicle is rented or leased; nor shall the term
16 include motor vehicles displaying a dealer license plate, in
17 which event "owner" shall mean the person to whom the vehicle
18 is assigned for use; nor shall the term include the owner of a
19 vehicle that has been reported stolen to a law enforcement
20 agency prior to the time of the violation, in which event
21 "owner" shall mean the person who is found guilty of stealing
22 the motor vehicle.

23 (6) SCHOOL BUS VIOLATION or VIOLATION. Any violation
24 of Section 32-5A-154, Code of Alabama 1975.

25 Section 3. (a) A county or municipal board of
26 education may approve the use of automated devices to detect
27 school bus violations by voting at a meeting of the board to

1 approve the adoption of an automated school bus enforcement
2 program.

3 (b) If approved by a county, municipal, or other
4 school district governing board and authorized by ordinance or
5 resolution enacted by the governing body of a local political
6 subdivision, a law enforcement agency or a political
7 subdivision in consultation with a school system, as the case
8 may be, may enter into an agreement with a private vendor for
9 the installation, operation, notice processing, and
10 administration and maintenance of school bus automated devices
11 on buses within the school system's fleet whether owned or
12 leased.

13 (c) A county or municipal board of education may
14 contract for the operation of a school bus violation
15 enforcement program authorized by this act through
16 intergovernmental agreements with the county or municipal law
17 enforcement offices and the district and municipal courts.

18 (d) A civil fine, not to exceed two hundred fifty
19 dollars (\$250), may be imposed for a school bus violation for
20 which a notice of violation is issued pursuant to this act.
21 All such fines shall be paid, less the costs to administer,
22 operate, and maintain the program, as follows: 40 percent of
23 the remainder, after costs of operation identified above, to
24 the county or municipal governing body where the offense was
25 committed; 40 percent of the remainder, after costs of
26 operation identified above, to the school system where the
27 offense was committed; 10 percent of the remainder, after

1 costs of operation identified above, to the State Department
2 of Education for school bus safety initiatives; and 10 percent
3 of the remainder, after costs of operation identified above,
4 to the Alabama Department of Public Safety for highway safety
5 enforcement.

6 Section 4. (a) After review of the violation by law
7 enforcement, any county or municipal governing body or law
8 enforcement office operating an automated device shall send
9 the owner of a vehicle that has been detected by the device as
10 being involved in a school bus violation, a notice of
11 violation by U. S. mail. In the event there is more than one
12 owner, the notice may be issued to the first person listed on
13 the title or other evidence of ownership, or jointly to all
14 listed owners.

15 (b) The notice of violation shall include at a
16 minimum each of the following items of information:

17 (1) The name and address of the person alleged to be
18 liable as the owner of the motor vehicle involved in the
19 violation.

20 (2) The license tag number of the vehicle.

21 (3) The violation charged.

22 (4) The date, time, and location where the violation
23 occurred.

24 (5) The photographic images or video of the vehicle
25 and vehicle license plate only that are captured by the
26 automated device. The image or video shall be reviewed by a
27 law enforcement officer of the county or municipality, who

1 shall certify the notice of violation. Under no circumstances
2 may the image or video contain images of the face of the
3 driver or passengers in the vehicle.

4 (6) The amount of the civil fine along with the
5 time, place, and manner for payment of the fine.

6 (7) The procedure under which the notice of
7 violation may be contested, or the procedure and conditions
8 under which responsibility for payment of the civil fine may
9 be transferred to another individual who was operating the
10 vehicle at the time of the violation.

11 (8) That failure to timely pay, contest, or transfer
12 responsibility to another shall constitute an admission that
13 the owner is responsible, and that failure to pay a fine for
14 which the owner is determined to be responsible shall result
15 in the inability to obtain or renew in Alabama the license of
16 the vehicle involved or to obtain or transfer its title in
17 Alabama, or for the person held to be responsible to obtain or
18 renew an Alabama driver's license, unless and until the civil
19 fine is paid to the local governing body.

20 (9) The date by which the local governing body must
21 receive payment of the civil fine, receive notice by the owner
22 that responsibility is being transferred to another, or
23 receive notice by the owner that the notice of violation is
24 being contested, shall be clearly and prominently stated on
25 the notice of violation. The time may not be less than 20 days
26 after the notice of violation is mailed or personally
27 delivered.

