

1 SB144
2 156905-4
3 By Senator Holley
4 RFD: Governmental Affairs
5 First Read: 14-JAN-14

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 Authorizing automated enforcement related to
12 overtaking a school bus in counties and municipalities as a
13 civil offense; authorizing a county or municipal board of
14 education to approve, in their respective jurisdiction, a
15 civil process of automated detection device of a school bus
16 violation enforcement; requiring certain procedures to be
17 followed by a county or municipal board of education using
18 automated school bus enforcement; making the owner of the
19 vehicle involved in a violation presumptively responsible for
20 payment of a civil fine, but providing procedures to contest
21 responsibility or transfer responsibility to another person;
22 providing for jurisdiction in district courts and in municipal
23 courts over the civil offenses; providing for procedures for
24 administrating this act; allowing a law enforcement agency or
25 a local governing entity to enter agreements with contractors
26 providing automated devices; providing for the destruction of

1 recorded information after certain time periods; and allowing
2 appeals to the circuit court.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

6 (b) Any board may authorize a process of civil
7 enforcement of a school bus violation pursuant to the
8 procedures set out in this act.

9 (c) The provisions of this act shall not compel a
10 governing body or board to participate in the safety program
11 created herein.

12 Section 2. The following definitions and provisions
13 shall apply to this act:

14 (1) AUTOMATED DEVICE. Any camera or recording device
15 that uses a vehicle sensor and camera synchronized to record
16 by photograph or video the rear of a motor vehicle approaching
17 or overtaking a school bus that is stopped for the purpose of
18 receiving or discharging school children in violation of
19 Section 32-5A-154, Code of Alabama 1975.

20 (2) BOARD. A board of education or the governing
21 body of a school system.

22 (3) CONTRACTOR. A company that provides services to
23 a board or governing body including, but not limited to,
24 automated devices, citation processing, and collection of the
25 civil fines. None of the activities of the contractor shall be
26 construed as an agent providing or participating in private

1 investigative services or acting as a statutory authority
2 under open records laws.

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

6 (5) GOVERNING BODY. A county commission, city
7 council, or city commission.

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

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

26 (8) SCHOOL BUS VIOLATION or VIOLATION. Any violation
27 of Section 32-5A-154, Code of Alabama 1975, as amended.

1 (9) TRAINED TECHNICIAN. A sworn law enforcement
2 officer or person who has received instruction and training in
3 the proper use of the automated photographic enforcement
4 system to be used by the school board or contractor.

5 Section 3. (a) A board may approve the use of
6 automated devices to detect school bus violations by voting at
7 a meeting of the board to approve the adoption of an automated
8 school bus enforcement program.

9 The school board may elect to operate the program
10 authorized in this act without the involvement of the
11 governing body or sheriff through the utilization of a trained
12 technician. In such case, all references in this act to
13 governing body, county, or city shall apply to the school
14 board.

15 (b) In the alternative, if approved by a board and
16 authorized by ordinance or resolution enacted by the governing
17 body, the board may enter into an agreement with a contractor
18 for the installation, operation, notice processing,
19 administration and maintenance of school bus automated devices
20 on buses within the school system's fleet whether owned or
21 leased. Prior to entering into a contract for the
22 installation, operation, notice processing, administration,
23 and maintenance of school bus automated devices, the board
24 shall have entered into an intergovernmental agreement with
25 the appropriate law enforcement agencies (municipal police
26 department and/or county sheriff) and the local governing body
27 providing that the appropriate law enforcement agency is

1 willing to review any violation occurring in its respective
2 jurisdiction.

3 (c) A civil fine not to exceed three hundred dollars
4 (\$300) for a first offense, seven hundred fifty dollars (\$750)
5 for a second offense, and one thousand dollars (\$1,000) for
6 each subsequent offense in a 5-year period shall be imposed
7 for a school bus violation for which a notice of violation is
8 issued pursuant to this act. All such fines shall be paid,
9 after deducting costs to administer, operate, and maintain the
10 program, as follows: 40 percent to the county or municipal
11 governing body which contracted for the operation of a school
12 bus violation program through an intergovernmental agreement
13 with the board pursuant to paragraph (b); 40 percent to the
14 school system where the offense was committed; 10 percent to
15 the State Department of Education for school bus safety
16 initiatives; and 10 percent to the Alabama Department of
17 Public Safety for highway safety enforcement.

