

- 1 SB117
- 2 210511-4
- 3 By Senator Coleman-Madison
- 4 RFD: Judiciary
- 5 First Read: 02-FEB-21
- 6 PFD: 01/28/2021



1 SB117 2 3 4 ENROLLED, An Act, Relating to expungement; to amend Sections 15-27-1, 5 15-27-2, 15-27-4, 15-27-5, 15-27-7, 15-27-8, 15-27-9, 6 15-27-10, and 15-27-19, Code of Alabama 1975, to expand the 7 expungement of criminal records to include convictions of 8 certain misdemeanor offenses, traffic violations, municipal 9 ordinances, and felony offenses; to increase the filing fee 10 for petitions for expungement; to add Section 15-27-2.1 to the 11 Code of Alabama 1975, to provide for the number of 12 expungements a person may be granted; to add Section 15-27-21 13 to the Code of Alabama 1975, to provide for the admissibility 14 of an expungement in a criminal trial in certain 15 circumstances; to make nonsubstantive, technical revisions to 16 update the existing code language to current style; and in 17 connection therewith would have as its purpose or effect the 18 requirement of a new or increased expenditure of local funds 19 within the meaning of Amendment 621 of the Constitution of 20 Alabama of 1901, as amended by Amendment 890, now appearing as 21 Section 111.05 of the Official Recompilation of the 22 Constitution of Alabama of 1901, as amended. 23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA: 24

1 Section 1. This act shall be known and may be cited as the Record Expungement Designed to Enhance Employment and 2 3 Eliminate Recidivism (REDEEMER) Act. Section 2. Sections 15-27-1, 15-27-2, 15-27-4, 4 15-27-5, 15-27-7, 15-27-8, 15-27-9, 15-27-10, and 15-27-19, 5 Code of Alabama 1975, are amended to read as follows: 6 "§15-27-1. 7 "(a) A person who has been charged with a 8 misdemeanor criminal offense, a violation, a traffic 9 violation, or a municipal ordinance violation may file a 10 petition in the criminal division of the circuit court in the 11 county in which the charges were filed, to expunge records 12 relating to the charge in any of the following circumstances: 13 "(1) When the charge is has been dismissed with 14 prejudice and more than 90 days have passed. 15 "(2) When the charge has been no billed by a grand 16 jury and more than 90 days have passed. 17"(3) When the person has been found not guilty of 18 the charge and more than 90 days have passed. 19 "(4) When the charge has been nolle prossed without 20 conditions, more than 90 days have passed, and the charge or 21 22 charges have not been refiled. "(5) When the indictment has been quashed and the 23 statute of limitations for refiling the charge or charges has 24

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expired or the prosecuting agency confirms that the charge or 1 2 charges will not be refiled. "(6)a. When the charge was dismissed after 3 successful completion of a drug court program, mental health 4 court program, diversion program, veteran's court, or any 5 court-approved deferred prosecution program. 6 "b. Expungement may be a court-ordered condition of 7 a program listed in paragraph a. 8 "c. A petition for expungement may be filed one year 9 from the date of successful completion of a program listed in 10 11 paragraph a. "(4) (7) When the charge was dismissed without 12 prejudice more than two years one year ago, has not been 13 refiled, and the person has not been convicted of any other 14 felony or misdemeanor crime, any violation, or any traffic 15 violation, excluding minor traffic violations, during the 16 17 previous two years. "(5) (8) When the person proves by a preponderance 18 of the evidence that the person is a victim of human 19 trafficking, that the person committed the misdemeanor 20 criminal offense, violation, traffic violation, or municipal 21 ordinance violation during the period the person was being 22 23 trafficked, and that the person would not have committed the offense or violation but for being trafficked. Evidence that a 24 25 person is a victim of human trafficking may include, but is

