

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 ENGROSSED

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9 A BILL

10 TO BE ENTITLED

11 AN ACT

12

13 Relating to the City of Brantley, Alabama, in
14 Crenshaw County; authorizing automated speeding enforcement in
15 the City of Brantley, 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 Brantley Municipal Court
23 over the civil violations and allowing appeals to the Crenshaw
24 County Circuit Court for trial de novo; creating a cause of
25 action for any person held responsible for payment of the
26 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 "Brantley Speed Limit Safety Act."

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

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

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

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

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

26 (4) OWNER. The owner of a motor vehicle as shown on
27 the motor vehicle registration records of the Alabama

Department of Revenue or the analogous department or agency of another state or country. The term shall not include a motor vehicle rental or leasing company when a motor vehicle registered by the company is rented or leased to another person under a rental or lease agreement with the company, in which event "owner" shall mean the person to whom the vehicle is rented or leased; nor shall the term include motor vehicles displaying dealer license plates, in which event "owner" shall mean the person to whom the vehicle is assigned for use; nor shall the term include the owner of any stolen motor vehicle, in which event "owner" shall mean the person who is guilty of stealing the motor vehicle.

(5) PHOTOGRAPHIC SPEEDING ENFORCEMENT OR AUTOMATED SPEEDING ENFORCEMENT SYSTEM. A camera system which is designed and installed to work in conjunction with an electrically operated speed detection device synchronized to automatically record digital imaging of a motor vehicle while speeding.

The device shall be capable of producing at least two recorded images, at least one of which is capable of clearly depicting the license plate of a motor vehicle that is speeding.

(6) SPEEDING VIOLATION. Any violation of a motor vehicle at a speed that exceeds 10 miles per hour over the legal maximum speed limits presented in or adopted pursuant to Article 8, Chapter 5A, Title 32, Sections 32-5A-170 to 32-5A-178, inclusive, Code of Alabama 1975; provided, however, that speed limits set by action of the Brantley City Council

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

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

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

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

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

19 Section 3. (a) The City of Brantley is empowered to
20 utilize an automated photographic speeding enforcement system
21 to detect and record speeding violations, to issue notices of
22 civil violations by mail, and to prosecute civil violations
23 for the recorded speeding violations which may occur within
24 the corporate limits of the City of Brantley as provided in
25 this act. A civil fine assessed under this act shall not
26 exceed one hundred dollars (\$100), and municipal court costs
27 may be assessed in the same manner and in the same amounts

prescribed for municipal criminal speeding violations prosecuted as a misdemeanor. An additional fee of ten dollars (\$10) shall be added to the Brantley Municipal Court costs authorized to be collected in connection with notices issued under this act. Court costs collected pursuant to this act shall be distributed in the same manner as prescribed by law for the distribution of municipal court costs for misdemeanor violations. The additional ten dollars (\$10) authorized by this act shall be paid to the Alabama Criminal Justice Information Center as compensation for record keeping with respect to speeding violation notices issued pursuant to this act.

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

(c) Prior to operating such an enforcement system, the City of Brantley shall make a public announcement and conduct a public awareness campaign of the use of an automated photographic speeding enforcement system a minimum of 30 days before using the devices. The City of Brantley may place photographic speeding enforcement systems at locations without public notice of the specific location, may change locations

1 without public notice, and may install and move as needed
2 decoy devices designed to resemble photographic speeding
3 enforcement systems.

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

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

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

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

25 (3) If a traffic violation is based on the vehicle
26 identification number, and the registered owner of the vehicle
27 is a rental car business, the law enforcement agency, before a

1 notice of violation may be issued, shall provide a written
2 notice to the rental car business that a notice of violation
3 may be issued to the rental car business if the rental car
4 business does not, within 30 days of receiving written notice,
5 provide to the issuing agency by return mail a statement under
6 oath stating the name and known mailing address of the
7 individual driving or renting the vehicle when the violation
8 occurred.

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

11 (1) Description of the speeding violation alleged.
12 (2) The date, time, and location of the violation.
13 (3) A copy of recorded images of the vehicle
14 involved in the violation.

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

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

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

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

24 a. The right to contest the imposition of the civil
25 penalty in an administrative adjudication.

26 b. The manner and time in which to contest the
27 imposition of the civil penalty.

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

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

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

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

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

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

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

Section 5. (a) The Brantley Municipal Court is vested with the power and jurisdiction to hear and adjudicate the civil violations provided for in this act and to issue orders imposing the civil fines and costs set out in this act.

