

1 SB194
2 173064-1
3 By Senator Waggoner
4 RFD: County and Municipal Government
5 First Read: 09-FEB-16

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8 SYNOPSIS: This bill would authorize the city council
9 or other governing body of a municipality to adopt
10 a municipal ordinance providing for parking
11 enforcement and collection.

12 This bill would provide for parking
13 enforcement civil violations.

14 This bill would authorize each municipality
15 to adopt a municipal ordinance consistent with this
16 act.

17 This bill would provide certain procedures
18 to be followed by the municipality for parking
19 enforcement.

20 This bill would provide that the owner of
21 the vehicle unlawfully parked shall be
22 presumptively liable for a civil violation and the
23 payment of a civil fine, but providing procedures
24 to contest liability.

25 This bill would provide for jurisdiction in
26 the municipal court of the municipality over the
27 civil violations and allow appeals to the circuit

1 court of the county where the municipality is
2 situated for trial de novo without a jury.

3 This bill would provide the procedure for
4 collection of outstanding parking tickets to
5 include immobilization and impoundment.

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 To authorize the city council or other governing
12 body of a municipality to adopt a municipal ordinance
13 providing for parking enforcement and collection; to provide
14 for parking enforcement civil violations; to authorize each
15 municipality to adopt a municipal ordinance consistent with
16 this act; to provide certain procedures to be followed by the
17 municipality for parking enforcement; to provide that the
18 owner of the vehicle unlawfully parked shall be presumptively
19 liable for a civil violation and the payment of a civil fine,
20 but providing procedures to contest liability; to provide for
21 jurisdiction in the municipal court of the municipality over
22 the civil violations and allow appeals to the circuit court of
23 the county where the municipality is situated for trial de
24 novo without a jury; and to provide the procedure for
25 collection of outstanding parking tickets to include
26 immobilization and impoundment.

27 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

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

9 (2) CIVIL VIOLATION. There is hereby created a
10 non-criminal category of law called a civil violation created
11 and existing for the sole purpose of carrying out the terms of
12 this act.

13 (3) IMMOBILIZATION. The act of placing on a parked
14 motor vehicle a lockable vehicle wheel clamp or boot or
15 similar device that is designed to be placed on a parked
16 vehicle to prevent the operation of the vehicle until the
17 device is unlocked and removed. The term "boot" shall include
18 the devices used for this purpose. The devices shall be a
19 high-visibility color, such as yellow, orange, or red. No
20 cables, chains, ropes, or other similar means of vehicle
21 immobilization shall be allowed.

22 (4) IMPOUNDMENT. Removing a vehicle from a public
23 street or right-of-way by towing to a place designated by the
24 municipality.

25 (5) OWNER. An 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 (6) PARKING VIOLATION. Any violation of an ordinance
13 created pursuant to this act for an offense related to
14 parking. A parking violation shall be a civil violation as
15 defined in this act.

16 Section 3. (a) Each municipality may enforce parking
17 regulations by issuing notices of civil parking violations by
18 affixing a parking ticket on the windshield of an unlawfully
19 parked vehicle and prosecuting civil violations for the
20 parking violations which may occur within the corporate limits
21 of the municipality as provided in this act.

22 (b) (1) A civil fine assessed under this act may not
23 exceed one hundred dollars (\$100) with the exception of
24 handicap parking violations which may not exceed two hundred
25 fifty dollars (\$250) and municipal court costs may be assessed
26 only in contested cases in the same manner and in the same
27 amounts prescribed for misdemeanor traffic offenses.

1 (2) An additional fee of up to twenty-five dollars
2 (\$25) for each parking ticket shall be authorized as a late
3 fee if the fine is not paid on or before its due date.

4 (3) Court costs collected pursuant to this act shall
5 be distributed in the same manner prescribed by law for the
6 distribution of municipal court costs for misdemeanor traffic
7 offenses.

8 (c) A parking ticket issued under this act for
9 parking violations shall contain all of the following
10 information:

11 (1) Description of the parking violation alleged.

