

SECOND REGULAR SESSION

# HOUSE BILL NO. 1769

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MATHEWS.

4534H.011

D. ADAM CRUMBLISS, Chief Clerk

## AN ACT

To repeal section 400.9-501, RSMo, and to enact in lieu thereof two new sections relating to the offense of filing false documents, with penalty provisions.

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

Section A. Section 400.9-501, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 400.9-501 and 570.095, to read as follows:

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

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

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

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

~~[(c) A person shall not knowingly or intentionally file, attempt to file, or record any document related to real property with a recorder of deeds under chapter 59 or a financing~~

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.

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 E 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.]~~

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

2 **(1) With the intent to defraud, deceive, harass, alarm, or negatively impact**  
3 **financially, or in such a manner reasonably calculated to deceive, defraud, harass, alarm,**  
4 **or negatively impact financially, he or she files, causes to be filed or recorded, or attempts**  
5 **to file or record, creates, uses as genuine, transfers or has transferred, presents, or**  
6 **prepares with knowledge or belief that it will be filed, presented, recorded, or transferred**  
7 **to the secretary of state or the secretary's designee, to the recorder of deeds of any county**  
8 **or city not within a county or the recorder's designee, to any municipal, county, district,**  
9 **or state government entity, division, agency, or office, or to any credit bureau or financial**  
10 **institution any of the following types of documents:**

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

12 **(b) Uniform commercial code filing or record;**

13 **(c) Real property recording;**

14 **(d) Financing statement;**

15 **(e) Contract;**

16 **(f) Warranty, special, or quitclaim deed;**

17 **(g) Quiet title claim or action;**

18 **(h) Deed in lieu of foreclosure;**

19 **(i) Legal affidavit;**

20 **(j) Legal process;**

21 **(k) Legal summons;**

22 **(l) Bills and due bills;**

23 **(m) Criminal charging documents or materially false criminal charging documents;**

24 (n) Any other document not stated in this subdivision that is related to real  
25 property; or

26 (o) Any state, county, district, federal, municipal, credit bureau, or financial  
27 institution form or document; and

28 (2) Such document listed under subdivision (1) of this subsection contains  
29 materially false information; is fraudulent; is a forgery, as defined under section 570.090;  
30 lacks the consent of all parties listed in a document that requires mutual consent; or is  
31 invalid under Missouri law.

32 2. Filing false documents under this section is a class D felony for the first offense  
33 except the following circumstances shall be a class C felony:

34 (1) The defendant has been previously found guilty or pleaded guilty to a violation  
35 of this section;

36 (2) The victim or named party in the matter:

37 (a) Is an official elected to municipal, county, district, federal, or statewide office;

38 (b) Is an official appointed to municipal, county, district, federal, or statewide  
39 office; or

40 (c) Is an employee of an official elected or appointed to municipal, county, district,  
41 federal, or statewide office;

42 (3) The victim or named party in the matter is a judge or magistrate of:

43 (a) Any court or division of the court in this or any other state or an employee  
44 thereof; or

45 (b) Any court system of the United States or is an employee thereof;

46 (4) The victim or named party in the matter is a full-time, part-time, or reserve or  
47 auxiliary peace officer, as defined under section 590.010, who is licensed in this state or any  
48 other state;

49 (5) The victim or named party in the matter is a full-time, part-time, or volunteer  
50 firefighter in this state or any other state;

51 (6) The victim or named party in the matter is an officer of federal job class 1811  
52 who is empowered to enforce United States laws;

53 (7) The victim or named party in the matter is a law enforcement officer of the  
54 United States as defined under 5 U.S.C. 8401(17)(A) or (D);

55 (8) The victim or named party in the matter is an employee of any law enforcement  
56 or legal prosecution agency in this state, any other state, or the United States;

57 (9) The victim or named party in the matter is an employee of a federal agency that  
58 has agents or officers of job class 1811 who are empowered to enforce United States laws

59 or is an employee of a federal agency that has law enforcement officers as defined under  
60 5 U.S.C. 8401(17)(A) or (D); or

61 (10) The victim or named party in the matter is an officer of the railroad police as  
62 defined under section 388.600.

