

1 HB376
2 166361-1
3 By Representatives Wilcox, Sessions, Davis, Gaston, Williams
4 (JW), Drummond, Clarke, Buskey and Bracy (N & P)
5 RFD: Mobile County Legislation
6 First Read: 31-MAR-15

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A BILL

10 TO BE ENTITLED

11 AN ACT

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13 Relating to Mobile County; to authorize electronic
14 enforcement related to overtaking a school bus in the county
15 or municipalities located in the county; to provide that the
16 unauthorized overtaking of a school bus would be a civil
17 offense; to authorize a county or city board of education
18 located in the county to approve, in its respective
19 jurisdiction, a civil process of electronic detection device
20 of a school bus violation enforcement; to require certain
21 procedures to be followed by a county or city board of
22 education using electronic school bus enforcement; to make the
23 owner of the vehicle involved in a violation presumptively
24 responsible for payment of a civil fine; to provide procedures
25 to contest responsibility or transfer responsibility to
another person; to provide for the jurisdiction of district
courts and municipal courts over the civil offenses; to

1 provide for procedures for administering this act; to allow a
2 law enforcement agency or a local governing entity to enter
3 agreements with vendors of electronic devices; to provide for
4 the destruction of recorded information after certain time
5 periods; to allow appeals to the Circuit Court of Mobile
6 County; to provide enforcement regarding licensing, titling,
7 and driver's license issuance and renewal until the civil fine
8 is paid.

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

10 Section 1. This act shall be known and may be cited
11 as the Mobile County School Bus Safety Act.

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

14 (1) BOARD. A county or city board of education, or
15 the governing body of a school system located in Mobile
16 County, Alabama.

17 (2) COURT. A district court located in Mobile
18 County, Alabama, if a school bus violation occurs in an
19 unincorporated area, or a municipal court located in Mobile
20 County, Alabama, if a violation occurs in an incorporated
21 municipality.

22 (3) ELECTRONIC DEVICE. Any camera or recording
23 device that uses a vehicle sensor and camera synchronized to
24 automatically record by video, photograph, or full motion
25 streaming video, a motor vehicle approaching or overtaking a
26 school bus that is stopped for the purpose of receiving or

discharging school children in violation of Section 32-5A-154,
Code of Alabama 1975.

(4) LAW ENFORCEMENT AGENCY. A law enforcement agency of a local political subdivision or local governing body located in Mobile County, Alabama, or a county or city school system located in Mobile County, Alabama, that is authorized to issue a citation for a violation of the state vehicle law or of local traffic laws or regulations.

(5) OWNER. The meaning ascribed to "owner" in Section 32-1-1.1, Code of Alabama 1975, except that the term may not include a motor vehicle rental or leasing company when a motor vehicle registered by the company is being operated by 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 a dealer license plate, in which event "owner" shall mean the person to whom the vehicle is assigned for use; nor shall the term include the owner of a vehicle that has been reported stolen to a law enforcement agency prior to the time of the violation, in which event "owner" shall mean the person who is found guilty of stealing the motor vehicle.

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

Section 3. Any county or city board of education located in Mobile County, Alabama, may authorize a process of

1 civil enforcement of a school bus violation pursuant to the
2 procedures set out in this act.

3 Section 4. (a) A county or city board of education
4 located in Mobile County, Alabama, may approve the use of
5 electronic devices to detect school bus violations by voting
6 at a public meeting of the board to approve the adoption of an
7 electronic school bus enforcement program.

8 (b) If approved by the county, city, or other school
9 district governing board located in Mobile County, Alabama,
10 and authorized by ordinance or resolution enacted by the
11 governing body of a local political subdivision, a law
12 enforcement agency or a political subdivision in consultation
13 with a school system, as the case may be, may enter into an
14 agreement with a private vendor for the installation,
15 operation, notice processing, and administration and
16 maintenance of school bus electronic devices on buses within
17 the school system's fleet whether owned or leased.

18 (c) A county or city board of education located in
19 Mobile County, Alabama, may contract for the operation of a
20 school bus violation enforcement program authorized by this
21 act through intergovernmental agreements with the county or
22 municipal law enforcement offices and the district and
23 municipal courts located in Mobile County, Alabama.