18 Section 4. (a) After review of the violation by law
19 enforcement or trained technician, the governing body or
20 contractor shall send the owner of a vehicle that has been
21 detected by the device as being involved in a school bus
22 violation a notice of violation by U. S. mail. A notice of
23 violation shall be mailed no later than 14 days after being
24 reviewed by law enforcement. In the event there is more than
25 one owner, the notice may be issued to the first person listed
26 on the title or other evidence of ownership, or jointly to all
27 listed owners.

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

3 (1) The name and address of the person alleged to be
4 liable as the owner of the motor vehicle involved in the
5 violation.

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

7 (3) The violation charged.

8 (4) The date, time, and location where the violation
9 occurred.

10 (5) The photographic images and the online video of
11 the vehicle that are captured by the automated device. The
12 image or video shall be reviewed by a law enforcement officer
13 or trained technician who shall electronically certify the
14 notice of violation. The image or video may not contain images
15 of the face of the driver or passengers in the vehicle.

16 (6) The amount of the civil fine along with the
17 time, place, and manner for payment of the fine which shall
18 include the option to pay the fine by electronic means.

19 (7) The procedure under which the notice of
20 violation may be contested, or the procedure and conditions
21 under which responsibility for payment of the civil fine may
22 be transferred to another individual who was operating the
23 vehicle at the time of the violation.

24 (8) The date by which the local governing body must
25 receive payment of the civil fine, receive notice by the owner
26 that responsibility is being transferred to another, or
27 receive notice by the owner that the notice of violation is

1 being contested, shall be clearly and prominently stated on
2 the notice of violation. The time may not be less than 30 days
3 after the notice of violation is mailed.

4 (c) All recorded video images and other photographic
5 information obtained through the use of school bus violation
6 detection monitoring systems authorized in this act that do
7 not identify a violation shall be destroyed by any city, town,
8 school system or contractor within 90 days of the date the
9 image was recorded, unless otherwise ordered by a court of
10 competent jurisdiction. All photographic and other recorded
11 information that identifies a violation shall be destroyed
12 within 30 days of final disposition of proceedings related to
13 the enforcement or defense of a violation, unless otherwise
14 ordered by a court of competent jurisdiction.

15 (d) All photographic evidence regardless of whether
16 it is a still photograph or video shall remain the sole
17 property of the board and shall be available to a third party,
18 other than the alleged violator, pursuant only to a valid
19 court order.

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

24 Section 5. The owner of a vehicle that has been
25 issued a notice of violation shall be responsible for payment
26 of the civil fine unless the owner successfully transfers
27 responsibility, there is an adjudication that no violation

1 occurred, or there is an otherwise lawful determination that
2 no civil penalty shall be imposed. All owners of a vehicle who
3 are mailed or receive a notice of violation shall be jointly
4 and severally liable for payment of the civil fine. The county
5 or municipality may collect the civil fine in the same manner
6 as any other debt owed to the county or municipality.

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

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

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

20 (3) The owner timely transmits to the governing body
21 on the form provided with the notice of violation and in
22 accordance with the procedure set out on the notice of
23 violation the name and mailing address of the person who was
24 operating the vehicle.

25 (4) The civil fine is paid by any person, unless
26 there is adjudication that no violation occurred or there is

1 otherwise a lawful determination that no civil penalty shall
2 be imposed.

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

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

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

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

1 procedure. If the owner chooses to contest the notice of
2 violation after the owner has unsuccessfully attempted to
3 transfer responsibility using this procedure, and the owner
4 claims in defense that another person was the operator of the
5 vehicle, the court may take appropriate action to cause the
6 owner and the other person to appear at the same hearing to
7 determine responsibility.

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

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

23 (c) The following procedures shall apply to
24 proceedings to contest a notice of violation issued pursuant
25 to this act:

26 (1) Upon receipt of a timely notice that the person
27 receiving the notice of violation is contesting the notice,

1 the governing body shall cause the case to be docketed in
2 court and shall issue notice of the hearing date.

