

1 SB280  
2 183369-2  
3 By Senator Waggoner  
4 RFD: County and Municipal Government  
5 First Read: 07-MAR-17

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4 ENGROSSED

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7 A BILL  
8 TO BE ENTITLED  
9 AN ACT

10  
11 Relating to municipalities; to authorize the city  
12 council or other governing body of a municipality to adopt a  
13 municipal ordinance providing for parking enforcement; to  
14 provide for civil violations and fines; to provide certain  
15 procedures to be followed by a municipality for parking  
16 enforcement; to provide that the owner of a vehicle unlawfully  
17 parked shall be presumptively liable, but providing procedures  
18 to contest liability; to provide for jurisdiction in the  
19 municipal court of a municipality for civil violations,  
20 allowing appeals to the circuit court of the county where the  
21 municipality is situated for trial de novo without a jury; and  
22 to provide a means for collection of outstanding parking  
23 tickets to include immobilization and impoundment.

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

25 Section 1. Each municipality, by municipal  
26 ordinance, may adopt the procedures set out in this act.

1           Section 2. As used in this act, the following terms  
2 shall have the following meanings:

3           (1) CIVIL FINE. The monetary amount assessed by the  
4 municipality pursuant to this act for a determination of civil  
5 liability for a parking violation, including municipal court  
6 costs associated with the infraction.

7           (2) IMMOBILIZATION. The act of placing on a parked  
8 motor vehicle a lockable vehicle wheel clamp or boot or  
9 similar device that is designed to be placed on a parked  
10 vehicle to prevent the operation of the vehicle until the  
11 device is unlocked and removed. The term "boot" shall include  
12 the devices used for this purpose. Such devices shall be a  
13 high visibility color, such as yellow, orange, or red. No  
14 cables, chains, ropes, or other similar means of vehicle  
15 immobilization shall be allowed.

16           (3) IMPOUNDMENT. Removing a vehicle from a public  
17 street or right-of-way by towing to a place designated by the  
18 municipality.

19           (4) OWNER. The owner or owners, if jointly  
20 registered, of a motor vehicle as shown on motor vehicle  
21 registration or title records of the Department of Revenue or  
22 the analogous department or agency of another state or  
23 country. The term shall not include a motor vehicle rental or  
24 leasing company when a motor vehicle registered by the company  
25 is rented or leased to another person under a rental or lease  
26 agreement with the company, in which event "owner" shall mean  
27 the person to whom the vehicle is rented or leased; nor shall

1 the term include motor vehicles displaying dealer license  
2 plates, in which event "owner" shall mean the person to whom  
3 the vehicle is assigned for use; nor shall the term include  
4 the owner of any stolen motor vehicle, in which event "owner"  
5 shall mean the person who is guilty of stealing the motor  
6 vehicle.

7 (5) PARKING VIOLATION. Any violation of an ordinance  
8 created pursuant to this act for an offense related to  
9 parking.

10 Section 3. (a) Each municipality is empowered to  
11 enforce parking regulations by issuing notices of civil  
12 parking violations by affixing a parking ticket on the  
13 windshield of an unlawfully parked vehicle and by prosecuting  
14 civil violations for the parking violations which may occur  
15 within the municipality, as provided in this act.

16 (b) A civil fine assessed under this act may not  
17 exceed one hundred dollars (\$100) with the exception of  
18 handicap parking violations which shall be a minimum of one  
19 hundred dollars (\$100), but may not exceed the maximum amount  
20 authorized by law. Municipal court costs for parking offenses  
21 may be assessed only in contested cases in an amount not to  
22 exceed one hundred dollars (\$100) which shall be retained by  
23 the municipality.

24 (c) A parking ticket issued under this act for  
25 parking violations shall contain the following information:

26 (1) Description of the parking violation alleged.

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

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

3           (4) The date by which the civil penalty must be paid  
4 and any applicable late fee.

5           (5) That the person named in the notice of violation  
6 may pay the civil penalty in lieu of appearing at an  
7 administrative adjudication hearing at a date, time, and place  
8 shown on the ticket.

