

1 HB17  
2 133971-4  
3 By Representative Galliher  
4 RFD: Judiciary  
5 First Read: 07-FEB-12  
6 PFD: 09/15/2011

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ENROLLED, An Act,

To amend Section 13A-9-12 of the Code of Alabama 1975, to establish the crimes of falsely removing a recording and offering a false instrument for recording against a public servant; to provide for penalties; and in connection therewith would have as its purpose or effect the requirement of a new or increased expenditure of local funds within the meaning of Amendment 621 of the Constitution of Alabama of 1901, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 13A-9-12 of the Code of Alabama 1975, is amended to read as follows:

"§13A-9-12.

"(a) A person commits the crime of offering a false instrument for recording if, knowing that a written instrument relating to or affecting real or personal property, or an interest therein, or directly affecting contractual relationships contains a material false statement or material false information, and with intent to defraud, he presents or offers it to a public office or a public employee, with the knowledge that it will be registered, filed or recorded or become a part of the records of that public office or public employee.

1           "(b) Offering a false instrument for recording is a  
2 Class A misdemeanor.

3           "~~(c) A public servant as defined in Section 13A-10-1~~  
4 ~~commits the crime of falsely removing an instrument from~~  
5 ~~recording if, knowing that a written instrument relating to or~~  
6 ~~affecting real or personal property, or an interest therein,~~  
7 ~~or directly affecting contractual relationships is valid, he~~  
8 ~~or she attempts to have the instrument removed from recording.~~

9           "~~(d) Falsely removing an instrument from recording~~  
10 ~~is a Class C felony.~~

11           "~~(e)~~ (c) A person commits the crime of offering a  
12 false instrument for recording against a public servant if the  
13 person offers, for recording, a written instrument which  
14 relates to or affects the real or personal property, or an  
15 interest therein, or a contractual relationship of a public  
16 servant, knowing that the written instrument contains a  
17 materially false statement or materially false information,  
18 with the intent to defraud, intimidate, or harass the public  
19 servant, or to impede the public servant in the performance of  
20 his or her duties. For the purposes of this subsection, public  
21 servant is defined as in Section 13A-10-1.

22           "~~(f)~~ (d) Offering a false instrument for recording  
23 against a public servant is a Class C felony.

24           "~~(g) If a false instrument has been filed against a~~  
25 ~~public servant as defined in Section 13A-10-1, the request to~~

1 ~~remove the false instrument may be removed to circuit court~~  
2 ~~and expedited. If the request cannot be heard in circuit court~~  
3 ~~within 45 days, the request may be heard by a magistrate.a~~  
4 ~~request to remove the instrument may be made in writing to the~~  
5 ~~Secretary of State or appropriate judge of probate. Upon~~  
6 ~~making the request, the petitioner shall remove the request to~~  
7 ~~the circuit court for the county in which the public servant~~  
8 ~~resides by filing the request with the circuit clerk and~~  
9 ~~serving a copy upon the person or entity that filed the~~  
10 ~~instrument. The action shall be entitled to priority, and the~~  
11 ~~circuit court must hold a hearing within 45 days of the~~  
12 ~~removal of the request. Final determination of the request~~  
13 ~~shall be made by the circuit judge without a jury. The Alabama~~  
14 ~~Rules of Civil Procedure shall apply to any proceedings heard~~  
15 ~~pursuant to this subsection"~~

16 ~~The circuit clerk shall notify the appropriate~~  
17 ~~recording office that a petition has been received. Upon~~  
18 ~~receiving this notification the recording office shall make a~~  
19 ~~record of lis pendens for the pendency of the proceedings in~~  
20 ~~circuit court. Upon a finding by the circuit court that the~~  
21 ~~instrument is false, the appropriate recording office shall~~  
22 ~~mark the instrument as invalid with reference to the circuit~~  
23 ~~court's order.~~

24 ~~Section 2. A recording official may administratively~~  
25 ~~nullify or expunge from an official record a false or~~

1 ~~fraudulent lien or similar false or fraudulent instrument. A~~  
2 ~~public servant who is the victim of a false or fraudulent lien~~  
3 ~~or other instrument filed against him or her may petition the~~  
4 ~~recording official for administrative relief to correct the~~  
5 ~~official record. This administrative procedure shall require~~  
6 ~~the recording official to first give written notice of the~~  
7 ~~potential nullification to the offeror/filer and to the public~~  
8 ~~servant named in the lien or other instrument, at the last~~  
9 ~~known available address for each. The offeror/filer shall have~~  
10 ~~14 days from the date of the notice given to validate the~~  
11 ~~document to the reasonable satisfaction of the recording~~  
12 ~~official. If the recording official finds that the lien or~~  
13 ~~other document is materially false or fraudulent and was filed~~  
14 ~~or recorded with the intent to defraud, intimidate, or harass~~  
15 ~~the public servant, or impede the public servant in the~~  
16 ~~performance of his or her duties or purports to be a judgment,~~  
17 ~~lien, or decree of a court or governmental entity, but was not~~  
18 ~~lawfully issued, the filing official shall enter an~~  
19 ~~appropriate order stating his or her findings that either the~~  
20 ~~document has been validated and shall remain on record, or~~  
21 ~~that the document shall be nullified by entry of an~~  
22 ~~appropriate order on the record with reference to the false~~  
23 ~~lien or other instrument. The order of the filing official~~  
24 ~~shall be rendered within 28 days from the date when the notice~~  
25 ~~to validate the document was issued. Any party adversely~~