1	not limited to, evidence that the person's trafficker was
2	convicted of trafficking the person under Section 13A-6-152 or
3	Section 13A-6-153.
4	"(b) Subsection (a) notwithstanding, a person who
5	has been convicted of a misdemeanor offense, a violation, a
6	traffic violation, or a municipal ordinance violation may file
7	a petition in the criminal division of the circuit court in
8	the county in which the charges were filed to expunge records
9	relating to the charge and the conviction if all of the
10	following occur:
11	"(1) Except as provided in Section 15-27-4, all
12	probation or parole requirements have been completed,
13	including payment of all fines, costs, restitution, and other
14	court-ordered amounts, and are evidenced by the applicable
15	court or agency.
16	"(2) Three years have passed from the date of
17	conviction.
18	"(3) The person was not operating a commercial
19	vehicle at the time and convicted of any of the offenses
20	<u>enumerated in 49 C.F.R. § 383.51.</u>
21	"(4) The conviction is not a violent offense, as
22	provided in Section 12-25-32.
23	"(5) The conviction is not a sex offense, as
24	provided in Section 15-20A-5.

"(6) The conviction is not an offense involving 1 2 moral turpitude, as provided in Section 17-3-30.1. This 3 subdivision does not apply if the crime the person was convicted of was classified as a felony at the time of the 4 5 conviction, but has been reclassified as a misdemeanor, pursuant to Act 2015-185, and the person has not been arrested 6 7 for any offense, excluding minor traffic violations, 15 years prior to the filing of the petition for expungement. 8 9 "(7) The conviction is not a serious traffic offense, as provided in Article 9 of Chapter 5A of Title 32. 10 "(c) Subject to the provisions of 15-27-16, records 11 related to offenses and convictions may be disclosed to a 12 criminal justice agency, a district attorney, or a prosecuting 13 authority for criminal investigation purposes as provided in 14 Section 15-27-7, to a utility and its agents and affiliates, 15 to the Department of Human Resources for the purpose of 16 investigation or assessment in order to protect children or 17 vulnerable adults, or to any entities or services providing 18 information to banking, insurance, and other financial 19 institutions as required for various requirements as provided 20 in state and federal law. Further, any criminal charges that 21 are expunded or are pending expundement pursuant to 15-27-1 22 23 shall be available for use by any attorneys, officers of the Court, or the Court itself in any civil matters related to the 24 criminal charges expunded or seeking to be expunded regardless 25

1	of the outcome of the petitioned expungement. At the
2	conclusion of the pending civil matter, all references to the
3	criminal charges expunged or to be expunged shall be redacted
4	in the event the criminal charges are expunged.
5	" <del>(b)</del> <u>(d)</u> The circuit court shall have exclusive
6	jurisdiction of a petition filed under subsection subsections
7	(a) <u>and (b)</u> .
8	"\$15-27-2.
9	"(a) A person who has been charged with <del>a</del> <u>any</u> felony
10	offense <del>, except a violent offense as defined in Section</del>
11	<del>12-25-32,</del> may file a petition in the criminal division of the
12	circuit court in the county in which the charges were filed,
13	to expunge records relating to the charge in any of the
14	following circumstances:
15	"(1) When the charge is dismissed with prejudice and
16	more than 90 days have passed.
17	"(2) When the charge has been no billed by a grand
18	jury and more than 90 days have passed.
19	"(3) When the person has been found not guilty of
20	the charge and more than 90 days have passed.
21	"(4) When the charge has been nolle prossed without
22	conditions, and more than 90 days have passed, and the charge
23	or charges have not been refiled.
24	"(5) When the indictment has been quashed and the
25	statute of limitations for refiling the charge or charges has

1	expired or the prosecuting agency confirms that the charge or
2	charges will not be refiled.
3	$\checkmark$ " <del>(3)</del> (6)a. The When the charge was dismissed after
4	successful completion of a drug court program, mental health
5	court program, diversion program, veteran's court, or any
6	court-approved deferred prosecution program after one year
7	from successful completion of the program.
8	"b. Expungement may be a court-ordered condition of
9	a program listed in paragraph a.
10	"c. A petition for expungement may be filed one year
11	from the date of the successful completion of a program listed
12	<u>in paragraph a.</u>
13	" <del>(4)</del> <u>(7)</u> <del>The</del> <u>When the</u> charge was dismissed without
14	prejudice more than five years ago, has not been refiled, and
15	the person has not been convicted of any other felony or
16	misdemeanor crime, any violation, or any traffic violation,
17	excluding minor traffic violations, during the previous five
18	years.
19	" <del>(5) Ninety days have passed from the date of</del>
20	dismissal with prejudice, no bill, acquittal, or nolle
21	prosequi and the charge has not been refiled.
22	" <del>(6)</del> <u>(8)</u> When the person proves by a preponderance
23	of the evidence that the person is a victim of human
24	trafficking, that the person committed the felony offense
25	during the period the person was being trafficked, and that

