

1 SB114  
2 156502-5  
3 By Senators Orr, Pittman, Taylor, Bussman, Williams, Fielding,  
4 Glover, Holtzclaw, Holley, Dial, Ward, Whatley and Reed  
5 RFD: Fiscal Responsibility and Accountability  
6 First Read: 14-JAN-14

1 SB114

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4 ENROLLED, An Act,

5 Relating to crimes and offenses; to provide a  
6 definition; to prohibit certain conduct in obtaining public  
7 assistance under any state or federally funded public  
8 assistance program; to provide penalties; to provide for the  
9 admissibility of certain records relating to public assistance  
10 fraud; to provide for the forfeiture of any funds, proceeds,  
11 or property obtained by fraudulent conduct in obtaining public  
12 assistance; to amend Section 40-18-100, Code of Alabama 1975,  
13 to provide for the interception of state income tax refunds of  
14 persons fraudulently or improperly obtaining public assistance  
15 from a housing authority; and in connection therewith to have  
16 as its purpose or effect the requirement of a new or increased  
17 expenditure of local funds within the meaning of Amendment 621  
18 of the Constitution of Alabama of 1901, now appearing as  
19 Section 111.05 of the Official Recompilation of the  
20 Constitution of Alabama of 1901, as amended.

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

22 Section 1. (a) For the purposes of this section,  
23 public assistance means money or property provided directly or  
24 indirectly to eligible persons through programs of the federal  
25 government, the state, or any political subdivision thereof,

1 including any program administered by a public housing  
2 authority.

3 (b) It shall be unlawful for an individual or  
4 business entity to knowingly do any of the following:

5 (1) Fail, by false statement, misrepresentation,  
6 impersonation, or other fraudulent means, to disclose a  
7 material fact used in making a determination as to the  
8 qualification of the person to receive public assistance.

9 (2) Fail to disclose a change in circumstances in  
10 order to obtain or continue to receive any public assistance  
11 to which he or she is not entitled or in an amount larger than  
12 that to which he or she is entitled.

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

15 (4) Use, transfer, acquire, traffic, alter, forge,  
16 possess, attempt to use, attempt to transfer, attempt to  
17 acquire, attempt to traffic, attempt to alter, attempt to  
18 forge, attempt to possess, or aid and abet another person in  
19 the use, transfer, acquisition, traffic, alteration, forgery,  
20 or possession of a food assistance identification card, an  
21 authorization, including, but not limited to, an electronic  
22 authorization, for the expenditure of food assistance  
23 benefits, a certificate of eligibility for medical services,  
24 or a Medicaid identification card in any manner not authorized  
25 by law, or to re-encode a magnetic strip on any card with

1 information issued by any state or federal agency that grants  
2 monetary benefits that were not issued by that agency or that  
3 does not match the information on the front of the card.

4 (5) File, attempt to file, or aid and abet in the  
5 filing of a claim for services to, or on behalf of, a  
6 recipient of public assistance for services that were not  
7 rendered.

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

11 (7) Bill the recipient of public assistance, or his  
12 or her family, for an amount in excess of that provided for by  
13 law or regulation.

14 (8) Fail to credit, return, or pay back to the state  
15 or its agents any payments received from Social Security,  
16 insurance, or other sources of funds paid or administered by  
17 any state agency that are in excess of the approved or listed  
18 amount or were received or approved based on fraud or  
19 fraudulent conduct.

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

1           (10) Convert, charge, accept, or in any way take any  
2 funds administered by a public assistance program in excess of  
3 the listed price plus any applicable taxes.

4           (11) Receive payment that includes public assistance  
5 funds, in any form, for the purchase of items that are not  
6 authorized or are prohibited by state or federal law.

