

1 HB446
2 137431-4
3 By Representatives Vance, McCutcheon and Hill
4 RFD: Judiciary
5 First Read: 01-MAR-12

2
3
4
5
6
7
8 SYNOPSIS: This bill would enable county and municipal
9 boards of education to initiate civil enforcement
10 of offenses related to overtaking a school bus by
11 using automated detection devices, and allowing a
12 civil notice of violation to be issued by mail. It
13 would provide that the owner of the vehicle is
14 presumptively responsible but provide procedures to
15 transfer responsibility or to contest the notice of
16 violation. District and municipal courts would be
17 granted subject matter jurisdiction to adjudicate
18 the civil notice. The bill would provide for
19 appeals. Civil fines would be authorized. Any
20 person who becomes responsible for payment of the
21 civil fine would not have the violation entered on
22 the driver's history, not suffer other adverse
23 consequences so long as the civil fine is timely
24 paid, and insurance companies could not use a
25 violation to set or change insurance rates. Failure
26 to timely pay a civil fine would result in civil

1 collection efforts by a county or a municipal board
2 of education.

3
4 A BILL
5 TO BE ENTITLED
6 AN ACT

7
8 Authorizing automated enforcement related to
9 overtaking a school bus in counties and municipalities as a
10 civil offense; authorizing a county or municipal board of
11 education to initiate automated school bus violation
12 enforcement; requiring certain procedures to be followed by a
13 county or municipal board of education using automated school
14 bus enforcement; making the owner of the vehicle involved in a
15 violation presumptively responsible for payment of a civil
16 fine, but providing procedures to contest responsibility or
17 transfer responsibility to another person; providing for
18 jurisdiction in district courts and in municipal courts over
19 the civil offenses and allowing appeals to the circuit court;
20 providing enforcement regarding licensing, titling and
21 driver's license issuance and renewal until the civil fine is
22 paid.

23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

26 (b) Any county or municipal board of education may
27 initiate the civil enforcement procedures set out in this act.

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

3 (1) AUTOMATED DEVICE. Any camera or recording device
4 that uses a vehicle sensor and camera synchronized to
5 automatically record by video, photograph, or full motion
6 streaming video, a motor vehicle approaching or overtaking a
7 school bus that is stopped for the purpose of receiving or
8 discharging school children in violation of Section 32-5A-154,
9 Code of Alabama 1975.

10 (2) BOARD. A county or municipal board of education.

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

14 (4) OWNER. The meaning ascribed to "owner" in
15 Section 32-1-1.1, Code of Alabama 1975, except that the term
16 shall not include a motor vehicle rental or leasing company
17 when a motor vehicle registered by the company is being
18 operated by another person under a rental or lease agreement
19 with the company, in which event "owner" shall mean the person
20 to whom the vehicle is rented or leased.

21 (5) SCHOOL BUS VIOLATION. Any violation of Section
22 32-5A-154, Code of Alabama 1975.

23 Section 3. (a) A county or municipal board of
24 education may initiate the use of automated devices to detect
25 school bus violations by voting at a meeting of the board
26 approving the adoption of an automated school bus enforcement
27 program.

1 (b) A county or municipal board of education may
2 issue notices of violations by mail as provided herein. A
3 municipality may adopt an ordinance that expressly provides
4 that the procedures and provisions of this act are adopted.

5 (c) A civil fine, not to exceed three hundred
6 dollars (\$300), may be imposed for a school bus violation for
7 which a notice of violation is issued pursuant to this act.
8 All such fines shall be paid to the county or municipal board
9 of education where the offense was committed.

10 Section 4. (a) A county or municipal board of
11 education may operate a school bus violation enforcement
12 program authorized by this act through intergovernmental
13 agreements with the county or municipal law enforcement
14 offices and the district and municipal courts.

15 (b) After review of the violation by law
16 enforcement, any county or municipal board of education
17 operating an automated device shall send the owner of a
18 vehicle that has been detected by the device as being involved
19 in a school bus violation, a notice of violation by U. S.
20 mail, or alternatively shall deliver the notice personally. In
21 the event there is more than one owner, the county or
22 municipal board of education may either issue the notice of
23 violation to the first person listed on the title or other
24 evidence of ownership, or issue a joint notice of violation to
25 all listed owners.

26 (c) The notice of violation shall include at a
27 minimum each of the following items of information:

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

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

5 (3) The violation charged.

6 (4) The date, time, and location where the violation
7 occurred.

8 (5) The photographic images or video captured by the
9 automated device that shall be reviewed by a law enforcement
10 officer of the county or municipality, who shall certify the
11 notice of violation.

12 (6) The amount of the civil fine along with the
13 time, place, and manner for payment of the fine.