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

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

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

17 (d) The person named in the notice of violation may
18 pay the civil penalty in lieu of appearing at an
19 administrative adjudication hearing at a date, time, and place
20 shown on the ticket.

21 (e) That failure to pay the civil penalty or to
22 contest liability shall be an admission of liability.

23 (f) Any other information deemed necessary by the
24 municipality.

25 Section 4. (a) Prior to imposing a civil penalty
26 pursuant to this act, the municipality shall first mail a
27 notice of violation by certified U.S. mail, return receipt

1 requested, to the owner of the motor vehicle which is recorded
2 by the automated photographic parking enforcement system that
3 committed a parking violation. The notice shall be sent not
4 later than the 30th day after the date the parking violation
5 is recorded to the following:

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

8 (2) If the vehicle is registered in another state or
9 country, to the owner's address as shown on the motor vehicle
10 registration records of the department or agency of the other
11 state or country analogous to the Alabama Department of
12 Revenue.

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

15 (1) Description of the parking violation alleged.

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

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

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

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

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

26 (7) Information that informs the person named in the
27 notice of violation of the following:

1 a. The right to contest the imposition of the civil
2 penalty in an administrative adjudication.

3 b. The manner and time in which to contest the
4 imposition of the civil penalty.

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

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

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

12 (10) Any other information deemed necessary by the
13 municipality.

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

17 (d) The civil penalty imposed shall be paid within
18 30 days of the 10th day after the date the notice of violation
19 is mailed.

20 (e) It shall be within the discretion of the trained
21 technician to determine which of the recorded parking
22 violations are prosecuted based upon the quality and
23 legibility of the recorded image. In lieu of issuing a notice
24 of violation, the municipality may mail a warning notice to
25 the owner during the initial warning period.

26 Section 5. (a) The municipal court of the
27 municipality is vested with the power and jurisdiction to hear

1 and adjudicate the civil violations provided for in this act
2 and to issue orders imposing the civil fines and costs set out
3 in this act. The presiding municipal judge of a municipality
4 may order that parking offense disputes be administratively
5 adjudicated by a magistrate pursuant to Rule 19(b), Alabama
6 Rules of Judicial Administration.

7 (b) A person who receives a parking ticket may
8 contest the imposition of the civil fine by appearing for a
9 hearing on the date, time, and place on the ticket or for
10 hearing as described in any mailed notice to the registered
11 owner after the initial date as set on the parking ticket.

12 (c) Failure to pay a civil penalty or to contest
13 liability in a timely manner is an admission of liability in
14 the full amount of the civil fine assessed in the notice of
15 violation and is a debt owed to the municipality to be
16 collected as all other debts owed to the municipality and as
17 provided for in this act.

18 (d) The civil fine shall not be assessed if, after a
19 hearing, the judge or magistrate of the municipality enters a
20 finding of no liability.

21 (e) If an adjudicative hearing is requested, the
22 municipality shall have the burden of proving the parking
23 violation by a preponderance of the evidence.

24 (f) The notice of violation, and evidence of
25 ownership of a vehicle as shown by copies or summaries of
26 vehicle registration or other ownership records shall be
27 admissible into evidence without foundation unless the

1 municipal court finds there is an indication of
2 untrustworthiness, in which case the municipality shall be
3 given a reasonable opportunity to lay an evidentiary
4 foundation.

5 (g) All other matters of evidence and procedure not
6 specifically addressed in this act shall be subject to the
7 rules of evidence and the rules of procedure as they apply in
8 the small claims courts of this state, except that on any
9 appeal to circuit court the evidence and procedures shall be
10 as for any civil case in the circuit court except as otherwise
11 provided in this act and discovery shall be limited to
12 interrogatories and request for production ordered by the
13 circuit court as essential for the defense of the parking
14 violation.

15 (h) A person who is found liable for the civil
16 violation after an adjudicative hearing is liable for court
17 costs and fees as set out herein in addition to the amount of
18 the civil fine assessed for the violation. A person who is
19 found liable for a civil violation after an adjudicative
20 hearing shall pay the civil fine and costs within 10 days of
21 the hearing.