1 the person would not have committed the felony offense but for being trafficked. Evidence that a person is a victim of human 2 3 trafficking may include, but is not limited to, evidence that the person's trafficker was convicted of trafficking the 4 person under Section 13A-6-152 or Section 13A-6-153. 5 "(b) Subsection (a) notwithstanding, convictions for 6 a person who has been convicted of any of the following 7 offenses, which are defined as a violent offense under 8 subdivision (15) of violent offenses, as defined in Section 9 12-25-32, may be expunded upon a showing that the person 10 committed the felony offense during the period the person was 11 trafficked, and that the person would not have committed the 12 felony offense but for being trafficked: 13 "(1) Promoting prostitution in the first degree 14 pursuant to Section 13A-12-111. 15 "(2) Domestic violence in the third degree pursuant 16 to subsection (d) of Section 13A-6-132. 17 "(3) Production of obscene matter involving a person 18 under the age of 17 years pursuant to Section 13A-12-197. 19 "(c)-(1) A person who has been charged with any 20 felony offense, including a violent offense as defined in 21 Section 12-25-32, may file a petition in the criminal division 22 23 of the circuit court in the county in which the charges were filed to expunge records relating to the charge if the person 24 25 has been found not guilty of the charge.

1 "(2) Records related to violent offenses as defined 2 in Section 12-25-32 may be disclosed to a law enforcement 3 agency for criminal investigation purposes as provided in 4 Section 15-27-7. "(c) A person who has been convicted of a felony 5 6 offense may file a petition in the criminal division of the circuit court in the county in which the charges were filed to 7 expunge records relating to the charge and the conviction if 8 9 all of the following occur: "(1) The person has been granted a certificate of 10 pardon with restoration of civil and political rights for the 11 conviction from the Board of Pardons and Paroles. 12 13 "(2) All civil and political rights that were forfeited as a result of the conviction have been restored. 14 "(3) One hundred eighty days have passed from the 15 date of the issuance of the certification of pardon. 16 "(4) Except as provided in subsection (b), the 17 conviction is not a violent offense, as provided in Section 18 19 12-25-32. "(5) The conviction is not a sex offense, as 20 provided in Section 15-20A-5. 21 "(6) The conviction is not an offense involving 22 moral turpitude, as provided in Section 17-3-30.1. This 23 subdivision does not apply if the crime the person was 24 25 convicted of was classified as a felony at the time of the

1	conviction, but has been reclassified as a misdemeanor,
2	pursuant to Act 2015-185, and the person has not been arrested
3	for any offense, excluding minor traffic violations, 15 years
4	prior to the filing of the petition for expungement.
5	"(7) The conviction is not a serious traffic
6	offense, as provided in Article 9 of Chapter 5A of Title 32.
7	"(d) Subject to the provisions of Section 15-27-16,
8	records related to offenses and convictions may be disclosed
9	to a criminal justice agency, a district attorney, or a
10	prosecuting authority for criminal investigation purposes as
11	provided in Section 15-27-7, to a utility and its agents and
12	affiliates, to the Department of Human Resources for the
13	purpose of investigation or assessment in order to protect
14	children or vulnerable adults, or to any entities or services
15	providing information to banking, insurance, and other
16	financial institutions as required for various requirements as
17	provided in state and federal law. Further, any criminal
18	charges that are expunged or are pending expungement pursuant
19	to 15-27-2 shall be available for use by any attorneys,
20	officers of the Court, or the Court itself in any civil
21	matters related to the criminal charges expunged or seeking to
22	be expunged regardless of the outcome of the petitioned
23	expungement. At the conclusion of the pending civil matter,
24	all references to the criminal charges expunged or to be

