

**House Jefferson County Legislation Engrossed
Substitute for HB107**



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A BILL
TO BE ENTITLED
AN ACT

Relating to Jefferson County; to prohibit certain forms of street racing and exhibition driving; to authorize the county commission to assess civil penalties for violations; to authorize the towing and impoundment of a motor vehicle for a violation; to provide for the administration and enforcement procedures; and to provide adjudicative and appellate procedures.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. (a) This act shall only apply to Jefferson County.

(b) As used in this act, the following terms have the following meanings:

(1) COUNTY COMMISSION. The Jefferson County Commission.

(2) MOTOR VEHICLE BURNOUT. The practice of intentionally keeping a motor vehicle stationary by using the brake pedal or parking brake of the vehicle, while simultaneously engaging the gas pedal to allow one set of wheels to spin. The practice may result in the vehicle tires being heated to a sufficient degree so as to cause smoke to appear.



**House Jefferson County Legislation Engrossed
Substitute for HB107**

29 (3) MOTOR VEHICLE DONUT. The intentional and
30 unnecessary operation of a motor vehicle in a manner that
31 causes the vehicle to move in a zigzag or circular course or
32 to gyrate or spin around. The term does not include
33 maneuvering the otherwise lawfully operated vehicle when
34 necessary to avoid collision, injury, or damage.

35 (4) MOTOR VEHICLE SPEED CONTEST. The operation of two
36 or more vehicles at accelerated speeds from a starting point
37 to an ending point in a competitive attempt to outdistance
38 each other, or the operation of one or more vehicles over a
39 common selected course from a starting point to an ending
40 point for the purpose of comparing the relative speeds or
41 power of acceleration of such vehicle or vehicles within a
42 certain distance or time limit. The term includes drag racing.

43 (5) MOTOR VEHICLE EXHIBITION OF SPEED. The operation of
44 one or more vehicles from a starting point to an ending point,
45 or over a common selected course, for the purpose of
46 exhibiting the speed or power of the vehicle.

47 (6) MOTOR VEHICLE SIDESHOW. An event in which one or
48 more persons perform motor vehicle stunts, including burnouts,
49 donuts, motor vehicle speed contests, motor vehicle
50 exhibitions of speed, or reckless driving, for spectators.

51 (7) OFF STREET PARKING FACILITY. Any public or private
52 lot, building, or space used for the parking of motor
53 vehicles, regardless of whether charges are made for the use
54 thereof.

55 (8) TRAFFIC ENFORCEMENT OFFICER. Any parking
56 enforcement officer or traffic enforcement officer, as



**House Jefferson County Legislation Engrossed
Substitute for HB107**

57 designated by the Jefferson County Commission or a
58 municipality within Jefferson County, who is not required to
59 be certified by the Alabama Peace Officers' Standards and
60 Training Commission; and any law enforcement officer.

61 Section 2. A person may not engage in, or aid or abet
62 the furtherance of, any of the following on a public road or
63 highway, off street parking facility, or any other parcel of
64 public or private property, without the consent of the owner
65 of that property:

66 (1) A motor vehicle speed contest.

67 (2) A motor vehicle exhibition of speed.

68 (3) A motor vehicle sideshow.

69 (4) A motor vehicle burnout, motor vehicle donut, or
70 other reckless driving maneuver.

71 Section 3. (a) Where an automated photographic or video
72 traffic enforcement system is authorized to be used by
73 existing law, the traffic enforcement system may be used to
74 assist in the detection and recording of violations of this
75 act. A traffic enforcement officer may issue notices of civil
76 violations by mail and prosecute civil violations for the
77 recorded or observed violations which occur within the county
78 limits.

79 (b) In addition, the county commission, by resolution,
80 may provide for a civil penalty to be assessed upon an
81 adjudication of a violation of this act.

82 Section 4. (a) A traffic enforcement officer who
83 observes a violation of this act, or who obtains proof of a
84 violation through the use of an automated photographic or



**House Jefferson County Legislation Engrossed
Substitute for HB107**

85 video traffic enforcement system, may cause a motor vehicle
86 operated in violation of this section to be towed and
87 impounded at the registered owner's expense as follows:

88 (1) On a first violation, for a period of 10 days.

89 (2) On a second violation, for a period of 20 days.

90 (3) On a third or subsequent violation, for a period of
91 30 days.