1 (c) All recorded video images and other photographic
2 information obtained through the use of school bus violation
3 detection monitoring systems authorized in this act that do
4 not identify a violation shall be destroyed by any city, town,
5 school system or vendor within 30 days of the date the image
6 was recorded, unless otherwise ordered by a court of competent
7 jurisdiction. All photographic and other recorded information
8 that identifies a violation shall be destroyed within 30 days
9 of final disposition of proceedings related to the enforcement
10 or defense of a violation, unless otherwise ordered by a court
11 of competent jurisdiction.

12 (d) All photographic evidence regardless of whether
13 it is a still photograph or video shall remain the sole
14 property of the county or municipal law enforcement agency
15 which reviews the photographic evidence and shall be available
16 to a third party, other than the alleged violator, pursuant
17 only to a valid court order.

18 (e) Except as expressly provided, all civil actions
19 based on evidence produced by a school bus violation detection
20 monitoring system shall follow the procedures set out in this
21 act.

22 Section 5. The owner of a vehicle that has been
23 issued a notice of violation shall be responsible for payment
24 of the civil fine unless the owner successfully transfers
25 responsibility, there is an adjudication that no violation
26 occurred, or there is an otherwise lawful determination that
27 no civil penalty shall be imposed. All owners of a vehicle who

1 are mailed or receive a notice of violation shall be jointly
2 and severally liable for payment of the civil fine. The county
3 or municipality may collect the civil fine in the same manner
4 as any other debt owed to the county or municipality.

5 Section 6. (a) The owner shall not be responsible
6 for payment of the civil fine resulting from a notice of
7 violation if each of the following conditions apply:

8 (1) The vehicle was operated at the time of the
9 violation by a person who was not the owner, or an agent or
10 employee of the owner.

11 (2) The owner signs and timely transmits to the
12 county or municipality on the form provided with the notice of
13 violation and in accordance with the procedure set out on the
14 notice of violation a statement that he or she was not
15 operating the vehicle at the time of the violation, and that
16 the person who was operating the vehicle was not the agent or
17 employee of the owner.

18 (3) The owner timely transmits to the county or
19 municipality on the form provided with the notice of violation
20 and in accordance with the procedure set out on the notice of
21 violation the name and mailing address of the person who was
22 operating the vehicle.

23 (4) The civil fine is paid by any person, unless
24 there is adjudication that no violation occurred or there is
25 otherwise a lawful determination that no civil penalty shall
26 be imposed.

1 (b) Whenever a county or municipality timely
2 receives the information required from the owner to transfer
3 responsibility, it shall issue a new notice of violation to
4 the person to whom the owner transferred responsibility with
5 an explanation as to why the person is receiving the notice of
6 violation, in the same manner as if the person were the owner
7 of the vehicle. The person shall be responsible for payment of
8 the civil fine unless the person either:

9 (1) Timely returns a signed statement on a form
10 provided with the notice of violation that he or she was not
11 the operator and declining responsibility, in which case
12 responsibility shall fall back to the owner.

13 (2) Admits to being the operator but denies
14 committing a violation, in which case the person may contest
15 the notice of violation in the same manner as the owner may
16 contest the notice of violation.

17 (c) In cases in which a person other than the owner
18 denies he or she was the operator and declines responsibility,
19 a new notice shall be issued to the owner stating that the
20 other person declined responsibility and giving the owner the
21 option of paying the civil fine or contesting the violation by
22 a stated date that shall be not less than 20 days from the
23 mailing of the new notice. The owner may not attempt to
24 transfer responsibility more than one time using this
25 procedure. If the owner chooses to contest the notice of
26 violation after the owner has unsuccessfully attempted to
27 transfer responsibility using this procedure, and the owner

1 claims in defense that another person was the operator of the
2 vehicle, the court may take appropriate action to cause the
3 owner and the other person to appear at the same hearing to
4 determine responsibility.

5 Section 7. (a) No person shall be responsible for
6 payment of a civil fine for a notice of violation issued under
7 this act if the operator of the vehicle that is the subject of
8 the notice of violation is adjudicated to have not committed a
9 violation or there is otherwise a lawful determination that no
10 civil penalty may be imposed. Any person receiving a notice of
11 violation pursuant to this act, in accordance with the
12 procedure set out in this act and on the notice of violation,
13 may contest the notice of violation by obtaining a hearing in
14 the court.