<u>expunged shall</u> be redacted in the event the criminal charges 1 2 are expunged. "(d) (e) The circuit court shall have exclusive 3 jurisdiction of a petition filed under subsection (a) or 4 5 subsection (b) subsection (a), (b), or (c). 6 "\$15-27-4. 7 "(a) In addition to any cost of court or docket fee for filing the petition in circuit court, an administrative 8 filing fee of three five hundred dollars (\$300) (\$500) shall 9 be paid at the time the petition is filed and is a condition 10 precedent to any ruling of the court pursuant to this chapter. 11 The administrative filing fee shall not be waived by the court 12 and shall be distributed as follows: 13 "(1) Seventy-five dollars (\$75) to the State 14 15 Judicial Administrative Fund. 16 "(2) Twenty-five dollars (\$25) to the Alabama Department of Forensic Sciences. 17 "(3) Fifty dollars (\$50) to the district attorney's 18 office. 19 20 "(4) Fifty dollars (\$50) to the clerk's office of 21 the circuit court having jurisdiction over the matter, for the use and benefit of the circuit court clerk. 22 "(5) Fifty dollars (\$50) to the Public Safety Fund. 23 "(6) Fifty dollars (\$50) to the general fund of the 24

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county where the arresting law enforcement agency is located

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1	if the arrest was made by the sheriff's office to be used for
2	law enforcement purposes, or, if the arrest was made by
3	another law enforcement agency, to the municipality or other
4	entity or state agency funding the law enforcement activity.
5	" <u>(7) One hundred dollars (\$100) to the State General</u>
6	Fund.
7	" <u>(8) Fifty dollars (\$50) to the Education Trust</u>
8	<u>Fund.</u>
9	"(9) Fifty dollars (\$50) to the Fair Trial Tax Fund.
10	"(b)(1) When a petitioner is seeking the expungement
11	of multiple charges arising from one arrest, the petitioner
12	shall only be required to pay one filing fee pursuant to
13	subsection (a).
14	"(2) When a petitioner is seeking the expungement of
15	multiple charges arising from multiple arrests, the petitioner
16	shall be required to pay a filing fee for each arrest pursuant
17	to subsection (a).
18	" <del>(b)</del> <u>(c)</u> Notwithstanding subsection (a), a person
19	seeking relief under this chapter may apply for indigent
20	status by completing an Affidavit of Substantial Hardship and
21	Order which shall be submitted with the petition. If the court
22	finds the petitioner is indigent, the court may set forth a
2.2	
23	payment plan for the petitioner to satisfy shall waive the
23	payment plan for the petitioner to satisfy shall waive the filing fee over a period of time, which shall be paid in full,

1 prior to any order granting an expungement provided in 2 subsection (a). "(c) (d) If a petitioner seeks expungement of an 3 4 arrest or conviction record and the court in the original case made a clear and unequivocal judicial finding on the record 5 6 that the arrest had no foundation of probable cause, the 7 court, in the expungement proceeding, shall waive all docket fees and court costs, except for the filling fee in subsection 8 9 (a). "§15-27-5. 10 "(a) If the prosecuting authority or victim files an 11 objection to the granting of a petition under this chapter, 12 the court having jurisdiction over the matter shall set a date 13 for a hearing no sooner than 14 days from the filing of the 14 15 objection. The court shall notify the prosecuting authority and the petitioner of the hearing date. In the discretion of 16 the court making its determination, the court shall consider 17 all of the following factors: 18 "(1) Nature and seriousness of the offense 19 20 committed. "(2) Circumstances under which the offense occurred. 21 "(3) Date of the offense. 22 "(4) Age of the person when the offense was 23 committed. 24

"(5) Whether the offense was an isolated or repeated
 incident.

3 "(6) Other conditions which may have contributed to4 the offense.

5 "(7) An available probation or parole record,6 report, or recommendation.

7 "(8) Whether the offense was dismissed or nolle
8 prossed as part of a negotiated plea agreement and the
9 petitioner plead pleaded guilty to another related or lesser
10 offense.

"(9) Evidence of rehabilitation, including good conduct in prison or jail, in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful business or employment history, and the recommendation of his or her supervisors or other persons in the community.

17 "(10) Any other matter the court deems relevant, 18 which may include, but is not limited to, a prior expungement 19 of the petitioner's records.

20 "(b) A hearing under subsection (a) shall be 21 conducted in a manner prescribed by the trial judge and shall 22 include oral argument and review of relevant documentation in 23 support of, or in objection to, the granting of the petition. 24 The Alabama Rules of Evidence shall apply to the hearing.

