

SECOND REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 2103

103RD GENERAL ASSEMBLY

4097H.04P

JOSEPH ENGLER, Chief Clerk

AN ACT

To repeal sections 59.120, 486.735, 570.095, and 578.700, RSMo, and to enact in lieu thereof four new sections relating to protections against document fraud, with penalty provisions.

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

Section A. Sections 59.120, 486.735, 570.095, and 578.700, RSMo, are repealed and
2 four new sections enacted in lieu thereof, to be known as sections 59.120, 486.735, 570.095,
3 and 578.700, to read as follows:

59.120. **1.** The recorder shall keep ~~his~~ **the recorder's** office at the seat of justice,
2 and the county commission shall provide the same with suitable books, in which the recorder
3 shall record all instruments of writing authorized and required to be recorded. If there is no
4 courthouse or other suitable county building at the seat of justice, the county commission
5 shall provide an office for the recorder at any other place in the county where there is a
6 courthouse and courts of record are held.

**2. Each recorder shall display in the recorder's office in a place visible to the
8 public a printed sign with the following text in all capital letters of at least one inch in
9 height: "WARNING: THE OFFENSE OF FILING FALSE DOCUMENTS IS A
10 FELONY UNDER MISSOURI LAW (RSMO 570.095) WITH PENALTIES THAT
11 MAY INCLUDE JAIL OR PRISON TIME AND FINANCIAL RESTITUTION."**

486.735. **1.** A vendor or manufacturer shall register with the secretary prior to selling
2 or manufacturing notary seals. The secretary shall maintain an internet site for the purpose of
3 allowing vendors and manufacturers to confirm the current standing of any notary in the state.

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.

4 2. A vendor or manufacturer shall not provide a notary seal to a purchaser claiming to
5 be a notary, unless the purchaser presents a notary commission issued by the secretary, and
6 unless:

7 (1) In the case of a purchaser appearing in person, the vendor or manufacturer
8 identifies this individual as the person named in the commission, through either personal
9 knowledge or satisfactory evidence of identity; or

10 (2) In the case of a purchaser ordering a seal by mail or delivery service, the vendor or
11 manufacturer confirms the notary's standing as a commissioned notary through the internet
12 site.

13 3. For each commission, a vendor or manufacturer shall make or sell only one seal
14 and, if requested by the person presenting the commission, only one embossing seal.

15 4. After manufacturing or providing a notary seal, the vendor shall affix an image of
16 all seals on a form as prescribed by the secretary and, within seven business days, send the
17 completed form to the secretary, retaining a copy of the form and the commission for a period
18 of five years.

19 5. A notary obtaining a seal as a result of a name change shall present a copy of the
20 confirmation of notary's name or address change from the secretary in accordance with
21 sections 486.780 and 486.785.

22 6. A vendor or manufacturer who fails to comply with this section shall be subject to a
23 fine of ~~[one]~~ **ten** thousand dollars for each violation. For multiple violations, a vendor's
24 permission to sell or manufacture notary seals may be withdrawn by the secretary. Such
25 violation shall not preclude the civil liability of the vendor to parties injured by the vendor's
26 failure to comply with this section.

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, or
4 negatively impact financially, he or she files, causes to be filed or recorded, or attempts to file
5 or record, creates, uses as genuine, transfers or has transferred, presents, or prepares with
6 knowledge or belief that it will be filed, presented, recorded, or transferred to the secretary of
7 state or the secretary's designee, to the recorder of deeds of any county or city not within a
8 county or the recorder's designee, to any municipal, county, district, or state government
9 entity, division, agency, or office, or to any credit bureau or financial institution any of the
10 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 property;

25 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 materially
29 false information; is fraudulent; is a forgery, as **[defined]** **described** under section 570.090;
30 lacks the consent of all parties listed in a document that requires mutual consent; or is invalid
31 under Missouri law.

32 2. Filing false documents under this section is a class **[D]** C felony for the first
33 offense except the following circumstances shall be a class **[E]** B felony:

34 (1) The defendant has been previously found guilty or pleaded guilty to a violation of
35 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 office;

39 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 thereof;

44 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 who
52 is empowered to enforce United States laws;

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

55 (8) The victim or named party in the matter is an employee of any law enforcement or
56 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 or
59 is an employee of a federal agency that has law enforcement officers as defined under 5
60 U.S.C. Section 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~~ **authorized** under section 388.600.

63 3. For a penalty enhancement as described under subsection 2 of this section to apply,
64 the occupation of the victim or named party shall be material to the subject matter of the
65 document or documents filed or the relief sought by the document or documents filed, and the
66 occupation of the victim or named party shall be materially connected to the apparent reason
67 that the victim has been named, victimized, or involved. For purposes of subsection 2 of this
68 section and this subsection, a person who has retired or resigned from any agency, institution,
69 or occupation listed under subsection 2 of this section shall be considered the same as a
70 person who remains in employment and shall also include the following family members of a
71 person listed under subdivisions (2) to (9) of subsection 2 of this section:

72 (1) Such person's spouse;

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

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

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

81 5. (1) Nothing in this section shall limit the power of the state to investigate, charge,
82 or punish any person for any conduct that constitutes a crime by any other statute of this state
83 or the United States.