9           (6) That failure to pay the civil penalty or to  
10 contest liability is an admission of liability.

11           (7) Any other information deemed necessary by the  
12 municipality.

13           (8) Procedure to transfer ownership information for  
14 rental vehicles.

15           Section 4. (a) The municipal court of the  
16 municipality is vested with the power and jurisdiction to hear  
17 and adjudicate the civil violations provided for in this act  
18 and to impose the civil fines and costs set out in this act.  
19 When a hearing is requested for a disputed parking ticket, the  
20 parking offense dispute shall be administratively adjudicated  
21 by a magistrate.

22           (b) A person who receives a parking ticket may  
23 contest the imposition of the civil fine by appearing for an  
24 administrative hearing on the date, time, and place on the  
25 ticket or for hearing as described in any mailed notice to the  
26 registered owner after the initial date as set on the parking  
27 ticket.

1           (c) Failure to pay a civil penalty or to contest  
2 liability in a timely manner is an admission of liability in  
3 the full amount of the civil fine assessed in the notice of  
4 violation, is a debt owed to the municipality to be collected  
5 as all other debts owed to the municipality, as provided for  
6 in this act, and is a waiver of an administrative hearing for  
7 a disputed ticket.

8           (d) The civil fine and costs shall not be assessed  
9 if, after a hearing, the magistrate of the municipality enters  
10 a finding of no liability.

11           (e) If an administrative hearing is requested, the  
12 municipality shall have the burden of proving the parking  
13 violation by a preponderance of the evidence.

14           (f) The notice of violation and evidence of  
15 ownership of a vehicle as shown by copies or summaries of  
16 vehicle registration, title, and other ownership records shall  
17 be admissible into evidence without foundation unless the  
18 magistrate finds there is an indication of untrustworthiness,  
19 in which case the municipality shall be given a reasonable  
20 opportunity to lay an evidentiary foundation.

21           (g) A person who is found liable for the parking  
22 violation after an administrative hearing is liable for court  
23 costs and fees as set out herein in addition to the amount of  
24 the civil fine assessed for the violation. A person who is  
25 found liable for a parking violation after an administrative  
26 hearing shall pay the civil fine and costs within 14 days of  
27 the hearing.

1 (h) Whenever payment of a civil fine is owed to the  
2 municipality, the amount of the civil fine as set by ordinance  
3 may not be increased or decreased, and the liability may be  
4 satisfied only by payment.

5 (i) An owner is prima facie responsible for a  
6 parking violation; provided, however, that it shall be an  
7 affirmative defense to the imposition of civil liability under  
8 this act to be proven by a preponderance of the evidence that:

9 (1) The motor vehicle was stolen and timely reported  
10 to law enforcement or was being operated by a person other  
11 than an owner of the vehicle without the effective consent of  
12 an owner.

13 (2) The license plate described in the parking  
14 ticket was a stolen plate, timely reported to law enforcement,  
15 and being displayed on a motor vehicle other than the motor  
16 vehicle for which the plate had been issued.

17 (3) The person or persons shown as owner had  
18 transferred ownership of the vehicle to another person prior  
19 to the parking violation.

20 Section 5. (a) Following an administrative hearing,  
21 the magistrate shall issue a finding stating the following:

22 (1) Whether the person charged with the parking  
23 violation is liable for the violation.

24 (2) The amount of the civil fine assessed against  
25 the person, along with the fees and costs of court provided  
26 for herein.

1 (b) A person who is found liable after an  
2 administrative hearing may appeal the finding to the circuit  
3 court of the county where the city hall of the municipality is  
4 located by filing a notice of appeal with the clerk of the  
5 municipal court, filing a copy of the notice of appeal in the  
6 circuit court, and paying the circuit court civil filing fee.  
7 The notice of appeal must be filed not later than the 14th day  
8 after the date on which the magistrate entered the finding of  
9 civil liability. The filing of a notice of appeal shall stay  
10 the enforcement of the civil fine penalty. An appeal shall be  
11 determined by the circuit court trial de novo without a jury.

