

1 HB516  
2 158762-1  
3 By Representative Williams (P)  
4 RFD: Judiciary  
5 First Read: 20-FEB-14

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8 SYNOPSIS: Under existing law, there is no specific  
9 crime of mortgage fraud.

10 This bill would make mortgage fraud a crime.

11 Amendment 621 of the Constitution of Alabama  
12 of 1901, now appearing as Section 111.05 of the  
13 Official Recompilation of the Constitution of  
14 Alabama of 1901, as amended, prohibits a general  
15 law whose purpose or effect would be to require a  
16 new or increased expenditure of local funds from  
17 becoming effective with regard to a local  
18 governmental entity without enactment by a 2/3 vote  
19 unless: it comes within one of a number of  
20 specified exceptions; it is approved by the  
21 affected entity; or the Legislature appropriates  
22 funds, or provides a local source of revenue, to  
23 the entity for the purpose.

24 The purpose or effect of this bill would be  
25 to require a new or increased expenditure of local  
26 funds within the meaning of the amendment. However,  
27 the bill does not require approval of a local

1 governmental entity or enactment by a 2/3 vote to  
2 become effective because it comes within one of the  
3 specified exceptions contained in the amendment.  
4

5 A BILL  
6 TO BE ENTITLED  
7 AN ACT  
8

9 To make mortgage fraud a crime; and in connection  
10 therewith would have as its purpose or effect the requirement  
11 of a new or increased expenditure of local funds within the  
12 meaning of Amendment 621 of the Constitution of Alabama of  
13 1901, now appearing as Section 111.05 of the Official  
14 Recompilation of the Constitution of Alabama of 1901, as  
15 amended.

16 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

17 Section 1. (a) For purposes of this section, the  
18 term "mortgage lending transaction" means any transaction  
19 between two or more persons for the purpose of making or  
20 obtaining, attempting to make or obtain, or assisting another  
21 person to make or obtain a residential mortgage loan or other  
22 lien on residential real property, including, but not limited  
23 to, the solicitation, application or origination, negotiation  
24 of terms, third party provider services, underwriting, signing  
25 and closing, and funding of the loan.

26 (b) A person commits the crime of mortgage fraud if,  
27 with the intent to defraud for his or her own benefit or the

1 benefit of a third person, he or she knowingly does any of the  
2 following:

3 (1) Makes any material misstatement,  
4 misrepresentation, or omission during the mortgage lending  
5 process with the intention that the misstatement,  
6 misrepresentation, or omission will be relied on by a mortgage  
7 lender, borrower, or any other person or entity involved in  
8 the mortgage lending transaction.

9 (2) Uses or facilitates the use of any material  
10 misstatement, misrepresentation, or omission during the  
11 mortgage lending process with the intention that the  
12 misstatement, misrepresentation, or omission will be relied on  
13 by a mortgage lender, borrower, or any other person or entity  
14 involved in the mortgage lending transaction.

15 (3) Receives any proceeds or any other funds in  
16 connection with the mortgage lending process that the person  
17 knew resulted from a violation of subdivision (1) or (2).

18 (4) Files or causes to be filed with any office of a  
19 judge of probate of this state a document involved in the  
20 mortgage lending process that contains a material  
21 misstatement, misrepresentation, or omission.

22 (c) Mortgage fraud in which there is a financial  
23 loss of greater than five hundred dollars (\$500) or the  
24 defendant has previously been convicted of mortgage fraud  
25 constitutes mortgage fraud in the first degree. Mortgage fraud  
26 in the first degree is a Class C felony.

1           (d) Mortgage fraud in which the defendant has not  
2 previously been convicted of mortgage fraud and there is no  
3 financial loss or the financial loss is five hundred dollars  
4 (\$500) or less constitutes mortgage fraud in the second  
5 degree. Mortgage fraud in the second degree is a Class A  
6 misdemeanor.

7           Section 2. Although this bill would have as its  
8 purpose or effect the requirement of a new or increased  
9 expenditure of local funds, the bill is excluded from further  
10 requirements and application under Amendment 621, now  
11 appearing as Section 111.05 of the Official Recompilation of  
12 the Constitution of Alabama of 1901, as amended, because the  
13 bill defines a new crime or amends the definition of an  
14 existing crime.

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