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

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

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

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

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

1 (7) Whenever payment of a civil fine is due, the
2 amount of the civil fine may not be decreased and the
3 liability may be satisfied only by payment.

4 (8) A civil fine assessed under this act shall not
5 exceed three hundred dollars (\$300) for a first offense, seven
6 hundred fifty dollars (\$750) for a second offense, and one
7 thousand dollars (\$1,000) for each subsequent offense in a
8 five-year period, and court costs shall be assessed only in
9 contested cases in the same manner and in the same amounts
10 prescribed for a violation prosecuted as a misdemeanor under
11 Section 32-5A-154, Code of Alabama 1975. Court costs collected
12 pursuant to this act shall be distributed in the same manner
13 as prescribed by law for the distribution of court costs for
14 misdemeanor violations. An additional fee of ten dollars (\$10)
15 shall be collected by the district or municipal court in
16 connection with notices issued under this act to be paid to
17 the Alabama Criminal Justice Information Center and deposited
18 in the State Treasury to the credit of the Criminal Justice
19 Information System Automation Fund as compensation for record
20 keeping and transaction processing with respect to violation
21 notices issued under this act. Any civil fine assessed under
22 this act and collected by the court shall be remitted pursuant
23 to subsection (d) of Section 3.

24 Section 8. Persons who contest a notice of violation
25 and are adjudicated by the court to be responsible for the
26 civil fine may appeal the adjudication for a trial de novo to
27 the circuit court of the county in which the district or

1 municipal court is located, using the procedures that apply to
2 criminal convictions with the following qualifications:

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

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

24 (3) Regardless of the civil nature of the
25 proceedings, the circuit court, in its discretion and for its
26 administrative convenience, may assign case numbers as for
27 criminal appeals and place the appeals on criminal dockets in

1 the same manner as criminal appeals from a district or
2 municipal court.

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

10 Section 10. (a) No person may be arrested or
11 incarcerated for nonpayment of a civil fine.

12 (b) A governing body may contract with a collection
13 service for the purpose of collecting any unpaid civil fine
14 authorized by this act.

15 Section 11. Adoption by a board of the procedures
16 under this act and the enforcement of this act by a governing
17 body shall not affect current procedure and prosecutions
18 commenced by issuance of a uniform traffic ticket and
19 complaint by a law enforcement officer or otherwise. The
20 issuance of a notice of violation as authorized by this act
21 shall be subordinate to the issuance of a uniform traffic
22 ticket and complaint for the same action if issued by a sworn
23 law enforcement officer, and issuance of a uniform traffic
24 ticket and complaint for a school bus violation shall preclude
25 issuance of a notice of violation as authorized by this act.
26 In the event both a uniform traffic ticket and complaint and a
27 notice of violation as authorized by this act are issued for

1 the same action, the one issued by a sworn law enforcement
2 officer pursuant to Section 32-5A-154, Code of Alabama 1975,
3 shall control and shall constitute a defense to the other.

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

15 (b) As a condition precedent to the bringing of a
16 civil action under subsection (a), the person held responsible
17 for payment of the civil fine shall first make written demand
18 on the other person for reimbursement of the civil fine,
19 giving a minimum of 60 days to remit payment, and if
20 reimbursement is fully made within the 60 day period then the
21 cause of action shall be extinguished and no attorney fees or
22 other damages shall attach to the reimbursement.

23 Section 13. The provisions of this act are
24 severable. If any part of this act is declared invalid or
25 unconstitutional, that declaration shall not affect the part
26 which remains.

1 Section 14. This act shall become effective on the
2 first day of the third month following its passage and
3 approval by the Governor, or its otherwise becoming law.

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Senate

Read for the first time and referred to the Senate
committee on Governmental Affairs..... 14-JAN-14

Read for the second time and placed on the calen-
dar with 1 substitute and..... 28-JAN-14

Read for the third time and passed as amended 18-MAR-14

Yeas 28
Nays 1

Patrick Harris
Secretary