22 (i) Whenever payment of a civil fine is owed to the
23 municipality, the amount of the civil fine as set by ordinance
24 may not be increased, decreased, or remitted by the municipal
25 court, and the liability may be satisfied only by payment.

1 (j) It shall be an affirmative defense to the
2 imposition of civil liability under this act to be proven by a
3 preponderance of the evidence that:

4 (1) The motor vehicle was stolen or being operated
5 by a person other than the owner of the vehicle without the
6 effective consent of the owner.

7 (2) The license plate described in the parking
8 ticket was a stolen plate and being displayed on a motor
9 vehicle other than the motor vehicle for which the plate had
10 been issued.

11 (3) The person who received the parking ticket was
12 not the owner of the motor vehicle at the time of the
13 violation.

14 (4) That at the time of the violation the motor
15 vehicle was a stolen vehicle or the license plate displayed on
16 the motor vehicle was a stolen plate, the owner must submit
17 proof acceptable to the hearing officer that the theft of the
18 vehicle or license plate, prior to the time of the violation,
19 had been timely reported to the appropriate law enforcement
20 agency.

21 Section 6. (a) Following an adjudicative hearing,
22 the municipal court judge or magistrate shall issue an order
23 stating the following:

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

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

4 (b) A person who is found liable after an
5 adjudicative hearing may appeal the finding to the circuit
6 court of the county where the municipality is situated by
7 filing a notice of appeal with the clerk of the municipal
8 court. The notice of appeal must be filed not later than the
9 14th day after the date on which the municipal court judge
10 entered the finding of civil liability. The filing of a notice
11 of appeal shall stay the enforcement of the civil fine
12 penalty. An appeal shall be determined by the circuit court by
13 trial de novo without a jury.

14 Section 7. The circuit court hearing an appeal shall
15 use the procedures that apply to criminal convictions in
16 municipal court with the following qualifications:

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

20 (2) If the person is adjudicated by the circuit
21 court to be responsible for payment of the civil fine, circuit
22 court costs shall be owed by the person adjudicated
23 responsible, with 100 percent of those court costs retained by
24 the circuit court. Court costs in the circuit court shall be
25 calculated as are court costs for criminal appeals from the
26 municipal court, and in the event the circuit court finds the

1 person appealing not to be responsible, no municipal court
2 costs shall be owed to the municipality.

3 (3) Regardless of the civil nature of the
4 proceedings, the circuit court, in its discretion and for its
5 administrative convenience, may assign case numbers as for
6 criminal appeals and place the appeals on criminal dockets in
7 the same manner as criminal appeals from municipal court.

8 (4) The municipality shall be responsible for
9 providing an attorney to represent the municipality and to
10 prosecute the civil proceedings in the circuit court.

11 Section 8. The municipality may provide by ordinance
12 that a late fee not exceeding twenty-five dollars (\$25) shall
13 attach to untimely paid civil fines that are authorized in
14 this act. No person may be arrested or incarcerated for
15 nonpayment of a civil fine or late fee.

16 Section 9. (a) A municipality is authorized to
17 utilize vehicle immobilization, impoundment, or both, to
18 facilitate the enforcement of parking ordinances and
19 collection of parking fines which shall adhere to the
20 following criteria:

21 (1) Issuance of the warning notice. When a
22 registered owner of a vehicle or vehicles has three or more
23 unpaid past due parking tickets, the municipality shall cause
24 a warning notice of impending immobilization, impoundment, or
25 both, to be sent by first class mail to the registered owner
26 listing the parking violations including the date of offense,

1 the violation, the license tag number, and location of the
2 offense.

3 (2) Warning notice appeal. The registered owner may
4 appeal the warning notice to the person, department, or agency
5 designated by the municipality to obtain rescission of the
6 warning notice by challenging the accuracy of the information
7 in the notice within 10 days of the date of the postmark date
8 of the notice.

