

1 SB201
2 172891-1
3 By Senators Brewbaker and Ross (N & P)
4 RFD: Local Legislation
5 First Read: 11-FEB-16

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9 A BILL
10 TO BE ENTITLED
11 AN ACT
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13 Relating to the City of Montgomery; to repeal
14 Sections 1 to 13, inclusive, of Act 2011-298, 2011 Regular
15 Session (Acts 2011, p. 554), and Sections 1 to 13, inclusive,
16 Act 2011-337, 2011 Regular Session (Acts 2011, p. 610),
17 relating to automatic photographic speeding enforcement
18 systems to detect and record speeding violations by operators
19 of motor vehicles; and to amend Sections 5 and 6 of Act
20 2009-740, 2009 Regular Session (Acts 2009, p. 2208), as
21 further amended by Act 2011-298, 2011 Regular Session (Acts
22 2011, p. 554), and Act 2011-337, 2011 Regular Session (Acts
23 2011, p. 610), to make conforming changes.

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

25 Section 1. Sections 1 to 13, inclusive, of Act
26 2011-298, 2011 Regular Session (Acts 2011, p. 554), and

1 Sections 1 to 13, inclusive, of Act 2011-337, 2011 Regular
2 Session (Acts 2011, p. 610), are repealed.

3 Section 2. Sections 5 and 6 of Act 2009-740, 2009
4 Regular Session (Acts 2009, p. 2208), as further amended by
5 Act 2011-298, 2011 Regular Session (Acts 2011, p. 554), and
6 Act 2011-337, 2011 Regular Session (Acts 2011, p. 610), are
7 amended to read as follows:

8 "Section 5. (a) Prior to imposing a civil penalty
9 under this act, the City of Montgomery shall first mail a
10 notice of violation by certified U.S. mail, return receipt
11 requested, to the owner of the motor vehicle which is recorded
12 by the photographic traffic signal enforcement system while
13 committing a traffic signal violation. The notice shall be
14 sent not later than the 30th day after the date the traffic
15 signal violation is recorded to:

16 "(1) The owner's address as shown on the
17 registration records of the Alabama Department of Revenue.

18 "(2) If the vehicle is registered in another state
19 or country, to the owner's address as shown on the motor
20 vehicle registration records of the department or agency of
21 the other state or country analogous to the Alabama Department
22 of Revenue.

23 "(b) A notice of violation issued under this act
24 shall contain the following:

25 "(1) Description of the violation alleged.

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

1 "(3) A copy of recorded images of the vehicle
2 involved in the violation.

3 "(4) The amount of the civil penalty to be imposed
4 for the violation.

5 "(5) The date by which the civil penalty must be
6 paid.

7 "(6) A statement that the person named in the notice
8 of violation may pay the civil penalty in lieu of appearing at
9 an administrative adjudication hearing.

10 "(7) Information that informs the person named in
11 the notice of violation:

12 "a. Of the right to contest the imposition of the
13 civil penalty in an administrative adjudication.

14 "b. Of the manner and time in which to contest the
15 imposition of the civil penalty.

16 "c. That failure to pay the civil penalty or to
17 contest liability is an admission of liability.

18 "(8) A statement that a recorded image is evidence
19 in a proceeding for the imposition of a civil penalty.

20 "(9) A statement that failure to pay the civil
21 penalty within the time allowed shall result in the imposition
22 of a late penalty not exceeding twenty-five dollars (\$25) for
23 each month after the issuance of the order imposing the civil
24 penalty.

25 "(10) Any other information deemed necessary by the
26 department.

1 "(c) A notice of violation under this act is
2 presumed to have been received on the 10th day after the date
3 the notice of violation is placed in the United States Mail.

4 "(d) The civil penalty imposed shall be paid within
5 30 days of the 10th day after the date the notice of violation
6 is mailed.

7 "(e) It shall be within the discretion of the
8 trained technician to determine which of the recorded traffic
9 signal violations are prosecuted based upon the quality and
10 legibility of the recorded image. In lieu of issuing a notice
11 of violation, the city may mail a warning notice to the owner.

12 "Section 6. (a) The Montgomery Municipal Court is
13 vested with the power and jurisdiction to hear and adjudicate
14 the civil violations provided for in this act, and to issue
15 orders imposing the civil fines and costs set out in this act.

16 "(b) A person who receives a notice of violation may
17 contest the imposition of the civil fine by submitting a
18 request for a hearing on the adjudication of the civil
19 violation, in writing, within 15 days of the 10th day after
20 the date the notice of violation is mailed. Upon receipt of a
21 timely request, the city shall notify the person of the date
22 and time of the adjudicative hearing by U.S. mail, return
23 receipt requested.

