

1 SB114  
2 156502-4  
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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4 ENGROSSED

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7 A BILL  
8 TO BE ENTITLED  
9 AN ACT

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

1           Section 1. (a) For the purposes of this section,  
2 public assistance means money or property provided directly or  
3 indirectly to eligible persons through programs of the federal  
4 government, the state, or any political subdivision thereof,  
5 including any program administered by a public housing  
6 authority.

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

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

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

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

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

1 or a Medicaid identification card in any manner not authorized  
2 by law, or to re-encode a magnetic strip on any card with  
3 information issued by any state or federal agency that grants  
4 monetary benefits that were not issued by that agency or that  
5 does not match the information on the front of the card.

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

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

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

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

22 (9) In any way receive, attempt to receive, or aid  
23 and abet in the receipt of unauthorized payments or other  
24 unauthorized public assistance or authorization or  
25 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 physician or a physician's employee, agent, contractor,  
9 subcontractor, or independent contractor must have specific  
10 intent to make a claim or obtain a payment for a health care  
11 item or service for which he or she has actual knowledge, as  
12 opposed to constructive knowledge, that he or she is not  
13 entitled to the claim or payment or that he or she has actual  
14 knowledge that his or her patient is not otherwise entitled to  
15 coverage under a public assistance program.

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

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

1       been entrusted or of which he or she has gained possession by  
2       virtue of his or her position.

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

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

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

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

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

23              (g) For the purposes of this section, public  
24       assistance fraud shall include the introduction of fraudulent  
25       records into a computer system, the unauthorized use of  
26       computer facilities, the intentional or deliberate alteration  
27       or destruction of computerized information or files,

1 fraudulent billing or charging, and the stealing of financial  
2 instruments, data, and other assets.

3 (h) Repayment of public assistance benefits or  
4 services or return of authorization or identification  
5 wrongfully obtained is not a defense to, or ground for  
6 dismissal of, criminal charges brought under this section.  
7 However, in situations in which a physician or his or her  
8 employee, agent, contractor, subcontractor, or independent  
9 contractor has overbilled or received an overpayment for a  
10 medical or health care service or improperly charted, coded,  
11 or billed for any medical or health care service, common  
12 practices, including but not limited to, repayment, even years  
13 later, may use as a defense to, or ground for dismissal of, a  
14 prosecution under this act.

15 (i) The introduction into evidence of a paid state  
16 warrant to the order of the defendant is prima facie evidence  
17 that the defendant did receive public assistance from the  
18 state.

19 (j) The introduction into evidence of a transaction  
20 history generated by a personal identification number (PIN)  
21 establishing a purchase or withdrawal by electronic benefit  
22 transfer is prima facie evidence that the identified recipient  
23 received public assistance from the state.

24 (k) (1) If an original record is admissible in any  
25 case or proceeding in a court in the state, a certified copy  
26 of the record in the custody of any federal or state agency  
27 relating to an investigation of public assistance fraud under

1 this section shall be admissible when certified and affirmed  
2 by the custodian of the agency records as provided in  
3 subdivision (2), without further proof in any court in the  
4 state where admissible. The agency records must satisfy both  
5 of the following:

6 a. Were made and kept in the usual and regular  
7 course of business of the agency.

8 b. Were made at the time that the acts,  
9 transactions, occurrences, or events occurred or arose or  
10 within a reasonable time thereafter.

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

16 "I, \_\_\_\_\_, hereby certify and affirm in  
17 writing that I am \_\_\_\_\_ (title) of the  
18 \_\_\_\_\_ (agency), a governmental agency, located at  
19 \_\_\_\_\_, that I am custodian of the agency records of  
20 the agency and that the copy of the records within are an  
21 exact, full, true, and correct copy of the records pertaining  
22 to \_\_\_\_\_. These records were made and kept in the  
23 usual and regular course of business of the listed agency and  
24 it was in the regular course of business of the listed agency  
25 to make and keep the records and that the records were made at  
26 the time that the acts, transactions, occurrences, or events  
27 that occurred or arose, or within a reasonable time



