

SECOND REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1769
99TH GENERAL ASSEMBLY

4534S.04T

2018

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Section A. Section 400.9-501, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 400.9-501 and 570.095, to read as follows: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

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.

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 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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