12 Section 6. The circuit court shall apply the  
13 preponderance of the evidence standard to a civil appeal under  
14 Section 5 (b). The evidence and procedures shall be as for any  
15 civil case in the circuit court except that there shall be no  
16 discovery permitted. The municipality shall be responsible for  
17 providing an attorney to represent the municipality and to  
18 prosecute the civil proceedings in the circuit court.

19 Section 7. The municipality may provide by ordinance  
20 that a late fee not exceeding twenty-five dollars (\$25) shall  
21 attach to untimely paid civil fines that are authorized in  
22 this act. No person may be arrested or incarcerated for  
23 nonpayment of a civil fine or late fee. The late fee limit may  
24 be increased every five years by an amount equal to the  
25 percentage increase, if any, in the U.S. Department of Labor's  
26 Producer Price Index during that five-year period, rounded to  
27 the nearest dollar, with the base year being 2017.

1           Section 8. (a) A municipality is authorized to  
2 utilize vehicle immobilization, or impoundment, or both, to  
3 facilitate the enforcement of parking ordinances and  
4 collection of parking fines which shall adhere to the  
5 following criteria:

6           (1) When an owner of a vehicle or vehicles,  
7 excluding motor vehicle rental companies, has three or more  
8 unpaid past due parking tickets, including parking tickets  
9 issued prior to the effective date of this act, the  
10 municipality shall cause a warning notice of impending  
11 immobilization, impoundment, or both, to be sent by first  
12 class mail to the owner listing the parking violations  
13 including the date of offense, the violation, the license tag  
14 number, if any, and the location of the offense.

15           (2) The owner may appeal the warning notice to the  
16 person, department, or agency designated by the municipality  
17 to obtain rescission of the warning notice by challenging the  
18 accuracy of the information in the notice 10 days of the date  
19 of the postmark date of the notice.

20           (3) A warning notice shall be canceled by the  
21 municipality when all past due parking tickets and other  
22 parking related fees are paid.

23           (4) Upon the expiration of 10 days from a warning  
24 notice and failure of the owner to appeal the warning notice  
25 or obtain a rescission of the warning notice, any vehicle  
26 registered or titled to the notified owner may be immobilized

1 when found parked legally or illegally on any public street or  
2 right-of-way in the municipality.

3 (5) Immediately after a vehicle is immobilized, the  
4 person immobilizing the vehicle shall affix at the rearmost  
5 portion of the window adjacent to the driver's seat of the  
6 vehicle a notice sticker or decal measuring no less than eight  
7 by four inches containing a warning that any attempt to move  
8 the vehicle may result in damage to the vehicle. The notice  
9 shall state the date and time the vehicle was immobilized; the  
10 municipality responsible for immobilizing the vehicle; the  
11 make, model, color, and license tag number, if any, of the  
12 immobilized vehicle; the reason for immobilization; and a  
13 contact number for requesting removal of the immobilization  
14 device; provided, however, that the sticker may be affixed in  
15 a location that is immediately and reasonably visible to the  
16 operator of a motor vehicle if there is no window adjacent to  
17 the driver's seat. Such sticker shall be a high visibility  
18 color, such as yellow, orange, or red and lettering shall be  
19 black.

20 (6) It shall be unlawful for any person who is not  
21 authorized by the municipality, including the employee or  
22 agent of any towing company, to remove or alter, any restraint  
23 from any vehicle after immobilization or to move any vehicle  
24 after immobilization.

25 (7) A municipality is authorized to charge an  
26 immobilization removal fee up to sixty-five dollars (\$65). The  
27 immobilization removal fee limit may be increased every five

1 years by an amount equal to the percentage increase, if any,  
2 in the U.S. Department of Labor's Producer Price Index during  
3 that five-year period, rounded to the nearest dollar, with the  
4 base year being 2017.

5 (8) The municipal ordinance shall provide to the  
6 vehicle owner or authorized user an immediate appeal of the  
7 vehicle immobilization during regular business hours and  
8 provide for payment of outstanding fines and fees to have the  
9 immobilization device removed 24 hours a day, seven days a  
10 week.

11 (9) A municipality shall not be liable for any  
12 damage caused by immobilization by a third party.

