

SENATE BILL NO. 1269

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR WASHINGTON.

4754S.011

KRISTINA MARTIN, Secretary

AN ACT

To repeal section 570.095, RSMo, and to enact in lieu thereof one new section relating to filing false documents, with penalty provisions.

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

Section A. Section 570.095, RSMo, is repealed and one new
2 section enacted in lieu thereof, to be known as section 570.095,
3 to read as follows:

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

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

17 (a) Common law lien;

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

(b) Uniform commercial code filing or record;
(c) Real property recording;
(d) Financing statement;
(e) Contract;
(f) Warranty, special, or quitclaim deed;
(g) Quiet title claim or action;
(h) Deed in lieu of foreclosure;
(i) Legal affidavit;
(j) Legal process;
(k) Legal summons;
(l) Bills and due bills;
(m) Criminal charging documents or materially false
criminal charging documents;
(n) **Court filing**;
(o) Any other document not stated in this subdivision
that is related to real property; or
[(o)] (p) Any state, county, district, federal,
municipal, credit bureau, or financial institution form or
document; and
(2) Such document listed under subdivision (1) of this
subsection contains materially false information; is
fraudulent; is a forgery, as [defined] **described** under
section 570.090; **is frivolous**; lacks the consent of all
parties listed in a document that requires mutual consent;
or is invalid **or unenforceable** under Missouri law; **or in the**
case a document used under paragraph (n) of subdivision (1)
of this subsection, lacks probable cause.
2. Filing false documents under this section is a
class [D] C felony for the first offense except the
following circumstances shall be a class [C] B felony:
(1) The defendant has been previously found guilty or
pleaded guilty to a violation of this section;

- 50 (2) The victim or named party in the matter:
- 51 (a) Is an official elected to municipal, county,
52 district, federal, or statewide office;
- 53 (b) Is an official appointed to municipal, county,
54 district, federal, or statewide office; or
- 55 (c) Is an employee of an official elected or appointed
56 to municipal, county, district, federal, or statewide office;
- 57 (3) The victim or named party in the matter is a judge
58 or magistrate of:
- 59 (a) Any court or division of the court in this or any
60 other state or an employee thereof; or
- 61 (b) Any court system of the United States or is an
62 employee thereof;
- 63 (4) The victim or named party in the matter is a full-
64 time, part-time, or reserve or auxiliary peace officer, as
65 defined under section 590.010, who is licensed in this state
66 or any other state;
- 67 (5) The victim or named party in the matter is a full-
68 time, part-time, or volunteer firefighter in this state or
69 any other state;
- 70 (6) The victim or named party in the matter is an
71 officer of federal job class 1811 who is empowered to
72 enforce United States laws;
- 73 (7) The victim or named party in the matter is a law
74 enforcement officer of the United States as defined under 5
75 U.S.C. Section 8401(17) (A) or (D);
- 76 (8) The victim or named party in the matter is an
77 employee of any law enforcement or legal prosecution agency
78 in this state, any other state, or the United States;
- 79 (9) The victim or named party in the matter is an
80 employee of a federal agency that has agents or officers of
81 job class 1811 who are empowered to enforce United States

82 laws or is an employee of a federal agency that has law
83 enforcement officers as defined under 5 U.S.C. Section
84 8401(17) (A) or (D); or

85 (10) The victim or named party in the matter is an
86 officer of the railroad police as **[defined]** **authorized** under
87 section 388.600.

88 3. For a penalty enhancement as described under
89 subsection 2 of this section to apply, the occupation of the
90 victim or named party shall be material to the subject
91 matter of the document or documents filed or the relief
92 sought by the document or documents filed, and the
93 occupation of the victim or named party shall be materially
94 connected to the apparent reason that the victim has been
95 named, victimized, or involved. For purposes of subsection
96 2 of this section and this subsection, a person who has
97 retired or resigned from any agency, institution, or
98 occupation listed under subsection 2 of this section shall
99 be considered the same as a person who remains in employment
100 and shall also include the following family members of a
101 person listed under subdivisions (2) to (9) of subsection 2
102 of this section:

103 (1) Such person's spouse;

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

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

108 4. Any person who pleads guilty or is found guilty
109 under subsections 1 to 3 of this section shall be ordered by
110 the court to make full restitution to any person or entity
111 that has sustained actual losses or costs as a result of the
112 actions of the defendants. Such restitution shall not be

113 paid in lieu of jail or prison time but rather in addition
114 to any jail or prison time imposed by the court.

115 5. (1) Nothing in this section shall limit the power
116 of the state to investigate, charge, or punish any person
117 for any conduct that constitutes a crime by any other
118 statute of this state or the United States.

