

HB 2214 -- FRAUDULENT FINANCING STATEMENTS

SPONSOR: Berry

This bill changes the laws regarding the filing of a fraudulent financing statement with the Secretary of State. In its main provisions, the bill;

(1) Specifies that a person commits a class D felony if he or she knowingly or intentionally files, attempts to file, or records any document related to real property with a recorder of deeds or a financing statement with the Secretary of State with the intent that it be used to harass or defraud any other person or that is materially false or fraudulent;

(2) Allows the court, upon conviction, to order restitution;

(3) Allows a debtor named in the financing statement to file an action against the person who filed the financing statement to seek appropriate equitable relief, actual damages or punitive damages including, but not limited to, reasonable attorney fees;

(4) Specifies that any person adversely affected by the false or fraudulent document or statement filed or recorded under these provisions must be held harmless from and against any and all liability to the other parties named in the document or statement;

(5) Specifies that a document, instrument, or record must be presumed to be materially false or fraudulent if it is filed by or on behalf of an inmate in the custody of the Department of Corrections. This presumption may be rebutted by providing the Secretary of State with a sworn and notarized document signed by the obligor, debtor, or owner of the collateral stating that the person entered into a security agreement with the inmate;

(6) Requires the Secretary of State to determine if a contested record was wrongfully filed when someone files an information statement alleging that a record was wrongfully filed. The Secretary of State may require the person filing the statement or the secured party to provide additional information. If the statement is found to be wrongfully filed, the record must be terminated and it must be void and ineffective. The secured party named in the record must be notified of the termination.

(7) Specifies that if a title insurer, title agent, or title agency who has caused a search of title makes a determination that, based upon the title search and other available information, a document constitutes a materially false or fraudulent document as described in these provisions, the title insurer, title agent, or

title agency must record a notice of false or fraudulent document, which includes specified requirements;

(8) Requires the recording of a notice of false or fraudulent document to be received as prima facie evidence in all courts of the truth of the invalidity of the false or fraudulent document;

(9) Specifies that these provisions must not be construed to result in the invalidity of a document which is shown to be authorized by contract, lease, or statute or imposed by a state or federal court of competent jurisdiction;

(10) Specifies that upon the filing of a notice of false or fraudulent document in accordance with these provisions, any person adversely affected by the false or fraudulent document described therein must be held harmless from and against the claims of any third party who relies upon the false or fraudulent document to the party's detriment;

(11) Specifies that no title insurer, title agent, or title agency be liable for the recording of a notice of false or fraudulent document recorded as a result of a search of title as described in these provisions; and

(12) Specifies that if a person files a false or fraudulent document with the recorder as described in these provisions, the person whose interest is adversely affected by the false or fraudulent document may file an action against the person who recorded the document seeking appropriate equitable relief for damages including, but not limited to, an order declaring the document ineffective and awarding reasonable attorney's fees.