

1 HB674
2 119435-1
3 By Representative England
4 RFD: Judiciary
5 First Read: 04-MAR-10

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8 SYNOPSIS: This bill would authorize any judge of
9 probate and the Secretary of State to refuse to
10 accept for filing what he or she believes to be a
11 materially false, fraudulent, or unlawfully issued
12 document, and to remove from existing public
13 records and documents filed against a public
14 employee or public official when he or she believes
15 the records and documents to be materially false,
16 fraudulent, or not lawfully issued. The bill would
17 provide the documents may include, but are not
18 limited to, deeds of conveyance, mortgages, and
19 judgment liens.

20 This bill would provide for a procedure
21 under which the filer or owner, or both, of a
22 document may make corrections.

23 This bill would establish the crime of
24 offering a false instrument for recording against a
25 public employee or public official and would
26 provide for penalties.

1 Amendment 621 of the Constitution of Alabama
2 of 1901, now appearing as Section 111.05 of the
3 Official Recompilation of the Constitution of
4 Alabama of 1901, as amended, prohibits a general
5 law whose purpose or effect would be to require a
6 new or increased expenditure of local funds from
7 becoming effective with regard to a local
8 governmental entity without enactment by a 2/3 vote
9 unless: it comes within one of a number of
10 specified exceptions; it is approved by the
11 affected entity; or the Legislature appropriates
12 funds, or provides a local source of revenue, to
13 the entity for the purpose.

14 The purpose or effect of this bill would be
15 to require a new or increased expenditure of local
16 funds within the meaning of the amendment. However,
17 the bill does not require approval of a local
18 governmental entity or enactment by a 2/3 vote to
19 become effective because it comes within one of the
20 specified exceptions contained in the amendment.

21
22 A BILL
23 TO BE ENTITLED
24 AN ACT

25
26 To add Section 36-14-18 to the Code of Alabama 1975,
27 to authorize the Secretary of State to refuse to accept for

1 filing any document which he or she believes to be materially
2 false, fraudulent, or not issued lawfully; to authorize the
3 Secretary of State to remove and expunge from existing public
4 records any document filed against a public employee or public
5 official which he or she believes to be materially false,
6 fraudulent, or not issued lawfully; to provide for the type of
7 documents; to provide for a procedure under which the filer or
8 owner, or both, of a document may seek corrections; to amend
9 Section 12-13-40 of the Code of Alabama 1975, to authorize the
10 judge of probate to refuse to accept for filing any document
11 which he or she believes to be materially false, fraudulent,
12 or not issued lawfully; to authorize the judge of probate to
13 remove and expunge from existing public records any document
14 filed against a public employee or public official which he or
15 she believes to be materially false, fraudulent, or not issued
16 lawfully; to provide for the type of documents; to provide for
17 a procedure under which the filer or owner, or both, of a
18 document may seek corrections; to amend Section 13A-9-12 of
19 the Code of Alabama 1975, to establish the crime of offering a
20 false instrument for recording against a public employee or
21 public official; to provide for penalties; and in connection
22 therewith would have as its purpose or effect the requirement
23 of a new or increased expenditure of local funds within the
24 meaning of Amendment 621 of the Constitution of Alabama of
25 1901, now appearing as Section 111.05 of the Official
26 Recompilation of the Constitution of Alabama of 1901, as
27 amended.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

2 Section 1. Section 36-14-18 is added to the Code of
3 Alabama 1975, to read as follows:

4 §36-14-18.

5 (a) The Secretary of State may refuse to accept for
6 filing or recording any record, paper, or other document
7 presented to him or her by any person if he or she reasonably
8 believes the document is materially false or fraudulent; or
9 purports to be issued by a court or appropriate governmental
10 entity, but was not lawfully issued. Written notice of the
11 refusal shall be given to the presenter of the document who
12 shall have 30 days from the date of the notice to validate the
13 document to the satisfaction of the Secretary of State. If a
14 refused document is validated by the presenter, the Secretary
15 of State shall accept the document for filing or recording,
16 and shall not be liable for damages, personally or in his or
17 her official capacity for the refusal.

18 (b) The Secretary of State may remove and expunge
19 from the public records any document filed or recorded against
20 a public employee or public official, as defined in Section
21 36-25-1; if he or she reasonably believes the document is
22 materially false or fraudulent; or purports to be issued by a
23 court or appropriate governmental entity, but was not lawfully
24 issued. Written notice of the intended removal shall be sent
25 to the public employee or public official named in the
26 document and to the presenter of the document, at the best
27 available address for each. The presenter shall have 30 days

1 from the date of the notice to validate the document to the
2 satisfaction of the Secretary of State. If upon notice of its
3 intended removal, a document is validated by the presenter,
4 the Secretary of State shall not remove or expunge the
5 document, and he or she shall not be liable for damages,
6 personally or in his or her official capacity for the intended
7 removal.

