

1 SB280
2 183369-1
3 By Senator Waggoner
4 RFD: County and Municipal Government
5 First Read: 07-MAR-17

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

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

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

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

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

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

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

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

6
7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 Relating to municipalities; to authorize the city
12 council or other governing body of a municipality to adopt a
13 municipal ordinance providing for parking enforcement; to
14 provide for civil violations and fines; to provide certain
15 procedures to be followed by a municipality for parking
16 enforcement; to provide that the owner of a vehicle unlawfully
17 parked shall be presumptively liable, but providing procedures
18 to contest liability; to provide for jurisdiction in the
19 municipal court of a municipality for civil violations,
20 allowing appeals to the circuit court of the county where the
21 municipality is situated for trial de novo without a jury; and
22 to provide a means for collection of outstanding parking
23 tickets to include immobilization and impoundment.

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

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

7 (2) IMMOBILIZATION. The act of placing on a parked
8 motor vehicle a lockable vehicle wheel clamp or boot or
9 similar device that is designed to be placed on a parked
10 vehicle to prevent the operation of the vehicle until the
11 device is unlocked and removed. The term "boot" shall include
12 the devices used for this purpose. Such devices shall be a
13 high visibility color, such as yellow, orange, or red. No
14 cables, chains, ropes, or other similar means of vehicle
15 immobilization shall be allowed.

16 (3) IMPOUNDMENT. Removing a vehicle from a public
17 street or right-of-way by towing to a place designated by the
18 municipality.

19 (4) OWNER. The owner or owners, if jointly
20 registered, of a motor vehicle as shown on motor vehicle
21 registration or title records of the Department of Revenue or
22 the analogous department or agency of another state or
23 country. The term shall not include a motor vehicle rental or
24 leasing company when a motor vehicle registered by the company
25 is rented or leased to another person under a rental or lease
26 agreement with the company, in which event "owner" shall mean
27 the person to whom the vehicle is rented or leased; nor shall

1 the term include motor vehicles displaying dealer license
2 plates, in which event "owner" shall mean the person to whom
3 the vehicle is assigned for use; nor shall the term include
4 the owner of any stolen motor vehicle, in which event "owner"
5 shall mean the person who is guilty of stealing the motor
6 vehicle.

7 (5) PARKING VIOLATION. Any violation of an ordinance
8 created pursuant to this act for an offense related to
9 parking.

10 Section 3. (a) Each municipality is empowered to
11 enforce parking regulations by issuing notices of civil
12 parking violations by affixing a parking ticket on the
13 windshield of an unlawfully parked vehicle and by prosecuting
14 civil violations for the parking violations which may occur
15 within the municipality, as provided in this act.

16 (b) A civil fine assessed under this act may not
17 exceed one hundred dollars (\$100) with the exception of
18 handicap parking violations which shall be a minimum of one
19 hundred dollars (\$100), but may not exceed the maximum amount
20 authorized by law. Municipal court costs for parking offenses
21 may be assessed only in contested cases in an amount not to
22 exceed one hundred dollars (\$100) which shall be retained by
23 the municipality.

24 (c) A parking ticket issued under this act for
25 parking violations shall contain the following information:

26 (1) Description of the parking violation alleged.

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

1 (3) The amount of the civil penalty to be imposed
2 for the violation.

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

5 (5) That the person named in the notice of violation
6 may pay the civil penalty in lieu of appearing at an
7 administrative adjudication hearing at a date, time, and place
8 shown on the ticket.

9 (6) That failure to pay the civil penalty or to
10 contest liability is an admission of liability.

11 (7) Any other information deemed necessary by the
12 municipality.

13 Section 4. (a) The municipal court of the
14 municipality is vested with the power and jurisdiction to hear
15 and adjudicate the civil violations provided for in this act
16 and to impose the civil fines and costs set out in this act.
17 When a hearing is requested for a disputed parking ticket, the
18 parking offense dispute shall be administratively adjudicated
19 by a magistrate.

20 (b) A person who receives a parking ticket may
21 contest the imposition of the civil fine by appearing for an
22 administrative hearing on the date, time, and place on the
23 ticket or for hearing as described in any mailed notice to the
24 registered owner after the initial date as set on the parking
25 ticket.

26 (c) Failure to pay a civil penalty or to contest
27 liability in a timely manner is an admission of liability in

1 the full amount of the civil fine assessed in the notice of
2 violation, is a debt owed to the municipality to be collected
3 as all other debts owed to the municipality, as provided for
4 in this act, and is a waiver of an administrative hearing for
5 a disputed ticket.

6 (d) The civil fine and costs shall not be assessed
7 if, after a hearing, the magistrate of the municipality enters
8 a finding of no liability.

