

1 SB334
2 166856-1
3 By Senator Holley
4 RFD: Education and Youth Affairs
5 First Read: 07-APR-15

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8 SYNOPSIS: This bill would enable county and municipal
9 boards of education to approve in their
10 jurisdiction a process of civil enforcement of
11 offenses related to overtaking a school bus by
12 using automated detection devices, and allowing a
13 civil notice of violation to be issued by mail. It
14 would provide that the owner of the vehicle is
15 presumptively responsible but provide procedures to
16 transfer responsibility or to contest the notice of
17 violation.

18 This bill would allow a law enforcement
19 agency or a local governing entity, in consultation
20 with a school system, to enter an agreement with a
21 private contractor for the installation, operation,
22 notice processing, and administration of a school
23 bus automated device.

24 This bill would grant subject matter
25 jurisdiction to district and municipal courts to
26 adjudicate the civil notice.

1 This bill would provide procedures for civil
2 action taken pursuant to this act.

3 This bill would provide for the destruction
4 of all images and other recorded information within
5 certain time periods.

6 This bill would provide for appeals.

7 This bill would authorize civil fines.

8 This bill would provide that a person who
9 becomes responsible for payment of the civil fine
10 would not have the violation entered on his or her
11 driver's history and not suffer other adverse
12 consequences if the civil fine is timely paid.

13 This bill would provide that insurance
14 companies could not use a violation to set or
15 change insurance rates.

16 This bill would provide that failure to
17 timely pay a civil fine would result in civil
18 collection efforts by a county or a municipal board
19 of education.

20
21 A BILL

22 TO BE ENTITLED

23 AN ACT

24
25 Authorizing automated enforcement related to
26 overtaking a school bus in counties and municipalities as a
27 civil offense; authorizing a county or municipal board of

1 education to approve, in their respective jurisdiction, a
2 civil process of automated detection device of a school bus
3 violation enforcement; requiring certain procedures to be
4 followed by a county or municipal board of education using
5 automated school bus enforcement; making the owner of the
6 vehicle involved in a violation presumptively responsible for
7 payment of a civil fine, but providing procedures to contest
8 responsibility or transfer responsibility to another person;
9 providing for jurisdiction in district courts and in municipal
10 courts over the civil offenses; providing for procedures for
11 administrating this act; allowing a law enforcement agency or
12 a local governing entity to enter agreements with contractors
13 providing automated devices; providing for the destruction of
14 recorded information after certain time periods; and allowing
15 appeals to the circuit court.

16 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

19 (b) Any board may authorize a process of civil
20 enforcement of a school bus violation pursuant to the
21 procedures set out in this act.

22 (c) The provisions of this act shall not compel a
23 governing body or board to participate in the safety program
24 created herein.

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

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

7 (2) BOARD. A board of education or the governing
8 body of a school system.

9 (3) CONTRACTOR. A company that provides services to
10 a board or governing body including, but not limited to,
11 automated devices, citation processing, and collection of the
12 civil fines. None of the activities of the contractor shall be
13 construed as an agent providing or participating in private
14 investigative services or acting as a statutory authority
15 under open records laws.

16 (4) COURT. A district court, if a school bus
17 violation occurs in an unincorporated area or a municipal
18 court if a violation occurs in an incorporated municipality.

19 (5) GOVERNING BODY. A county commission, city
20 council, or city commission.

21 (6) LAW ENFORCEMENT AGENCY. A law enforcement agency
22 of a local governing body, or a school system that is
23 authorized to issue a citation for a violation of the state
24 vehicle law or of local traffic laws or regulations.

