

1 HB673  
2 136014-1  
3 By Representative Hill  
4 RFD: Financial Services  
5 First Read: 10-APR-12

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8 SYNOPSIS: Under existing law, certain parties may  
9 redeem real property sold pursuant to an execution,  
10 judgment, or foreclosure sale for up to one year  
11 from the date of the sale, and the redemption price  
12 includes the value of all permanent improvements  
13 made to the property after the date of the  
14 foreclosure, execution, or judgment sale.

15 This bill would repeal the prohibition of  
16 pre-sale waivers of the right of redemption and  
17 reduce the time period to exercise the right of  
18 redemption for all property, other than  
19 agricultural property and forestry property, to 90  
20 days from the date of the execution, judgment, or  
21 foreclosure sale.

22 The bill would retain the one-year period to  
23 exercise the right of redemption for property used  
24 for agricultural or forestry purposes.

25 The bill would also define permanent  
26 improvements to mean all improvements made to the

1 property after the date of the sale, irrespective  
2 of their necessity or reasonableness.

3 The bill would apply to all execution,  
4 judgment, and foreclosure sales that occur on or  
5 after September 1, 2012.

6  
7 A BILL  
8 TO BE ENTITLED  
9 AN ACT

10  
11 To amend Sections 6-5-248, 6-5-250, 6-5-253, and  
12 6-5-254, of the Code of Alabama 1975, relating to redemption  
13 of real property that is sold pursuant to an execution,  
14 judgment, or foreclosure sale; to reduce the period of time to  
15 exercise the right of redemption for all property other than  
16 agricultural property and forestry property; to provide that  
17 these redemption periods would apply to all sales pursuant to  
18 an execution, judgment, or foreclosure that occur on and after  
19 September 1, 2012; to repeal the prohibition of pre-sale  
20 waivers of the right of redemption; and to define permanent  
21 improvements to mean all improvements made to the property  
22 after the date of the sale, irrespective of their necessity or  
23 reasonableness.

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

25 Section 1. Sections 6-5-248, 6-5-250, 6-5-253, and  
26 6-5-254, of the Code of Alabama 1975, are amended to read as  
27 follows:

1           "§6-5-248.

2           "(a) Where real estate, or any interest therein, is  
3 sold the same may be redeemed by:

4           "(1) Any debtor, including any surety or guarantor.

5           "(2) Any mortgagor, even if such mortgagor is not  
6 personally liable for payment of a debt.

7           "(3) Any junior mortgagee, or its transferee.

8           "(4) Judgment creditor, or its transferee.

9           "(5) Any transferee of the interests of the debtor  
10 or mortgagor, either before or after the sale. A transfer of  
11 any kind made by the debtor or mortgagor will accomplish a  
12 transfer of the interests of that party.

13           "(6) The respective spouses of all debtors,  
14 mortgagors, or transferees of any interest of the debtor or  
15 mortgagor, who are spouses on the day of the execution,  
16 judgment, or foreclosure sale.

17           (7) Children, heirs, or devisees of any debtor or  
18 mortgagor.

19           "(b) (1) Except as set forth in subdivision (2), all  
20 All persons named or enumerated in subdivisions (a) (1) ~~through~~  
21 to (a) (7), inclusive, may exercise the right of redemption  
22 granted by this article within ~~one year~~ 90 days from the date  
23 of the sale.

24           "(2) All persons named or enumerated in subdivisions  
25 (a) (1) to (a) (7), inclusive, may exercise the right of  
26 redemption granted by this article within one year from the  
27 date of the sale for any property that is classified and

1 assessed as of the date of sale as agricultural property or  
2 forestry property pursuant to subdivision (1) of subsection  
3 (b) of Section 40-8-1.

4 "(3) In any proceeding to determine whether property  
5 is subject to the one-year redemption period described in  
6 subsection (2), the person seeking to redeem such property  
7 after the 90-day period provided in subsection (1) shall bear  
8 the burden of proof to demonstrate such entitlement by clear  
9 and convincing evidence.

10 "(c) When any judgment creditor or junior mortgagee  
11 or any transferee of a judgment creditor or a junior mortgagee  
12 redeems under this article, all recorded judgments, recorded  
13 mortgages and recorded liens having a higher recorded priority  
14 in existence at the time of the sale are revived against the  
15 real estate redeemed and against the redeeming party and such  
16 shall become lawful charges pursuant to Section 6-5-253(a)(4)  
17 to be paid off at redemption.

