

1 SB114  
2 156502-3  
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

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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 This bill would provide for the forfeiture  
16 of any funds, proceeds, or property obtained by  
17 fraudulent conduct in obtaining public assistance.

18 This bill would also authorize the  
19 Department of Revenue to intercept state income tax  
20 refunds of individuals who owe debts to a public  
21 housing authority.

22 Amendment 621 of the Constitution of Alabama  
23 of 1901, now appearing as Section 111.05 of the  
24 Official Recompilation of the Constitution of  
25 Alabama of 1901, as amended, prohibits a general  
26 law whose purpose or effect would be to require a  
27 new or increased expenditure of local funds from

1 becoming effective with regard to a local  
2 governmental entity without enactment by a 2/3 vote  
3 unless: it comes within one of a number of  
4 specified exceptions; it is approved by the  
5 affected entity; or the Legislature appropriates  
6 funds, or provides a local source of revenue, to  
7 the entity for the purpose.

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

15  
16 A BILL  
17 TO BE ENTITLED  
18 AN ACT  
19

20 Relating to crimes and offenses; to provide a  
21 definition; to prohibit certain conduct in obtaining public  
22 assistance under any state or federally funded public  
23 assistance program; to provide penalties; to provide for the  
24 admissibility of certain records relating to public assistance  
25 fraud; to provide for the forfeiture of any funds, proceeds,  
26 or property obtained by fraudulent conduct in obtaining public  
27 assistance; to amend Section 40-18-100, Code of Alabama 1975,

1 to provide for the interception of state income tax refunds of  
2 persons fraudulently or improperly obtaining public assistance  
3 from a housing authority; and in connection therewith to have  
4 as its purpose or effect the requirement of a new or increased  
5 expenditure of local funds within the meaning of Amendment 621  
6 of the Constitution of Alabama of 1901, now appearing as  
7 Section 111.05 of the Official Recompilation of the  
8 Constitution of Alabama of 1901, as amended.

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

10 Section 1. (a) For the purposes of this section,  
11 public assistance means money or property provided directly or  
12 indirectly to eligible persons through programs of the federal  
13 government, the state, or any political subdivision thereof,  
14 including any program administered by a public housing  
15 authority.

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

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

22 (2) Fail to disclose a change in circumstances in  
23 order to obtain or continue to receive any public assistance  
24 to which he or she is not entitled or in an amount larger than  
25 that to which he or she is entitled.

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

1           (4) Use, transfer, acquire, traffic, alter, forge,  
2 possess, attempt to use, attempt to transfer, attempt to  
3 acquire, attempt to traffic, attempt to alter, attempt to  
4 forge, attempt to possess, or aid and abet another person in  
5 the use, transfer, acquisition, traffic, alteration, forgery,  
6 or possession of a food assistance identification card, an  
7 authorization, including, but not limited to, an electronic  
8 authorization, for the expenditure of food assistance  
9 benefits, a certificate of eligibility for medical services,  
10 or a Medicaid identification card in any manner not authorized  
11 by law, or to re-encode a magnetic strip on any card with  
12 information issued by any state or federal agency that grants  
13 monetary benefits that were not issued by that agency or that  
14 does not match the information on the front of the card.

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

19           (6) File a false claim or a claim for nonauthorized  
20 items or services under any state or federally funded public  
21 assistance program.

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

25           (8) Fail to credit, return, or pay back to the state  
26 or its agents any payments received from Social Security,  
27 insurance, or other sources of funds paid or administered by

1 any state agency that are in excess of the approved or listed  
2 amount or were received or approved based on fraud or  
3 fraudulent conduct.

4 (9) In any way receive, attempt to receive, or aid  
5 and abet in the receipt of unauthorized payments or other  
6 unauthorized public assistance or authorization or  
7 identification to obtain public assistance.

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

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

14 (c) It shall be unlawful for any person having  
15 duties in the administration of a public assistance program or  
16 in the distribution of public assistance or with authorization  
17 or identification to obtain public assistance to do any of the  
18 following:

19 (1) Fraudulently misappropriate, attempt to  
20 misappropriate, knowingly fail to disclose fraudulent  
21 activity, or aid and abet in the misappropriation of a food  
22 assistance, an authorization for food assistance, a food  
23 assistance identification card, a certificate of eligibility  
24 for prescribed medicine, a Medicaid identification card, or  
25 any other public assistance program with which he or she has  
26 been entrusted or of which he or she has gained possession by  
27 virtue of his or her position.

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

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

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

14           (3) Three or more violations of this section shall  
15 establish a rebuttable presumption that the individual  
16 knowingly violated this section.

17           (e) The value of a food assistance authorization  
18 benefit shall be equal to the cash or exchange value  
19 unlawfully obtained by the fraudulent act committed in  
20 violation of this section.