63 3. For a penalty enhancement as described under subsection 2 of this section to  
64 apply, the occupation of the victim or named party shall be material to the subject matter  
65 of the document or documents filed or the relief sought by the document or documents  
66 filed, and the occupation of the victim or named party shall be materially connected to the  
67 apparent reason that the victim has been named, victimized, or involved. For purposes of  
68 subsection 2 of this section and this subsection, a person who has retired or resigned from  
69 any agency, institution, or occupation listed under subsection 2 of this section shall be  
70 considered the same as a person who remains in employment and shall also include the  
71 following family members of a person listed under subdivisions (2) to (9) of subsection 2  
72 of this section:

73 (1) Such person's spouse;

74 (2) Such person or such person's spouse's ancestor or descendant by blood or  
75 adoption; or

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

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

82 5. (1) Nothing in this section shall limit the power of the state to investigate, charge,  
83 or punish any person for any conduct that constitutes a crime by any other statute of this  
84 state or the United States.

85 (2) No receiving entity shall be required under this section to retain the filing or  
86 record for prosecution under this section. A filing or record being rejected by the receiving  
87 entity shall not be used as an affirmative defense.

88 6. (1) Any agency of the state, a county, or a city not within a county that is  
89 responsible for or receives document filings or records, including county recorders of deeds  
90 and the secretary of state's office, shall, by January 1, 2019, impose a system in which the  
91 documents that have been submitted to the receiving agency, or those filings rejected by  
92 the secretary of state under its legal authority, are logged or noted in a ledger, spreadsheet,  
93 or similar recording method if the filing or recording officer or employee believes the

94 filings or records appear to be fraudulent or contain suspicious language. The receiving  
95 agency shall make noted documents available for review by:

96 (a) The jurisdictional prosecuting or circuit attorney or such attorney's designee;

97 (b) The county sheriff or the sheriff's designee;

98 (c) The police chief of a county or city not within a county or such chief's designee;

99 or

100 (d) A commissioned peace officer as defined under section 590.010.

101

102 Review of such documents is permissible for the agent or agencies under this subdivision  
103 without the need of a grand jury subpoena or court order. No fees or monetary charges  
104 shall be levied on the investigative agents or agencies for review of documents noted in the  
105 ledger or spreadsheet. The ledger or spreadsheet and its contents shall be retained by the  
106 agency that controls entries into such ledger or spreadsheet for a minimum of three years  
107 from the earliest entry listed in the ledger or spreadsheet.

108 (2) The receiving entity shall, upon receipt of a filing or record that has been noted  
109 as a suspicious filing or record, notify the chief law enforcement officer or such officer's  
110 designee of the county and the prosecutor or the prosecutor's designee of the county of the  
111 filing's or record's existence. Such notification shall be made within two business days of  
112 the filing or record having been received. Notification may be accomplished via email or  
113 via paper memorandum.

114 (3) No agency receiving the filing or record shall be required under this section to  
115 notify the person conducting the filing or record that the filing or record is entered as a  
116 logged or noted filing or record.

117 (4) Reviews to ensure compliance with the provisions of this section shall be the  
118 responsibility of any commissioned peace officer. Findings of noncompliance shall be  
119 reported to the jurisdictional prosecuting or circuit attorney or such attorney's designee  
120 by any commissioned peace officer who has probable cause to believe that the  
121 noncompliance has taken place purposely, knowingly, recklessly, or with criminal  
122 negligence, as described under section 562.016.

123 7. To petition for a judicial review of a filing or record that is believed to be  
124 fraudulent, false, misleading, forged, or contains materially false information, a petitioner  
125 may file a probable cause statement that delineates the basis for the belief that the filing  
126 or record is materially false, contains materially false information, is a forgery, is  
127 fraudulent, or is misleading. This probable cause statement shall be filed in the associate  
128 or circuit court of the county in which the original filing or record was transferred,  
129 received, or recorded.

130           **8. A filed petition under this section shall have an initial hearing date within twenty**  
131 **business days of the date the petition is filed with the court. A court ruling of "invalid"**  
132 **shall be evidence that the original filing or record was not accurate, true, or correct. A**  
133 **court ruling of "invalid" shall be retained or recorded at the original receiving entity. The**  
134 **receiving entity shall waive all filing or recording fees associated with the filing or**  
135 **recording of the court ruling document in this subsection. Such ruling may be forwarded**  
136 **to credit bureaus or other institutions at the request of the petitioner via motion to the**  
137 **applicable court at no additional cost to the petitioner.**

138           **9. If a filing or record is deemed invalid, court costs and fees are the responsibility**  
139 **of the party who originally initiated the filing or record. If the filing or record is deemed**  
140 **valid, no court costs or fees, in addition to standard filing fees, shall be assessed.**

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