

SECOND REGULAR SESSION

# HOUSE BILL NO. 1858

98TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE MATHEWS.

4884H.011

D. ADAM CRUMBLISS, Chief Clerk

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## AN ACT

To repeal sections 400.9-501 and 400.9-516, RSMo, and to enact in lieu thereof four new sections relating to the filing of certain documents, with penalty provisions.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Section 400.9-501 and 400.9-516, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 59.311, 400.9-501, 400.9-516, and 570.095, to read as follows:

**59.311. If a person filing with the recorder of deeds fails to comply with the standard filing form, such filing shall be treated as a provisional filing, as provided in subsection 6 of section 570.095. The recorder of deeds shall notify law enforcement of such filing, as provided in subsection 6 of section 570.095. From the date of filing with the recorder of deeds, law enforcement has fifteen days to lodge an objection in associate circuit or circuit court as to the validity of such filing. If no objection is lodged, the filing is no longer a provisional filing and is treated as any other valid filing. If an objection is made in associate circuit or circuit court, notice of such objection, along with a court date, shall be sent to all owners of record, the individual that made the filing, and all parties to the filing.**

400.9-501. (a) Except as otherwise provided in subsection (b), if the local law of this state governs perfection of a security interest or agricultural lien, the office in which to file a financing statement to perfect the security interest or agricultural lien is:

(1) The office designated for the filing or recording of a record of a mortgage on the related real property, if:

(A) The collateral is as-extracted collateral or timber to be cut; or

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

7 (B) The financing statement is filed as a fixture filing and the collateral is goods that are  
8 or are to become fixtures; or

9 (2) The office of the secretary of state in all other cases, including a case in which the  
10 collateral is goods that are or are to become fixtures and the financing statement is not filed as  
11 a fixture filing.

12 (b) The office in which to file a financing statement to perfect a security interest in  
13 collateral, including fixtures, of a transmitting utility is the office of the secretary of state. The  
14 financing statement also constitutes a fixture filing as to the collateral indicated in the financing  
15 statement which is or is to become fixtures.

16 [(c) A person shall not knowingly or intentionally file, attempt to file, or record any  
17 document related to real property with a recorder of deeds under chapter 59 or a financing  
18 statement with the secretary of state under subdivision (2) of subsection (a) or subsection (b) of  
19 this section, with the intent that such document or statement be used to harass or defraud any  
20 other person or knowingly or intentionally file, attempt to file, or record such a document or  
21 statement that is materially false or fraudulent.

22 (1) A person who violates this subsection shall be guilty of a class D felony.

23 (2) If a person is convicted of a violation under this subsection, the court may order  
24 restitution.

25 (d) In the alternative to the provisions of sections 428.105 through 428.135, if a person  
26 files a false or fraudulent financing statement with the secretary of state under subdivision (2)  
27 of subsection (a) or subsection (b) of this section, a debtor named in that financing statement may  
28 file an action against the person that filed the financing statement seeking appropriate equitable  
29 relief, actual damages, or punitive damages, including, but not limited to, reasonable attorney  
30 fees.]

400.9-516. (a) Except as otherwise provided in subsection (b), communication of a  
2 record to a filing office and tender of the filing fee or acceptance of the record by the filing office  
3 constitutes filing.

4 (b) Filing does not occur with respect to a record that a filing office refuses to accept  
5 because:

6 (1) The record is not communicated by a method or medium of communication  
7 authorized by the filing office;

8 (2) An amount equal to or greater than the applicable filing fee is not tendered;

9 (3) The filing office is unable to index the record because:

10 (A) In the case of an initial financing statement, the record does not provide a name for  
11 the debtor;

12 (B) In the case of an amendment or information statement, the record:

- 13 (i) Does not identify the initial financing statement as required by section 400.9-512 or  
14 400.9-518, as applicable; or
- 15 (ii) Identifies an initial financing statement whose effectiveness has lapsed under section  
16 400.9-515;
- 17 (C) In the case of an initial financing statement that provides the name of a debtor  
18 identified as an individual or an amendment that provides a name of a debtor identified as an  
19 individual which was not previously provided in the financing statement to which the record  
20 relates, the record does not identify the debtor's surname; or
- 21 (D) In the case of a record filed or recorded in the filing office described in section  
22 400.9-501(a)(1), the record does not provide a sufficient description of the real property to which  
23 it relates;
- 24 (4) In the case of an initial financing statement or an amendment that adds a secured  
25 party of record, the record does not provide a name and mailing address for the secured party of  
26 record;
- 27 (5) In the case of an initial financing statement or an amendment that provides a name  
28 of a debtor which was not previously provided in the financing statement to which the  
29 amendment relates, the record does not:
- 30 (A) Provide a mailing address for the debtor; or
- 31 (B) Indicate whether the name provided as the name of the debtor is the name of an  
32 individual or an organization;
- 33 (6) In the case of an assignment reflected in an initial financing statement under section  
34 400.9-514(a) or an amendment filed under section 400.9-514(b), the record does not provide a  
35 name and mailing address for the assignee; **or**
- 36 (7) In the case of a continuation statement, the record is not filed within the six-month  
37 period prescribed by section 400.9-515(d)[;
- 38 (8) The secretary of state has reasonable cause to believe the record is materially false  
39 or fraudulent; or
- 40 (9) The record on its face reveals, based on factors such as whether the debtor and the  
41 secured party are substantially the same person, the individual debtor is a transmitting utility, or  
42 whether the collateral described is within the scope of this chapter, that the record is being filed  
43 for a purpose other than a transaction that is within the scope of this chapter. This includes a  
44 record that asserts a claim against a current or former employee or officer of a federal, state,  
45 county, or other local governmental unit that relates to the performance of the officer's or  
46 employee's public duties, and for which the filer does not hold a properly executed security  
47 agreement or judgment from a court of competent jurisdiction].
- 48 (c) For purposes of subsection (b):

49 (1) A record does not provide information if the filing office is unable to read or decipher  
50 the information; **and**

51 (2) A record that does not indicate that it is an amendment or identify an initial financing  
52 statement to which it relates, as required by section 400.9-512, 400.9-514 or 400.9-518, is an  
53 initial financing statement[]; and

54 (3) A document, instrument, or record shall be presumed to be materially false or  
55 fraudulent if the document, instrument, or record is filed by an offender or on behalf of an  
56 offender. This presumption may be rebutted by providing the secretary of state the original or  
57 a copy of a sworn and notarized document signed by the obligor, debtor, or owner of the property  
58 designated as collateral stating that the person entered into a security agreement with the offender  
59 and authorized the filing of the instrument as provided in section 400.9-509. For the purposes  
60 of this subdivision the term "offender" shall have the same definition as provided in section  
61 217.010, except, it shall only include inmates in the custody of the department of corrections].

62 (d) A record that is communicated to the filing office with tender of the filing fee, but  
63 which the filing office refuses to accept for a reason other than one set forth in subsection (b),  
64 is effective as a filed record except as against a purchaser of the collateral which gives value in  
65 reasonable reliance upon the absence of the record from the files.

66 [(e) In the alternative to the provisions of sections 428.105 through 428.135, if an  
67 information statement filed with the secretary of state under section 400.9-518 alleges that a  
68 previously filed record was wrongfully filed, the secretary of state shall, without undue delay,  
69 determine whether the contested record was wrongfully filed. To determine whether the record  
70 was wrongfully filed, the secretary of state may require the person who filed the information  
71 statement or the secured party to provide any additional relevant information, including an  
72 original or copy of a security agreement that is related to the record. If the secretary of state finds  
73 that the record was wrongfully filed, the secretary of state shall terminate the record and the  
74 record shall be void and ineffective. The secretary of state shall notify the secured party named  
75 in the contested record of the termination.]