Leave of the court shall be obtained for the taking of witness
 testimony relating to any disputed fact.

3 "(c) There is no right to the expungement of any 4 criminal record, and any request for expungement of a criminal record may be denied at the sole discretion of the court. The 5 6 court shall grant the petition if it is reasonably satisfied 7 from the evidence that the petitioner has complied with and satisfied the requirements of this chapter. The court shall . 8 9 have discretion over the number of cases that may be expunded pursuant to this chapter after the first case is expunged. The 10 ruling of the court shall be subject to certiorari review and 11 12 shall may not be reversed absent a showing of an abuse of discretion. 13

"(d) If no objection to a petition is filed by the 14 prosecuting authority or victim, the court having jurisdiction 15 16 over the matter may shall rule on the merits of the petition 17 without setting the matter for hearing. In such cases, the court shall grant the petition if it is reasonably satisfied 18 from the evidence that the petitioner has complied with and 19 satisfied the requirements of this chapter. The court shall 20 have discretion over the number of cases that may be expunged 21 22 pursuant to this chapter after the first case is expunged. "§15-27-7. 23

24 "(a) Upon receipt of the order of expungement, a25 criminal justice agency in possession of records subject to

the order shall immediately forward the records to the Alabama 1 2 Criminal-Justice Information Center State Law Enforcement Agency. The center shall digitally archive the records in a 3 4 manner prescribed by the Alabama Criminal Justice Information Center Commission and designate the records as protected 5 notwithstanding any, except as provided in other provisions of 6 this chapter. Such The records may not be used for any 7 non-criminal justice purpose, except as otherwise provided in 8 9 this chapter, and may only be made available to criminal justice agencies, a district attorney, or a prosecuting 10authority upon acknowledgement of an investigation or other 11 criminal matter involving the person related to the 12 expungement. Any expunged records that were added to a federal 13 database shall be requested to be removed and not made 14 15 available within any interstate criminal database. Records may also be made available to the Department of Human Resources 16 for the purpose of investigation or assessment in order to 17 protect children or vulnerable adults. Expungement under this 18 chapter does not expunge reports that are indicated, as 19 defined in Section 26-14-8. 20

"(b) Records expunged under this chapter may not be
transmitted to the Federal Bureau of Investigation national
criminal records repository. Any record subject to be expunged
under this chapter and transmitted to the Federal Bureau of
Investigation prior to the expungement of such the record

shall be requested for withdrawal within the national system 1 2 by the Alabama Criminal Justice Information Center State Law 3 Enforcement Agency. "§15-27-8. 4 5 "Once the records are expunded pursuant to this chapter, the records shall be forwarded to the Alabama 6 7 Criminal Justice Information Center State Law Enforcement Agency in a manner prescribed by the Alabama Criminal Justice 8 Information Center Commission for purposes of archiving, and 9 the records shall be stored in a manner prescribed by the 10 Alabama Criminal Justice Information Center Commission. The 11 records shall be retained by the Alabama Criminal Justice 12 Information Center State Law Enforcement Agency indefinitely. 13 "\$15-27-9. 14 "For purposes of this chapter, the term record 15 includes, but is not limited to, all of the following terms 16 shall have the following meanings: 17 "(1) CRIMINAL JUSTICE AGENCIES. As defined in 18 19 Section 41-9-590. 20 "(2) RECORD. The term shall include, but is not limited to, all of the following: 21 "(1) a. Arrest and conviction records. 22 "(2) b. Booking or arrest photographs of the 23

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24 petitioner.

