HB566

116696-1

By Representatives England and Harper (N & P)

RFD: Tuscaloosa County Legislation

First Read: 16-FEB-10
A BILL

TO BE ENTITLED

AN ACT

Relating to the City of Tuscaloosa, Alabama, in Tuscaloosa County; authorizing automated traffic light enforcement in the City of Tuscaloosa, Alabama, as a civil violation; providing certain procedures to be followed by the city using automated photographic traffic light enforcement; providing that the owner of the vehicle involved in running a traffic light is presumptively liable for a civil violation and the payment of a civil fine, but providing procedures to contest liability; providing for jurisdiction in the Tuscaloosa Municipal Court over the civil violations and allowing appeals to the Tuscaloosa County Circuit Court for trial de novo; creating a cause of action for any person held responsible for payment of the civil fine against the person who was actually operating a vehicle during the running of a traffic light; and prohibiting the tampering with a
photographic traffic signal enforcement system, except by
authorized persons.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

   Section 1. (a) This act shall be known and may be
cited as the "Tuscaloosa Red Light Safety Act."

   (b) The City of Tuscaloosa, Alabama, may, by
ordinance, adopt the procedures set out in this act.

   Section 2. The Legislature finds and declares the
following:

   (1) Accident data establishes that vehicles running
red lights have been and are a dangerous problem in
Tuscaloosa, Alabama.

   (2) Studies have found that automated traffic camera
enforcement in a municipal area is a highly accurate method
for detecting red light violations and is very effective in
reducing the number of red light violations and decreasing the
number of traffic accidents, deaths, and injuries.

   (3) Current Alabama law provides that failing to
stop and remain stopped at a traffic-control signal which is
emitting a steady red signal is a criminal misdemeanor. Under
Alabama law one who commits such a misdemeanor is subject to
prosecution only if the misdemeanor was witnessed by either a
duly empowered police officer or other witness who makes a
verified complaint to a sworn magistrate.

   (4) Many jurisdictions have adopted laws that allow
use of automated photographic traffic enforcement, and the
Legislature finds that it should adopt legislation
implementing a program for automated photographic enforcement
of traffic signal violations, which the Legislature finds is
consistent with this act.

(5) By allowing a program for use of automated
traffic cameras in traffic signal enforcement by the City of
Tuscaloosa, the Legislature hopes to both decrease the rate of
traffic signal violations and learn more about the
effectiveness and fairness involved in the use of the
automated systems.

Section 3. As used in this act, the following terms
shall have the following meanings:

(1) CITY. The City of Tuscaloosa, Alabama.

(2) CIVIL FINE. The monetary amount assessed by the
City of Tuscaloosa pursuant to this act for an adjudication of
civil liability for a traffic signal violation, including
municipal court costs associated with the infraction.

(3) CIVIL VIOLATION. There is hereby created a
noncriminal category of law called a civil violation created
and existing for the sole purpose of carrying out the terms of
this act. The penalty for violation of a civil violation shall
be the payment of a civil fine, the enforceability of which
shall be accomplished through civil action. The prosecution of
a civil violation created hereby shall carry reduced
evidentiary requirements and burden of proof as set out in
Section 6, and in no event shall an adjudication of liability
for a civil violation be punishable by a criminal fine or
imprisonment.
(4) OWNER. The owner of a motor vehicle as shown on the motor vehicle registration records of the Alabama Department of Revenue or the analogous department or agency of another state or country. The term shall not include a motor vehicle rental or leasing company when a motor vehicle registered by the company is rented or leased to another person under a rental or lease agreement with the company, in which event "owner" shall mean the person to whom the vehicle is rented or leased; nor shall the term include motor vehicles displaying dealer license plates, in which event "owner" shall mean the person to whom the vehicle is assigned for use; nor shall the term include the owner of any stolen motor vehicle, in which event "owner" shall mean the person who is guilty of stealing the motor vehicle.

(5) PHOTOGRAPHIC TRAFFIC SIGNAL ENFORCEMENT SYSTEM. A camera system which is designed and installed to work in conjunction with an electrically operated traffic-control device using vehicle sensors synchronized to automatically record, either by conventional film or digital imaging, sequenced photographs or full motion video of the rear of a motor vehicle while proceeding through a signalized intersection.

(6) TRAFFIC-CONTROL SIGNAL. Any device, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and permitted to proceed as defined in Section 32-1-1.1, Code of Alabama 1975. The device shall be capable of producing at least two recorded
images, at least one of which is capable of clearly depicting
the license plate of a motor vehicle that is not operated in
compliance with the instructions of the traffic-control
signal.

(7) TRAFFIC SIGNAL VIOLATION. Any violation of
Section 32-5A-31, Section 32-5A-32, or Section 32-5A-35, Code
of Alabama 1975, or of any combination thereof, wherein a
vehicle proceeds into a signalized intersection at a time
while the traffic-control signal for that vehicle's lane of
travel is emitting a steady red signal. A traffic signal
violation shall be a civil violation as defined in this act.