92 (b) The traffic enforcement officer making the
93 impoundment shall direct an approved towing service to tow the
94 vehicle to the garage of the towing service, storage lot, or
95 other place of safety and maintain custody and control of the
96 vehicle for the required amount of time. Thereafter, the
97 registered owner or authorized agent of the registered owner
98 may claim the vehicle by paying all reasonable and customary
99 towing and storage fees for the services of the towing
100 company. The vehicle shall then be released to the registered
101 owner or an agent of the owner.

102 (c) Any towing service or towing company removing the
103 vehicle at the direction of a traffic enforcement officer in
104 accordance with this act shall have a lien on the motor
105 vehicle for all reasonable and customary fees relating to the
106 towing and storage of the motor vehicle. This lien shall be
107 subject and subordinate to all prior security interests and
108 other liens affecting the vehicle whether evidenced on the
109 certificate of title or otherwise. Notice of any sale or other
110 proceedings relative to this lien shall be given to the
111 holders of all prior security interests or other liens by
112 official service of process at least 15 days prior to any sale



**House Jefferson County Legislation Engrossed
Substitute for HB107**

113 or other proceedings.

114 (d) Subject to the requirements of this act, the
115 provisions of Chapter 13 of Title 32, Code of Alabama 1975,
116 relating to the impoundment and sale of abandoned motor
117 vehicles, shall apply to any person in possession of a motor
118 vehicle impounded pursuant to this section.

119 (e) Notwithstanding anything in this section to the
120 contrary, a person who is adjudicated to have not committed a
121 violation of this section shall not be required to pay any
122 reasonable and customary towing and storage fees for the
123 services of the towing company. All reasonable and customary
124 towing and storage fees shall be paid to the towing company by
125 the governing body employing the traffic enforcement officer
126 who directed the vehicle to be towed as required by Section
127 4 (b) .

128 Section 5. (a) The district court is vested with the
129 power and jurisdiction to hear and adjudicate the civil
130 violations provided for in this act, and to issue orders
131 imposing any civil penalty authorized by the county
132 commission, and to order the towing and impoundment of a motor
133 vehicle in violation of this act.

134 (b) A person who receives a notice of violation may
135 contest the imposition of the civil penalty or the towing and
136 impoundment of the motor vehicle by submitting a request for a
137 hearing on the adjudication of the civil violation, in
138 writing, within 15 days of the 10th day after the date the
139 notice of violation is mailed. Upon receipt of a timely
140 request, the county commission shall notify the person of the



**House Jefferson County Legislation Engrossed
Substitute for HB107**

141 date and time of the adjudicative hearing.

142 (c) Failure to pay a civil penalty or to contest
143 liability as provided in the notice of violation.

144 (d) The civil penalty and court costs shall not be
145 assessed if, after a hearing, the court enters a finding of no
146 liability. In addition, the person shall not be required to
147 pay any costs or fees or the towing or impoundment of the
148 motor vehicle.

149 (e) If an adjudicative hearing is requested, the county
150 commission shall have the burden of proving the violation by a
151 preponderance of the evidence. The reliability of a
152 photographic traffic signal enforcement system used to produce
153 the recorded image of the violation may be attested to by
154 affidavit of a trained technician. An affidavit of a trained
155 technician that alleges a violation based on an inspection of
156 the pertinent recorded image is admissible in a proceeding
157 under this act and is evidence of the facts contained in the
158 affidavit.

159 (f) The notice of violation, the recorded and
160 reproduced images of the traffic signal violation, regardless
161 of the media on which they are recorded, accompanied by a
162 certification of authenticity of a trained technician, and
163 evidence of ownership of a vehicle as shown by copies or
164 summaries of official records shall be admissible into
165 evidence without foundation unless the court finds there is an
166 indication of untrustworthiness, in which case the county
167 commission shall be given a reasonable opportunity to lay an
168 evidentiary foundation.



**House Jefferson County Legislation Engrossed
Substitute for HB107**

169 (g) All other matters of evidence and procedure not
170 specifically addressed in this part shall be subject to the
171 rules of evidence and the rules of procedure as they apply in
172 the small claims courts of this state, except that on any
173 appeal to the circuit court for trial de novo the evidence and
174 procedures shall be as for any civil case in the circuit court
175 except as otherwise provided in this act.

176 (h) A person who is found liable for the civil
177 violation after an adjudicative hearing or who requests an
178 adjudicative hearing and thereafter fails to appear at the
179 time and place of the hearing is liable for court costs and
180 fees set out herein in addition to the amount of the civil
181 penalty assessed for the violation. A person who is found
182 liable for a civil violation after an adjudicative hearing
183 shall pay any civil penalty and court costs assessed by the
184 court within 10 days of the hearing.

