

FIRST REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

# HOUSE BILL NO. 303

99TH GENERAL ASSEMBLY

0700H.02P

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Section A. Section 400.9-501, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 400.9-501 and 570.095, to read as follows: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 his or her designee, or any county or independent city recorder**  
8 **of deeds or his or her designee, any municipal, county, district, or state government entity,**  
9 **division, agency, or office, or any credit bureau or financial institution any of the following**  
10 **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 documents listed in subdivision (1) of this subsection contain materially  
29 false information, or are fraudulent, or are a forgery, as defined in section 570.090, or lack  
30 the consent of all parties listed in documents where mutual consent is required, or are  
31 invalid under Missouri law.

32           2. Filing false documents under this section is a class D felony for the first offense  
33 except under the following circumstances where filing false documents is 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 who was appointed to municipal, county, district, federal, or  
39 statewide office; or

40           (c) Is an employee of an official who has been elected or appointed to municipal,  
41 county, district, 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 of  
44 any court of this state or any other state; or

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

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

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

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

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

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

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

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

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

64 3. For a penalty enhancement as described in subsection 2 of this section to apply,  
65 the occupation of the victim or named party shall be material to the subject matter of the  
66 document or documents filed or the relief sought by the document or documents filed, and  
67 the occupation of the victim or named party shall be materially connected to the apparent  
68 reason that the victim has been named, victimized, or involved. For purposes of this  
69 subsection and subsection 2 of this section, a person who has retired or resigned from any  
70 agency, institution, or occupation listed under subsection 2 of this section shall be  
71 considered the same fashion as a person who remains in employment and shall also include  
72 the following family members of a person listed under subdivisions (2) to (9) of subsection  
73 2 of this section:

74 (1) Such person's spouse;

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

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

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

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

86 (2) There is no requirement under this section that the filing or record be retained  
87 by the receiving entity for prosecution under this section. A filing or record being rejected  
88 by the receiving entity shall not be used as an affirmative defense.

89 6. (1) Any statewide or county agency or similar agency that functions in  
90 independent cities of this state, which is responsible for or receives document filings or  
91 records, including county recorders of deeds and the secretary of state's office, shall, by  
92 January 1, 2018, impose a system in which the documents that have been submitted to the  
93 receiving agency or in the case of the secretary of state those filings rejected under its legal  
94 authority, are logged or noted in a ledger, spreadsheet, or similar recording method if the  
95 filing or recording officer or employee believes the filings or records appear to be

96 **fraudulent or contain suspicious verbiage. The receiving agency shall make available**  
97 **noted documents for review by the:**

98 **(a) Jurisdictional prosecuting or circuit attorney or his or her designee;**

99 **(b) County sheriff or his or her designee;**

100 **(c) County police chief or his or her designee;**

101 **(d) City police chief or his or her designee in independent cities; or**

102 **(e) Commissioned peace officers as defined in section 590.010.**

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

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

116 **(3) There shall be no requirement imposed by this section that the agency receiving**  
117 **the filing or record make notification to the person conducting the filing or record that the**  
118 **filing or record has been entered as a logged or noted filing or record.**

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

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

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

140           **9. If a filing or record is deemed invalid, the prevailing party shall be awarded all**  
141 **reasonable costs and fees incurred by that party in the action. If the filing or record is**  
142 **deemed valid, no court costs or fees, in addition to standard filing fees, shall be assessed.**

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