

SECOND REGULAR SESSION

SENATE BILL NO. 750

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHATZ.

Pre-filed December 1, 2017, and ordered printed.

ADRIANE D. CROUSE, Secretary.

5004S.011

AN ACT

To repeal section 400.9-501, RSMo, and to enact in lieu thereof two new sections relating to the filing of 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Section A. Section 400.9-501, RSMo, is repealed and two new sections
2 enacted in lieu thereof, to be known as sections 400.9-501 and 570.095, to read
3 as follows:

400.9-501. (a) Except as otherwise provided in subsection (b), if the local
2 law of this state governs perfection of a security interest or agricultural lien, the
3 office in which to file a financing statement to perfect the security interest or
4 agricultural lien is:

5 (1) The office designated for the filing or recording of a record of a
6 mortgage on the related real property, if:

7 (A) The collateral is as-extracted collateral or timber to be cut; or

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

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

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

18 [(c) A person shall not knowingly or intentionally file, attempt to file, or

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 record any document related to real property with a recorder of deeds under
20 chapter 59 or a financing statement with the secretary of state under subdivision
21 (2) of subsection (a) or subsection (b) of this section, with the intent that such
22 document or statement be used to harass or defraud any other person or
23 knowingly or intentionally file, attempt to file, or record such a document or
24 statement that is materially false or fraudulent.

25 (1) A person who violates this subsection shall be guilty of a class E
26 felony.

27 (2) If a person is convicted of a violation under this subsection, the court
28 may order restitution.

29 (d) In the alternative to the provisions of sections 428.105 through
30 428.135, if a person files a false or fraudulent financing statement with the
31 secretary of state under subdivision (2) of subsection (a) or subsection (b) of this
32 section, a debtor named in that financing statement may file an action against
33 the person that filed the financing statement seeking appropriate equitable relief,
34 actual damages, or punitive damages, including, but not limited to, reasonable
35 attorney fees.]

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

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

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

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

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

17 (d) **Financing statement;**

18 (e) **Contract;**

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

- 20 (g) Quiet title claim or action;
- 21 (h) Deed in lieu of foreclosure;
- 22 (i) Legal affidavit;
- 23 (j) Legal process;
- 24 (k) Legal summons;
- 25 (l) Bills and due bills;
- 26 (m) Criminal charging documents or materially false criminal
- 27 charging documents;
- 28 (n) Any other document not stated in this subdivision that is
- 29 related to real property; or
- 30 (o) Any state, county, district, federal, municipal, credit bureau,
- 31 or financial institution form or document; and
- 32 (2) Such document listed in subdivision (1) of this subsection:
- 33 (a) Contains materially false information;
- 34 (b) Is fraudulent;
- 35 (c) Is a forgery, as defined in section 570.090;
- 36 (d) Lacks the consent of all parties listed in documents where
- 37 mutual consent is required; or
- 38 (e) is otherwise invalid under Missouri law.
- 39 2. Filing false documents under this section shall be punishable
- 40 as a class D felony for the first offense except under the following
- 41 circumstances where filing false documents shall be punishable a class
- 42 C felony:
- 43 (1) The defendant has been previously found guilty or pleaded
- 44 guilty to a violation of this section;
- 45 (2) The victim or named party in the matter:
- 46 (a) Is an official elected or appointed to municipal, county,
- 47 district, federal, or statewide office; or
- 48 (b) Is an employee of an official who has been elected or
- 49 appointed to municipal, county, district, federal, or statewide office;
- 50 (3) The victim or named party in the matter is a judge or
- 51 magistrate of:
- 52 (a) Any court or division of the court in this or any other state
- 53 or an employee of any court of this state or any other state; or
- 54 (b) Any court system of the United States or is an employee of
- 55 any court of the United States;
- 56 (4) The victim or named party in the matter is a full-time, part-

57 time, auxiliary, or reserve peace officer, as defined in section 590.010,
58 licensed in this state or any other state;

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

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

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

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

68 (9) The victim or named party in the matter is an employee of a
69 federal agency that has agents or officers who are of job class 1811 who
70 are empowered to enforce United States laws or is an employee of a
71 federal agency that has law enforcement officers as defined in 5 U.S.C.
72 8401(17)(A) or (D); or