25 (7) OWNER. The meaning ascribed to "owner" in
26 Section 32-1-1.1, Code of Alabama 1975, except that the term
27 shall not include a motor vehicle rental or leasing company

1 when a motor vehicle registered by the company is being
2 operated by another person under a rental or lease agreement
3 with the company, in which event "owner" shall mean the person
4 to whom the vehicle is rented or leased; nor shall the term
5 include motor vehicles displaying a dealer license plate, in
6 which event "owner" shall mean the person to whom the vehicle
7 is assigned for use; nor shall the term include the owner of a
8 vehicle that has been reported stolen to a law enforcement
9 agency prior to the time of the violation, in which event
10 "owner" shall mean the person who is found guilty of stealing
11 the motor vehicle.

12 (8) SCHOOL BUS VIOLATION or VIOLATION. Any violation
13 of Section 32-5A-154, Code of Alabama 1975, as amended.

14 (9) TRAINED TECHNICIAN. A sworn law enforcement
15 officer or person who has received instruction and training in
16 the proper use of the automated photographic enforcement
17 system to be used by the school board or contractor.

18 Section 3. (a) A board may approve the use of
19 automated devices to detect school bus violations by voting at
20 a meeting of the board to approve the adoption of an automated
21 school bus enforcement program.

22 The school board may elect to operate the program
23 authorized in this act without the involvement of the
24 governing body or sheriff through the utilization of a trained
25 technician. In such case, all references in this act to
26 governing body, county, or city shall apply to the school
27 board.

1 (b) In the alternative, if approved by a board and
2 authorized by ordinance or resolution enacted by the governing
3 body, the board may enter into an agreement with a contractor
4 for the installation, operation, notice processing,
5 administration and maintenance of school bus automated devices
6 on buses within the school system's fleet whether owned or
7 leased. Prior to entering into a contract for the
8 installation, operation, notice processing, administration,
9 and maintenance of school bus automated devices, the board
10 shall have entered into an intergovernmental agreement with
11 the appropriate law enforcement agencies (municipal police
12 department and/or county sheriff) and the local governing body
13 providing that the appropriate law enforcement agency is
14 willing to review any violation occurring in its respective
15 jurisdiction.

16 (c) A civil fine not to exceed three hundred dollars
17 (\$300) for a first offense, seven hundred fifty dollars (\$750)
18 for a second offense, and one thousand dollars (\$1,000) for
19 each subsequent offense in a 5-year period shall be imposed
20 for a school bus violation for which a notice of violation is
21 issued pursuant to this act. All such fines shall be paid,
22 after deducting costs to administer, operate, and maintain the
23 program, as follows: 40 percent to the county or municipal
24 governing body which contracted for the operation of a school
25 bus violation program through an intergovernmental agreement
26 with the board pursuant to paragraph (b); 40 percent to the
27 school system where the offense was committed; 10 percent to

1 the State Department of Education for school bus safety
2 initiatives; and 10 percent to the Alabama Law Enforcement
3 Agency for highway safety enforcement.

4 Section 4. (a) After review of the violation by law
5 enforcement or trained technician, the governing body or
6 contractor shall send the owner of a vehicle that has been
7 detected by the device as being involved in a school bus
8 violation a notice of violation by U. S. mail. A notice of
9 violation shall be mailed no later than 14 days after being
10 reviewed by law enforcement. In the event there is more than
11 one owner, the notice may be issued to the first person listed
12 on the title or other evidence of ownership, or jointly to all
13 listed owners.

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

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

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

20 (3) The violation charged.

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

23 (5) The photographic images and the online video of
24 the vehicle that are captured by the automated device. The
25 image or video shall be reviewed by a law enforcement officer
26 or trained technician who shall electronically certify the

1 notice of violation. The image or video may not contain images
2 of the face of the driver or passengers in the vehicle.

3 (6) The amount of the civil fine along with the
4 time, place, and manner for payment of the fine which shall
5 include the option to pay the fine by electronic means.