1 affected by the action of the recording official may appeal to  
2 the circuit court of any county where the lien or other  
3 instrument is recorded, or in the circuit court of Montgomery  
4 County within 14 days by filing a civil action in accordance  
5 with the Alabama Rules of Civil Procedure. The ruling of the  
6 recording official shall be stayed upon the filing of the  
7 civil action for the appeal. A final determination of the  
8 petition for nullification shall be made by the circuit judge  
9 without a jury. The circuit clerk shall notify the appropriate  
10 recording official that a petition has been received. Upon  
11 receiving this notification, the recording official shall make  
12 a record of lis pendens for the pendency of the proceedings in  
13 circuit court. Upon a finding by the circuit court that the  
14 instrument is false, the appropriate recording official shall  
15 mark the instrument as invalid and null with reference to the  
16 circuit court's order which shall be appropriately recorded  
17 and referenced in the same index or indexes as the original  
18 lien or instrument.

19 A recording official may nullify or expunge from an  
20 official record a false or fraudulent lien or instrument. A  
21 person or entity whose rights are affected by the filing of a  
22 lien or other instrument may petition a recording official to  
23 nullify or expunge the filing. If a lien or instrument is  
24 recorded with more than one recording official, then the  
25 petitioner may file such a petition with any such recording

1 official, but may file only one such petition and any decision  
2 rendered on that petition in accordance with the procedures  
3 outlined in this section shall be equally applicable to all  
4 other filings. Such petition shall be in writing and sworn  
5 under oath and based upon the personal knowledge of the  
6 petitioner. A copy of such petition shall be delivered via  
7 certified and first class mail to the person or entity who  
8 filed the lien or instrument or who claims the rights or  
9 interests thereby at an address shown on the lien or  
10 instrument. Within 14 days of the filing of such a petition,  
11 the recording official shall give written notice of the filing  
12 of the petition to the person or entity who filed the lien or  
13 instrument or who claims the rights or interests thereby. Such  
14 notice shall be sent by certified and first class mail, shall  
15 be deemed delivered when placed in the mail and shall state  
16 that any additional proof of the validity of the lien or  
17 instrument shall be filed with the recording official within  
18 14 days of the date of mailing said notice and that the  
19 failure to do so could result in the lien or instrument being  
20 nullified or expunged. If the recording official does not  
21 grant the petition within 28 days of the date that it is  
22 filed, the petition shall be deemed denied. An order granting  
23 or denying a petition, if rendered, shall be delivered to the  
24 parties by the recording official by certified first class  
25 mail, but shall not be enforced, acted upon or effective

1 before the expiration of 28 days from the date of mailing or  
2 the final adjudication of any and all appeals of that  
3 decision, at which time any final order granting the petition  
4 shall be recorded and indexed in order to provide notice that  
5 the lien or instrument has been nullified or expunged. A party  
6 may appeal the decision of the recording official to the  
7 circuit court of any county where the lien or instrument was  
8 filed or to the circuit court of Montgomery County, Alabama.  
9 Such appeals must be filed within 28 days of the recording  
10 official's order or deemed denied. Such appeals shall be filed  
11 and commenced as a civil action under the Alabama Rules of  
12 Civil Procedure, which shall otherwise apply to such actions  
13 on appeal. A notice of the appeal shall also be filed with the  
14 recording official, who shall file the notice as a lis pendens  
15 filing. The appeal shall be de novo by the circuit court  
16 without a jury. The prevailing party on appeal shall be  
17 entitled to a judgement against the other party for the  
18 prevailing party's attorneys fees and expenses arising out of  
19 and relating to the appeal, and court costs shall be taxed  
20 against the non-prevailing party. The remedy and procedure  
21 provided in this section is not exclusive or mandatory.  
22 Nothing in this section shall prevent the enforcement or  
23 challenge of any recorded lien or instrument as may otherwise  
24 be allowed by law. Nothing in this section alters or modifies  
25 any other requirements for the filing, enforcement or



1 challenge of any lien or instrument required or allowed by  
2 law."

3           Section 3. Although this bill would have as its  
4 purpose or effect the requirement of a new or increased  
5 expenditure of local funds, the bill is excluded from further  
6 requirements and application under Amendment 621, now  
7 appearing as Section 111.05 of the Official Recompilation of  
8 the Constitution of Alabama of 1901, as amended, because the  
9 bill defines a new crime or amends the definition of an  
10 existing crime.

11           Section 4. This act shall become effective  
12 immediately following its passage and approval by the  
13 Governor, or its otherwise becoming law.

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Speaker of the House of Representatives

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President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in  
and was passed by the House 23-FEB-12, as amended and was  
passed again as amended by Executive Amendment 10-APR-12.  
Yeas 96, Nays 0, Abstains 0

Greg Pappas  
Clerk

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Senate	22-MAR-12	Passed
Senate	12-APR-12	Passed, as amended by Executive Amendment Yeas 26, Nays 0, Ab- stains 1

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