9 (3) Rescission of the warning notice. A rescission
10 notice will be canceled by the municipality when all past due
11 parking tickets and other parking-related fees are paid.

12 (4) Procedure for immobilization. Upon the
13 expiration of 10 days from a warning notice and failure of the
14 registered owner to appeal the warning notice or obtain a
15 rescission of the warning notice, any vehicle registered to
16 the notified owner may be immobilized when found parked
17 legally or illegally on any public street or right-of-way.

18 (5) Immediately after a vehicle is immobilized, the
19 person immobilizing such vehicle shall affix at the rearmost
20 portion of the window adjacent to the driver's seat of such
21 vehicle a notice sticker or decal measuring no less than eight
22 by four inches containing a warning that any attempt to move
23 the vehicle may result in damage to the vehicle. The notice
24 shall state the date and time the vehicle was immobilized, the
25 municipality responsible for immobilizing the vehicle, the
26 make, model, color, and license tag number of the immobilized
27 vehicle; the reason for immobilization; and a contact number

1 for requesting removal of the immobilization device. Provided,
2 however, that the sticker may be affixed in a location that is
3 immediately and reasonably visible to the operator of a motor
4 vehicle if there is no window adjacent to the driver's seat.
5 Such sticker shall be a high-visibility background color, such
6 as yellow, orange, or red and lettering shall be black.

7 (6) It shall be unlawful for any person, who is not
8 authorized by the municipality, including the employee or
9 agent of any towing company, to remove, or alter, any
10 restraint from any vehicle after immobilization or to move any
11 vehicle after immobilization.

12 (7) A municipality is authorized to charge an
13 immobilization removal fee up to sixty-five dollars (\$65).

14 (8) The municipal ordinance shall provide to the
15 vehicle owner or authorized user an immediate appeal of the
16 vehicle immobilization during regular business hours and
17 provide for the payment of outstanding fines and fees to have
18 the immobilization device removed 24 hours a day seven days a
19 week.

20 (b) Vehicles not removed considered abandoned. Any
21 vehicle which is not removed from city property within 24
22 hours of immobilization may be considered abandoned and
23 ordered impounded.

24 Procedure for impoundment.

25 a. Relocating the vehicle by towing to a place and
26 in a manner authorized by the municipality.

1 b. Post-impoundment administrative hearing. The
2 registered owner has the right to request in writing a
3 post-impoundment administrative hearing within 21 days of the
4 impoundment to contest the validity of an impoundment. The
5 hearing officer and procedure shall be as designated in the
6 ordinance and shall take place not later than three business
7 days from receipt of the written request for an administrative
8 hearing for impoundment. The decision of the hearing officer
9 is appealable to the applicable circuit court upon payment of
10 the circuit court filing fee within 14 days of the decision of
11 the hearing officer for a trial de novo without jury.

12 c. Procedure for release of the vehicle. In order
13 to secure the release of a vehicle, the registered owner must
14 do one of the following within 21 days of immobilization or
15 impoundment:

16 1. Pay the total amount due including all
17 outstanding parking tickets, all immobilization, impoundment,
18 storage fees, or all of them.

19 2. A secured party lien holder may pay the total
20 amount due on behalf of the registered owner and, upon the
21 execution of a hold-harmless agreement that releases the
22 municipality and its officers, employees, and agents from all
23 liability with respect to the vehicle, obtain the release of
24 the vehicle to the secured party.

25 3. Release under any other terms as provided in the
26 ordinance.

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

7 Section 10. (a) The penalty for violation of a civil
8 violation shall be a civil fine, not to exceed fifty dollars
9 (\$50), the enforceability of which shall be accomplished
10 through civil action. The prosecution of a civil violation
11 created by this act shall carry reduced evidentiary
12 requirements and burden of proof as set out in Section 4, and
13 in no event shall an adjudication of liability for a civil
14 violation be punishable by a criminal fine or imprisonment.

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

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

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

13 Section 12. This act shall become effective
14 immediately following its passage and approval by the
15 Governor, or its otherwise becoming law.