

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

ENGROSSED

A BILL  
TO BE ENTITLED  
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

1 knowledge that it will be registered, filed or recorded or  
2 become a part of the records of that public office or public  
3 employee.

4 "(b) Offering a false instrument for recording is a  
5 Class A misdemeanor.

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

12 "(d) Falsely removing an instrument from recording  
13 is a Class C felony.

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

25 "(f) Offering a false instrument for recording  
26 against a public servant is a Class C felony.

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

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

26           Section 2. Although this bill would have as its  
27 purpose or effect the requirement of a new or increased

1 expenditure of local funds, the bill is excluded from further  
2 requirements and application under Amendment 621, now  
3 appearing as Section 111.05 of the Official ReCompilation of  
4 the Constitution of Alabama of 1901, as amended, because the  
5 bill defines a new crime or amends the definition of an  
6 existing crime.

7           Section 3. This act shall become effective  
8 immediately following its passage and approval by the  
9 Governor, or its otherwise becoming law.

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House of Representatives

Read for the first time and re-  
ferred to the House of Representa-  
tives committee on Judiciary ..... 07-FEB-12

Read for the second time and placed  
on the calendar 2 amendments ..... 08-FEB-12

Read for the third time and passed  
as amended..... 23-FEB-12

Yeas 95, Nays 0, Abstains 0

Greg Pappas  
Clerk