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

75 3. For a penalty enhancement as described in subsection 2 of this
76 section to apply, the occupation of the victim or named party shall be
77 material to the subject matter of the document or documents filed or
78 the relief sought by the document or documents filed, and the
79 occupation of the victim or named party shall be materially connected
80 to the apparent reason that the victim has been named, victimized, or
81 involved. For purposes of this subsection and subsection 2 of this
82 section, a person who has retired or resigned from any agency,
83 institution, or occupation listed under subsection 2 of this section shall
84 be considered the same as a person who remains in employment and
85 shall also include the following family members of a person listed
86 under subdivisions (2) to (9) of subsection 2 of this section:

87 (1) Such person's spouse;

88 (2) The ancestor or descendant by blood or adoption of such
89 person or such person's spouse; or

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

92 4. Any person who pleads guilty or is found guilty under
93 subsections 1 to 3 of this section shall be ordered by the court to make

94 full restitution to any person or entity that has sustained actual losses
95 or costs as a result of the actions of the defendants. Such restitution
96 shall not be paid in lieu of jail or prison time, but rather in addition to
97 any jail or prison time imposed by the court.

98 5. (1) Nothing in this section shall limit the power of the state
99 to investigate, charge, or punish any person for any conduct that
100 constitutes a crime by any other statute of this state or the United
101 States.

102 (2) A receiving entity shall not be required to retain the filing or
103 record in question for prosecution under this section. A filing or
104 record being rejected by the receiving entity shall not be used as an
105 affirmative defense.

106 6. (1) Any agency of the state, county, or city not within a
107 county, which is responsible for or receives document filings or
108 records, including county recorders of deeds and the secretary of state,
109 shall, by January 1, 2019, impose a system in which the documents that
110 have been submitted to the receiving agency or in the case of the
111 secretary of state those filings rejected under its legal authority, are
112 logged or noted in a ledger, spreadsheet, or similar recording method
113 if the filing or recording officer or employee believes the filings or
114 records appear to be fraudulent or contain suspicious language. The
115 receiving agency shall make available noted documents for review by:

116 (a) The jurisdictional prosecuting or circuit attorney, or his or
117 her designee;

118 (b) The county sheriff, or his or her designee;

119 (c) The police chief of a city not within a county, or his or her
120 designee; or

121 (d) A commissioned peace officer, as that term is defined in
122 section 590.010.

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

131 **(2) The receiving entity shall, upon receipt of a filing or record**
132 **that has been noted as a suspicious filing or record, notify the chief law**
133 **enforcement officer or his or her designee and the prosecuting attorney**
134 **or his or her designee of the existence of the filing or**
135 **record. Notification shall be made within two business days of the**
136 **filing or record having been received. Notification may be**
137 **accomplished via electronic mail or via paper memorandum.**

138 **(3) No agency receiving the filing or record shall be required**
139 **under this section to notify the person conducting the filing or record**
140 **that the filing or record has been entered as a logged or noted filing or**
141 **record.**

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

149 **7. To petition for a judicial review of a filing or record that is**
150 **believed to be fraudulent, false, misleading, forged, or contains**
151 **materially false information, a petitioner may file a probable cause**
152 **statement that delineates the basis for the belief that the filing or**
153 **record is materially false, contains materially false information, is a**
154 **forgery, is fraudulent, or is misleading. This probable cause statement**
155 **shall be filed in the associate or circuit court of the county in which the**
156 **original filing or record was transferred, received, or recorded.**

157 **8. A filed petition under this section shall have an initial hearing**
158 **date within twenty business days of the petition being filed with the**
159 **court. A court ruling of "invalid" shall be evidence that the original**
160 **filing or record was not accurate, true, or correct. A court ruling of**
161 **"invalid" shall be retained or recorded at the original receiving**
162 **entity. The receiving entity shall waive all filing or recording fees**
163 **associated with the filing or recording of the court ruling document in**
164 **this subsection. This ruling may be forwarded to credit bureaus or**
165 **other institutions at the request of the petitioner via motion to the**
166 **applicable court at no additional cost to the petitioner.**

167 **9. If a filing or record is deemed invalid, court costs and fees**

168 shall be the responsibility of the party who originally initiated the
169 filing or record. If the filing or record is deemed valid, no court costs
170 or fees, in addition to standard filing fees, shall be assessed.

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