24 "(c) Failure to pay a civil penalty or to contest
25 liability in a timely manner is an admission of liability in
26 the full amount of the civil fine assessed in the notice of
27 violation.

1 "(d) The civil fine shall not be assessed if, after
2 a hearing, the Montgomery Municipal Judge enters a finding of
3 no liability.

4 "(e) If an adjudicative hearing is requested, the
5 city shall have the burden of proving the traffic signal
6 violation by a preponderance of the evidence. The reliability
7 of the photographic traffic signal enforcement system used to
8 produce the recorded image of the violation may be attested to
9 by affidavit of a trained technician. An affidavit of a
10 trained technician that alleges a violation based on an
11 inspection of the pertinent recorded image is admissible in a
12 proceeding under this act and is evidence of the facts
13 contained in the affidavit.

14 "(f) The notice of violation, the recorded and
15 reproduced images of the traffic signal violation, regardless
16 of the media on which they are recorded, accompanied by a
17 certification of authenticity of a trained technician, and
18 evidence of ownership of a vehicle as shown by copies or
19 summaries of official records shall be admissible into
20 evidence without foundation unless the municipal court finds
21 there is an indication of untrustworthiness, in which case the
22 city shall be given a reasonable opportunity to lay an
23 evidentiary foundation.

24 "(g) All other matters of evidence and procedure not
25 specifically addressed in this act shall be subject to the
26 rules of evidence and the rules of procedure as they apply in
27 the small claims courts of this state, except that on any

1 appeal to Montgomery County Circuit Court for trial de novo
2 the evidence and procedures shall be as for any civil case in
3 the circuit court except as otherwise provided in this act.

4 "(h) A person who is found liable for the civil
5 violation after an adjudicative hearing or who requests an
6 adjudicative hearing and thereafter fails to appear at the
7 time and place of the hearing is liable for court costs and
8 fees set out herein in addition to the amount of the civil
9 fine assessed for the violation. A person who is found liable
10 for a civil violation after an adjudicative hearing shall pay
11 the civil fine and costs within 10 days of the hearing.

12 "(i) Whenever payment of a civil fine is owed to the
13 city, the amount of the civil fine as set by ordinance may not
14 be increased, decreased, or remitted by the municipal court,
15 and the liability may be satisfied only by payment.

16 "(j) It shall be an affirmative defense to the
17 imposition of civil liability under this act, to be proven by
18 a preponderance of the evidence, that:

19 "1. The traffic-control signal was not in proper
20 position and sufficiently visible to an ordinarily observant
21 person.

22 "2. The operator of the motor vehicle was acting in
23 compliance with the lawful order or direction of a police
24 officer.

25 "3. The operator of the motor vehicle violated the
26 instructions of the traffic-control signal so as to yield the

1 right-of-way to an immediately approaching authorized
2 emergency vehicle.

3 "4. The motor vehicle was being operated as an
4 authorized emergency vehicle under Sections 32-5A-7 and
5 32-5-213 of the Code of Alabama 1975, and that the operator
6 was acting in compliance with that chapter.

7 "5. The motor vehicle was stolen or being operated
8 by a person other than the owner of the vehicle without the
9 effective consent of the owner.

10 "6. The license plate depicted in the recorded image
11 of the violation was a stolen plate and being displayed on a
12 motor vehicle other than the motor vehicle for which the plate
13 had been issued.

14 "7. The presence of ice, snow, unusual amounts of
15 rain, or other unusually hazardous road conditions existed
16 that would make compliance with this act more dangerous under
17 the circumstances than noncompliance.

18 "8. The person who received the notice of violation
19 was not the owner of the motor vehicle at the time of the
20 violation.

21 "9. There was no sign installed as required by this
22 act near the red light at which the violation allegedly
23 occurred warning that an automated red light camera device was
24 being used.

25 "(k) To demonstrate that at the time of the
26 violation the motor vehicle was a stolen vehicle or the
27 license plate displayed on the motor vehicle was a stolen

1 plate, the owner must submit proof acceptable to the hearing
2 officer that the theft of the vehicle or license plate, prior
3 to the time of the violation, had been timely reported to the
4 appropriate law enforcement agency.

5 "(1) Notwithstanding anything in this act to the
6 contrary, a person who fails to pay the amount of a civil fine
7 or to contest liability in a timely manner is entitled to an
8 adjudicative hearing on the violation if:

9 "1. The person files an affidavit with the hearing
10 officer stating the date on which the person received the
11 notice of violation that was mailed to the person, if not
12 received by the 10th day after same is mailed as set out in
13 subsection (a) of Section 5.

14 "2. Within the 15 days of the date of actual
15 receipt, the person requests an administrative adjudicative
16 hearing."

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