

1 SB105
2 147725-1
3 By Senators Orr, Beason and Pittman
4 RFD: Finance and Taxation General Fund
5 First Read: 05-FEB-13

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8 SYNOPSIS: Existing law prohibits the use of
9 fraudulent means to establish eligibility for
10 public housing and Medicaid.

11 This bill would prohibit certain fraudulent
12 conduct in obtaining public assistance under any
13 state or federally funded public assistance program
14 and would provide penalties.

15 Under existing law, a person commits the
16 crime of theft of services, if he or she
17 intentionally obtains services, known by him or her
18 to be available only for compensation, by
19 deception, threat, false token, or other means to
20 avoid payment for the services.

21 This bill would remove the requirement that
22 the person committing the crime knew the services
23 were available only for compensation.

24 Amendment 621 of the Constitution of Alabama
25 of 1901, now appearing as Section 111.05 of the
26 Official Recompilation of the Constitution of
27 Alabama of 1901, as amended, prohibits a general

1 law whose purpose or effect would be to require a
2 new or increased expenditure of local funds from
3 becoming effective with regard to a local
4 governmental entity without enactment by a 2/3 vote
5 unless: it comes within one of a number of
6 specified exceptions; it is approved by the
7 affected entity; or the Legislature appropriates
8 funds, or provides a local source of revenue, to
9 the entity for the purpose.

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

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18 A BILL
19 TO BE ENTITLED
20 AN ACT
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22 Relating to crimes and offenses; to prohibit certain
23 conduct in obtaining public assistance under any state or
24 federally funded public assistance program; to provide
25 penalties; to amend Section 13A-8-10 of the Code of Alabama
26 1975, relating to theft of services, to remove the requirement
27 that the person committing the crime knew the services were

1 available only for compensation; and in connection therewith
2 to have as its purpose or effect the requirement of a new or
3 increased expenditure of local funds within the meaning of
4 Amendment 621 of the Constitution of Alabama of 1901, now
5 appearing as Section 111.05 of the Official Recompilation of
6 the Constitution of Alabama of 1901, as amended.

7 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

8 Section 1. (a) It shall be unlawful for any person
9 to knowingly do any of the following:

10 (1) Fail, by false statement, misrepresentation,
11 impersonation, or other fraudulent means, to disclose a
12 material fact used in making a determination as to the
13 qualification of the person to receive public assistance under
14 any state or federally funded program.

15 (2) Fail to disclose a change in circumstances in
16 order to obtain or continue to receive any public assistance
17 to which he or she is not entitled or in an amount larger than
18 that to which he or she is entitled.

19 (3) Aid and abet another person in the commission of
20 the prohibitions enumerated in subdivisions (1) and (2).

21 (4) Use, transfer, acquire, traffic, alter, forge,
22 possess, attempt to use, attempt to transfer, attempt to
23 acquire, attempt to traffic, attempt to alter, attempt to
24 forge, attempt to possess, or aid and abet another person in
25 the use, transfer, acquisition, traffic, alteration, forgery,
26 or possession of a food assistance identification card, an
27 authorization, including, but not limited to, an electronic

1 authorization, for the expenditure of food assistance
2 benefits, a certificate of eligibility for medical services,
3 or a Medicaid identification card in any manner not authorized
4 by law.

5 (5) File, attempt to file, or aid and abet in the
6 filing of a claim for services to a recipient of public
7 assistance under any state or federally funded public
8 assistance program for services that were not rendered.

9 (6) File a false claim or a claim for nonauthorized
10 items or services under any state or federally funded public
11 assistance program.

12 (7) Bill the recipient of public assistance under
13 any state or federally funded public assistance program, or
14 his or her family, for an amount in excess of that provided
15 for by law or regulation.

16 (8) Fail to credit the state or its agents for
17 payments received from Social Security, insurance, or other
18 sources.

19 (9) In any way receive, attempt to receive, or aid
20 and abet in the receipt of unauthorized payments or other
21 unauthorized public assistance or authorization or
22 identification to obtain public assistance under any state or
23 federally funded public assistance program.

24 (b) It shall be unlawful for any person having
25 duties in the administration of a state or federally funded
26 public assistance program or in the distribution of public
27 assistance or with authorization or identification to obtain

1 public assistance under a state or federally funded public
2 assistance program to do any of the following:

3 (1) Fraudulently misappropriate, attempt to
4 misappropriate, knowingly fail to disclose fraudulent
5 activity, or aid and abet in the misappropriation of a food
6 assistance, an authorization for food assistance, a food
7 assistance identification card, a certificate of eligibility
8 for prescribed medicine, a Medicaid identification card, or
9 public assistance from any other state or federally funded
10 program with which he or she has been entrusted or of which he
11 or she has gained possession by virtue of his or her position.