24 (d) A civil fine, not to exceed three hundred
25 dollars (\$300), may be imposed for a school bus violation for
26 which a notice of violation is issued pursuant to this act.
27 All such fines shall be paid, less the costs to administer,

operate, and maintain the program, as follows: 20 percent of the remainder, after costs of operation identified above, to the county or municipal governing body located in Mobile County, Alabama, where the offense was committed; 60 percent of the remainder, after costs of operation identified above, to the school system where the offense was committed; 10 percent of the remainder, after costs of operation identified above, to the license commissioner; and 10 percent of the remainder, after costs of operation identified above, to the sheriff for highway safety enforcement.

Section 5. (a) After review of the violation by law enforcement, any county or municipal governing body or law enforcement office located in Mobile County, Alabama, operating an electronic device shall send the owner of a vehicle that has been detected by the device as being involved in a school bus violation, a notice of violation by U. S. mail. If there is more than one owner, the notice may be issued to the first person listed on the title or other evidence of ownership, or jointly to all listed owners.

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

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

(2) The license tag number of the vehicle.

(3) The violation charged.

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

(5) The photographic images or video of the vehicle and vehicle license plate only that are captured by the electronic device. The image or video shall be reviewed by a law enforcement officer of Mobile County or municipality located in Mobile County, Alabama, who shall certify the notice of violation. Under no circumstances may the image or video contain images of the face of the driver or passengers in the vehicle.

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

(7) The procedure under which the notice of violation may be contested, or the procedure and conditions under which responsibility for payment of the civil fine may be transferred to another individual who was operating the vehicle at the time of the violation.

(8) That failure to timely pay, contest, or transfer responsibility to another shall constitute an admission that the owner is responsible, and that failure to pay a fine for which the owner is determined to be responsible shall result in the inability to obtain or renew in Alabama the license of the vehicle involved or to obtain or transfer its title in Alabama, or for the person held to be responsible to obtain or renew an Alabama driver's license, unless and until the civil fine is paid to the local governing body.

(9) The date by which the local governing body must receive payment of the civil fine, receive notice by the owner that responsibility is being transferred to another, or receive notice by the owner that the notice of violation is being contested, shall be clearly and prominently stated on the notice of violation. The time may not be less than 30 days after the notice of violation is mailed or personally delivered.

(c) All recorded video images and other photographic information obtained through the use of school bus violation detection monitoring systems authorized in this act that do not identify a violation shall be destroyed by any city, town, school system or vendor within 30 days of the date the image was recorded, unless otherwise ordered by a court of competent jurisdiction. All photographs and other recorded information that identify a violation shall be destroyed within 30 days of final disposition of proceedings related to the enforcement or defense of a violation, unless otherwise ordered by a court of competent jurisdiction.

(d) All photographic evidence regardless of whether it is a still photograph or video shall remain the sole property of Mobile County or municipal law enforcement agency which reviews the photographic evidence and shall be available to a third party, other than the alleged violator, pursuant only to a valid court order.

(e) Except as expressly provided, all civil actions based on evidence produced by a school bus violation detection

monitoring system shall follow the procedures set out in this act.

Section 6. The owner of a vehicle that has been issued a notice of violation shall be responsible for payment of the civil fine unless the owner successfully transfers responsibility, there is an adjudication that no violation occurred, or there is an otherwise lawful determination that no civil penalty shall be imposed. All owners of a vehicle who are mailed or receive a notice of violation shall be jointly and severally liable for payment of the civil fine. The county or municipality may collect the civil fine in the same manner as any other debt owed to Mobile County or municipality located in Mobile County, Alabama.

Section 7. (a) The owner may not be responsible for payment of the civil fine resulting from a notice of violation if each of the following conditions apply:

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

(2) The owner signs and timely transmits to the county or municipality on the form provided with the notice of violation and in accordance with the procedure set out on the notice of violation a statement that he or she was not operating the vehicle at the time of the violation, and that the person who was operating the vehicle was not the agent or employee of the owner.

(3) The owner timely transmits to the county or municipality on the form provided with the notice of violation and in accordance with the procedure set out on the notice of violation the name and mailing address of the person who was operating the vehicle.