185 (i) Whenever payment of a civil penalty is owed to the
186 county commission, the amount of the civil penalty as set by
187 resolution may not be increased, decreased, or remitted by the
188 court, and the liability may be satisfied only by payment.

189 Section 6. (a) It shall be an affirmative defense to
190 the imposition of civil liability under this act, to be proven
191 by a preponderance of the evidence, that:

192 (1) The motor vehicle was stolen or being operated by a
193 person other than the owner of the vehicle without the
194 effective consent of the owner.

195 (2) The license plate depicted in the recorded image of
196 the violation was a stolen plate and being displayed on a



**House Jefferson County Legislation Engrossed
Substitute for HB107**

197 motor vehicle other than the motor vehicle for which the plate
198 had been issued.

199 (3) The person who received the notice of violation was
200 not the owner of the motor vehicle at the time of the
201 violation.

202 (b) To demonstrate that at the time of the violation
203 the motor vehicle was a stolen vehicle or the license plate
204 displayed on the motor vehicle was a stolen plate, the owner
205 must submit proof acceptable to the hearing officer that the
206 theft of the vehicle or license plate, prior to the time of
207 the violation, had been timely reported to the appropriate law
208 enforcement agency.

209 Section 7. Notwithstanding anything in this act to the
210 contrary, a person who fails to pay the amount of a civil
211 penalty or to contest liability in a timely manner is entitled
212 to an adjudicative hearing on the violation if:

213 (1) The person files an affidavit with the hearing
214 officer stating the date on which the person received the
215 notice of violation that was mailed to the person, if not
216 received by the 10th day after same is mailed.

217 (2) Within 15 days of the date of actual receipt, the
218 person requests an administrative adjudicative hearing.

219 Section 8. (a) Following an adjudicative hearing, the
220 court shall issue an order stating:

221 (1) Whether the person charged with the civil violation
222 is liable for the violation; and

223 (2) If so, the amount of the civil penalty assessed
224 against the person, along with any other fees and costs of



**House Jefferson County Legislation Engrossed
Substitute for HB107**

225 court.

226 (b) The orders issued under this section may be filed
227 in the office of the Judge of Probate of Jefferson County, and
228 shall operate as a judicial lien in the same manner and with
229 the same weight and effect as any other civil judgment filed
230 therein.

231 (c) A person who is found liable after an adjudicative
232 hearing may appeal that finding of civil liability to the
233 circuit court, by filing a notice of appeal with the clerk of
234 the municipal court. The notice of appeal must be filed not
235 later than the 14th day after the date on which the municipal
236 court judge entered the finding of civil liability. The filing
237 of a notice of appeal shall stay the enforcement of the civil
238 penalty. An appeal shall be determined by the circuit court by
239 trial de novo.

240 Section 9. The circuit court hearing an appeal shall
241 use the procedures that apply to criminal proceedings with the
242 following qualifications:

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

246 (2) If the person is adjudicated by the circuit court
247 to be responsible for payment of a civil penalty, circuit
248 court costs shall be owed by the person adjudicated
249 responsible, with 100 percent of those court costs retained by
250 the circuit court. Court costs in the circuit court shall be
251 calculated as are court costs for criminal appeals from the
252 municipal court, and in the event the circuit court finds the



**House Jefferson County Legislation Engrossed
Substitute for HB107**

253 person appealing to not be responsible, no court costs shall
254 be owed to the county commission.

255 (3) Regardless of the civil nature of the proceedings,
256 the circuit court, in its discretion and for its
257 administrative convenience, may assign case numbers as for
258 criminal appeals and place the appeals on criminal dockets

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

261 (5) The county commission shall be responsible for
262 providing an attorney to represent the county commission and
263 to prosecute the civil proceedings in the circuit court.

264 Section 10. In the event the evidence produced by a
265 photographic traffic signal enforcement system does not
266 produce an image of the license plate with sufficient clarity
267 for a traffic enforcement officer to determine the identity of
268 the owner, and if the identity cannot otherwise be reliably
269 established, then no notice of violation may be issued
270 pursuant to this act. If, however, a notice of violation is
271 issued, to the degree constitutionally allowed, those issues
272 related to the identity of the vehicle or its owner shall
273 affect the weight to be accorded the evidence and shall not
274 affect its admissibility.

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