14 (7) The procedure under which the notice of
15 violation may be contested, or the procedure and conditions
16 under which responsibility for payment of the civil fine may
17 be transferred to another individual who was operating the
18 vehicle at the time of the violation, all as set out herein.

19 (8) That failure to timely pay, contest, or transfer
20 responsibility to another shall constitute an admission that
21 the owner is responsible for payment of the civil fine, and
22 that failure to pay a fine for which the owner is determined
23 to be responsible shall result in the inability to obtain or
24 renew in Alabama the license of the vehicle involved or to
25 obtain or transfer its title in Alabama, or for the person
26 held to be responsible to obtain or renew an Alabama driver's

1 license, unless and until the civil fine is paid to the county
2 or municipal board of education.

3 (9) The date by which the county or municipal board
4 of education must receive payment of the civil fine, receive
5 notice by the owner that responsibility is being transferred
6 to another, or receive notice by the owner that the notice of
7 violation is being contested, shall be clearly and prominently
8 stated on the notice of violation, and the time may not be
9 less than 20 days after the notice of violation is mailed or
10 personally delivered by the county or municipal board of
11 education.

12 (d) A county or municipal board of education may
13 enter into an agreement with a private vendor for the
14 installation, operation, notice processing, administration and
15 maintenance of automated detection devices on buses within the
16 county or municipal board of education's fleet, whether owned
17 or leased.

18 Section 5. The owner of a vehicle that has been
19 issued a notice of violation shall be responsible for payment
20 of the civil fine unless the owner successfully transfers
21 responsibility, there is an adjudication that no violation
22 occurred, or there is an otherwise lawful determination that
23 no civil penalty shall be imposed. All owners of a vehicle who
24 are mailed or receive a notice of violation shall be jointly
25 and severally liable for payment of the civil fine. The county
26 or municipal board of education may collect the civil fine in

1 the same manner as any other debt owed to the county or
2 municipal board of education.

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

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

9 (2) The owner signs and timely transmits to the
10 county or municipal board of education on the form provided
11 with the notice of violation and in accordance with the
12 procedure set out on the notice of violation a statement that
13 he or she was not operating the vehicle at the time of the
14 violation, and that the person who was operating the vehicle
15 was not the agent or employee of the owner.

16 (3) The owner timely transmits to the county or
17 municipal board of education on the form provided with the
18 notice of violation and in accordance with the procedure set
19 out on the notice of violation the name and mailing address of
20 the person who was operating the vehicle.

21 (4) The civil fine is paid by any person, unless
22 there is an adjudication that no violation occurred or there
23 is otherwise a lawful determination that no civil penalty
24 shall be imposed.

25 (b) Whenever a county or municipal board of
26 education timely receives the information required from the
27 owner to transfer responsibility, it shall issue a new notice

1 of violation to the person to whom the owner transferred
2 responsibility with an explanation as to why the person is
3 receiving the notice of violation, in the same manner as if
4 the person were the owner of the vehicle. The person shall be
5 responsible for payment of the civil fine unless the person
6 either:

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

11 (2) Admits to being the operator but denies
12 committing a violation, in which case the person may contest
13 the notice of violation in the same manner as the owner may
14 contest the notice of violation.

15 (c) In cases in which a person other than the owner
16 denies he or she was the operator and declines responsibility,
17 a new notice shall be issued to the owner stating that the
18 other person declined responsibility and giving the owner the
19 option of paying the civil fine or contesting the violation by
20 a stated date that shall be not less than 20 days from the
21 mailing of the new notice. The owner may not attempt to
22 transfer responsibility more than one time using this
23 procedure. If the owner chooses to contest the notice of
24 violation after the owner has unsuccessfully attempted to
25 transfer responsibility using this procedure, and the owner
26 claims in defense that another person was the operator of the
27 vehicle, the court may take appropriate action to cause the

1 owner and the other person to appear at the same hearing to
2 determine responsibility.

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

12 (b) District and municipal courts of this state are
13 hereby vested with the power and jurisdiction to adjudicate a
14 notice of violation issued pursuant to this act as a civil
15 offense whenever the offense is alleged to have occurred
16 within the geographic jurisdiction of the court.

17 (c) The following procedures shall apply to
18 proceedings to contest a notice of violation issued pursuant
19 to this act:

20 (1) Upon receipt of a timely notice that the person
21 receiving the notice of violation is contesting the notice,
22 the county or municipal board of education shall cause the
23 case to be docketed in court and shall issue notice of the
24 hearing date.

25 (2) The issuance of a notice of violation shall be
26 prima facie evidence that the person who received the notice

1 of violation was operating the vehicle at the time of the
2 violation.

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

12 (4) The notice of violation, any evidence of the
13 violation produced by a device, and evidence of ownership of a
14 vehicle as shown by copies or summaries of official records
15 shall be admissible into evidence without foundation unless a
16 court otherwise requires a foundation.

