

1 HB732  
2 116535-2  
3 By Representative Wren (N & P)  
4 RFD: Montgomery County Legislation  
5 First Read: 23-MAR-10

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

1 automated speeding enforcement devices or equipment systems,  
2 except 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 "Montgomery Speed Limit Safety Act."

6 (b) The City of Montgomery, Alabama, may, by  
7 municipal ordinance 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 speeding vehicles  
11 have been and are a dangerous problem in Montgomery, Alabama.

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

17 (3) Current Alabama law provides that speeding is a  
18 criminal misdemeanor. Under Alabama law, one who commits such  
19 a misdemeanor is subject to prosecution only if the  
20 misdemeanor was witnessed by either a duly empowered police  
21 officer or other witness who makes a verified complaint to a  
22 sworn magistrate.

23 (4) Many jurisdictions that have adopted laws that  
24 allow the use of automated speeding enforcement have  
25 experienced a significant reduction in the instances of  
26 speeding, and the Legislature finds that it should adopt  
27 legislation that would authorize the City of Montgomery to

1 implement a program for automated speeding enforcement of  
2 speeding violations.

3 (5) By allowing a program for the use of automated  
4 traffic cameras in speeding enforcement by the City of  
5 Montgomery, the Legislature hopes to both decrease the rate of  
6 speeding violations.

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

9 (1) CITY. The City of Montgomery, Alabama.

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

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

25 (4) OWNER. The owner of a motor vehicle as shown on  
26 the motor vehicle registration records of the Alabama  
27 Department of Revenue or the analogous department or agency of

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

12 (5) PHOTOGRAPHIC SPEEDING ENFORCEMENT OR AUTOMATED  
13 SPEEDING ENFORCEMENT SYSTEM. A camera system which is designed  
14 and installed to work in conjunction with an electrically  
15 operated speed detection device synchronized to automatically  
16 record digital imaging of a motor vehicle while speeding.

17 The device shall be capable of producing at least  
18 two recorded images, at least one of which is capable of  
19 clearly depicting the license plate of a motor vehicle that is  
20 speeding.

21 (6) SPEEDING VIOLATION. Any violation of a motor  
22 vehicle at a speed that exceeds the legal maximum speed limits  
23 presented in or adopted pursuant to Article 8, Chapter 5A,  
24 Title 32, Sections 32-5A-170 to 32-5A-178, inclusive, Code of  
25 Alabama 1975; provided, however, that speed limits set by  
26 action of the Montgomery City Council as found in the City  
27 Code of the City of Montgomery, Article IX, Section 27-561

1 shall supersede the limits set in Article 8, Chapter 5A, Title  
2 32, Sections 32-5A-170 to 32-5A-178, inclusive, Code of  
3 Alabama 1975. A speeding violation shall be a civil violation  
4 as defined in this act.

5 (7) TRAINED TECHNICIAN. A sworn law enforcement  
6 officer employed by the City of Montgomery, who alternatively:

7 a. Is a professional engineer in the field of civil  
8 engineering.

9 b. Has received instruction and training in the  
10 proper use of the automated photographic speeding enforcement  
11 system to be used by the city's traffic engineer or his or her  
12 designee.

13 c. Has been trained by the vendor installing the  
14 equipment. Under no circumstances shall the salary or other  
15 compensation of the trained technician be related to the  
16 number of notices of violation issued or amount of fines  
17 collected.

18 Section 4. (a) The City of Montgomery is empowered  
19 to utilize an automated photographic speeding enforcement  
20 system to detect and record speeding violations, to issue  
21 notices of civil violations by mail, and to prosecute civil  
22 violations for the recorded speeding violations which may  
23 occur within the corporate limits of the City of Montgomery as  
24 provided in this act. A civil fine assessed under this act  
25 shall not exceed one hundred dollars (\$100), and municipal  
26 court costs may be assessed in the same manner and in the same  
27 amounts prescribed for municipal criminal speeding violations

1 prosecuted as a misdemeanor. An additional fee of ten dollars  
2 (\$10) shall be added to the Montgomery Municipal Court costs  
3 authorized to be collected in connection with notices issued  
4 under this act. Court costs collected pursuant to this act  
5 shall be distributed in the same manner as prescribed by law  
6 for the distribution of municipal court costs for misdemeanor  
7 violations. The additional ten dollars (\$10) authorized by  
8 this act shall be paid to the Alabama Criminal Justice  
9 Information Center as compensation for record keeping with  
10 respect to speeding violation notices issued pursuant to this  
11 act.

12 (b) If an ordinance is adopted for automated  
13 speeding enforcement, the City of Montgomery shall cause a  
14 sign to be posted at each of a minimum of 10 roadway entry  
15 points to the city to provide motorists with notice that  
16 automated photographic speeding enforcement systems are in  
17 use. The sign shall comply with this requirement if it states  
18 substantially the following: "AUTOMATED CAMERAS USED IN  
19 SPEEDING ENFORCEMENT," or if it otherwise gives sufficient  
20 notice.

