

SECOND REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 1858

98TH GENERAL ASSEMBLY

4884H.02P

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 400.9-516, 486.245, 486.285, 486.305, 486.310, and 486.375, RSMo, and to enact in lieu thereof eight new sections relating to the filing of certain documents, with penalty provisions.

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

Section A. Sections 400.9-516, 486.245, 486.285, 486.305, 486.310, and 486.375, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as sections 400.9-516, 486.245, 486.285, 486.305, 486.310, 486.375, 570.095, and 1, to read as follows:

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

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

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

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

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

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

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

(i) Does not identify the initial financing statement as required by section 400.9-512 or 400.9-518, as applicable; 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.

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.

486.245. 1. The county clerk shall keep a register, listing the name and address of each
2 person to whom he awards a notary commission and the date upon which he awards the
3 commission. Within thirty days after receiving a bond, signature and oath, the county clerk shall
4 forward the bond, signature and oath to the secretary of state by certified mail. All such bonds,
5 signatures and oaths shall be preserved permanently by the secretary of state.

6 **2. The secretary of state shall maintain a database that includes but is not limited**
7 **to information that is contained on each notary's seal or any lost seal of a notary public.**

486.285. 1. (1) **A manufacturer of a notary public's seal shall register with the**
2 **secretary of state and communicate to the secretary of state when it has issued a seal to a**
3 **person in this state. After such communication, the secretary of state shall approve any**
4 **seal issued by the manufacturer within ten days.**

5 **(2) A copy of the notary's commission shall be maintained by such manufacturer.**

6 **(3) If a manufacturer violates the provisions of this subsection, the manufacturer**
7 **shall be subject to a one thousand dollar fine for each violation.**

8 2. Each notary public shall provide, keep, and use a seal which is either an engraved
9 embosser seal or a black inked rubber stamp seal to be used on the document being notarized.
10 The seal shall contain the notary's name exactly as indicated on the commission and the words
11 "Notary Seal", "Notary Public", and "State of Missouri" and, after August 28, 2004, the
12 commission number assigned by the secretary of state, provided that the notary public has been
13 issued a commission number by the secretary of state, all of which shall be in print not smaller
14 than eight-point type.

15 [2.] 3. The indentations made by the seal embosser or printed by the black inked rubber
16 stamp seal shall not be applied on the notarial certificate or document to be notarized in a manner
17 that will render illegible or incapable of photographic reproduction any of the printed marks or
18 writing on the certificate or document.

19 [3.] 4. Every notary shall keep an official notarial seal that is the exclusive property of
20 the notary and the seal may not be used by any other person or surrendered to an employer upon
21 termination of employment.

 486.305. 1. Any notary public who loses or misplaces his **or her** journal of notarial acts
2 or official seal shall [forthwith mail or deliver] **immediately provide written** notice of the fact
3 to the secretary of state. **For a lost or misplaced official seal, upon receipt of the written**
4 **notice, the secretary of state shall issue the notary a new commission number for the notary**
5 **to order a new seal. The secretary of state may post notice on the secretary of state's**
6 **website notifying the general public that the lost or misplaced notary seal and commission**
7 **number of such notary is invalid and is not an acceptable notary commission number.**

8 2. **If a notary public's official seal is destroyed, broken, damaged, or otherwise**
9 **rendered inoperable, the notary shall immediately provide written notice of that fact to the**
10 **secretary of state. Upon receipt of the written notice, the secretary of state shall issue the**
11 **notary a new commission number for the notary to order a new seal. The secretary of state**
12 **may post notice on the secretary of state's website notifying the general public that the**
13 **destroyed, broken, damaged, or otherwise inoperable notary seal and commission number**
14 **of such notary is invalid and is not an acceptable notary commission number.**

 486.310. 1. If any notary public no longer desires to be a notary public, he or she shall
2 forthwith mail or deliver to the secretary of state a letter of resignation **and his or her notary**
3 **seal**, and his or her commission shall thereupon cease to be in effect. **The secretary of state**
4 **may post notice on the secretary of state's website notifying the general public that the**
5 **notary is no longer a commissioned notary public in the state of Missouri.** If a notary public

6 resigns following the receipt of a complaint by the secretary of state regarding the notary public's
7 conduct, the secretary of state may deny any future applications by such person for appointment
8 and commission as a notary public.

9 **2. If any notary public seeks to amend his or her commission, he or she shall**
10 **forthwith mail or deliver to the secretary of state his or her notary seal unless a person,**
11 **business, or manufacturer alters the existing seal in compliance with subsection 4 of section**
12 **486.285.**

 486.375. Any person who acts as, or otherwise willfully impersonates, a notary public
2 while not lawfully appointed and commissioned to perform notarial acts is guilty of a
3 [misdemeanor and punishable upon conviction by a fine not exceeding five hundred dollars or
4 by imprisonment for not more than six months or both] **class D felony.**

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 or record;**
- 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 or record be retained
76 by the receiving entity for prosecution under this section. A filing or record being rejected
77 by the receiving entity shall not be used as an affirmative defense.

78 6. (1) Any statewide or county agency or similar agency that functions in
79 independent cities of this state, which is responsible for or receives document filings or
80 records, including county recorders of deeds and the secretary of state's office, shall, by
81 January 1, 2017, impose a system in which the documents that have been submitted to the
82 receiving agency or in the case of the secretary of state those filings rejected under its legal
83 authority, are logged in a ledger, spreadsheet, note, or similar recording method when the
84 filing or recording officer believes the filings or records appear to be fraudulent or contain
85 suspicious verbiage. The receiving agency shall make available noted documents for
86 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.

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

101 7. To petition for a judicial review of a filing or record that is believed to be
102 fraudulent, false, misleading, forged, or contains materially false information, a petitioner
103 may file a probable cause statement which delineates the cause to believe that the filing or
104 record is materially false, contains materially false information, is a forgery, is fraudulent,
105 or is misleading. This probable cause statement shall be filed in the associate or circuit
106 court of the county in which the original filing or record was transferred, received, or
107 recorded.

108 8. There shall be no requirement imposed by this section that the agency receiving
109 the filing or record shall notify the person conducting the filing that the filing or record has
110 been entered as a noted filing or record. If a filing or record is deemed invalid, court costs
111 and fees are the responsibility of the party who initiated the filing or record. If the filing
112 or record is deemed valid, no court costs or fees, in addition to standard filing fees, shall
113 be assessed.

114 9. A filed petition under this section shall have an initial hearing date within twenty
115 business days of the petition being filed with the court. A court ruling of "invalid" shall
116 be evidence that the original filing or record was not accurate, true, or correct. A court
117 ruling of "invalid" shall be retained or recorded at the original receiving entity. The
118 receiving entity shall waive all filing or recording fees associated with the filing or
119 recording of the court ruling document in this subsection. This ruling may be forwarded
120 to credit bureaus or other institutions at the request of the petitioner via motion to the
121 applicable court at no additional cost to the petitioner.

Section 1. 1. If a law requires a signature or record to be notarized, acknowledged,
2 verified or made under oath, the requirement is satisfied if the electronic signature of the
3 person authorized to perform those acts, together with all other information required to
4 be included by other applicable law, is attached to or logically associated with the signature
5 or record.

6 2. The secretary of state is hereby authorized to promulgate rules and regulations
7 establishing procedures for an electronic notarization.

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