12 (2) Knowingly misappropriate, attempt to
13 misappropriate, or aid and abet in the misappropriation of
14 funds given in exchange for food assistance program benefits
15 or for any form of food assistance benefits authorization.

16 (c) (1) A person who violates this section in an
17 aggregate value of two hundred dollars (\$200) or more in any
18 12 consecutive months shall be guilty of a Class C felony.

19 (2) A person who violates this section in an amount
20 less than the aggregate value of two hundred dollars (\$200) in
21 any 12 consecutive months shall be guilty of a Class A
22 misdemeanor.

23 (d) The value of a food assistance authorization
24 benefit shall be equal to the cash or exchange value
25 unlawfully obtained by the fraudulent act committed in
26 violation of this section.

1 (e) Public assistance fraud for the purposes of this
2 section shall include the introduction of fraudulent records
3 into a computer system, the unauthorized use of computer
4 facilities, the intentional or deliberate alteration or
5 destruction of computerized information or files, and the
6 stealing of financial instruments, data, and other assets.

7 (f) Repayment of public assistance benefits or
8 services or return of authorization or identification
9 wrongfully obtained is not a defense to, or ground for
10 dismissal of, criminal charges brought under this section.

11 (g) The introduction into evidence of a paid state
12 warrant to the order of the defendant is prima facie evidence
13 that the defendant did receive public assistance from the
14 state.

15 (h) The introduction into evidence of a transaction
16 history generated by a personal identification number (PIN)
17 establishing a purchase or withdrawal by electronic benefit
18 transfer is prima facie evidence that the identified recipient
19 received public assistance from the state.

20 (i) All records relating to investigations of public
21 assistance fraud under this act in the custody of any state
22 department are available for examination by law enforcement
23 and are admissible into evidence in proceedings brought under
24 this section as business records.

25 (j) The Department of Human Resources, the Medicaid
26 Agency, the Housing Finance Authority, and any other state
27 agency that administers public assistance shall create an

1 error-prone or fraud-prone case profile within its public
2 assistance information system and shall screen each
3 application for public assistance, including food assistance,
4 Medicaid, temporary cash assistance, and public housing,
5 against the profile to identify cases that have a potential
6 for error or fraud. Each case identified as having a potential
7 for error or fraud shall be subjected to preeligibility fraud
8 screening. The Department of Human Resources may utilize the
9 Income and Eligibility Verification System to comply with the
10 criteria of this section to address fraud.

11 (k) (1) Any person providing service for which
12 compensation is paid under any state or federally funded
13 public assistance program who solicits, requests, or receives,
14 either actually or constructively, any payment or contribution
15 through a payment, assessment, gift, devise, bequest, or other
16 means, whether directly or indirectly, from a recipient of
17 public assistance from a public assistance program, or from
18 the family of the recipient, shall notify the Department of
19 Human Resources, on a form provided by the department, of the
20 amount of the payment or contribution and of any other
21 information as specified by the department, within 10 days
22 after the receipt of the payment or contribution, or if the
23 payment or contribution is to become effective at some time in
24 the future, within 10 days of the consummation of the
25 agreement to make the payment or contribution.

26 (2) Failure to notify the Department of Human
27 Resources within the prescribed time is a Class A misdemeanor.

1 Section 2. Section 13A-8-10 of the Code of Alabama
2 1975, is amended to read as follows:

3 "§13A-8-10.

4 "(a) A person commits the crime of theft of services
5 if:

6 "(1) He intentionally obtains services ~~known by him~~
7 ~~to be available only for compensation~~ by deception, threat,
8 false token or other means to avoid payment for the services;
9 or

10 "(2) Having control over the disposition of services
11 of others to which he is not entitled, he knowingly diverts
12 those services to his own benefit or to the benefit of another
13 not entitled thereto.

14 "(b) "Services" includes but is not necessarily
15 limited to labor, professional services, transportation,
16 telephone or other public services, accommodation in motels,
17 hotels, restaurants or elsewhere, admission to exhibitions,
18 computer services and the supplying of equipment for use.

19 "(c) Where compensation for services is ordinarily
20 paid immediately upon the rendering of them, as in the case of
21 motels, hotels, restaurants and the like, absconding without
22 payment or bona fide offer to pay is prima facie evidence
23 under subsection (a) that the services were obtained by
24 deception.

25 "(d) If services are obtained under subdivision (a)
26 (1) from a hotel, motel, inn, restaurant or cafe, no

1 prosecution can be commenced after 120 days from the time of
2 the offense."

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 on the
12 first day of the third month following its passage and
13 approval by the Governor, or its otherwise becoming law.