9 (e) If an administrative hearing is requested, the
10 municipality shall have the burden of proving the parking
11 violation by a preponderance of the evidence.

12 (f) The notice of violation and evidence of
13 ownership of a vehicle as shown by copies or summaries of
14 vehicle registration, title, and other ownership records shall
15 be admissible into evidence without foundation unless the
16 magistrate finds there is an indication of untrustworthiness,
17 in which case the municipality shall be given a reasonable
18 opportunity to lay an evidentiary foundation.

19 (g) A person who is found liable for the parking
20 violation after an administrative hearing is liable for court
21 costs and fees as set out herein in addition to the amount of
22 the civil fine assessed for the violation. A person who is
23 found liable for a parking violation after an administrative
24 hearing shall pay the civil fine and costs within 14 days of
25 the hearing.

26 (h) Whenever payment of a civil fine is owed to the
27 municipality, the amount of the civil fine as set by ordinance

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

3 (i) An owner is prima facie responsible for a
4 parking violation; provided, however, that it shall be an
5 affirmative defense to the imposition of civil liability under
6 this act to be proven by a preponderance of the evidence that:

7 (1) The motor vehicle was stolen and timely reported
8 to law enforcement or was being operated by a person other
9 than an owner of the vehicle without the effective consent of
10 an owner.

11 (2) The license plate described in the parking
12 ticket was a stolen plate, timely reported to law enforcement,
13 and being displayed on a motor vehicle other than the motor
14 vehicle for which the plate had been issued.

15 (3) The person or persons shown as owner had
16 transferred ownership of the vehicle to another person prior
17 to the parking violation.

18 Section 5. (a) Following an administrative hearing,
19 the magistrate shall issue a finding stating the following:

20 (1) Whether the person charged with the parking
21 violation is liable for the violation.

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

25 (b) A person who is found liable after an
26 administrative hearing may appeal the finding to the circuit
27 court of the county where the city hall of the municipality is

1 located by filing a notice of appeal with the clerk of the
2 municipal court, filing a copy of the notice of appeal in the
3 circuit court, and paying the circuit court civil filing fee.
4 The notice of appeal must be filed not later than the 14th day
5 after the date on which the magistrate entered the finding of
6 civil liability. The filing of a notice of appeal shall stay
7 the enforcement of the civil fine penalty. An appeal shall be
8 determined by the circuit court trial de novo without a jury.

9 Section 6. The circuit court shall apply the
10 preponderance of the evidence standard to a civil appeal under
11 Section 5 (b). The evidence and procedures shall be as for any
12 civil case in the circuit court except that there shall be no
13 discovery permitted. The municipality shall be responsible for
14 providing an attorney to represent the municipality and to
15 prosecute the civil proceedings in the circuit court.

16 Section 7. The municipality may provide by ordinance
17 that a late fee not exceeding twenty-five dollars (\$25) shall
18 attach to untimely paid civil fines that are authorized in
19 this act. No person may be arrested or incarcerated for
20 nonpayment of a civil fine or late fee. The late fee limit may
21 be increased every five years by an amount equal to the
22 percentage increase, if any, in the U.S. Department of Labor's
23 Producer Price Index during that five-year period, rounded to
24 the nearest dollar, with the base year being 2017.

25 Section 8. (a) A municipality is authorized to
26 utilize vehicle immobilization, or impoundment, or both, to
27 facilitate the enforcement of parking ordinances and

1 collection of parking fines which shall adhere to the
2 following criteria:

3 (1) When an owner of a vehicle or vehicles has three
4 or more unpaid past due parking tickets, including parking
5 tickets issued prior to the effective date of this act, the
6 municipality shall cause a warning notice of impending
7 immobilization, impoundment, or both, to be sent by first
8 class mail to the owner listing the parking violations
9 including the date of offense, the violation, the license tag
10 number, if any, and the location of the offense.

11 (2) The owner may appeal the warning notice to the
12 person, department, or agency designated by the municipality
13 to obtain rescission of the warning notice by challenging the
14 accuracy of the information in the notice 10 days of the date
15 of the postmark date of the notice.

16 (3) A warning notice shall be canceled by the
17 municipality when all past due parking tickets and other
18 parking related fees are paid.

19 (4) Upon the expiration of 10 days from a warning
20 notice and failure of the owner to appeal the warning notice
21 or obtain a rescission of the warning notice, any vehicle
22 registered or titled to the notified owner may be immobilized
23 when found parked legally or illegally on any public street or
24 right-of-way in the municipality.