7           (c) In order to commit a violation of subsection  
8 (b), a hospital, as defined in Section 22-21-20, Code of  
9 Alabama 1975, or an employee, agent, contractor, subcontractor  
10 or independent contractor of a hospital, or a physician or a  
11 physician's employee, agent, contractor, subcontractor, or  
12 independent contractor must have specific intent to make a  
13 claim or obtain a payment for a health care item or service  
14 for which he or she has actual knowledge, as opposed to  
15 constructive knowledge, that he or she is not entitled to the  
16 claim or payment or that he or she has actual knowledge that  
17 his or her patient is not otherwise entitled to coverage under  
18 a public assistance program.

19           (d) It shall be unlawful for any person having  
20 duties in the administration of a public assistance program or  
21 in the distribution of public assistance or with authorization  
22 or identification to obtain public assistance to do any of the  
23 following:

24           (1) Fraudulently misappropriate, attempt to  
25 misappropriate, knowingly fail to disclose fraudulent

1 activity, or aid and abet in the misappropriation of a food  
2 assistance, an authorization for food assistance, a food  
3 assistance identification card, a certificate of eligibility  
4 for prescribed medicine, a Medicaid identification card, or  
5 any other public assistance program with which he or she has  
6 been entrusted or of which he or she has gained possession by  
7 virtue of his or her position.

8 (2) Knowingly misappropriate, attempt to  
9 misappropriate, or aid and abet in the misappropriation of  
10 funds given in exchange for food assistance program benefits  
11 or for any form of food assistance benefits authorization.

12 (e) (1) In addition to any other penalty provided by  
13 law, an individual or business entity that violates this  
14 section in an aggregate value of two hundred dollars (\$200) or  
15 more shall be guilty of a Class C felony.

16 (2) In addition to any other penalty provided by  
17 law, an individual or business entity that violates this  
18 section in an amount less than the aggregate value of two  
19 hundred dollars (\$200) shall be guilty of a Class A  
20 misdemeanor.

21 (3) Three or more violations of this section shall  
22 establish a rebuttable presumption that the individual  
23 knowingly violated this section.

24 (f) The value of a food assistance authorization  
25 benefit shall be equal to the cash or exchange value

1 unlawfully obtained by the fraudulent act committed in  
2 violation of this section.

3 (g) For the purposes of this section, public  
4 assistance fraud shall include the introduction of fraudulent  
5 records into a computer system, the unauthorized use of  
6 computer facilities, the intentional or deliberate alteration  
7 or destruction of computerized information or files,  
8 fraudulent billing or charging, and the stealing of financial  
9 instruments, data, and other assets.

10 (h) Repayment of public assistance benefits or  
11 services or return of authorization or identification  
12 wrongfully obtained is not a defense to, or ground for  
13 dismissal of, criminal charges brought under this section.  
14 However, in situations in which a hospital, as defined in  
15 Section 22-21-20, Code of Alabama 1975, or an employee, agent,  
16 contractor, subcontractor or independent contractor of a  
17 hospital, or a physician or his or her employee, agent,  
18 contractor, subcontractor, or independent contractor has  
19 overbilled or received an overpayment for a medical or health  
20 care service or improperly charted, coded, or billed for any  
21 medical or health care service, common practices, including  
22 but not limited to, repayment, even years later, may use as a  
23 defense to, or ground for dismissal of, a prosecution under  
24 this act.

1           (i) The introduction into evidence of a paid state  
2 warrant to the order of the defendant is prima facie evidence  
3 that the defendant did receive public assistance from the  
4 state.

5           (j) The introduction into evidence of a transaction  
6 history generated by a personal identification number (PIN)  
7 establishing a purchase or withdrawal by electronic benefit  
8 transfer is prima facie evidence that the identified recipient  
9 received public assistance from the state.

10           (k) (1) If an original record is admissible in any  
11 case or proceeding in a court in the state, a certified copy  
12 of the record in the custody of any federal or state agency  
13 relating to an investigation of public assistance fraud under  
14 this section shall be admissible when certified and affirmed  
15 by the custodian of the agency records as provided in  
16 subdivision (2), without further proof in any court in the  
17 state where admissible. The agency records must satisfy both  
18 of the following:

19           a. Were made and kept in the usual and regular  
20 course of business of the agency.