21           (f) For the purposes of this section, public  
22 assistance fraud shall include the introduction of fraudulent  
23 records into a computer system, the unauthorized use of  
24 computer facilities, the intentional or deliberate alteration  
25 or destruction of computerized information or files,  
26 fraudulent billing or charging, and the stealing of financial  
27 instruments, data, and other assets.

1 (g) Repayment of public assistance benefits or  
2 services or return of authorization or identification  
3 wrongfully obtained is not a defense to, or ground for  
4 dismissal of, criminal charges brought under this section.

5 (h) The introduction into evidence of a paid state  
6 warrant to the order of the defendant is prima facie evidence  
7 that the defendant did receive public assistance from the  
8 state.

9 (i) The introduction into evidence of a transaction  
10 history generated by a personal identification number (PIN)  
11 establishing a purchase or withdrawal by electronic benefit  
12 transfer is prima facie evidence that the identified recipient  
13 received public assistance from the state.

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

23 a. Were made and kept in the usual and regular  
24 course of business of the agency.

25 b. Were made at the time that the acts,  
26 transactions, occurrences, or events occurred or arose or  
27 within a reasonable time thereafter.



1                   (2) The certificate of the custodian of a record  
2 under subdivision (1) shall name the parties to the case or  
3 proceeding and the name of the court to which made, by  
4 appropriate caption. The certificate shall be in the following  
5 form:

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

20                   (k) The Department of Human Resources, the Medicaid  
21 Agency, the Housing Finance Authority, and any other state  
22 agency that administers public assistance shall create an  
23 error-prone or fraud-prone case profile within its public  
24 assistance information system and shall screen each  
25 application for public assistance, including food assistance,  
26 Medicaid, temporary cash assistance, and public housing,  
27 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 (1) (1) Any person providing service for which  
7 compensation is paid under any state or federally funded  
8 public assistance program who solicits, requests, or receives,  
9 either actually or constructively, any payment or contribution  
10 through a payment, assessment, gift, devise, bequest, or other  
11 means, whether directly or indirectly, from a recipient of  
12 public assistance from a public assistance program, or from  
13 the family of the recipient, shall notify the Department of  
14 Human Resources, on a form provided by the department, of the  
15 amount of the payment or contribution and of any other  
16 information as specified by the department, within 10 days  
17 after the receipt of the payment or contribution, or if the  
18 payment or contribution is to become effective at some time in  
19 the future, within 10 days of the consummation of the  
20 agreement to make the payment or contribution.

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

23 (m) (1) All funds, proceeds, or property, whether  
24 real or personal, used or intended to be used in the  
25 commission of any violation of this section, obtained in any  
26 way by a violation of this section, or in any way derived from  
27 the proceeds of a violation of this section, are subject to

1 forfeiture. A forfeiture proceeding shall be by means of an in  
2 rem civil action.

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

7 a. How seizure of funds, proceeds, or property may  
8 be made.

9 b. The promptness of the proceeding.

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

11 d. Disposition of property after forfeiture.

12 e. How a bona fide lien holder's interests are  
13 treated.

14 (3) The standard of proof in a forfeiture proceeding  
15 under this subsection is reasonable satisfaction that the  
16 funds, proceeds, or property subject to forfeiture were used  
17 or intended to be used to violate this section or were  
18 obtained based on a violation of this section.

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

21 "§40-18-100.

22 "For the purposes of this article, the following  
23 terms shall have the respective meanings ascribed by this  
24 section:

25 "(1) CLAIMANT AGENCY. Only:

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

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

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

5           "b. The Alabama Department of Human Resources with  
6 respect to the collection of debts and money owed under any  
7 and all of its public assistance programs and other programs  
8 administered by that department, including support programs  
9 administered pursuant to the requirements of Title IV-D of the  
10 Social Security Act.

11          "c. The Alabama Medicaid Agency with respect to the  
12 collection of debts and money owed under any and all of the  
13 programs it administers.

14          "d. The Alabama Department of Industrial Relations  
15 with respect to the collection or recovery, or both, of debts  
16 owed as a result of overpayments of state unemployment  
17 compensation benefits.

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

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

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

1           "(3) DEBT. Any liquidated sum due and owing any  
2 claimant agency which has accrued through contract,  
3 subrogation, tort, or operation of law regardless of whether  
4 there is an outstanding judgment for that sum, or any  
5 liquidated sum of child or spousal support, or both child and  
6 spousal support, due and owing any individual eligible for and  
7 receiving child support enforcement services through the  
8 Alabama Department of Human Resources.

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

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

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

21           Section 4. This act shall become effective on the  
22 first day of the third month following its passage and  
23 approval by the Governor, or its otherwise becoming law.