1 "<del>(3)</del> <u>c.</u> Index references such as the State Judicial Information System or any other governmental index references 2 for public records search. 3 "d. Records relating to administrative suspension 4 pursuant to Article 14 of Chapter 5A of Title 32, including 5 driver license suspension records. 6 "(4) e. Other data, whether in documentary or 7 electronic form, relating to the arrest or, charge, or 8 9 conviction. "\$15-27-10. 10 "(a) Nothing in this chapter shall prohibit a 11 criminal justice agency, a law enforcement agency or official, 12 district attorney or a prosecuting authority, the Alabama 13 Department of Forensic Sciences, or the Department of Human 14 Resources from maintaining an investigative file, report, case 15 file, or log which may include any evidence, biological 16 evidence, photographs, exhibits, or information in documentary 17 18 or electronic form. "(b) Nothing in this chapter shall prohibit the 19 Department of Human Resources from continuing to maintain any 20 documentation, reports, case files, or evidence needed for the 21 protection of children or vulnerable adults. 22 "\$15-27-19. 23 "The Alabama Criminal Justice Information Center 24 Commission shall adopt rules for the submission of data from 25

1	criminal justice agencies necessary to complete the criminal
2	history record within the state criminal history repository.
3	Data within the repository shall include all records allowed
4	by federal regulation of state repositories."
5	Section 3. Sections 15-27-2.1 and 15-27-21 are added
6	to the Code of Alabama 1975, to read as follows:
7	\$15-27-2.1.
8	(a)(1) A person may be granted unlimited
9	expungements pursuant to subdivisions (a)(1) through (a)(5)
10	and (a)(7) and (a)(8) of Section 15-27-1, subdivisions (a)(1)
11	through (a)(5) and (a)(7) and (a)(8) of Section 15-27-2, and
12	subsection (b) of Section 15-27-2.
13	(2) A person may only be granted one expungement
14	pursuant to subsection (c) of Section 15-27-2.
15	(3) A person may only be granted two expungements
16	pursuant to subdivision (a)(6) of Section 15-27-1, subsection
17	(b) of Section 15-27-1, and subdivision (a)(6) of Section
18	15-27-2.
19	(b) For the purposes of subsection (a), one
20	expungement shall include all charges or convictions stemming
21	from the same arrest or incident.
22	(c) The Administrative Office of Courts, in
23	consultation with the Alabama State Law Enforcement Agency,
24	shall adopt procedures relating to prior expungements for the
25	purposes of the limitations in this section.

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§15-27-21.

A certified record of an expungement is admissible in a criminal trial, subject to the Alabama Rules of Criminal Procedure and the Alabama Rules of Evidence. Prior to the introduction of an expungement by any party, the court shall conduct an in-camera hearing to determine its admissibility.

Section 4. This act may not be interpreted to
supersede, modify, or otherwise affect the application of
Sections 15-27-14 or 15-27-20, Code of Alabama 1975.

Section 5. Although this bill would have as its 10 purpose or effect the requirement of a new or increased 11 12 expenditure of local funds, the bill is excluded from further requirements and application under Amendment 621, as amended 13 by Amendment 890, now appearing as Section 111.05 of the 14 Official Recompilation of the Constitution of Alabama of 1901, 15 as amended, because the bill defines a new crime or amends the 16 definition of an existing crime. 17

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

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4	President and Presiding Officer of the Senate
5	Mac Mcatchen
6	Speaker of the House of Representatives
7 8 9 10 11 12 13 14 15	SB117 Senate 03-MAR-21 I hereby certify that the within Act originated in and passed the Senate, as amended. Patrick Harris, Secretary.
16 17 18 19	House of Representatives Amended and passed 13-APR-21
20 21 22	Senate concurred in House amendment 15-APR-21
23 24	By: Senator Coleman-Madison 4.33.2021 TIME 4:15 Alabama Secretary Of State Act Num: 2021-286 Bill Num: S-117
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HOUSE ACTION	DATE: 3.4 20 <u>21</u>	RD1RFD JUDY	-	House to its/standing committee on	م مو	House with the recommend	This day of April 20 21.	Chairperson		DATE: 2)-) 20 <u>2</u> )	RF WAMENOS RD 2 CAL			Committee		I hereby certify that the Resolution as required in Section C of Act No. 81-889	id is attached to	YEAS 63 NAYS 31	Clerk
SENATE ACTION	I hereby certify that the Resolution as	required in Section C of Act No. 81-889		Secretary	·•• <i>.</i>	notice & proof is	attached to the Bill, 5B as required in the General Acts of Ala- hama 1975 Act No. 919.	RICK	Secretary		CONFERENCE COMMITTEE	Senate Conferees				-			
5	4SOR	NUMAN - Waduba	Q T	20		22	23	24	25	26	27	28	29	30	31	32	33	34	35