17 (5) All other matters of evidence and procedure not
18 specifically addressed in this act shall be subject to the
19 rules of evidence and the rules of procedure as they apply in
20 the small claims courts of this state, except that on any
21 appeal in the circuit court the procedures shall be as for any
22 civil case in circuit court except as otherwise provided in
23 this act.

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

26 (7) Whenever payment of a civil fine is owed to the
27 county or municipal board of education, the amount of the

1 civil fine may not be increased, decreased, or remitted by the
2 court, and the liability may be satisfied only by payment.

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

21 Section 8. Persons who contest a notice of violation
22 and are adjudicated by the court to be responsible for the
23 civil fine may appeal the adjudication for a trial de novo to
24 the circuit court of the county in which the district or
25 municipal court is located, using the procedures that apply to
26 criminal convictions with the following qualifications:

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

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

22 (3) Regardless of the civil nature of the
23 proceedings, the circuit court, in its discretion and for its
24 administrative convenience, may assign case numbers as for
25 criminal appeals and place the appeals on criminal dockets in
26 the same manner as criminal appeals from a district or
27 municipal court.

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

7 Section 10. (a) Except in cases where there is an
8 adjudication that no violation occurred or there is otherwise
9 a lawful determination that no civil penalty shall be imposed,
10 any unpaid civil fine authorized by this act:

11 (1) Shall result in nonissuance or nonrenewal of an
12 Alabama vehicle license for the vehicle involved in the
13 violation.

14 (2) Shall cause title of the vehicle involved in the
15 violation to not be transferred in Alabama.

16 (3) Shall cause the person held responsible for the
17 violation to be ineligible to obtain or renew an Alabama
18 driver's license, unless and until the civil fine plus any
19 late fee is paid to the county or municipal board of
20 education.

21 (b) No person may be arrested or incarcerated for
22 nonpayment of a civil fine.

23 (c) Any state or county official charged with
24 issuance or transfer of vehicle licenses or titles, or
25 issuance of drivers' licenses, may not issue or renew the
26 vehicle license, issue or transfer title of the vehicle, or
27 issue or renew the driver's license of the responsible person,

1 so long as the official has notice that a civil fine
2 authorized by this act is or remains unpaid. In cases in which
3 the county or municipal board of education has given a notice
4 of nonpayment to the appropriate licensing official and when
5 thereafter the civil fine has been paid, the county or
6 municipal board of education shall transmit notice of the
7 payment to the appropriate licensing official.

8 Section 11. (a) A civil violation of this act shall
9 not result in any punishment of a criminal nature, shall not
10 count as points and shall not be entered into any person's
11 official driving history, shall not be considered a criminal
12 conviction for any purpose, shall not be used to increase or
13 enhance punishment for a subsequent offense of a civil or
14 criminal nature, shall not be considered a moving violation,
15 and shall not be used by any insurance company to determine or
16 affect premiums or rates.

17 (b) The fact that a person is held liable or
18 responsible for a civil fine for a violation shall not be used
19 as evidence that the person was guilty of negligence or other
20 culpable conduct, but this fact shall not preclude evidence
21 generated by a device from being used as evidence in other
22 proceedings.

23 Section 12. Adoption by a county or municipal board
24 of the procedures under this act and the enforcement of this
25 act by a county or municipality shall not affect current
26 procedure and prosecutions commenced by issuance of a uniform
27 traffic ticket and complaint by a law enforcement officer or

1 otherwise. The issuance of a notice of violation as authorized
2 by this act shall preclude issuance of a uniform traffic
3 ticket and complaint for the same action, and issuance of a
4 uniform traffic ticket and complaint for a school bus
5 violation shall preclude issuance of a notice of violation as
6 authorized by this act. In the event both a uniform traffic
7 ticket and complaint and a notice of violation as authorized
8 by this act are issued for the same action, the one issued
9 first in time shall control and shall constitute a defense to
10 the other.

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

22 (b) As a condition precedent to the bringing of a
23 civil action, the person held responsible for payment of the
24 civil fine must first make written demand on the other person
25 for reimbursement of the civil fine, giving a minimum of 60
26 days to remit payment, and if reimbursement is fully made
27 within the 60-day period then the cause of action shall be

1 extinguished and no attorney fees or other damages shall
2 attach to the reimbursement.

3 Section 14. Automated devices may be purchased or
4 leased by a county or municipality.

5 Section 15. The provisions of this act are
6 severable. If any part of this act is declared invalid or
7 unconstitutional, that declaration shall not affect the part
8 which remains.

9 Section 16. This act shall become effective on the
10 first day of the third month following its passage and
11 approval by the Governor, or its otherwise becoming law.