

1 SB441
2 156971-1
3 By Senators Dunn, Coleman, Smitherman, Beasley, Irons, and
4 Singleton (N & P)
5 RFD: Local Legislation No. 2
6 First Read: 05-MAR-14

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9 A BILL
10 TO BE ENTITLED
11 AN ACT
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13 Relating to the City of Midfield, Alabama, in
14 Jefferson County; authorizing automated speeding enforcement
15 in the City of Midfield, 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 Midfield Municipal Court
23 over the civil violations and allowing appeals to the
24 Jefferson 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 "Midfield Speed Limit Safety Act."

6 (b) The City of Midfield, Alabama, may, by municipal
7 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 Midfield, 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 Midfield 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 Midfield, 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 Midfield, Alabama.

10 (2) CIVIL FINE. The monetary amount assessed by the
11 City of Midfield 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 Midfield City Council as found in the City Code
27 of the City of Midfield shall supersede the limits set in

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

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

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

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

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

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

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

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

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

1 decoy devices designed to resemble photographic speeding
2 enforcement systems.

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

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

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

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

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

26 (1) Description of the speeding violation alleged.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (d) The civil penalty imposed shall be paid within
2 30 days of the 10th day after the date the notice of violation
3 is mailed.

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

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

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

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

25 (d) The civil fine shall not be assessed if, after a
26 hearing, the Midfield Municipal Judge enters a finding of no
27 liability.

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

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

21 (g) All other matters of evidence and procedure not
22 specifically addressed in this act shall be subject to the
23 rules of evidence and the rules of procedure as they apply in
24 the small claims courts of this state, except that on any
25 appeal to Jefferson County Circuit Court for trial de novo the
26 evidence and procedures shall be as for any civil case in the
27 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 as 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 operator of the motor vehicle was acting in
17 compliance with the lawful order or direction of a police
18 officer.

19 2. The motor vehicle was being operated as an
20 authorized emergency vehicle under Sections 32-5A-7 and
21 32-5-213 of the Code of Alabama 1975, and that the operator
22 was acting in compliance with that chapter.

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

26 4. The license plate depicted in the recorded image
27 of the violation was a stolen plate and being displayed on a

1 motor vehicle other than the motor vehicle for which the plate
2 had been issued.

3 5. The person who received the notice of violation
4 was not the owner of the motor vehicle at the time of the
5 violation.

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

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

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

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

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

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

3 (2) The amount of the civil fine assessed against
4 the person, along with the fees and costs of court provided
5 for herein.

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

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

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

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

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

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

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

17 (5) The city shall be responsible for providing an
18 attorney to represent the city and to prosecute the civil
19 proceedings in the circuit court.

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

1 related to the identity of the vehicle or its owner shall
2 affect the weight to be accorded the evidence and shall not
3 affect its admissibility.

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

26 Section 11. The city shall keep statistical data
27 regarding the effectiveness of automated photographic speeding

1 enforcement systems in reducing speeding violations and
2 collisions and shall communicate the data on an annual basis
3 to the Alabama Department of Transportation and the Alabama
4 Criminal Justice Information Center.

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

17 Section 13. Any person against whom an adjudication
18 of liability for a civil violation is made pursuant to this
19 act, or an ordinance passed pursuant hereto, and who actually
20 pays the civil fine imposed thereby shall have a cause of
21 action against any person who may be shown to have been
22 operating the vehicle recorded at the time of the violation
23 for the amount of the civil fine actually paid plus any
24 consequential or compensatory damages and a reasonable
25 attorney fee, without regard to the rules regarding joint and
26 several liability, contribution, or indemnity. Provided,
27 however, that as a condition precedent to the bringing of a

1 civil action, that the person held responsible for payment of
2 the civil fine must first make written demand on the other
3 person for reimbursement of the civil fine, giving a minimum
4 of 60 days to remit payment, and if reimbursement is fully
5 made within the 60-day period then the cause of action shall
6 be extinguished and no attorney fees or other damages shall
7 attach to the reimbursement. Any cause of action brought
8 pursuant to this section must be commenced within two years
9 from the date of the payment of the civil fine for a speeding
10 violation.

11 Section 14. The provisions of this act are
12 severable. If any part of this act is declared invalid or
13 unconstitutional, that declaration shall not affect the part
14 which remains.

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