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

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

18 (c) All recorded video images and other photographic
19 information obtained through the use of school bus violation
20 detection monitoring systems authorized in this act that do
21 not identify a violation shall be destroyed by any city, town,
22 school system or contractor within 90 days of the date the
23 image was recorded, unless otherwise ordered by a court of
24 competent jurisdiction. All photographic and other recorded
25 information that identifies a violation shall be destroyed
26 within 30 days of final disposition of proceedings related to

1 the enforcement or defense of a violation, unless otherwise
2 ordered by a court of competent jurisdiction.

3 (d) All photographic evidence regardless of whether
4 it is a still photograph or video shall remain the sole
5 property of the board and shall be available to a third party,
6 other than the alleged violator, pursuant only to a valid
7 court order.

8 (e) Except as expressly provided, all civil actions
9 based on evidence produced by a school bus violation detection
10 monitoring system shall follow the procedures set out in this
11 act.

12 Section 5. The owner of a vehicle that has been
13 issued a notice of violation shall be responsible for payment
14 of the civil fine unless the owner successfully transfers
15 responsibility, there is an adjudication that no violation
16 occurred, or there is an otherwise lawful determination that
17 no civil penalty shall be imposed. All owners of a vehicle who
18 are mailed or receive a notice of violation shall be jointly
19 and severally liable for payment of the civil fine. The county
20 or municipality may collect the civil fine in the same manner
21 as any other debt owed to the county or municipality.

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

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

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

8 (3) The owner timely transmits to the governing body
9 on the form provided with the notice of violation and in
10 accordance with the procedure set out on the notice of
11 violation the name and mailing address of the person who was
12 operating the vehicle.

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

17 (b) Whenever a county or municipality timely
18 receives the information required from the owner to transfer
19 responsibility, the county, municipality, or its contractor
20 shall issue a new notice of violation to the person to whom
21 the owner transferred responsibility with an explanation as to
22 why the person is receiving the notice of violation, in the
23 same manner as if the person were the owner of the vehicle.
24 The person shall be responsible for payment of the civil fine
25 unless the person either:

26 (1) Timely returns a signed statement on a form
27 provided with the notice of violation that he or she was not

1 the operator and declining responsibility, in which case
2 responsibility shall fall back to the owner.

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

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

22 Section 7. (a) No person shall be responsible for
23 payment of a civil fine for a notice of violation issued under
24 this act if the operator of the vehicle that is the subject of
25 the notice of violation is adjudicated to have not committed a
26 violation or there is otherwise a lawful determination that no
27 civil penalty may be imposed. Any person receiving a notice of

1 violation pursuant to this act, in accordance with the
2 procedure set out in this act and on the notice of violation,
3 may contest the notice of violation by obtaining a hearing in
4 the court.

5 (b) District and municipal courts of this state are
6 hereby vested with the power and jurisdiction to adjudicate a
7 notice of violation issued pursuant to this act as a civil
8 offense whenever the offense is alleged to have occurred
9 within the geographic jurisdiction of the court.

10 (c) The following procedures shall apply to
11 proceedings to contest a notice of violation issued pursuant
12 to this act:

13 (1) Upon receipt of a timely notice that the person
14 receiving the notice of violation is contesting the notice,
15 the governing body shall cause the case to be docketed in
16 court and shall issue notice of the hearing date.

17 (2) The issuance of a notice of violation shall be
18 prima facie evidence that the person who received the notice
19 of violation was operating the vehicle at the time of the
20 violation.

21 (3) In the event there is a dispute between the
22 owner and another as to which person was operating the vehicle
23 at the time of the alleged violation, or a dispute between
24 joint owners, it shall be presumed that the owner was
25 operating the vehicle, and in the event there are joint
26 owners, the presumption shall follow the order the owners are
27 listed on the title or other evidence of ownership. However, a

1 court may determine the identity of the operator of the
2 vehicle based on any admitted evidence.

3 (4) The notice of violation, any evidence of the
4 violation produced by a device, and evidence of ownership of a
5 vehicle as shown by copies or summaries of official records
6 shall be admissible into evidence without foundation.