18 "Once any lienholder, recorded judgment creditor, or  
19 junior mortgagee is paid the amount of such person's debt and  
20 any accrued interest and other contractual charges, such  
21 person has no further right to redeem.

22 "Any lienholder, recorded judgment creditor, or  
23 junior mortgagee with a lower recorded priority may redeem  
24 from those having a higher recorded priority who have  
25 redeemed.

26 "(d) When any debtor, mortgagor, their transferees,  
27 their respective spouses, children, heirs, or devisees redeem,

1 all recorded judgments, recorded mortgages, and recorded liens  
2 in existence at the time of the sale, are revived against the  
3 real estate redeemed and against the redeeming party and  
4 further redemption by some party other than the mortgagor or  
5 debtor under this article is precluded.

6 "(e) When any debtor or mortgagor conveys his  
7 interest in property subject to a mortgage prior to sale  
8 wherein they are released from liability for the debt, his  
9 right of redemption under this article is terminated. In the  
10 same manner, the right of redemption granted under this  
11 article to the spouses, children, heirs, or devisees of  
12 debtors or mortgagors terminates when the debtors or  
13 mortgagors have conveyed their interests in the property and  
14 are released from liability for the debt.

15 "However, where debtors or mortgagors have conveyed  
16 their interests in the property but remain liable on the debt  
17 and are debtors at the date of the foreclosure sale, the  
18 debtors and mortgagors retain their right of redemption under  
19 this article and in the same manner, their spouses, children,  
20 heirs or devisees continue to be entitled to the right of  
21 redemption under this article.

22 "(f) A redemption made by any person under this  
23 article, other than the debtors or mortgagors, and their  
24 respective spouses, children, heirs, or devisees, shall  
25 preclude any further redemption by such person.

1           "(g) Subject to subsection (e), a mortgagor and  
2 debtor have priority over any other redeeming party and a  
3 mortgagor has priority over a debtor.

4           "§6-5-250.

5           "The statutory rights of redemption given or  
6 conferred by this article are mere personal privileges and not  
7 property or property rights. The privileges must be exercised  
8 in the mode and manner prescribed by statute and may ~~not~~ be  
9 waived in a deed of trust, judgment, or mortgage, or in any  
10 agreement before foreclosure or execution sale. The right of  
11 privilege conferred under this article is not subject to levy  
12 and sale under execution or attachment nor is it subject to  
13 alienation except in the cases provided for in this article;  
14 but if the right or privilege is perfected by redemption as  
15 provided in this article, then, and not until then, it becomes  
16 property or rights of property subject to levy, sale,  
17 alienation, or other disposition, except as is expressly  
18 authorized by statute.

19           §6-5-253.

20           "(a) Anyone entitled and desiring to redeem real  
21 estate under the provisions of this article must also pay or  
22 tender to the purchaser or his or her transferee the purchase  
23 price paid at the sale, with interest at the rate allowed to  
24 be charged on money judgments as set forth in Section 8-8-10  
25 (as it is now or hereinafter may be amended), and all other  
26 lawful charges, also with interest as aforesaid; lawful  
27 charges are the following:

1           "(1) Permanent improvements as prescribed herein. As  
2 used in this section, the term "permanent improvements" shall  
3 mean the value as of the date of redemption of all  
4 improvements made to the property on or after the date of the  
5 execution, judgment, or foreclosure sale, irrespective of the  
6 necessity or reasonableness of any such improvements.

7           "(2) Taxes paid or assessed.

8           "(3) All insurance premiums paid or owed by the  
9 purchaser.

10           "(4) Any other valid lien or encumbrance paid or  
11 owned by such purchaser or his or her transferee or if the  
12 redeeming party is a judgment creditor or junior mortgagee or  
13 any transferee thereof, then all recorded judgments, recorded  
14 mortgages and recorded liens having a higher priority in  
15 existence at the time of sale which are revived under Section  
16 6-5-248(c). If the redemption is made from a person who at  
17 the time of redemption owned the debt for which the property  
18 was sold, the redemptioner must also pay any balance due on  
19 the debt, with interest as aforesaid thereon to date.

20           "(5) Mortgagees of the purchaser, or their  
21 transferees, are considered transferees of the purchaser, and  
22 a party redeeming must pay all mortgages made by the purchaser  
23 or his or her transferee on the land to the extent of the  
24 purchase price.