15 (b) District and municipal courts of this state are
16 hereby vested with the power and jurisdiction to adjudicate a
17 notice of violation issued pursuant to this act as a civil
18 offense whenever the offense is alleged to have occurred
19 within the geographic jurisdiction of the court.

20 (c) The following procedures shall apply to
21 proceedings to contest a notice of violation issued pursuant
22 to this act:

23 (1) Upon receipt of a timely notice that the person
24 receiving the notice of violation is contesting the notice,
25 the county or municipality shall cause the case to be docketed
26 in court and shall issue notice of the hearing date.

1 (2) The issuance of a notice of violation shall be
2 prima facie evidence that the person who received the notice
3 of violation was operating the vehicle at the time of the
4 violation.

5 (3) In the event there is a dispute between the
6 owner and another as to which person was operating the vehicle
7 at the time of the alleged violation, or a dispute between
8 joint owners, it shall be presumed that the owner was
9 operating the vehicle, and in the event there are joint
10 owners, the presumption shall follow the order the owners are
11 listed on the title or other evidence of ownership. However, a
12 court may determine the identity of the operator of the
13 vehicle based on any admitted evidence.

14 (4) The notice of violation, any evidence of the
15 violation produced by a device, and evidence of ownership of a
16 vehicle as shown by copies or summaries of official records
17 shall be admissible into evidence without foundation unless a
18 court otherwise requires a foundation.

19 (5) All other matters of evidence and procedure not
20 specifically addressed in this act shall be subject to the
21 rules of procedure as provided in this act. On any appeal in
22 the circuit court the procedures shall be as for any civil
23 case in circuit court.

24 (6) The court shall apply the preponderance of the
25 evidence standard in adjudicating any notice of violation.

26 (7) Whenever payment of a civil fine is due, the
27 amount of the civil fine may not be increased, decreased, or

1 remitted by the court, and the liability may be satisfied only
2 by payment.

3 (8) A civil fine assessed under this act shall not
4 exceed two hundred fifty dollars (\$250) and court costs shall
5 be assessed only in contested cases in the same manner and in
6 the same amounts prescribed for a violation prosecuted as a
7 misdemeanor under Section 32-5A-154, Code of Alabama 1975.
8 Court costs collected pursuant to this act shall be
9 distributed in the same manner as prescribed by law for the
10 distribution of court costs for misdemeanor violations. An
11 additional fee of ten dollars (\$10) shall be collected by the
12 district or municipal court in connection with notices issued
13 under this act to be paid to the Alabama Criminal Justice
14 Information Center and deposited in the State Treasury to the
15 credit of the Criminal Justice Information System Automation
16 Fund as compensation for record keeping and transaction
17 processing with respect to violation notices issued under this
18 act. Any civil fine assessed under this act and collected by
19 the court shall be remitted to the county or municipality in
20 which the violation occurred.

21 Section 8. Persons who contest a notice of violation
22 and are adjudicated by the court to be responsible for the
23 civil fine may appeal the adjudication for a trial de novo to
24 the circuit court of the county in which the district or
25 municipal court is located, using the procedures that apply to
26 criminal convictions with the following qualifications:

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

4 (2) The person appealing must, as a condition
5 precedent to appeal, pay the civil fine in full, and failure
6 to do so shall divest the circuit court of jurisdiction. If on
7 appeal the circuit court finds that the person is not
8 responsible for payment of the civil fine, the county or
9 municipality shall refund the same without interest within 15
10 days of receipt of notice of the disposition from the circuit
11 court. If the person is adjudicated by the circuit court to be
12 responsible for payment of the civil fine, then no additional
13 fine may be imposed by the circuit court, but court costs of
14 the circuit court shall be owed by the person adjudicated
15 responsible with 100 percent of the court costs retained by
16 the circuit court. Court costs in the circuit court shall be
17 calculated as are court costs for criminal appeals from the
18 district or municipal court, and in the event the circuit
19 court finds the person appealing to not be responsible, no
20 court costs shall be owed by the county or municipal board of
21 education.

22 (3) Regardless of the civil nature of the
23 proceedings, the circuit court, in its discretion and for its
24 administrative convenience, may assign case numbers as for
25 criminal appeals and place the appeals on criminal dockets in
26 the same manner as criminal appeals from a district or
27 municipal court.