7 (5) All other matters of evidence and procedure not
8 specifically addressed in this act shall be subject to the
9 rules of procedure as provided in this act. On any appeal in
10 the circuit court the procedures shall be as for any civil
11 case in circuit court.

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

14 (7) Whenever payment of a civil fine is due, the
15 amount of the civil fine may not be decreased and the
16 liability may be satisfied only by payment.

17 (8) A civil fine assessed under this act shall not
18 exceed three hundred dollars (\$300) for a first offense, seven
19 hundred fifty dollars (\$750) for a second offense, and one
20 thousand dollars (\$1,000) for each subsequent offense in a
21 five-year period, and court costs shall be assessed only in
22 contested cases in the same manner and in the same amounts
23 prescribed for a violation prosecuted as a misdemeanor under
24 Section 32-5A-154, Code of Alabama 1975. Court costs collected
25 pursuant to this act shall be distributed in the same manner
26 as prescribed by law for the distribution of court costs for
27 misdemeanor violations. An additional fee of ten dollars (\$10)

1 shall be collected by the district or municipal court in
2 connection with notices issued under this act to be paid to
3 the Alabama Criminal Justice Information Center and deposited
4 in the State Treasury to the credit of the Criminal Justice
5 Information System Automation Fund as compensation for record
6 keeping and transaction processing with respect to violation
7 notices issued under this act. Any civil fine assessed under
8 this act and collected by the court shall be remitted pursuant
9 to subsection (d) of Section 3.

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

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

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

1 fine may be imposed by the circuit court, but court costs of
2 the circuit court shall be owed by the person adjudicated
3 responsible with 100 percent of the court costs retained by
4 the circuit court. Court costs in the circuit court shall be
5 calculated as are court costs for criminal appeals from the
6 district or municipal court, and in the event the circuit
7 court finds the person appealing not to be responsible, no
8 court costs shall be owed by the county or municipal board of
9 education.

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

16 Section 9. In the event the evidence produced by an
17 automated device does not produce an image or video of the
18 license plate with sufficient clarity for a law enforcement
19 officer or trained technician to determine the identity of the
20 owner, and if the identity cannot otherwise be reliably
21 established, then no notice of violation may be issued
22 pursuant to this act.

23 Section 10. (a) No person may be arrested or
24 incarcerated for nonpayment of a civil fine.

25 (b) A governing body may contract with a collection
26 service for the purpose of collecting any unpaid civil fine
27 authorized by this act.

1 Section 11. Adoption by a board of the procedures
2 under this act and the enforcement of this act by a governing
3 body shall not affect current procedure and prosecutions
4 commenced by issuance of a uniform traffic ticket and
5 complaint by a law enforcement officer or otherwise. The
6 issuance of a notice of violation as authorized by this act
7 shall be subordinate to the issuance of a uniform traffic
8 ticket and complaint for the same action if issued by a sworn
9 law enforcement officer, and issuance of a uniform traffic
10 ticket and complaint for a school bus violation shall preclude
11 issuance of a notice of violation as authorized by this act.
12 In the event both a uniform traffic ticket and complaint and a
13 notice of violation as authorized by this act are issued for
14 the same action, the one issued by a sworn law enforcement
15 officer pursuant to Section 32-5A-154, Code of Alabama 1975,
16 shall control and shall constitute a defense to the other.

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

1 (b) As a condition precedent to the bringing of a
2 civil action under subsection (a), the person held responsible
3 for payment of the civil fine shall first make written demand
4 on the other person for reimbursement of the civil fine,
5 giving a minimum of 60 days to remit payment, and if
6 reimbursement is fully made within the 60 day period then the
7 cause of action shall be extinguished and no attorney fees or
8 other damages shall attach to the reimbursement.

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

13 Section 14. This act shall become effective on the
14 first day of the third month following its passage and
15 approval by the Governor, or its otherwise becoming law.