

HCS HB 1412 -- FRAUDULENT FINANCING STATEMENTS (Phillips)

COMMITTEE OF ORIGIN: Committee on Crime Prevention and Public Safety

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 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; and

(5) 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.