

1 SB197
2 128192-2
3 By Senators Waggoner and Ward
4 RFD: Judiciary
5 First Read: 10-MAR-11

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

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11 To amend Section 12-13-40 of the Code of Alabama
12 1975, to authorize the judge of probate to remove and expunge
13 from existing public records any document filed against a
14 public servant which he or she believes to be materially
15 false, fraudulent, or not issued lawfully; to amend Section
16 13A-9-12 of the Code of Alabama 1975, to establish the crimes
17 of falsely removing a recording and offering a false
18 instrument for recording against a public servant; to provide
19 for penalties; to amend Section 35-11-5 of the Code of Alabama
20 1975, to require a plaintiff to attempt to serve notice of a
21 lien on a debtor and require certain proof of the notice; to
22 add Section 36-14-18 to the Code of Alabama 1975, to authorize
23 the Secretary of State to remove and expunge from existing
24 public records any document filed against a public servant
25 which he or she believes to be materially false, fraudulent,
26 or not issued lawfully; to require the presenter of a lien to
27 attempt to serve notice and keep proof of the attempt to serve

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

7 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

8 Section 1. Sections 12-13-40, 13A-9-12, and 35-11-5
9 of the 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 office of the
24 judge of probate 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) Remove and expunge, at the written request of a
15 public servant who has a document filed against him or her,
16 from the public records any deed of conveyance, mortgage
17 instrument to secure the payment of debt, judgment, lien, or
18 other document filed or recorded against the public servant,
19 as defined in Section 13A-10-1; if the judge of probate
20 reasonably believes the document is materially false or
21 fraudulent and was filed or recorded with the intent to
22 defraud, intimidate, or harass the public servant, impede the
23 public servant in the performance of his or her duties, or
24 purports to be a judgment, lien, or decree of a court or
25 appropriate governmental entity, but was not lawfully issued.
26 Written notice of the intended removal shall be sent to the
27 public servant named in the document and to the presenter of

1 the document, at the best available address for each. The
2 presenter shall have 14 days from the date of the notice to
3 validate the document to the satisfaction of the judge of
4 probate. Within 28 days from the date of notice, the judge of
5 probate shall issue an order stating that either the document
6 has been validated and will remain on record, or that it shall
7 be removed and expunged. Any party affected by the action of
8 the judge of probate may appeal to the circuit court of any
9 county where the document is filed, or in the circuit court of
10 Montgomery County within 14 days.

11 ~~"(7)(8) To exercise such~~ Exercise all other powers
12 as are or may be conferred on him or her by law.

13 "§13A-9-12.

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

24 "(b) Offering a false instrument for recording is a
25 Class A misdemeanor.

26 "(c) A person commits the crime of falsely removing
27 an instrument from recording if, knowing that a written

1 instrument relating to or affecting real or personal property,
2 or an interest therein, or directly affecting contractual
3 relationships is valid, he or she attempts to have the
4 instrument removed from recording through the procedures
5 created in Section 36-14-18(a) or 12-13-40(7).

6 "(d) Falsely removing an instrument from recording
7 is a Class A misdemeanor.

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

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

21 "§35-11-5.

22 "(a) In all cases in this chapter where the process
23 of attachment is authorized, and unless otherwise particularly
24 provided for in the article declaring the lien, before such
25 attachment shall issue, the plaintiff, his or her agent or
26 attorney must make affidavit setting forth the amount of such
27 claim, or if a toll is claimed, the reasonable value thereof,

1 that one of the enumerated causes for attachment prescribed in
2 the applicable article exists, that the attachment is not sued
3 out for the purpose of vexing or harassing the defendant,
4 whether or not the debt or toll is due, and if not, when the
5 same will be due, that said debt or toll remains unpaid, and
6 must describe therein, as near as practicable, the property on
7 which the lien is claimed. ~~He~~ The plaintiff must also execute
8 a bond in double the amount claimed, with sufficient sureties
9 to be approved by the officer issuing the attachment, payable
10 to the defendant and with the condition that the plaintiff
11 will prosecute the attachment to effect and pay the defendant
12 all such damages as he may sustain from the wrongful or
13 vexatious suing out of such attachment.

14 "(b) The plaintiff shall attempt to serve notice on
15 a debtor prior to filing a lien and the plaintiff shall
16 provide proof of such notice when filing the instrument with
17 the judge of probate or the Secretary of State."

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

20 §36-14-18.

21 The Secretary of State, upon the completion of a
22 form created by the Secretary of State by a public servant, as
23 defined in Section 13A-10-1, may remove and expunge from the
24 public records any document filed or recorded against the
25 public servant if the Secretary of State reasonably believes
26 the document is materially false or fraudulent and was filed
27 or recorded with the intent to defraud, intimidate, or harass

1 the public servant, impede the public servant in the
2 performance of his or her duties, or purports to be issued by
3 a court or appropriate governmental entity, but was not
4 lawfully issued. Written notice of the intended removal shall
5 be sent to the public servant named in the document and to the
6 presenter of the document, at the best available address for
7 each. The presenter shall have 14 days from the date of the
8 notice to validate the document to the satisfaction of the
9 Secretary of State. Within 28 days from the date of notice,
10 the Secretary of State shall send a letter via first class
11 mail to the public servant named in the document and to the
12 presenter of the document, at the best available address for
13 each, stating that either the document has been validated and
14 will remain on record, or that it shall be removed and
15 expunged. Any party affected by the action of the Secretary of
16 State may appeal to the Circuit Court of Montgomery County
17 within 14 days.

18 Section 3. Although this bill would have as its
19 purpose or effect the requirement of a new or increased
20 expenditure of local funds, the bill is excluded from further
21 requirements and application under Amendment 621, now
22 appearing as Section 111.05 of the Official Recompilation of
23 the Constitution of Alabama of 1901, as amended, because the
24 bill defines a new crime or amends the definition of an
25 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.

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Senate

Read for the first time and referred to the Senate
committee on Judiciary..... 10-MAR-11

Read for the second time and placed on the calen-
dar..... 31-MAR-11

Read for the third time and passed as amended 12-APR-11

Yeas 30
Nays 0

Patrick Harris
Secretary