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

87 6. (1) Any agency of the state, a county, or a city not within a county that is
88 responsible for or receives document filings or records, including county recorders of deeds
89 and the secretary of state's office, shall, by January 1, 2019, impose a system in which the
90 documents that have been submitted to the receiving agency, or those filings rejected by the
91 secretary of state under its legal authority, are logged or noted in a ledger, spreadsheet, or
92 similar recording method if the filing or recording officer or employee believes the filings or
93 records appear to be fraudulent or contain suspicious language. The receiving agency shall
94 make noted documents available for review by:

- 95 (a) The jurisdictional prosecuting or circuit attorney or such attorney's designee;
- 96 (b) The county sheriff or the sheriff's designee;
- 97 (c) The police chief of a county or city not within a county or such chief's designee; or
- 98 (d) A commissioned peace officer as defined under section 590.010.

99

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

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

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

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

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

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

127 8. A filed petition under this section shall have an initial hearing date within twenty
 128 business days of the date the petition is filed with the court. A court ruling of invalid shall be
 129 evidence that the original filing or record was not accurate, true, or correct. A court ruling of
 130 invalid shall be retained or recorded at the original receiving entity. The receiving entity shall
 131 waive all filing or recording fees associated with the filing or recording of the court ruling
 132 document in this subsection. Such ruling may be forwarded to credit bureaus or other
 133 institutions at the request of the petitioner via motion to the applicable court at no additional
 134 cost to the petitioner.

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

138 **10. (1) An owner of an interest in real property that has been subject to a filing**
 139 **or record that is believed to be fraudulent, false, misleading, or forged or that contains**
 140 **materially false information may petition for a judicial review under subsections 7, 8,**
 141 **and 9 of this section.**

142 **(2) A county recorder of deeds may post information on such petition process in**
 143 **the recorder's office and online.**

578.700. 1. For purposes of this section, all definitions from section 486.600 shall
 2 apply.

3 2. In performing a notarial act, a notary shall be guilty of:

4 **(1) A class E felony for executing a false notarial certificate under subsection 1 of**
 5 **section 486.660; or**

6 **(2) A misdemeanor, punishable upon conviction by a fine not exceeding five hundred**
 7 **dollars or imprisonment for not more than six months, or both, for knowingly:**

8 ~~[(1)]~~ **(a) Failing to require the presence of a principal at the time of a notarial act; or**

9 ~~[(2)]~~ **(b) Failing to identify a principal through personal knowledge or satisfactory**
 10 **evidence[~~or~~]**

11 ~~(3) Executing a false notarial certificate under subsection 1 of section 486.660].~~

12 3. A notary who knowingly performs any other act prohibited by chapter 486 or fails
 13 to perform any other act required by chapter 486 shall be guilty of a misdemeanor, punishable
 14 upon conviction by a fine not exceeding five hundred dollars or imprisonment for not more
 15 than six months, or both.

16 4. Any person who is not a notary and who knowingly acts as or otherwise
 17 impersonates a notary shall be guilty of a ~~[misdemeanor, punishable upon conviction by a fine~~

18 ~~not exceeding five hundred dollars or imprisonment for not more than six months, or both]~~
19 **class E felony.**

20 5. Any person who knowingly obtains, conceals, defaces, or destroys the seal,
21 journal, or official records of a notary shall be guilty of a [~~misdemeanor, punishable upon~~
22 ~~conviction by a fine not exceeding five hundred dollars]~~ **class E felony.**

23 6. Any person who knowingly solicits, coerces, or in any way influences a notary to
24 commit official misconduct shall be guilty of a [~~misdemeanor, punishable upon conviction by~~
25 ~~a fine not exceeding five hundred dollars]~~ **class E felony.**

26 7. Any person who knowingly obtains, conceals, damages, or destroys the coding,
27 disk, certificate, card, token, program, software, or hardware that is intended exclusively to
28 enable an electronic notary public to produce a registered electronic signature, notary seal, or
29 single element combining the required features of an electronic signature and notary seal,
30 shall be guilty of a [~~misdemeanor, punishable upon conviction by a fine not exceeding five~~
31 ~~hundred dollars or imprisonment for not more than six months, or both]~~ **class E felony.**

32 8. **Any person who is not a notary and knowingly presents false information to**
33 **obtain or attempt to obtain a notary public's seal from a manufacturer under chapter**
34 **486 shall be guilty of a class E felony.**

35 9. The penalties of this section shall not preclude other sanctions and remedies
36 provided by law.

✓