

1 HB416  
2 174954-1  
3 By Representative England  
4 RFD: County and Municipal Government  
5 First Read: 15-MAR-16

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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 the motor vehicle  
21 registration records of the Department of Revenue or the  
22 analogous department or agency of another state or country.  
23 The term shall not include a motor vehicle rental or leasing  
24 company when a motor vehicle registered by the company is  
25 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 or other ownership records shall be  
15 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 2016.

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

11 (2) The registered owner may appeal the warning  
12 notice to the person, department, or agency designated by the  
13 municipality to obtain rescission of the warning notice by  
14 challenging the accuracy of the information in the notice 10  
15 days of the date 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 registered owner to appeal the  
21 warning notice or obtain a rescission of the warning notice,  
22 any vehicle registered to the notified owner may be  
23 immobilized when found parked legally or illegally on any  
24 public street or 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 of the immobilized  
7 vehicle; the reason for immobilization; and a contact number  
8 for requesting removal of the immobilization device; provided,  
9 however, that the sticker may be affixed in a location that is  
10 immediately and reasonably visible to the operator of a motor  
11 vehicle if there is no window adjacent to the driver's seat.  
12 Such sticker shall be a high visibility color, such as yellow,  
13 orange, or red and lettering shall be black.

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

19 (7) A municipality is authorized to charge an  
20 immobilization removal fee up to sixty-five dollars (\$65). The  
21 immobilization removal fee limit may be increased every five  
22 years by an amount equal to the percentage increase, if any,  
23 in the U.S. Department of Labor's Producer Price Index during  
24 that five-year period, rounded to the nearest dollar, with the  
25 base year being 2016.

26 (8) The municipal ordinance shall provide to the  
27 vehicle owner or authorized user an immediate appeal of the

1 vehicle immobilization during regular business hours and  
2 provide for payment of outstanding fines and fees to have the  
3 immobilization device removed 24 hours a day, seven days a  
4 week.

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

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

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

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

25 (e) A vehicle immobilized or impounded under this  
26 section may be released:

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

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

11           (3) As otherwise provided in the ordinance.

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

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

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

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

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