21 (c) Prior to operating such an enforcement system,  
22 the City of Montgomery shall make a public announcement and  
23 conduct a public awareness campaign of the use of an automated  
24 photographic speeding enforcement system a minimum of 30 days  
25 before using the devices. The City of Montgomery may place  
26 photographic speeding enforcement systems at locations without  
27 public notice of the specific location, may change locations

1 without public notice, and may install and move as needed  
2 decoy devices designed to resemble photographic speeding  
3 enforcement systems.

4 (d) The city shall post signs warning of the use of  
5 an automated photographic device for speeding enforcement  
6 within 60 yards of every speed detection device used. Each  
7 sign shall be placed at least five feet from the edge of the  
8 road or street and shall be placed not lower than two feet and  
9 not higher than eight feet.

10 Section 5. (a) Prior to imposing a civil penalty  
11 pursuant to this act, the City of Montgomery shall first mail  
12 a notice of violation by certified U.S. mail, return receipt  
13 requested, to the owner of the motor vehicle which is recorded  
14 by the automated photographic speeding enforcement system that  
15 committed a speeding violation. The notice shall be sent not  
16 later than the 30th day after the date the speeding violation  
17 is recorded to the following:

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

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

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

27 (1) Description of the speeding violation alleged.



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

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

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

6 (5) The date by which the civil penalty must be  
7 paid.

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

11 (7) Information that informs the person named in the  
12 notice of violation of the following:

13 a. The right to contest the imposition of the civil  
14 penalty in an administrative adjudication.

15 b. The manner and time in which to contest the  
16 imposition of the civil penalty.

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

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

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

24 (10) Any other information deemed necessary by the  
25 city.

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

4 (d) The civil penalty imposed shall be paid within  
5 30 days of the 10th day after the date the notice of violation  
6 is mailed.

7 (e) It shall be within the discretion of the trained  
8 technician to determine which of the recorded speeding  
9 violations are prosecuted based upon the quality and  
10 legibility of the recorded image. In lieu of issuing a notice  
11 of violation, the city may mail a warning notice to the owner  
12 during the initial warning period.

13 Section 6. (a) The Montgomery Municipal Court is  
14 vested with the power and jurisdiction to hear and adjudicate  
15 the civil violations provided for in this act and to issue  
16 orders imposing the civil fines and costs set out in this act.

17 (b) A person who receives a notice of violation may  
18 contest the imposition of the civil fine by submitting a  
19 request for a hearing on the adjudication of the civil  
20 violation, in writing, within 15 days of the 10th day after  
21 the date the notice of violation is mailed. Upon receipt of a  
22 timely request, the city shall notify the person of the date  
23 and time of the adjudicative hearing by U.S. mail.

24 (c) Failure to pay a civil penalty or to contest  
25 liability in a timely manner is an admission of liability in  
26 the full amount of the civil fine assessed in the notice of  
27 violation.

1 (d) The civil fine shall not be assessed if, after a  
2 hearing, the Montgomery Municipal Judge enters a finding of no  
3 liability.

4 (e) If an adjudicative hearing is requested, the  
5 city shall have the burden of proving the speeding violation  
6 by a preponderance of the evidence. The reliability of the  
7 automated photographic speeding enforcement system used to  
8 produce the recorded image of the violation may be attested to  
9 by affidavit of a trained technician. An affidavit of a  
10 trained technician that alleges a violation based on an  
11 inspection of the pertinent recorded image or video is  
12 admissible in a proceeding under this act and is evidence of  
13 the facts contained in the affidavit.

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

24 (g) All other matters of evidence and procedure not  
25 specifically addressed in this act shall be subject to the  
26 rules of evidence and the rules of procedure as they apply in  
27 the small claims courts of this state, except that on any

1 appeal to Montgomery County Circuit Court for trial de novo  
2 the evidence and procedures shall be as for any civil case in  
3 the circuit court except as otherwise provided in this act.

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

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

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

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

22 2. The motor vehicle was being operated as an  
23 authorized emergency vehicle under Sections 32-5A-7 and  
24 32-5-213 of the Code of Alabama 1975, and that the operator  
25 was acting in compliance with that chapter.

1           3. The motor vehicle was stolen or being operated by  
2 a person other than the owner of the vehicle without the  
3 effective consent of the owner.

4           4. The license plate depicted in the recorded image  
5 of the violation was a stolen plate and being displayed on a  
6 motor vehicle other than the motor vehicle for which the plate  
7 had been issued.

8           5. The person who received the notice of violation  
9 was not the owner of the motor vehicle at the time of the  
10 violation.

11           (k) To demonstrate that at the time of the violation  
12 the motor vehicle was a stolen vehicle or the license plate  
13 displayed on the motor vehicle was a stolen plate, the owner  
14 must submit proof acceptable to the hearing officer that the  
15 theft of the vehicle or license plate, prior to the time of  
16 the violation, had been timely reported to the appropriate law  
17 enforcement agency.

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

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

1                   2. Within the 15 days of the date of actual receipt,  
2 the person requests an administrative adjudicative hearing.

3                   Section 7. (a) Following an adjudicative hearing,  
4 the municipal court judge shall issue an order stating the  
5 following:

6                   (1) Whether the person charged with the civil  
7 violation is liable for the violation and, if so,

8                   (2) The amount of the civil fine assessed against  
9 the person, along with the fees and costs of court provided  
10 for herein.