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

(b) Whenever a county or municipality located in Mobile County, Alabama, timely receives the information required from the owner to transfer responsibility, it shall issue a new notice of violation to the person to whom the owner transferred responsibility with an explanation as to why the person is receiving the notice of violation, in the same manner as if the person were the owner of the vehicle. The person shall be responsible for payment of the civil fine unless the person either:

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

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

(c) In cases in which a person other than the owner denies he or she was the operator and declines responsibility, a new notice shall be issued to the owner stating that the other person declined responsibility and giving the owner the option of paying the civil fine or contesting the violation by a stated date that shall be not less than 30 days from the mailing of the new notice. The owner may not attempt to transfer responsibility more than one time using this procedure. If the owner chooses to contest the notice of violation after the owner has unsuccessfully attempted to transfer responsibility using this procedure, and the owner claims in defense that another person was the operator of the vehicle, the court may take appropriate action to cause the owner and the other person to appear at the same hearing to determine responsibility.

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

(b) District and municipal courts of Mobile County, Alabama, are hereby vested with the power and jurisdiction to

1 adjudicate a notice of violation issued pursuant to this act
2 as a civil offense whenever the offense is alleged to have
3 occurred within the geographic jurisdiction of the court.

4 (c) The following procedures shall apply to
5 proceedings to contest a notice of violation issued pursuant
6 to this act:

7 (1) Upon receipt of a timely notice that the person
8 receiving the notice of violation is contesting the notice,
9 Mobile County or a municipality located in Mobile County shall
10 cause the case to be docketed in court and shall issue notice
11 of the hearing date.

12 (2) The issuance of a notice of violation shall be
13 prima facie evidence that the person who received the notice
14 of violation was operating the vehicle at the time of the
15 violation.

16 (3) If there is a dispute between the owner and
17 another as to which person was operating the vehicle at the
18 time of the alleged violation, or a dispute between joint
19 owners, it shall be presumed that the owner was operating the
20 vehicle, and if there are joint owners, the presumption shall
21 follow the order the owners are listed on the title or other
22 evidence of ownership. However, a court may determine the
23 identity of the operator of the vehicle based on any admitted
24 evidence.

25 (4) The notice of violation, any evidence of the
26 violation produced by a device, and evidence of ownership of a
27 vehicle as shown by copies or summaries of official records

1 shall be admissible into evidence without foundation unless a
2 court otherwise requires a foundation.

3 (5) All other matters of evidence and procedure not
4 specifically addressed in this act shall be subject to the
5 rules of procedure as provided in this act. On any appeal to
6 the Circuit Court of Mobile County, Alabama, the procedures
7 shall be as for any civil case in the Circuit Court of Mobile
8 County, Alabama.

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

11 (7) Whenever payment of a civil fine is due, the
12 amount of the civil fine may not be increased, decreased, or
13 remitted by the court, and the liability may be satisfied only
14 by payment.

15 (8) A civil fine assessed under this act may not
16 exceed three hundred dollars (\$300) and court costs shall be
17 assessed only in contested cases in the same manner and in the
18 same amounts prescribed for a violation prosecuted as a
19 misdemeanor under Section 32-5A-154, Code of Alabama 1975.

20 Court costs collected pursuant to this act shall be
21 distributed in the same manner as prescribed by law for the
22 distribution of court costs for misdemeanor violations. An
23 additional fee of ten dollars (\$10) shall be collected by the
24 district or the appropriate municipal court located Mobile
25 County, Alabama, in connection with notices issued under this
26 act to be paid to the Alabama Criminal Justice Information
27 Center and deposited in the State Treasury to the credit of

1 the Criminal Justice Information System Automation Fund as
2 compensation for record keeping and transaction processing
3 with respect to violation notices issued under this act. Any
4 civil fine assessed under this act and collected by the court
5 shall be remitted to the county or municipality in which the
6 violation occurred

7 Section 9. A person who contests a notice of
8 violation and is adjudicated by the court to be responsible
9 for the civil fine may appeal the adjudication for a trial de
10 nova to the Circuit Court of Mobile County, Alabama, in which
11 the district or municipal court is located using the
12 procedures that apply to criminal convictions with the
13 following qualifications:

14 (1) The proceedings shall retain their civil nature
15 on appeal with the Circuit Court applying the preponderance of
16 the evidence standard.