21           b. Were made at the time that the acts,  
22 transactions, occurrences, or events occurred or arose or  
23 within a reasonable time thereafter.

24           (2) The certificate of the custodian of a record  
25 under subdivision (1) shall name the parties to the case or



1 proceeding and the name of the court to which made, by  
2 appropriate caption. The certificate shall be in the following  
3 form:

4 "I, \_\_\_\_\_, hereby certify and affirm in  
5 writing that I am \_\_\_\_\_ (title) of the  
6 \_\_\_\_\_ (agency), a governmental agency, located at  
7 \_\_\_\_\_, that I am custodian of the agency records of  
8 the agency and that the copy of the records within are an  
9 exact, full, true, and correct copy of the records pertaining  
10 to \_\_\_\_\_. These records were made and kept in the  
11 usual and regular course of business of the listed agency and  
12 it was in the regular course of business of the listed agency  
13 to make and keep the records and that the records were made at  
14 the time that the acts, transactions, occurrences, or events  
15 that occurred or arose, or within a reasonable time  
16 thereafter. All of which I hereby certify and affirm on this  
17 \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_"

18 (1) The Department of Human Resources, the Medicaid  
19 Agency, the Housing Finance Authority, and any other state  
20 agency that administers public assistance shall create an  
21 error-prone or fraud-prone case profile within its public  
22 assistance information system and shall screen each  
23 application for public assistance, including food assistance,  
24 Medicaid, temporary cash assistance, and public housing,  
25 against the profile to identify cases that have a potential

1 for error or fraud. Each case identified as having a potential  
2 for error or fraud shall be subjected to preeligibility fraud  
3 screening. The Department of Human Resources may utilize the  
4 Income and Eligibility Verification System to comply with the  
5 criteria of this section to address fraud.

6 The Alabama Medicaid Agency may utilize the Federal  
7 Data Services Hub to comply with the criteria of this section.

8 (m) (1) Any person providing service for which  
9 compensation is paid under any state or federally funded  
10 public assistance program who solicits, requests, or receives,  
11 either actually or constructively, any payment or contribution  
12 through a payment, assessment, gift, devise, bequest, or other  
13 means, whether directly or indirectly, from a recipient of  
14 public assistance from a public assistance program, or from  
15 the family of the recipient, shall notify the Department of  
16 Human Resources, on a form provided by the department, of the  
17 amount of the payment or contribution and of any other  
18 information as specified by the department, within 10 days  
19 after the receipt of the payment or contribution, or if the  
20 payment or contribution is to become effective at some time in  
21 the future, within 10 days of the consummation of the  
22 agreement to make the payment or contribution. This subsection  
23 shall not apply to a hospital, as defined in Section 22-21-20,  
24 Code of Alabama 1975, that treats Medicaid or Medicare

1 patients, or a physician who treats Medicaid or Medicare  
2 patients.

3 For the purposes of this subsection, the term  
4 payment shall not include any copayment paid by a recipient of  
5 Medicaid to a medical provider.

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

8 (n)(1) All funds, proceeds, or property, whether  
9 real or personal, used or intended to be used in the  
10 commission of any violation of this section, obtained in any  
11 way by a violation of this section, or in any way derived from  
12 the proceeds of a violation of this section, are subject to  
13 forfeiture. This forfeiture provision shall not apply to  
14 payments received by a hospital, as defined in Section  
15 22-21-20, Code of Alabama 1975, for services provided to  
16 Medicaid recipients. A forfeiture proceeding shall be by means  
17 of an in rem civil action.

18 (2) Subsections (b) through (e), inclusive, and  
19 subsection (h) of Section 20-2-93, Code of Alabama 1975, are  
20 applicable to forfeiture proceeding under this subsection,  
21 including all of the following portions of the proceeding:

22 a. How seizure of funds, proceeds, or property may  
23 be made.