**570.095. 1. A person commits the crime of filing false documents if:**

2 (1) **He or she files, causes to be filed, or attempts to file, creates, uses as genuine,**  
3 **transfers or has transferred, presents, or prepares with knowledge or belief that it will be**  
4 **filed, presented, or transferred to the secretary of state or his or her designee, any county**  
5 **recorder of deeds or his or her designee, any municipal, county, district, or state**  
6 **government entity or office, or any credit bureau or financial institution any of the**  
7 **following types of documents:**

8 (a) **Common law lien;**

9 (b) **Uniform commercial code filing;**

- 10 (c) Real property recording;  
11 (d) Financing statement;  
12 (e) Contract;  
13 (f) Warranty, special, or quitclaim deed;  
14 (g) Quiet title claim or action;  
15 (h) Deed in lieu of foreclosure;  
16 (i) Legal affidavit;  
17 (j) Legal process;  
18 (k) Legal summons;  
19 (l) Bills and due bills;  
20 (m) Criminal charging documents;  
21 (n) Any other document not stated in this subdivision that is related to real  
22 property;  
23 (o) Any state, county, municipal, or financial institution form not otherwise  
24 delineated in this section; and  
25 (2) Such documents listed in subdivision (1) of this subsection contain materially  
26 false information, or are fraudulent, or are a forgery, as defined in section 570.090, or lack  
27 the consent of all parties listed in documents where mutual consent is required, or are  
28 invalid under Missouri law;
- 29 2. Filing false documents under this section is a class D felony until December 31,  
30 2016, and a class E felony beginning January 1, 2017, for the first offense except under the  
31 following circumstances where filing false documents is a class C felony:
- 32 (1) The defendant has been found guilty or pleaded guilty to a violation of this  
33 section;
- 34 (2) The victim or named party in the matter:
- 35 (a) Is an official elected to municipal, county, district, or statewide office;  
36 (b) Is an official who was appointed to municipal, county, district, or statewide  
37 office; or  
38 (c) Is an employee of an official who has been elected or appointed to municipal,  
39 county, district, or statewide office;
- 40 (3) The victim or named party in the matter is a judge or magistrate of:
- 41 (a) Any court or division of the court in this or any other state or an employee of  
42 any court of this state or any other state; or  
43 (b) Any court system of the United States or is an employee of any court of the  
44 United States;

45           **(4) The victim or named party in the matter is a full-time, part-time, or reserve or**  
46 **auxiliary peace officer licensed in this state or any other state; is an officer of federal job**  
47 **class 1811 who is empowered to enforce United States laws; or is a full-time or part-time**  
48 **firefighter in this state or any other state;**

49           **(5) The victim or named party in the matter is an employee of any law enforcement**  
50 **or legal prosecution agency in this state or any other state or is an employee of a federal**  
51 **agency that has agents or officers who are of job class 1811 who are empowered to enforce**  
52 **United States laws.**

53           **3. For a penalty enhancement as described in subsection 2 of this section to apply,**  
54 **the occupation of the victim or named party shall be material to the subject matter of the**  
55 **document or documents filed or the relief sought by the document or documents filed, and**  
56 **the occupation of the victim or named party shall be materially connected to the apparent**  
57 **reason that the victim has been named, victimized, or involved. For purposes of this**  
58 **subsection and subsection 2 of this section, a person who has retired or resigned from any**  
59 **agency, institution, or occupation listed in subsection 2 of this section shall be considered**  
60 **the same fashion as a person who remains in employment and shall also include the**  
61 **following family members of a person listed in subdivisions (2) to (5) of subsection 2 of this**  
62 **section:**

63           **(1) Such person's spouse;**

64           **(2) Such person or such person's spouse's ancestor or descendant by blood or**  
65 **adoption; or**

66           **(3) Such person's stepchild, while the marriage creating that relationship exists.**

67           **4. Any person who pleads guilty or is found guilty under subsections 1 to 3 of this**  
68 **section shall be ordered by the court to make full restitution to any person or entity that**  
69 **has sustained actual losses or costs as a result of the actions of the defendants. Such**  
70 **restitution shall not be paid in lieu of jail or prison time, but rather in addition to any jail**  
71 **or prison time imposed by the court.**