(b) A person who receives a notice of violation may contest the imposition of the civil fine by submitting a

1 request for a hearing on the adjudication of the civil
2 violation, in writing, within 15 days of the 10th day after
3 the date the notice of violation is mailed. Upon receipt of a
4 timely request, the city shall notify the person of the date
5 and time of the adjudicative hearing by U.S. mail.

6 (c) Failure to pay a civil penalty or to contest
7 liability in a timely manner is an admission of liability in
8 the full amount of the civil fine assessed in the notice of
9 violation.

10 (d) The civil fine shall not be assessed if, after a
11 hearing, the Brantley Municipal Judge enters a finding of no
12 liability.

13 (e) If an adjudicative hearing is requested, the
14 city shall have the burden of proving the speeding violation
15 by a preponderance of the evidence. The reliability of the
16 automated photographic speeding enforcement system used to
17 produce the recorded image of the violation may be attested to
18 by affidavit of a trained technician. An affidavit of a
19 trained technician that alleges a violation based on an
20 inspection of the pertinent recorded image or video is
21 admissible in a proceeding under this act and is evidence of
22 the facts contained in the affidavit.

23 (f) The notice of violation, the recorded and
24 reproduced images of the violation, regardless of the media on
25 which they are recorded, accompanied by a certification of
26 authenticity of a trained technician, and evidence of
27 ownership of a vehicle as shown by copies or summaries of

1 official records shall be admissible into evidence without
2 foundation unless the municipal court finds there is an
3 indication of untrustworthiness, in which case the city shall
4 be given a reasonable opportunity to lay an evidentiary
5 foundation.

6 (g) All other matters of evidence and procedure not
7 specifically addressed in this act shall be subject to the
8 rules of evidence and the rules of procedure as they apply in
9 the small claims courts of this state, except that on any
10 appeal to Crenshaw County Circuit Court for trial de novo the
11 evidence and procedures shall be as for any civil case in the
12 circuit court except as otherwise provided in this act.

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

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

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

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

4 2. The motor vehicle was being operated as an
5 authorized emergency vehicle under Sections 32-5A-7 and
6 32-5-213 of the Code of Alabama 1975, and that the operator
7 was acting in compliance with that chapter.

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

11 4. The license plate depicted in the recorded image
12 of the violation was a stolen plate and being displayed on a
13 motor vehicle other than the motor vehicle for which the plate
14 had been issued.

15 5. The person who received the notice of violation
16 was not the owner of the motor vehicle at the time of the
17 violation.

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

25 (l) Notwithstanding anything in this act to the
26 contrary, a person who fails to pay the amount of a civil fine

1 or to contest liability in a timely manner is entitled to an
2 adjudicative hearing on the violation if:

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

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

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

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

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

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

23 (c) A person who is found liable after an
24 adjudicative hearing may appeal that finding of civil
25 liability to the Circuit Court of Crenshaw County, Alabama, by
26 filing a notice of appeal with the clerk of the municipal
27 court. The notice of appeal must be filed not later than the

1 14th day after the date on which the municipal court judge
2 entered the finding of civil liability. The filing of a notice
3 of appeal shall stay the enforcement of the civil fine
4 penalty. An appeal shall be determined by the circuit court by
5 trial de novo.

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

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

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

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

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

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

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

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

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

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

16 Section 11. No civil penalty may be imposed and no
17 adjudication of liability for a civil violation may be made
18 under this act if the operator of the vehicle was arrested or
19 was issued a citation and notice to appear by a sworn police
20 officer for a criminal violation of any portion of Title 32,
21 Chapter 5A, Article 8, including, but not limited to, Sections
22 32-5A-170 to 32-5A-178, inclusive, Code of Alabama 1975, or
23 any other municipal ordinance which embraces and incorporates
24 the statutes contained in that article, and which occurred
25 simultaneously with and under the same set of circumstances
26 which were recorded by the automated photographic speeding
27 enforcement system.

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

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

1 Section 14. This act shall become effective
2 immediately following its passage and approval by the
3 Governor, or its otherwise becoming law.

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3 Senate

4 Read for the first time and referred to the Senate
5 committee on Local Legislation.....

05-MAR-15

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7 Read for the second time and placed on the calen-
8 dar.....

10-MAR-15

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10 Read for the third time and passed as amended 17-MAR-15

11 Yeas 13
12 Nays 4
13 Abstaining 8

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Patrick Harris
Secretary