(8) TRAINED TECHNICIAN. A sworn law enforcement
officer employed by the City of Tuscaloosa, who alternatively:

a. Is a professional engineer in the field of civil
engineering.

b. Has received instruction and training in the
proper use of the photographic traffic signal enforcement
system to be used by the city by the city's traffic engineer
or his or her designee.

c. Has been trained by the vendor installing the
equipment. Under no circumstances shall the salary or other
compensation of the trained technician be related to the
number of notices of violation issued or amount of fines
collected.

Section 4. (a) The City of Tuscaloosa is empowered
to utilize an automated photographic traffic signal
enforcement system to detect and record traffic signal
violations, to issue notices of civil violations by mail, and
to prosecute civil violations for the recorded traffic signal
violations which may occur within the corporate limits of the
City of Tuscaloosa as provided in this act. A civil fine
assessed under this act shall not exceed one hundred dollars
($100), and municipal court costs shall be assessed only in
contested cases in the same manner and in the same amounts
prescribed for a municipal criminal traffic-control device
violation prosecuted as a misdemeanor under Sections 32-5A-31,
thereof. An additional fee of ten dollars ($10) shall be added
to the Tuscaloosa Municipal Court costs authorized to be
collected in connection with notices issued under this act.
Court costs collected pursuant to this act shall be
distributed in the same manner as prescribed by law for the
distribution of municipal court costs for misdemeanor
violations. The additional ten dollars ($10) authorized by
this act shall be paid to the Alabama Criminal Justice
Information Center as compensation for record keeping with
respect to violation notices issued under this act.

(b) The City of Tuscaloosa shall cause a sign to be
posted at each of a minimum of five roadway entry points to
the city to provide motorists with notice that photographic
traffic signal enforcement systems are in use. The sign will
comply with this requirement if it states substantially the
following: "AUTOMATED CAMERAS USED IN RED LIGHT ENFORCEMENT,",
or if it otherwise gives sufficient notice.
(c) Prior to operating a photographic traffic signal enforcement system, the City of Tuscaloosa shall make a public announcement and conduct a public awareness campaign of the use of a photographic traffic signal enforcement system a minimum of 30 days before using the devices. The City of Tuscaloosa may place photographic traffic signal enforcement systems at locations without public notice of the specific location, may change locations without public notice, and may install and move as needed decoy devices designed to resemble photographic traffic signal enforcement systems.

(d) The city shall post a sign or signs at each intersection at which a device is located informing motorists that a photographic traffic signal enforcement system is in operation at the intersection.

Section 5. (a) Prior to imposing a civil penalty under this act, the City of Tuscaloosa shall first mail via first class United States mail a notice of violation to the owner of the motor vehicle which is recorded by the photographic traffic signal enforcement system while committing a traffic signal violation. The notice shall be sent not later than the 30th day after the date the traffic signal violation is recorded to:

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

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

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

(1) A description of the violation alleged.

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

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

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

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

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

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

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

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

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

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

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

(10) Any other information deemed necessary by the department or the city.

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

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

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

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

(b) A person who receives a notice of violation may contest the imposition of the civil fine by submitting a request for a hearing on the adjudication of the civil violation, in writing, within 15 days of the 10th day after the date the notice of violation is mailed. Upon receipt of a timely request, the city shall notify the person of the date and time of the adjudicative hearing.
(c) Failure to pay a civil penalty or to contest liability in a timely manner is an admission of liability in the full amount of the civil fine assessed in the notice of violation.

(d) The civil fine and court costs shall not be assessed if, after a hearing, the Tuscaloosa Municipal Judge enters a finding of no liability.

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

(f) The notice of violation, the recorded and reproduced images of the traffic signal violation, regardless of the media on which they are recorded, accompanied by a certification of authenticity of a trained technician, and evidence of ownership of a vehicle as shown by copies or summaries of official records shall be admissible into evidence without foundation unless the municipal court finds there is an indication of untrustworthiness, in which case the city shall be given a reasonable opportunity to lay an evidentiary foundation.
(g) All other matters of evidence and procedure not specifically addressed in this act shall be subject to the rules of evidence and the rules of procedure as they apply in the small claims courts of this state, except that on any appeal to Tuscaloosa County Circuit Court for trial de novo the evidence and procedures shall be as for any civil case in the circuit court except as otherwise provided in this act.

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

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

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

1. The traffic-control signal was not in proper position and sufficiently visible to an ordinarily observant person.
2. The operator of the motor vehicle was acting in compliance with the lawful order or direction of a police officer.

3. The operator of the motor vehicle violated the instructions of the traffic-control signal so as to yield the right-of-way to an immediately approaching authorized emergency vehicle.

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

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

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

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

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

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

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

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

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

Section 7. (a) Following an adjudicative hearing,
the municipal court judge shall issue an order stating:

(1) Whether the person charged with the civil
violation is liable for the violation; and, if so.

