

1 SB155
2 163895-2
3 By Senator Brewbaker (N & P)
4 RFD: Local Legislation
5 First Read: 05-MAR-15

1 SB155

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4 With Notice and Proof

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6 ENROLLED, An Act,

7 Relating to the City of Brantley, Alabama, in
8 Crenshaw County; authorizing automated speeding enforcement in
9 the City of Brantley, Alabama, as a civil violation;
10 authorizing the city to adopt a municipal ordinance consistent
11 with this act; providing certain procedures to be followed by
12 the city using automated photographic speeding enforcement;
13 providing that the owner of the vehicle involved is
14 presumptively liable for a civil violation and the payment of
15 a civil fine, but providing procedures to contest liability;
16 providing for jurisdiction in the Brantley Municipal Court
17 over the civil violations and allowing appeals to the Crenshaw
18 County Circuit Court for trial de novo; creating a cause of
19 action for any person held responsible for payment of the
20 civil fine against the person who was actually operating a
21 vehicle while speeding; and prohibiting the tampering with
22 automated speeding enforcement devices or equipment systems,
23 except by authorized persons.

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. (a) This act shall be known and may be
2 cited as the "Brantley Speed Limit Safety Act."

3 (b) The City of Brantley, Alabama, may, by municipal
4 ordinance adopt the procedures set out in this act.

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

7 (1) CITY. The City of Brantley, Alabama.

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

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

23 (4) OWNER. The owner of a motor vehicle as shown on
24 the motor vehicle registration records of the Alabama
25 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 10 miles per hour over the
23 legal maximum speed limits presented in or adopted pursuant to
24 Article 8, Chapter 5A, Title 32, Sections 32-5A-170 to
25 32-5A-178, inclusive, Code of Alabama 1975; provided, however,

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

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

9 a. Is a professional engineer in the field of civil
10 engineering.

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

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

20 Section 3. (a) The City of Brantley is empowered to
21 utilize an automated photographic speeding enforcement system
22 to detect and record speeding violations, to issue notices of
23 civil violations by mail, and to prosecute civil violations
24 for the recorded speeding violations which may occur within
25 the corporate limits of the City of Brantley as provided in

1 this act. A civil fine assessed under this act shall not
2 exceed one hundred dollars (\$100), and municipal court costs
3 may be assessed in the same manner and in the same amounts
4 prescribed for municipal criminal speeding violations
5 prosecuted as a misdemeanor. An additional fee of ten dollars
6 (\$10) shall be added to the Brantley Municipal Court costs
7 authorized to be collected in connection with notices issued
8 under this act. Court costs collected pursuant to this act
9 shall be distributed in the same manner as prescribed by law
10 for the distribution of municipal court costs for misdemeanor
11 violations. The additional ten dollars (\$10) authorized by
12 this act shall be paid to the Alabama Criminal Justice
13 Information Center as compensation for record keeping with
14 respect to speeding violation notices issued pursuant to this
15 act.

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

24 (c) Prior to operating such an enforcement system,
25 the City of Brantley shall make a public announcement and

1 conduct a public awareness campaign of the use of an automated
2 photographic speeding enforcement system a minimum of 30 days
3 before using the devices. The City of Brantley may place
4 photographic speeding enforcement systems at locations without
5 public notice of the specific location, may change locations
6 without public notice, and may install and move as needed
7 decoy devices designed to resemble photographic speeding
8 enforcement systems.

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

15 Section 4. (a) Prior to imposing a civil penalty
16 pursuant to this act, the City of Brantley shall first mail a
17 notice of violation by certified U.S. mail, return receipt
18 requested, to the owner of the motor vehicle which is recorded
19 by the automated photographic speeding enforcement system that
20 committed a speeding violation. The notice shall be sent not
21 later than the 30th day after the date the speeding violation
22 is recorded to the following:

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

1 (2) If the vehicle is registered in another state or
2 country, to the owner's address as shown on the motor vehicle
3 registration records of the department or agency of the other
4 state or country analogous to the Alabama Department of
5 Revenue.

6 (3) If a traffic violation is based on the vehicle
7 identification number, and the registered owner of the vehicle
8 is a rental car business, the law enforcement agency, before a
9 notice of violation may be issued, shall provide a written
10 notice to the rental car business that a notice of violation
11 may be issued to the rental car business if the rental car
12 business does not, within 30 days of receiving written notice,
13 provide to the issuing agency by return mail a statement under
14 oath stating the name and known mailing address of the
15 individual driving or renting the vehicle when the violation
16 occurred.

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

19 (1) Description of the speeding violation alleged.

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

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

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

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

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

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

8 a. The right to contest the imposition of the civil
9 penalty in an administrative adjudication.

10 b. The manner and time in which to contest the
11 imposition of the civil penalty.

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

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

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

19 (10) Any other information deemed necessary by the
20 city.

21 (c) A notice of violation under this act is presumed
22 to have been received on the 10th day after the date the
23 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 5. (a) The Brantley 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.

