

SENATE SUBSTITUTE
FOR
SENATE COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1769

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:

1 Section A. Section 400.9-501, RSMo, is repealed and two new
2 sections enacted in lieu thereof, to be known as sections 400.9-
3 501 and 570.095, to read as follows:

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

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

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

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

16 (2) The office of the secretary of state in all other

1 cases, including a case in which the collateral is goods that are
2 or are to become fixtures and the financing statement is not
3 filed as a fixture filing.

4 (b) The office in which to file a financing statement to
5 perfect a security interest in collateral, including fixtures, of
6 a transmitting utility is the office of the secretary of state.
7 The financing statement also constitutes a fixture filing as to
8 the collateral indicated in the financing statement which is or
9 is to become fixtures.

10 [(c) A person shall not knowingly or intentionally file,
11 attempt to file, or record any document related to real property
12 with a recorder of deeds under chapter 59 or a financing
13 statement with the secretary of state under subdivision (2) of
14 subsection (a) or subsection (b) of this section, with the intent
15 that such document or statement be used to harass or defraud any
16 other person or knowingly or intentionally file, attempt to file,
17 or record such a document or statement that is materially false
18 or fraudulent.

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

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

23 (d) In the alternative to the provisions of sections
24 428.105 through 428.135, if a person files a false or fraudulent
25 financing statement with the secretary of state under subdivision
26 (2) of subsection (a) or subsection (b) of this section, a debtor
27 named in that financing statement may file an action against the
28 person that filed the financing statement seeking appropriate

1 equitable relief, actual damages, or punitive damages, including,
2 but not limited to, reasonable attorney fees.]

3 570.095. 1. A person commits the offense of filing false
4 documents if:

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

18 (a) Common law lien;

19 (b) Uniform commercial code filing or record;

20 (c) Real property recording;

21 (d) Financing statement;

22 (e) Contract;

23 (f) Warranty, special, or quitclaim deed;

24 (g) Quiet title claim or action;

25 (h) Deed in lieu of foreclosure;

26 (i) Legal affidavit;

27 (j) Legal process;

28 (k) Legal summons;

1 (l) Bills and due bills;

2 (m) Criminal charging documents or materially false
3 criminal charging documents;

4 (n) Any other document not stated in this subdivision that
5 is related to real property; or

6 (o) Any state, county, district, federal, municipal, credit
7 bureau, or financial institution form or document; and

8 (2) Such document listed under subdivision (1) of this
9 subsection contains materially false information; is fraudulent;
10 is a forgery, as defined under section 570.090; lacks the consent
11 of all parties listed in a document that requires mutual consent;
12 or is invalid under Missouri law.

13 2. Filing false documents under this section is a class D
14 felony for the first offense except the following circumstances
15 shall be a class C felony:

16 (1) The defendant has been previously found guilty or
17 pleaded guilty to a violation of this section;

18 (2) The victim or named party in the matter:

19 (a) Is an official elected to municipal, county, district,
20 federal, or statewide office;

21 (b) Is an official appointed to municipal, county,
22 district, federal, or statewide office; or

23 (c) Is an employee of an official elected or appointed to
24 municipal, county, district, federal, or statewide office;

25 (3) The victim or named party in the matter is a judge or
26 magistrate of:

27 (a) Any court or division of the court in this or any other
28 state or an employee thereof; or

1 (b) Any court system of the United States or is an employee
2 thereof;

3 (4) The victim or named party in the matter is a full-time,
4 part-time, or reserve or auxiliary peace officer, as defined
5 under section 590.010, who is licensed in this state or any other
6 state;

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

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

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

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

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

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

26 3. For a penalty enhancement as described under subsection
27 2 of this section to apply, the occupation of the victim or named
28 party shall be material to the subject matter of the document or

1 documents filed or the relief sought by the document or documents
2 filed, and the occupation of the victim or named party shall be
3 materially connected to the apparent reason that the victim has
4 been named, victimized, or involved. For purposes of subsection
5 2 of this section and this subsection, a person who has retired
6 or resigned from any agency, institution, or occupation listed
7 under subsection 2 of this section shall be considered the same
8 as a person who remains in employment and shall also include the
9 following family members of a person listed under subdivisions
10 (2) to (9) of subsection 2 of this section:

11 (1) Such person's spouse;

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

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

16 4. Any person who pleads guilty or is found guilty under
17 subsections 1 to 3 of this section shall be ordered by the court
18 to make full restitution to any person or entity that has
19 sustained actual losses or costs as a result of the actions of
20 the defendants. Such restitution shall not be paid in lieu of
21 jail or prison time but rather in addition to any jail or prison
22 time imposed by the court.

23 5. (1) Nothing in this section shall limit the power of
24 the state to investigate, charge, or punish any person for any
25 conduct that constitutes a crime by any other statute of this
26 state or the United States.

27 (2) No receiving entity shall be required under this
28 section to retain the filing or record for prosecution under this

1 section. A filing or record being rejected by the receiving
2 entity shall not be used as an affirmative defense.

3 6. (1) Any agency of the state, a county, or a city not
4 within a county that is responsible for or receives document
5 filings or records, including county recorders of deeds and the
6 secretary of state's office, shall, by January 1, 2019, impose a
7 system in which the documents that have been submitted to the
8 receiving agency, or those filings rejected by the secretary of
9 state under its legal authority, are logged or noted in a ledger,
10 spreadsheet, or similar recording method if the filing or
11 recording officer or employee believes the filings or records
12 appear to be fraudulent or contain suspicious language. The
13 receiving agency shall make noted documents available for review
14 by:

15 (a) The jurisdictional prosecuting or circuit attorney or
16 such attorney's designee;

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

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

20 (d) A commissioned peace officer as defined under section
21 590.010.

22
23 Review of such documents is permissible for the agent or agencies
24 under this subdivision without the need of a grand jury subpoena
25 or court order. No fees or monetary charges shall be levied on
26 the investigative agents or agencies for review of documents
27 noted in the ledger or spreadsheet. The ledger or spreadsheet
28 and its contents shall be retained by the agency that controls

1 entries into such ledger or spreadsheet for a minimum of three
2 years from the earliest entry listed in the ledger or
3 spreadsheet.

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

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

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

24 7. To petition for a judicial review of a filing or record
25 that is believed to be fraudulent, false, misleading, forged, or
26 contains materially false information, a petitioner may file a
27 probable cause statement that delineates the basis for the belief
28 that the filing or record is materially false, contains

1 materially false information, is a forgery, is fraudulent, or is
2 misleading. This probable cause statement shall be filed in the
3 associate or circuit court of the county in which the original
4 filing or record was transferred, received, or recorded.

5 8. A filed petition under this section shall have an
6 initial hearing date within twenty business days of the date the
7 petition is filed with the court. A court ruling of "invalid"
8 shall be evidence that the original filing or record was not
9 accurate, true, or correct. A court ruling of "invalid" shall be
10 retained or recorded at the original receiving entity. The
11 receiving entity shall waive all filing or recording fees
12 associated with the filing or recording of the court ruling
13 document in this subsection. Such ruling may be forwarded to
14 credit bureaus or other institutions at the request of the
15 petitioner via motion to the applicable court at no additional
16 cost to the petitioner.

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