8 Section 2. Sections 12-13-40 and 13A-9-12 of the
9 Code of Alabama 1975, are amended to read as follows:

10 "§12-13-40.

11 "The ~~probate~~ judge of probate shall have authority
12 to do all of the following:

13 "(1) ~~To administer~~ Administer oaths and take and
14 certify the ~~same~~ oaths in all cases in which administering
15 such oath and taking such affidavit is not confined expressly
16 to some other officer~~7.~~

17 "(2) ~~To cause~~ Cause jurors to be impaneled and sworn
18 in any matter of fact pending before him or her in which the
19 right to a jury trial is given by law~~7.~~

20 "(3) ~~To appoint~~ Appoint guardians ad litem for
21 minors and persons of unsound mind, when necessary, but he
22 ~~must~~ or she shall not appoint as ~~such~~ guardian any clerk,
23 employee or other person connected with ~~his~~ the judge of
24 probate office or related to ~~him~~ the judge of probate by
25 consanguinity or affinity~~7.~~

26 "(4) ~~To employ~~ Employ, at his or her own expense a
27 chief clerk and such other clerks as ~~he deems~~ deemed

1 necessary, for whose official acts ~~he~~ the judge of probate
2 shall be responsible~~7.~~

3 "(5) ~~To complete~~ Complete the minute entries and
4 decrees of the court when the ~~same~~ minute entries and decrees
5 are incomplete ~~on account of~~ due to the failure to make
6 necessary entries at the time when they should have been made,
7 but the necessary application and proof ~~must~~ shall first be
8 made, and ~~such~~ the entries, orders, or decrees shall be as
9 valid and binding as if they had been made at the proper
10 time~~7.~~

11 "(6) ~~To authorize~~ Authorize the making of an
12 abstract of title of lands sold at judicial sale as provided
13 in Section 6-8-30~~7~~ and.

14 "(7) Refuse to accept for filing or recording any
15 mortgage instrument to secure the payment of debt, lien, or
16 other document presented to him or her by any person if he or
17 she reasonably believes the document is materially false or
18 fraudulent; or purports to be a judgment, lien, or decree of a
19 court or appropriate governmental entity, but was not lawfully
20 issued. Written notice of any refusal shall be given to the
21 presenter of the document, who shall have 30 days from the
22 date of the notice to validate the document to the
23 satisfaction of the judge of probate. If a refused document is
24 validated by the presenter, the judge of probate shall accept
25 the document for filing or recording, and shall not be liable
26 for damages, personally or in his or her official capacity for
27 the refusal.

1 "(8) Remove and expunge from the public records any
2 deed of conveyance, mortgage instrument to secure the payment
3 of debt, judgment, lien, or other document filed or recorded
4 against a public employee or public official, as defined in
5 Section 36-25-1; if he or she reasonably believes the document
6 is materially false or fraudulent; or purports to be a
7 judgment, lien, or decree of a court or appropriate
8 governmental entity, but was not lawfully issued. Written
9 notice of the intended removal shall be sent to the public
10 employee or public official named in the document and to the
11 presenter of the document, at the best available address for
12 each. The presenter shall have 30 days from the date of the
13 notice to validate the document to the satisfaction of the
14 judge of probate. If upon notice of its intended removal, a
15 document is validated by the presenter, the judge of probate
16 shall not remove and expunge the document, and shall not be
17 liable for damages, personally or in his or her official
18 capacity for the intended removal.

19 ~~"(7) To exercise such~~ (9) Exercise all other powers
20 as are or may be conferred on him or her by law.

21 "§13A-9-12.

22 "(a) A person commits the crime of offering a false
23 instrument for recording if, knowing that a written instrument
24 relating to or affecting real or personal property, or an
25 interest therein, or directly affecting contractual
26 relationships contains a material false statement or material
27 false information, and with intent to defraud, he presents or

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

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

7 "(c) A person commits the crime of offering a false
8 instrument for recording against a public employee or public
9 official if, the written instrument relates to or affects the
10 real or personal property, or the contractual relationships of
11 a public employee or public official, as defined in Section
12 36-25-1; and it is presented or offered with the intent to
13 defraud, intimidate, or harass the public employee or public
14 official, or to impede the public employee or public official
15 in the performance of his or her duties.

16 "(d) Offering a false instrument for recording
17 against a public employee or public official is a Class C
18 felony."

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
25 bill defines a new crime or amends the definition of an
26 existing crime.

1 Section 4. This act shall become effective
2 immediately following its passage and approval by the
3 Governor, or its otherwise becoming law.