17 (2) The person appealing must, as a condition
18 precedent to appeal, pay the civil fine in full, and failure
19 to do so shall divest the Circuit Court of Mobile County,
20 Alabama. If, on appeal the Circuit Court finds that the person
21 is not responsible for payment of the civil fine, the county
22 or municipality located in Mobile County, Alabama, shall
23 refund the same without interest within 15 days of receipt of
24 notice of the disposition from the Circuit Court. If the
25 person is adjudicated by the Circuit Court to be responsible
26 for payment of the civil fine, then no additional fine may be
27 imposed by the Circuit Court, but court costs of the Circuit

1 Court shall be owed by the person adjudicated responsible with
2 100 percent of the court costs retained by the Circuit Court.
3 Court costs in the Circuit Court shall be calculated as are
4 court costs for criminal appeals from the district or
5 municipal court of Mobile County, Alabama, and if the Circuit
6 Court finds the person appealing to not be responsible, no
7 court costs shall be owed by the county or city boards of
8 education located in Mobile County, Alabama.

9 (3) Regardless of the civil nature of the
10 proceedings, the Circuit Court of Mobile County, Alabama, in
11 its discretion and for its administrative convenience, may
12 assign case numbers as for criminal appeals and place the
13 appeals on criminal dockets in the same manner as criminal
14 appeals from district or municipal court of Mobile County,
15 Alabama.

16 Section 10. If the evidence produced by an
17 electronic device does not produce an image or video of the
18 license plate with sufficient clarity for a law enforcement
19 officer to determine the identity of the owner, and if the
20 identity cannot otherwise be reliably established, then no
21 notice of violation may be issued pursuant to this act.

22 Section 11. (a) Except in cases where there is an
23 adjudication that no violation occurred or there is otherwise
24 a lawful determination that no civil penalty shall be imposed,
25 any unpaid civil fine authorized by this act:

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

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

(3) Shall cause the person held responsible for the violation to be ineligible to obtain or renew an Alabama driver's license, unless and until the civil fine plus any late fee is paid to the county or municipal governing body.

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

(c) Any state or county official charged with issuance or transfer of vehicle licenses or titles, or issuance of driver's licenses, may not issue or renew the vehicle license, issue or transfer title of the vehicle, or issue or renew the driver's license of the responsible person, so long as the official has notice that a civil fine authorized by this act is or remains unpaid. In cases in which Mobile County or a municipality of Mobile County, Alabama, has given a notice of nonpayment to the appropriate licensing official and when thereafter the civil fine has been paid, Mobile County or a municipality of Mobile County, Alabama, shall transmit notice of the payment to the appropriate licensing official.

Section 12. (a) A civil violation of this act may not result in any punishment of a criminal nature, may not count as points and may not be entered into any person's

official driving history, may not be considered a criminal conviction for any purpose, may not be used to increase or enhance punishment for a subsequent offense of a civil or criminal nature, may not be considered a moving violation, and may not be used by any insurance company to determine or affect premiums or rates.

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

Section 13. Adoption by a county or city board of education located in Mobile County, Alabama, of the procedures under this act and the enforcement of this act by Mobile County or a municipality located in Mobile County, Alabama, may not affect current procedure and prosecutions commenced by issuance of a uniform traffic ticket and complaint by a law enforcement officer or otherwise. The issuance of a notice of a violation as authorized by this act shall be subordinate to the issuance of a uniform traffic ticket and complaint for the same action if issued by a sworn law enforcement officer, and issuance of a uniform traffic ticket and complaint for a school bus violation shall preclude issuance of a notice of violation as authorized by this act. If both a uniform traffic ticket and complaint and a notice of violation as authorized by this act are issued for the same action, the one issued by

1 a sworn law enforcement officer pursuant to Section 32-5A-154,
2 Code of Alabama 1975, shall control and shall constitute a
3 defense to the other.

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

15 (b) As a condition precedent to the bringing of a
16 civil action under subsection (a), the person held responsible
17 for payment of the civil fine must first make written demand
18 on the other person for reimbursement of the civil fine,
19 giving a minimum of 60 days to remit payment, and if
20 reimbursement is fully made within the 60-day period then the
21 cause of action shall be extinguished and no attorney fees or
22 other damages shall attach to the reimbursement.

23 Section 15. The provisions of this act are
24 severable. If any part of this act is declared invalid or
25 unconstitutional, that declaration may not affect the part
26 which remains.

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