11                   (b) The orders issued under this section may be  
12 filed in the office of the Judge of Probate of Montgomery  
13 County, Alabama, and shall operate as a judicial lien in the  
14 same manner and with the same weight and effect as any other  
15 civil judgment filed therein.

16                   (c) A person who is found liable after an  
17 adjudicative hearing may appeal that finding of civil  
18 liability to the Circuit Court of Montgomery County, Alabama,  
19 by filing a notice of appeal with the clerk of the municipal  
20 court. The notice of appeal must be filed not later than the  
21 14th day after the date on which the municipal court judge  
22 entered the finding of civil liability. The filing of a notice  
23 of appeal shall stay the enforcement of the civil fine  
24 penalty. An appeal shall be determined by the circuit court by  
25 trial de novo.

1           Section 8. (a) The circuit court hearing an appeal  
2 shall use the procedures that apply to criminal convictions in  
3 municipal court with the following qualifications:

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

7           (2) If the person is adjudicated by the circuit  
8 court to be responsible for payment of the civil fine, circuit  
9 court costs shall be owed by the person adjudicated  
10 responsible, with 100 percent of those court costs retained by  
11 the circuit court. Court costs in the circuit court shall be  
12 calculated as are court costs for criminal appeals from the  
13 municipal court, and in the event the circuit court finds the  
14 person appealing not to be responsible, no municipal court  
15 costs shall be owed to the city.

16           (3) Regardless of the civil nature of the  
17 proceedings, the circuit court, in its discretion and for its  
18 administrative convenience, may assign case numbers as for  
19 criminal appeals and place the appeals on criminal dockets in  
20 the same manner as criminal appeals from municipal court.

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

23           (5) The city shall be responsible for providing an  
24 attorney to represent the city and to prosecute the civil  
25 proceedings in the circuit court.

26           Section 9. In the event the evidence produced by an  
27 automated photographic speeding enforcement system does not

1 produce an image of the license plate with sufficient clarity  
2 for a trained technician to determine the identity of the  
3 owner, and if the identity cannot otherwise be reliably  
4 established, then no notice of violation may be issued  
5 pursuant to this act. If, however, a notice of violation is  
6 issued, to the degree constitutionally allowed, those issues  
7 related to the identity of the vehicle or its owner shall  
8 affect the weight to be accorded the evidence and shall not  
9 affect its admissibility.

10 Section 10. The city may provide by ordinance that a  
11 late fee not exceeding twenty-five dollars (\$25) shall attach  
12 to untimely paid civil fines that are authorized in this act.  
13 No person may be arrested or incarcerated for nonpayment of a  
14 civil fine or late fee. No record of an adjudication of civil  
15 violation made under this act shall be listed, entered, or  
16 reported on any criminal record or driving record, whether the  
17 record is maintained by the city or an outside agency. An  
18 adjudication of civil violation provided for in this act shall  
19 not be considered a conviction for any purpose, shall not be  
20 used to increase or enhance punishment for any subsequent  
21 offense of a criminal nature, shall not be considered a moving  
22 violation, and shall not be used by any insurance company to  
23 determine or affect premiums or rates unless an accident  
24 occurred due to the violation. The fact that a person is held  
25 liable or responsible for a civil fine for a speeding  
26 violation shall not be used as evidence that the person was  
27 guilty of negligence or other culpable conduct, and any



1 evidence generated by an automated photographic speeding  
2 enforcement system may only be used as evidence in other  
3 proceedings if it is or becomes admissible under the rules of  
4 evidence applicable therein.

5 Section 11. The city shall keep statistical data  
6 regarding the effectiveness of automated photographic speeding  
7 enforcement systems in reducing speeding violations and  
8 collisions and shall communicate the data on an annual basis  
9 to the Alabama Department of Transportation and the Alabama  
10 Criminal Justice Information Center.

11 Section 12. No civil penalty may be imposed and no  
12 adjudication of liability for a civil violation may be made  
13 under this act if the operator of the vehicle was arrested or  
14 was issued a citation and notice to appear by a sworn police  
15 officer for a criminal violation of any portion of Title 32,  
16 Chapter 5A, Article 8, including, but not limited to, Sections  
17 32-5A-170 to 32-5A-178, inclusive, Code of Alabama 1975, or  
18 any other municipal ordinance which embraces and incorporates  
19 the statutes contained in that article, and which occurred  
20 simultaneously with and under the same set of circumstances  
21 which were recorded by the automated photographic speeding  
22 enforcement system.

23 Section 13. Any person against whom an adjudication  
24 of liability for a civil violation is made pursuant to this  
25 act, or an ordinance passed pursuant hereto, and who actually  
26 pays the civil fine imposed thereby shall have a cause of  
27 action against any person who may be shown to have been

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

17 Section 14. The provisions of this act are  
18 severable. If any part of this act is declared invalid or  
19 unconstitutional, that declaration shall not affect the part  
20 which remains.

21 Section 15. This act shall become effective  
22 immediately following its passage and approval by the  
23 Governor, or its otherwise becoming law.