24 b. The promptness of the proceeding.

25 c. Custody of funds, proceeds, and property.

1           d. Disposition of property after forfeiture.

2           e. How a bona fide lien holder's interests are  
3 treated.

4           (3) The standard of proof in a forfeiture proceeding  
5 under this subsection is reasonable satisfaction that the  
6 funds, proceeds, or property subject to forfeiture were used  
7 or intended to be used to violate this section or were  
8 obtained based on a violation of this section.

9           Section 2. Section 40-18-100, Code of Alabama 1975,  
10 is amended to read as follows:

11           "§40-18-100.

12           "For the purposes of this article, the following  
13 terms shall have the respective meanings ascribed by this  
14 section:

15           "(1) CLAIMANT AGENCY. Only:

16           "a. The Alabama Commission on Higher Education with  
17 respect to the collection of debts under:

18           "1. The Alabama Student Grant Program provided for  
19 by Chapter 33A of Title 16; and

20           "2. The Alabama Guaranteed Student Loan Program  
21 provided for by Chapter 33B of Title 16.

22           "b. The Alabama Department of Human Resources with  
23 respect to the collection of debts and money owed under any  
24 and all of its public assistance programs and other programs  
25 administered by that department, including support programs

1 administered pursuant to the requirements of Title IV-D of the  
2 Social Security Act.

3 "c. The Alabama Medicaid Agency with respect to the  
4 collection of debts and money owed under any and all of the  
5 programs it administers.

6 "d. The Alabama Department of Industrial Relations  
7 with respect to the collection or recovery, or both, of debts  
8 owed as a result of overpayments of state unemployment  
9 compensation benefits.

10 "e. The Unified Judicial System with respect to the  
11 collection of fines and court costs owed as a result of any  
12 court or judicial proceeding.

13 "f. A housing authority under Chapter 1, Title 24,  
14 with respect to the collection of debts and money owed under  
15 any and all of the programs administered by the authority.

16 "(2) DEBTOR. Any individual owing money or having a  
17 delinquent account with any claimant agency, which obligation  
18 has not been adjudicated, satisfied by court order, set aside  
19 by court order, or discharged in bankruptcy.

20 "(3) DEBT. Any liquidated sum due and owing any  
21 claimant agency which has accrued through contract,  
22 subrogation, tort, or operation of law regardless of whether  
23 there is an outstanding judgment for that sum, or any  
24 liquidated sum of child or spousal support, or both child and  
25 spousal support, due and owing any individual eligible for and

1 receiving child support enforcement services through the  
2 Alabama Department of Human Resources.

3 "(4) DEPARTMENT. The Department of Revenue of the  
4 State of Alabama.

5 "(5) REFUND. The Alabama income tax refund which the  
6 department determines to be due any individual taxpayer."

7 Section 3. Nothing in this act shall apply to  
8 Section 22-1-11, Code of Alabama 1975.

9 Section 4. Although this bill would have as its  
10 purpose or effect the requirement of a new or increased  
11 expenditure of local funds, the bill is excluded from further  
12 requirements and application under Amendment 621, now  
13 appearing as Section 111.05 of the Official Recompilation of  
14 the Constitution of Alabama of 1901, as amended, because the  
15 bill defines a new crime or amends the definition of an  
16 existing crime.

17 Section 5. This act shall become effective on the  
18 first day of the third month following its passage and  
19 approval by the Governor, or its otherwise becoming law.

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President and Presiding Officer of the Senate

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Speaker of the House of Representatives

SB114  
Senate 26-FEB-14  
I hereby certify that the within Act originated in and passed  
the Senate, as amended.

Patrick Harris  
Secretary

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House of Representatives  
Amended and passed 02-APR-14

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Senate concurred in House amendment 03-APR-14

By: Senator Orr