1 Section 9. In the event the evidence produced by an
2 automated device does not produce an image or video of the
3 license plate with sufficient clarity for a law enforcement
4 officer to determine the identity of the owner, and if the
5 identity cannot otherwise be reliably established, then no
6 notice of violation may be issued pursuant to this act.

7 Section 10. (a) Except in cases where there is an
8 adjudication that no violation occurred or there is otherwise
9 a lawful determination that no civil penalty shall be imposed,
10 any unpaid civil fine authorized by this act:

11 (1) Shall result in nonissuance or nonrenewal of an
12 Alabama vehicle license for the vehicle involved in the
13 violation.

14 (2) Shall cause title of the vehicle involved in the
15 violation to not be transferred in Alabama.

16 (3) Shall cause the person held responsible for the
17 violation to be ineligible to obtain or renew an Alabama
18 driver's license, unless and until the civil fine plus any
19 late fee is paid to the county or municipal governing body.

20 (b) No person may be arrested or incarcerated for
21 nonpayment of a civil fine.

22 (c) Any state or county official charged with
23 issuance or transfer of vehicle licenses or titles, or
24 issuance of drivers' licenses, may not issue or renew the
25 vehicle license, issue or transfer title of the vehicle, or
26 issue or renew the driver's license of the responsible person,
27 so long as the official has notice that a civil fine

1 authorized by this act is or remains unpaid. In cases in which
2 the county or municipality has given a notice of nonpayment to
3 the appropriate licensing official and when thereafter the
4 civil fine has been paid, the county or municipality shall
5 transmit notice of the payment to the appropriate licensing
6 official.

7 Section 11. (a) A civil violation of this act shall
8 not result in any punishment of a criminal nature, shall not
9 count as points and shall not be entered into any person's
10 official driving history, shall not be considered a criminal
11 conviction for any purpose, shall not be used to increase or
12 enhance punishment for a subsequent offense of a civil or
13 criminal nature, shall not be considered a moving violation,
14 and shall not be used by any insurance company to determine or
15 affect premiums or rates.

16 (b) The fact that a person is held liable or
17 responsible for a civil fine for a violation shall not be used
18 as evidence that the person was guilty of negligence or other
19 culpable conduct, but this fact shall not preclude evidence
20 generated by a device from being used as evidence in other
21 proceedings.

22 Section 12. Adoption by a county or municipal board
23 of education of the procedures under this act and the
24 enforcement of this act by a county or municipality shall not
25 affect current procedure and prosecutions commenced by
26 issuance of a uniform traffic ticket and complaint by a law
27 enforcement officer or otherwise. The issuance of a notice of

1 violation as authorized by this act shall be subordinate to
2 the issuance of a uniform traffic ticket and complaint for the
3 same action if issued by a sworn law enforcement officer, and
4 issuance of a uniform traffic ticket and complaint for a
5 school bus violation shall preclude issuance of a notice of
6 violation as authorized by this act. In the event both a
7 uniform traffic ticket and complaint and a notice of violation
8 as authorized by this act are issued for the same action, the
9 one issued by a sworn law enforcement officer pursuant to
10 Section 32-5A-154, Code of Alabama 1975, shall control and
11 shall constitute a defense to the other.

12 Section 13. (a) Any person who is held responsible
13 for payment of a civil fine as provided herein, but who was
14 not actually operating the involved vehicle, who timely and
15 properly followed the procedure to transfer responsibility but
16 is ultimately held responsible because of the person's
17 ownership of the vehicle, and who actually pays the civil
18 fine, shall have a cause of action against the person who was
19 operating the vehicle for the amount of the civil fine
20 actually paid plus a reasonable attorney fee, without regard
21 to the rules regarding joint and several liability,
22 contribution, or indemnity.

23 (b) As a condition precedent to the bringing of a
24 civil action under subsection (a), the person held responsible
25 for payment of the civil fine must first make written demand
26 on the other person for reimbursement of the civil fine,
27 giving a minimum of 60 days to remit payment, and if

1 reimbursement is fully made within the 60-day period then the
2 cause of action shall be extinguished and no attorney fees or
3 other damages shall attach to the reimbursement.

4 Section 14. The provisions of this act are
5 severable. If any part of this act is declared invalid or
6 unconstitutional, that declaration shall not affect the part
7 which remains.

8 Section 15. This act shall become effective on the
9 first day of the third month following its passage and
10 approval by the Governor, or its otherwise becoming law.