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

123 6. (1) Any agency of the state, a county, or a city
124 not within a county that is responsible for or receives
125 document filings or records, including county recorders of
126 deeds and the secretary of state's office, shall, by January
127 1, 2019, impose a system in which the documents that have
128 been submitted to the receiving agency, or those filings
129 rejected by the secretary of state under its legal
130 authority, are logged or noted in a ledger, spreadsheet, or
131 similar recording method if the filing or recording officer
132 or employee believes the filings or records appear to be
133 fraudulent or contain suspicious language. The receiving
134 agency shall make noted documents available for review by:

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

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

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

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

142 Review of such documents is permissible for the agent or
143 agencies under this subdivision without the need of a grand

jury subpoena or court order. No fees or monetary charges shall be levied on the investigative agents or agencies for review of documents noted in the ledger or spreadsheet. The ledger or spreadsheet and its contents shall be retained by the agency that controls entries into such ledger or spreadsheet for a minimum of three years from the earliest entry listed in the ledger or spreadsheet.

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

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

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

7. **[To] (1) Any person who is named in or has a property interest affected by a filing or record that is believed to be covered by subsection 1 of this section may**

176 **file a** petition for a judicial review of **[a] the** filing or
177 record **[that is believed to be fraudulent, false,**
178 **misleading, forged, or contains materially false**
179 **information, a petitioner may file]** **and** a probable cause
180 statement that delineates the basis for the belief that the
181 filing or record is materially false, contains materially
182 false information, is a forgery, is fraudulent, or is
183 misleading. **[This]**

184 **(2) The petition and** probable cause statement shall be
185 filed in the associate or circuit court of the county in
186 which the original filing or record was transferred,
187 received, or recorded.

188 **(3) If the filing or record in question is a petition**
189 **or other document filed in associate circuit court or**
190 **circuit court or is a notice of lis pendens, lien notice, or**
191 **another instrument related to such petition or document,**
192 **then, in lieu of a separate petition, the petition and**
193 **probable cause statement shall be in the form of a motion in**
194 **the pending case before the court in which the petition or**
195 **document is filed, providing that the hearing on the motion**
196 **shall be in accordance with subsection 8 of this section and**
197 **any ruling shall provide the same remedies as a petition for**
198 **review under subdivision (1) of this subsection.**

199 **8. (1)** A filed petition under this section shall have
200 an initial hearing date within twenty business days of the
201 date the petition is filed with the court. A court ruling
202 of invalid shall be evidence that the original filing or
203 record was not accurate, true, **[or] correct, or proper.** A
204 court ruling of invalid shall be retained or recorded at the
205 original receiving entity.

206 **(2) If personal service cannot be obtained on the**
207 **person responsible for the filing or record, either because**

208 such person is unknown, are outside of this state, or are
209 believed by the petitioner to be evading service, then upon
210 an affidavit of the petitioner showing that a good faith
211 effort to serve or provide actual notice to such person was
212 made, the court shall have jurisdiction to hear and rule on
213 the validity of the filing or record.

214 (3) The receiving entity shall waive all filing or
215 recording fees associated with the filing or recording of
216 the court ruling document in this subsection. Such ruling
217 may be forwarded to credit bureaus or other institutions at
218 the request of the petitioner via motion to the applicable
219 court at no additional cost to the petitioner.

220 (4) If the petition is filed by a person who is not
221 named in subdivision (1) of subsection 6 of this section,
222 the court may consider the petition as a civil case without
223 prejudice to the right of the prosecuting or circuit
224 attorney to pursue criminal charges by a separate proceeding
225 and upon a court ruling of invalid, the court shall order:

226 (a) If the person responsible for the filing or record
227 has been personally served or has waived service as of the
228 date of the hearing, the person to pay restitution to the
229 petitioner for all costs and reasonable attorney's fees that
230 were incurred by the petitioner in filing and prosecuting
231 the petition and otherwise arising from the invalid filing
232 or record;

233 (b) Unless the person responsible for the filing or
234 record has been personally served or has waived service as
235 of the date of the hearing and the court has established
236 that the invalid filing or record was made in good faith
237 after a reasonable inquiry into the legal and factual
238 grounds of the filing or notice, the person to pay damages
239 to the petitioner in an amount of not less than five hundred

dollars and not more than three times the amount of actual damages, including costs and reasonable attorney's fees that were incurred by the petitioner in filing and prosecuting the petition and otherwise arising from the invalid filing or notice; or

(c) If the personal service on the person responsible for the filing or record has not been obtained as of the date of the hearing, hold a separate hearing within a reasonable period of time after personal service is obtained or waived and shall award costs and penalties as provided by paragraphs (a) and (b) of this subdivision.

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

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