1 thereafter. All of which I hereby certify and affirm on this  
2 \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_"

3 (1) The Department of Human Resources, the Medicaid  
4 Agency, the Housing Finance Authority, and any other state  
5 agency that administers public assistance shall create an  
6 error-prone or fraud-prone case profile within its public  
7 assistance information system and shall screen each  
8 application for public assistance, including food assistance,  
9 Medicaid, temporary cash assistance, and public housing,  
10 against the profile to identify cases that have a potential  
11 for error or fraud. Each case identified as having a potential  
12 for error or fraud shall be subjected to preeligibility fraud  
13 screening. The Department of Human Resources may utilize the  
14 Income and Eligibility Verification System to comply with the  
15 criteria of this section to address fraud.

16 (m) (1) Any person providing service for which  
17 compensation is paid under any state or federally funded  
18 public assistance program who solicits, requests, or receives,  
19 either actually or constructively, any payment or contribution  
20 through a payment, assessment, gift, devise, bequest, or other  
21 means, whether directly or indirectly, from a recipient of  
22 public assistance from a public assistance program, or from  
23 the family of the recipient, shall notify the Department of  
24 Human Resources, on a form provided by the department, of the  
25 amount of the payment or contribution and of any other  
26 information as specified by the department, within 10 days  
27 after the receipt of the payment or contribution, or if the

1 payment or contribution is to become effective at some time in  
2 the future, within 10 days of the consummation of the  
3 agreement to make the payment or contribution. This subsection  
4 shall not apply to a physician who treats Medicaid or Medicare  
5 patients.

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

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

19 a. How seizure of funds, proceeds, or property may  
20 be made.

21 b. The promptness of the proceeding.

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

23 d. Disposition of property after forfeiture.

24 e. How a bona fide lien holder's interests are  
25 treated.

26 (3) The standard of proof in a forfeiture proceeding  
27 under this subsection is reasonable satisfaction that the

1 funds, proceeds, or property subject to forfeiture were used  
2 or intended to be used to violate this section or were  
3 obtained based on a violation of this section.

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

6 "§40-18-100.

7 "For the purposes of this article, the following  
8 terms shall have the respective meanings ascribed by this  
9 section:

10 "(1) CLAIMANT AGENCY. Only:

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

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

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

17 "b. The Alabama Department of Human Resources with  
18 respect to the collection of debts and money owed under any  
19 and all of its public assistance programs and other programs  
20 administered by that department, including support programs  
21 administered pursuant to the requirements of Title IV-D of the  
22 Social Security Act.

23 "c. The Alabama Medicaid Agency with respect to the  
24 collection of debts and money owed under any and all of the  
25 programs it administers.

26 "d. The Alabama Department of Industrial Relations  
27 with respect to the collection or recovery, or both, of debts

1 owed as a result of overpayments of state unemployment  
2 compensation benefits.

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

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

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

13 "(3) DEBT. Any liquidated sum due and owing any  
14 claimant agency which has accrued through contract,  
15 subrogation, tort, or operation of law regardless of whether  
16 there is an outstanding judgment for that sum, or any  
17 liquidated sum of child or spousal support, or both child and  
18 spousal support, due and owing any individual eligible for and  
19 receiving child support enforcement services through the  
20 Alabama Department of Human Resources.

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

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

25 Section 3. Although this bill would have as its  
26 purpose or effect the requirement of a new or increased  
27 expenditure of local funds, the bill is excluded from further

1 requirements and application under Amendment 621, now  
2 appearing as Section 111.05 of the Official ReCompilation of  
3 the Constitution of Alabama of 1901, as amended, because the  
4 bill defines a new crime or amends the definition of an  
5 existing crime.

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

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Senate

Read for the first time and referred to the Senate  
committee on Fiscal Responsibility and Account-  
ability..... 14-JAN-14

Read for the second time and placed on the calen-  
dar 2 amendments..... 22-JAN-14

Read for the third time and passed as amended .... 22-JAN-14

Yeas 25  
Nays 6

Patrick Harris  
Secretary