25           "If the purchaser's mortgages do not exceed the  
26 amount of the purchase price, the balance must be paid to the  
27 purchaser.



1           "(b) If the redeeming party is the debtor,  
2 mortgagor, their respective spouses, children, heirs, or  
3 devisees then, unless otherwise provided herein, the  
4 judgments, mortgages, and liens revived pursuant to 6-5-248(d)  
5 are not lawful charges as defined in subsection (a).

6           "(c) The purchaser shall be entitled to all rents  
7 paid or accrued including oil and gas or mineral agreement  
8 rentals to the date of the redemption, and the rents must be  
9 prorated to such date. The purchaser or his or her transferee  
10 and his or her tenants shall have the right to harvest and  
11 gather the crops grown by them on the place for the year in  
12 which the redemption is made, but must pay a reasonable rent  
13 for the lands for the proportion of the current year to which  
14 such redemptioner may be entitled.

15           "(d) Any one entitled and desiring to redeem shall  
16 be granted a credit as against the amount of money required to  
17 be paid for redemption as follows:

18           "(1) For all timber cut or sold on the land by the  
19 purchaser or his or her transferees, during the statutory  
20 period of redemption.

21           "(2) For any oil and gas, minerals (including coal  
22 bed gas), sand, and gravel, taken from the land or sold, and  
23 for advanced royalties or bonuses received by the purchaser or  
24 his or her transferees, during the statutory period of  
25 redemption.

26           "(3) To the extent the value of the property is  
27 diminished when any structures or buildings are changed,

1 removed, demolished, or destroyed by the purchaser or his or  
2 her transferees during the statutory period of redemption.

3 "§6-5-254.

4 "(a) Any person offering to redeem must pay to the  
5 then holder of the legal title the value of all permanent  
6 improvements made on the land since the sale, and if the  
7 holder of the legal title cannot be ascertained, payment may  
8 be made to the circuit court of the county having jurisdiction  
9 of the subject matter when the complaint is filed to redeem.  
10 In response to written demand made under Section 6-5-252, the  
11 then holder of the legal title shall, within 10 days from the  
12 receipt of such demand, furnish the proposed redemptioner with  
13 the amount claimed as the value of such permanent  
14 improvements; and within 10 days after receipt of such  
15 response, the proposed redemptioner either shall accept the  
16 value so stated by the then holder of the legal title or,  
17 disagreeing therewith, shall appoint a referee to ascertain  
18 the value of such permanent improvements and in writing notify  
19 the then holder of the legal title of his or her disagreement  
20 and of the fact and name of the referee appointed by him or  
21 her. Within 10 days after the receipt of such notice, the then  
22 holder of the legal title shall appoint a referee to ascertain  
23 the value of the permanent improvements and advise the  
24 proposed redemptioner of the name of the appointee. The two  
25 referees shall, within 10 days after the then holder of the  
26 legal title has appointed his or her referee, meet and confer  
27 upon the award to be made by them. If they cannot agree, the

1 referees shall at once appoint an umpire, and the award by a  
2 majority of such body shall be made within 10 days after the  
3 appointment of the umpire and shall be final between the  
4 parties.

5 "(b) If a person offering to redeem fails or refuses  
6 to nominate a referee as provided in subsection (a) of this  
7 section, he or she must pay the value put upon the  
8 improvements by the then holder of the legal title. If the  
9 then holder of the legal title fails or refuses to appoint a  
10 referee, as provided in subsection (a) of this section, the  
11 then holder of the legal title shall forfeit his or her claim  
12 to compensation for such improvements. The failure of the  
13 referees, or either of them, to act or to appoint an umpire  
14 shall not operate to impair or to forfeit the right of either  
15 the proposed redemptioner or of the then holder of the legal  
16 title in the premises; and, in the event of failure without  
17 fault of the parties to effect an award, the appropriate court  
18 shall proceed to ascertain the true value of such permanent  
19 improvements and enforce the redemption accordingly.

20 "(c) As used in this section, the term "permanent  
21 improvements" shall mean the value as of the date of  
22 redemption of all improvements made to the property on or  
23 after the date of the execution, judgment, or foreclosure  
24 sale, irrespective of the necessity or reasonableness of any  
25 such improvements."

1                   Section 2. This act shall apply to all execution,  
2 judgment, and foreclosure sales conducted on and after  
3 September 1, 2012.

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