72           **5. (1) Nothing in this section shall limit the power of the state to investigate, charge,**  
73 **or punish any person for any conduct that constitutes a crime by any other statute of this**  
74 **state or the United States.**

75           **(2) There is no requirement under this section that the filing be retained by the**  
76 **receiving entity for prosecution under this section. A filing being rejected by associate**  
77 **circuit court or circuit court as provided in subsection 9 of this section shall not be used as**  
78 **an affirmative defense.**

79           **6. (1) Any statewide or county agency or similar agency that functions in**  
80 **independent cities of this state, which is responsible for or receives document filings,**

81 including county recorders of deeds and the secretary of state's office, shall, by January  
82 1, 2017, impose a provisional filing system in which documents that have been submitted  
83 to the receiving agency are held temporarily for a period of not less than fifteen business  
84 days and not more than fifteen business days when filings contain any unusual or  
85 suspicious verbiage or language. During the fifteen business day provisional filing period,  
86 the receiving agency shall make available the held documents for review by the:

- 87 (a) Jurisdictional prosecuting or circuit attorney or his or her designee;
- 88 (b) Sheriff or his or her designee;
- 89 (c) County police chief or his or her designee;
- 90 (d) City police chief or his or her designee in independent cities; or
- 91 (e) Active or commissioned peace officers, as defined in section 590.010.

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93 Review of such documents is permissible for the agent or agencies under this subdivision  
94 without the need of a grand jury subpoena or court order. No fees or monetary charges  
95 shall be levied on the investigative agents or agencies for review of documents during the  
96 provisional filing period.

97 (2) The receiving entity shall, upon receipt of a filing that has been delineated as  
98 a provisional filing, notify the chief law enforcement officer or his or her designee of the  
99 county and the prosecutor or his or her designee of the county of the filing's existence  
100 within two business days of the filing having been received. This notification may be  
101 accomplished via electronic mail or via paper memorandum.

102 7. If the provisional filing, during the provisional filing period under subsection 6  
103 of this section, is deemed by the investigative agent or agency, or by the receiving agency  
104 to be materially false; contain materially false information; or to be forged, fraudulent, or  
105 intentionally misleading, the provisional filing shall not be retained as a public filing until  
106 legal process has taken place as stipulated in this section. If the filing is not challenged  
107 during the provisional filing period, then the filing shall be retained as a record as  
108 permissible under state law.

109 8. To petition a filing that is deemed fraudulent, the investigating agent or agency  
110 or the receiving agency or his or her designee shall complete during the provisional filing  
111 period a probable cause statement that delineates the cause to believe that the filing is  
112 materially false; contains materially false information; or to be forged, fraudulent, or  
113 intentionally misleading. Such probable cause statement shall be filed in the associate  
114 circuit court or the circuit court of the county in which the original filing was made. The  
115 probable cause statement shall be filed within the provisional filing period to be considered  
116 by the associate circuit court or the circuit court. A copy of the probable cause statement

117 shall be provided to the receiving agency by the investigative agent or agency on the same  
118 business day in which the petition was filed.

119 **9.** There shall be no requirement imposed by this section that the agency receiving  
120 the filing shall notify the person conducting the filing that the filing has been entered as a  
121 provisional filing. The receiving agency shall notify the person conducting the filing via  
122 United States mail that a probable cause statement has been entered challenging the  
123 validity of the filing. The individual conducting the filing may petition the circuit court to  
124 validate the filing via court order. If the court deems that the filing is invalid as earlier  
125 stipulated, the filing shall not be retained. If a filing is deemed invalid, court costs and fees  
126 are the responsibility of the party who initiated the filing. If the filing is deemed valid, no  
127 court costs or fees, in addition to standard filing fees, shall be assessed.

128 **10.** Failure to comply with the stipulation of subsections 6 to 9 of this section by the  
129 appointed or elected secretary of state or county recorder of deeds shall be, for the first  
130 offense or filing, deemed an infraction. Each subsequent offense within the same calendar  
131 year shall be deemed a class B misdemeanor.

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