1 (d) The civil fine shall not be assessed if, after a
2 hearing, the Brantley 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

1 rules of evidence and the rules of procedure as they apply in
2 the small claims courts of this state, except that on any
3 appeal to Crenshaw County Circuit Court for trial de novo the
4 evidence and procedures shall be as for any civil case in the
5 circuit court except as otherwise provided in this act.

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

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

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

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

24 2. The motor vehicle was being operated as an
25 authorized emergency vehicle under Sections 32-5A-7 and

1 32-5-213 of the Code of Alabama 1975, and that the operator
2 was acting in compliance with that chapter.

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

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

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

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

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

24 1. The person files an affidavit with the hearing
25 officer stating the date on which the person received the

1 notice of violation that was mailed to the person, if not
2 received by the 10th day after same is mailed as set out in
3 subsection (a) of Section 5.

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

6 Section 6. (a) Following an adjudicative hearing,
7 the municipal court judge shall issue an order stating the
8 following:

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

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

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

19 (c) A person who is found liable after an
20 adjudicative hearing may appeal that finding of civil
21 liability to the Circuit Court of Crenshaw County, Alabama, by
22 filing a notice of appeal with the clerk of the municipal
23 court. The notice of appeal must be filed not later than the
24 14th day after the date on which the municipal court judge
25 entered the finding of civil liability. The filing of a notice

1 of appeal shall stay the enforcement of the civil fine
2 penalty. An appeal shall be determined by the circuit court by
3 trial de novo.

4 Section 7. (a) The circuit court hearing an appeal
5 shall use the procedures that apply to criminal convictions in
6 municipal court with the following qualifications:

7 (1) The proceedings shall retain their civil nature
8 on appeal with the circuit court applying the preponderance of
9 the evidence standard.

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

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

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

1 (5) The city shall be responsible for providing an
2 attorney to represent the city and to prosecute the civil
3 proceedings in the circuit court.

4 Section 8. In the event the evidence produced by an
5 automated photographic speeding enforcement system does not
6 produce an image of the license plate with sufficient clarity
7 for a trained technician to determine the identity of the
8 owner, and if the identity cannot otherwise be reliably
9 established, then no notice of violation may be issued
10 pursuant to this act. If, however, a notice of violation is
11 issued, to the degree constitutionally allowed, those issues
12 related to the identity of the vehicle or its owner shall
13 affect the weight to be accorded the evidence and shall not
14 affect its admissibility.

15 Section 9. The city may provide by ordinance that a
16 late fee not exceeding twenty-five dollars (\$25) shall attach
17 to untimely paid civil fines that are authorized in this act.
18 No person may be arrested or incarcerated for nonpayment of a
19 civil fine or late fee. No record of an adjudication of civil
20 violation made under this act shall be listed, entered, or
21 reported on any criminal record or driving record, whether the
22 record is maintained by the city or an outside agency. An
23 adjudication of civil violation provided for in this act shall
24 not be considered a conviction for any purpose, shall not be
25 used to increase or enhance punishment for any subsequent

1 offense of a criminal nature, shall not be considered a moving
2 violation, and shall not be used by any insurance company to
3 determine or affect premiums or rates unless an accident
4 occurred due to the violation. The fact that a person is held
5 liable or responsible for a civil fine for a speeding
6 violation shall not be used as evidence that the person was
7 guilty of negligence or other culpable conduct, and any
8 evidence generated by an automated photographic speeding
9 enforcement system may only be used as evidence in other
10 proceedings if it is or becomes admissible under the rules of
11 evidence applicable therein.

12 Section 10. The city shall keep statistical data
13 regarding the effectiveness of automated photographic speeding
14 enforcement systems in reducing speeding violations and
15 collisions and shall communicate the data on an annual basis
16 to the Alabama Department of Transportation and the Alabama
17 Criminal Justice Information Center.

18 Section 11. No civil penalty may be imposed and no
19 adjudication of liability for a civil violation may be made
20 under this act if the operator of the vehicle was arrested or
21 was issued a citation and notice to appear by a sworn police
22 officer for a criminal violation of any portion of Title 32,
23 Chapter 5A, Article 8, including, but not limited to, Sections
24 32-5A-170 to 32-5A-178, inclusive, Code of Alabama 1975, or
25 any other municipal ordinance which embraces and incorporates

1 the statutes contained in that article, and which occurred
2 simultaneously with and under the same set of circumstances
3 which were recorded by the automated photographic speeding
4 enforcement system.

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

1 Section 13. The provisions of this act are
2 severable. If any part of this act is declared invalid or
3 unconstitutional, that declaration shall not affect the part
4 which remains.

5 Section 14. This act shall become effective
6 immediately following its passage and approval by the
7 Governor, or its otherwise becoming law.

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB155

Senate 17-MAR-15

I hereby certify that the within Act originated in and passed the Senate, as amended.

Patrick Harris
Secretary

House of Representatives
Passed: 19-MAR-15

By: Senator Brewbaker