

SECOND REGULAR SESSION

HOUSE BILL NO. 2201

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE PRICE.

5682H.011

JOSEPH ENGLER, Chief Clerk

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Section A. Section 570.095, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 570.095, to read as follows:

- 570.095. 1. A person commits the offense of filing false documents if:
- (1) With the intent to defraud, deceive, harass, alarm, or negatively impact financially, or in such a manner reasonably calculated to deceive, defraud, harass, alarm, or negatively impact financially, he or she files, causes to be filed or recorded, or attempts to file or record, creates, uses as genuine, transfers or has transferred, presents, or prepares with knowledge or belief that it will be filed, presented, recorded, or transferred to the secretary of state or the secretary's designee, to the recorder of deeds of any county or city not within a county or the recorder's designee, to any municipal, county, district, or state government entity, division, agency, **court**, or office, or to any credit bureau or financial institution any of the following types of documents:
 - (a) Common law lien;
 - (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;

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.

- 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) **Court filings;**
25 (o) Any other document not stated in this subdivision that is related to real property;
26 or
27 ~~[(p)]~~ (p) Any state, county, district, federal, municipal, credit bureau, or financial
28 institution form or document; and
29 (2) Such document listed under subdivision (1) of this subsection contains materially
30 false information; is fraudulent; is a forgery, as ~~defined~~ **described** under section 570.090; **is**
31 **frivolous;** lacks the consent of all parties listed in a document that requires mutual consent;
32 ~~or~~ is invalid **or unenforceable** under Missouri law; **or in the case a document used under**
33 **paragraph (n) of subdivision (1) of this subsection, lacks probable cause.**
34 2. Filing false documents under this section is a class ~~[D]~~ **C** felony for the first
35 offense except the following circumstances shall be a class ~~[E]~~ **B** felony:
36 (1) The defendant has been previously found guilty or ~~[pleaded]~~ **pled** guilty to a
37 violation of this section;
38 (2) The victim or named party in the matter:
39 (a) Is an official elected to municipal, county, district, federal, or statewide office;
40 (b) Is an official appointed to municipal, county, district, federal, or statewide office;
41 or
42 (c) Is an employee of an official elected or appointed to municipal, county, district,
43 federal, or statewide office;
44 (3) The victim or named party in the matter is a judge or magistrate of:
45 (a) Any court or division of the court in this or any other state or an employee thereof;
46 or
47 (b) Any court system of the United States or is an employee thereof;
48 (4) The victim or named party in the matter is a full-time, part-time, or reserve or
49 auxiliary peace officer, as defined under section 590.010, who is licensed in this state or any
50 other state;
51 (5) The victim or named party in the matter is a full-time, part-time, or volunteer
52 firefighter in this state or any other state;
53 (6) The victim or named party in the matter is an officer of federal job class 1811 who
54 is empowered to enforce United States laws;

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

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

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

63 (10) The victim or named party in the matter is an officer of the railroad police as
64 ~~defined~~ **authorized** under section 388.600.

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

74 (1) Such person's spouse;

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

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

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

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

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

89 6. (1) Any agency of the state, a county, or a city not within a county that is
90 responsible for or receives document filings or records, including county recorders of deeds
91 and the secretary of state's office, shall, by January 1, 2019, impose a system in which the

92 documents that have been submitted to the receiving agency, or those filings rejected by the
93 secretary of state under its legal authority, are logged or noted in a ledger, spreadsheet, or
94 similar recording method if the filing or recording officer or employee believes the filings or
95 records appear to be fraudulent or contain suspicious language. The receiving agency shall
96 make noted documents available for review by:

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

101

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

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

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

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

123 7. ~~[To]~~ **(1) Any person who is named in or has a property interest affected by a**
124 **filing or record that is believed to be covered under subsection 1 of this section may file a**
125 **petition for a judicial review of [a] the filing or record** ~~[that is believed to be fraudulent, false,~~
126 ~~misleading, forged, or contains materially false information, a petitioner may file]~~ **and a**
127 **probable cause statement that delineates the basis for the belief that the filing or record is**

128 materially false, contains materially false information, is a forgery, is fraudulent, or is
129 misleading.

130 ~~[This]~~ **(2) The petition and** probable cause statement shall be filed in the associate or
131 circuit court of the county in which the original filing or record was transferred, received, or
132 recorded.

133 **(3) If the filing or record in question is a petition or other document filed in**
134 **associate circuit court or circuit court or is a notice of lis pendens, lien notice, or another**
135 **instrument related to such petition or document, in lieu of a separate petition, the**
136 **petition and probable cause statement shall be in the form of a motion in the pending**
137 **case before the court in which the petition or document is filed, provided that the**
138 **hearing on the motion shall be in accordance with subsection 8 of this section and any**
139 **ruling shall provide the same remedies as a petition for judicial review under**
140 **subdivision (1) of this subsection.**

141 8. **(1)** A filed petition under this section shall have an initial hearing date within
142 twenty business days of the date the petition is filed with the court. A court ruling of invalid
143 shall be evidence that the original filing or record was not accurate, true, ~~[or]~~ correct, or
144 proper. A court ruling of invalid shall be retained or recorded at the original receiving entity.

145 **(2) If personal service cannot be obtained on the person responsible for the filing**
146 **or record because such person is unknown, is outside of this state, or is believed by the**
147 **petitioner to be evading service, upon an affidavit by the petitioner showing that a good**
148 **faith effort to serve or provide actual notice to such person was made, the court shall**
149 **have jurisdiction to hear and rule on the validity of the filing or record.**

150 **(3)** The receiving entity shall waive all filing or recording fees associated with the
151 filing or recording of the court ruling document in this subsection. Such ruling may be
152 forwarded to credit bureaus or other institutions at the request of the petitioner via motion to
153 the applicable court at no additional cost to the petitioner.

154 **(4) If the petition is filed by a person who is not named as provided in**
155 **subdivision (1) of subsection 7 of this section, the court may consider the petition as a**
156 **civil case without prejudice to the right of the prosecuting or circuit attorney to pursue**
157 **criminal charges in a separate proceeding. Upon a court ruling of invalid, the court**
158 **shall:**

159 **(a) If the person responsible for the filing or record has been personally served**
160 **or has waived service as of the date of the hearing, order the person to pay restitution to**
161 **the petitioner for all costs and reasonable attorney's fees that were incurred by the**
162 **petitioner for filing and prosecuting the petition and otherwise arising from the invalid**
163 **filing or record;**

164 **(b) Unless the person responsible for the filing or record has been personally**
165 **served or has waived service as of the date of the hearing and the court has established**
166 **that the invalid filing or record was made in good faith after a reasonable inquiry into**
167 **the legal and factual grounds of the filing or notice, order the person to pay damages to**
168 **the petitioner in an amount of not less than five hundred dollars but not more than three**
169 **times the amount of actual damages, including costs and reasonable attorney's fees that**
170 **were incurred by the petitioner for filing and prosecuting the petition and otherwise**
171 **arising from the invalid filing or notice; or**

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

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

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