

1 HB17  
2 133971-3  
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.~~  
4 ~~a 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           Section 3. Although this bill would have as its  
20 purpose or effect the requirement of a new or increased  
21 expenditure of local funds, the bill is excluded from further  
22 requirements and application under Amendment 621, now  
23 appearing as Section 111.05 of the Official Recompilation of  
24 the Constitution of Alabama of 1901, as amended, because the

1 bill defines a new crime or amends the definition of an  
2 existing crime.

3 Section 4. This act shall become effective  
4 immediately following its passage and approval by the  
5 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.

Greg Pappas  
Clerk

Senate	22-MAR-12	Amended and Passed
House	03-APR-12	Concurred in Senate Amendment