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

(b) The orders issued under this section may be
filed in the office of the Probate Judge of Tuscaloosa County,
Alabama, and shall operate as a judicial lien in the same
manner and with the same weight and effect as any other civil
dgment filed therein.

(c) A person who is found liable after an
adjudicative hearing may appeal that finding of civil
liability to the Circuit Court of Tuscaloosa County, Alabama,
by filing a notice of appeal with the clerk of the municipal
court. The notice of appeal must be filed not later than the
14th day after the date on which the municipal court judge
entered the finding of civil liability. The filing of a notice
of appeal shall stay the enforcement of the civil fine
penalty. An appeal shall be determined by the circuit court by
trial de novo.

Section 8. (a) The circuit court hearing an appeal
shall use the procedures that apply to criminal convictions in
municipal court with the following qualifications:

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

(2) If the person is adjudicated by the circuit
court to be responsible for payment of the civil fine, circuit
court costs shall be owed by the person adjudicated
responsible, with 100 percent of those court costs retained by
the circuit court. Court costs in the circuit court shall be
calculated as are court costs for criminal appeals from the
municipal court, and in the event the circuit court finds the
person appealing to not be responsible, no municipal court
costs shall be owed to the city.
(3) Regardless of the civil nature of the proceedings, the circuit court, in its discretion and for its administrative convenience, may assign case numbers as for criminal appeals and place the appeals on criminal dockets in the same manner as criminal appeals from municipal court.

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

(5) The city shall be responsible for providing an attorney to represent the city and to prosecute the civil proceedings in the circuit court.

Section 9. In the event the evidence produced by a photographic traffic signal enforcement system does not produce an image of the license plate with sufficient clarity for a trained technician to determine the identity of the owner, and if the identity cannot otherwise be reliably established, then no notice of violation may be issued pursuant to this act. If, however, a notice of violation is issued, to the degree constitutionally allowed, those issues related to the identity of the vehicle or its owner shall affect the weight to be accorded the evidence and shall not affect its admissibility.

Section 10. The city may provide by ordinance that late fees not exceeding twenty-five dollars ($25) per month for each month after the issuance of the order imposing the civil fine shall attach to untimely paid civil fines that are authorized in this act. No person may be arrested or incarcerated for nonpayment of a civil fine or late fee. No
record of an adjudication of civil violation made under this
act shall be listed, entered, or reported on any criminal
record or driving record, whether the record is maintained by
the city or an outside agency. An adjudication of civil
violation provided for in this act shall not be considered a
conviction for any purpose, shall not be used to increase or
enhance punishment for any subsequent offense of a criminal
nature, shall not be considered a moving violation, and shall
not be used by any insurance company to determine or affect
premiums or rates. The fact that a person is held liable or
responsible for a civil fine for a red light violation shall
not be used as evidence that the person was guilty of
negligence or other culpable conduct, and any evidence
generated by a photographic traffic signal enforcement system
may only be used as evidence in other proceedings if it is or
becomes admissible under the rules of evidence applicable
therein.

Section 11. The city shall adopt the procedures
authorized by this act, and shall keep statistical data
regarding the effectiveness of photographic traffic signal
enforcement systems in reducing traffic-control device
violations and intersectional collisions and shall communicate
the data on an annual basis to the Alabama Department of
Transportation and the Alabama Criminal Justice Information
Center.

Section 12. The placement of control devices and
timing of yellow lights and red light clearance intervals,
adopted by the city, shall conform to the most recent edition of the Traffic Engineering Handbook. It shall be presumed that the city is in compliance with this section unless the contrary is shown by a preponderance of the evidence.

Section 13. No civil penalty may be imposed and no adjudication of liability for a civil violation may be made under this act if the operator of the vehicle was arrested or was issued a citation and notice to appear by a sworn police officer for a criminal violation of any portion of Article II, Chapter 5A, Title 32 including, but not limited to, Sections 32-5A-31, 32-5A-34, and 32-5A-35 of the Code of Alabama 1975, or any other municipal ordinance which embraces and incorporates the statutes contained in that article, and which occurred simultaneously with and under the same set of circumstances which were recorded by the photographic traffic signal enforcement system.

Section 14. Any person against whom an adjudication of liability for a civil violation is made under this act, or the ordinance passed pursuant hereto, and who actually pays the civil fine imposed thereby shall have a cause of action against any person who may be shown to have been operating the vehicle recorded at the time of the violation for the amount of the civil fine actually paid plus any consequential or compensatory damages and a reasonable attorney fee, without regard to the rules regarding joint and several liability, contribution, or indemnity. Provided, however, that as a condition precedent to the bringing of a civil action, that
the person held responsible for payment of the civil fine must
first make written demand on the other person for
reimbursement of the civil fine, giving a minimum of 60 days
to remit payment, and if reimbursement is fully made within
the 60-day period then the cause of action shall be
extinguished and no attorney fees or other damages shall
attach to the reimbursement. Any cause of action brought
pursuant to this section must be commenced within two years
from the date of the payment of the civil fine for a red light
violation.

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

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