25 (5) Immediately after a vehicle is immobilized, the
26 person immobilizing the vehicle shall affix at the rearmost
27 portion of the window adjacent to the driver's seat of the

1 vehicle a notice sticker or decal measuring no less than eight
2 by four inches containing a warning that any attempt to move
3 the vehicle may result in damage to the vehicle. The notice
4 shall state the date and time the vehicle was immobilized; the
5 municipality responsible for immobilizing the vehicle; the
6 make, model, color, and license tag number, if any, of the
7 immobilized vehicle; the reason for immobilization; and a
8 contact number for requesting removal of the immobilization
9 device; provided, however, that the sticker may be affixed in
10 a location that is immediately and reasonably visible to the
11 operator of a motor vehicle if there is no window adjacent to
12 the driver's seat. Such sticker shall be a high visibility
13 color, such as yellow, orange, or red and lettering shall be
14 black.

15 (6) It shall be unlawful for any person who is not
16 authorized by the municipality, including the employee or
17 agent of any towing company, to remove or alter, any restraint
18 from any vehicle after immobilization or to move any vehicle
19 after immobilization.

20 (7) A municipality is authorized to charge an
21 immobilization removal fee up to sixty-five dollars (\$65). The
22 immobilization removal fee limit may be increased every five
23 years by an amount equal to the percentage increase, if any,
24 in the U.S. Department of Labor's Producer Price Index during
25 that five-year period, rounded to the nearest dollar, with the
26 base year being 2017.

1 (8) The municipal ordinance shall provide to the
2 vehicle owner or authorized user an immediate appeal of the
3 vehicle immobilization during regular business hours and
4 provide for payment of outstanding fines and fees to have the
5 immobilization device removed 24 hours a day, seven days a
6 week.

7 (9) A municipality shall not be liable for any
8 damage caused by immobilization by a third party.

9 (b) Any vehicle which is not removed from city
10 property within 24 hours of immobilization shall be deemed
11 unclaimed and ordered impounded.

12 (c) A municipality may impound a vehicle by
13 relocating the vehicle by towing to a place and in a manner
14 authorized by the municipality.

15 (d) If a vehicle is impounded pursuant to this
16 section, the owner has the right to request in writing a
17 post-impoundment administrative hearing within 21 days of an
18 impoundment to contest the validity of the impoundment. The
19 hearing officer and procedure shall be as designated in the
20 ordinance and shall take place not later than three business
21 days from receipt of the written request for administrative
22 hearing for impoundment. The decision of the hearing officer
23 is appealable to the applicable circuit court upon payment of
24 the circuit court civil filing fee within 14 days of the
25 decision of the hearing officer for a de novo trial without
26 jury.

1 (e) A vehicle immobilized or impounded under this
2 section may be released:

3 (1) By payment by the owner of the total amount due,
4 including all outstanding parking tickets, all immobilization,
5 impoundment, and storage fees within 21 days of the
6 immobilization or impoundment, or both.

7 (2) By payment by a secured party lien holder after
8 the total amount due on behalf of the owner within 21 days of
9 the immobilization or impoundment, or both, and the execution
10 of a hold-harmless agreement that releases the municipality
11 and its officers, employees, and agents from all liability
12 with respect to the vehicle.

13 (3) As otherwise provided in the ordinance.

14 (f) If the owner, secured party lien holder, or
15 either, fails to secure release of the vehicle within 21 days
16 of the date of impoundment the vehicle shall be deemed
17 abandoned and may be sold at public auction by following the
18 same procedure set out in Section 32-13-1 et seq., Code of
19 Alabama 1975, for other abandoned vehicles.

20 Section 9. Any person against whom an adjudication
21 of liability for a parking violation is made pursuant to this
22 act, or an ordinance passed pursuant thereto, and who actually
23 pays the civil fine imposed shall have a cause of action
24 against any person who may be shown to have been operating the
25 vehicle recorded at the time of the violation for the amount
26 of the civil fine actually paid plus any consequential or
27 compensatory damages and a reasonable attorney fee, without

1 regard to the rules regarding joint and several liability,
2 contribution, or indemnity; provided, however, that as a
3 condition precedent to the bringing of a civil action, the
4 person held responsible for payment of the civil fine must
5 first make written demand on the other person for
6 reimbursement of the civil fine, giving a minimum of 60 days
7 to remit payment, and if reimbursement is fully made within
8 the 60-day period then the cause of action shall be
9 extinguished and no attorney fees or other damages shall
10 attach to the reimbursement. Any cause of action brought
11 pursuant to this section must be commenced within two years
12 from the date of the payment of the civil fine for a parking
13 violation.

14 Section 10. The provisions of this act are
15 severable. If any part of this act is declared invalid or
16 unconstitutional, that declaration shall not affect the part
17 which remains.

18 Section 11. This act shall become effective
19 immediately following its passage and approval by the
20 Governor, or its otherwise becoming law.