13 (10) Immobilization and impoundment enforcement  
14 shall not be applicable to vehicles owned by motor vehicle  
15 rental companies. A municipality may notify a motor vehicle  
16 rental company by mail or telephone or email that a vehicle  
17 owned by the motor vehicle rental company was ticketed. The  
18 municipality shall provide the vehicle tag information, make,  
19 and model and date, time, and location of the parking  
20 violation with the notice. The motor vehicle rental company  
21 shall respond to the municipality within 30 days with the name  
22 and address of the person renting the vehicle at the time of  
23 the violation.

24 (b) Any vehicle which is not removed from city  
25 property within 24 hours of immobilization shall be deemed  
26 unclaimed and ordered impounded.

1 (c) A municipality may impound a vehicle by  
2 relocating the vehicle by towing to a place and in a manner  
3 authorized by the municipality.

4 (d) If a vehicle is impounded pursuant to this  
5 section, the owner has the right to request in writing a  
6 post-impoundment administrative hearing within 21 days of an  
7 impoundment to contest the validity of the impoundment. The  
8 hearing officer and procedure shall be as designated in the  
9 ordinance and shall take place not later than three business  
10 days from receipt of the written request for administrative  
11 hearing for impoundment. The decision of the hearing officer  
12 is appealable to the applicable circuit court upon payment of  
13 the circuit court civil filing fee within 14 days of the  
14 decision of the hearing officer for a de novo trial without  
15 jury.

16 (e) A vehicle immobilized or impounded under this  
17 section may be released:

18 (1) By payment by the owner of the total amount due,  
19 including all outstanding parking tickets, all immobilization,  
20 impoundment, and storage fees within 21 days of the  
21 immobilization or impoundment, or both.

22 (2) By payment by a secured party lien holder after  
23 the total amount due on behalf of the owner within 21 days of  
24 the immobilization or impoundment, or both, and the execution  
25 of a hold-harmless agreement that releases the municipality  
26 and its officers, employees, and agents from all liability  
27 with respect to the vehicle.

1 (3) As otherwise provided in the ordinance.

2 (f) If the owner, secured party lien holder, or  
3 either, fails to secure release of the vehicle within 21 days  
4 of the date of impoundment the vehicle shall be deemed  
5 abandoned and may be sold at public auction by following the  
6 same procedure set out in Section 32-13-1 et seq., Code of  
7 Alabama 1975, for other abandoned vehicles.

8 Section 9. Any person against whom an adjudication  
9 of liability for a parking violation is made pursuant to this  
10 act, or an ordinance passed pursuant thereto, and who actually  
11 pays the civil fine imposed shall have a cause of action  
12 against any person who may be shown to have been operating the  
13 vehicle recorded at the time of the violation for the amount  
14 of the civil fine actually paid plus any consequential or  
15 compensatory damages and a reasonable attorney fee, without  
16 regard to the rules regarding joint and several liability,  
17 contribution, or indemnity; provided, however, that as a  
18 condition precedent to the bringing of a civil action, the  
19 person held responsible for payment of the civil fine must  
20 first make written demand on the other person for  
21 reimbursement of the civil fine, giving a minimum of 60 days  
22 to remit payment, and if reimbursement is fully made within  
23 the 60-day period then the cause of action shall be  
24 extinguished and no attorney fees or other damages shall  
25 attach to the reimbursement. Any cause of action brought  
26 pursuant to this section must be commenced within two years

1 from the date of the payment of the civil fine for a parking  
2 violation.

3 Section 10. The provisions of this act are  
4 severable. If any part of this act is declared invalid or  
5 unconstitutional, that declaration shall not affect the part  
6 which remains.

7 Section 11. This act shall become effective  
8 immediately following its passage and approval by the  
9 Governor, or its otherwise becoming law.

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Senate

Read for the first time and referred to the Senate  
committee on County and Municipal Government ..... 07-MAR-17

Read for the second time and placed on the calen-  
dar 1 amendment..... 13-APR-17

Read for the third time and passed as amended .... 27-APR-17

Yeas 13  
Nays 6

Patrick Harris,  
Secretary.