

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1331 Property Fraud
SPONSOR(S): Criminal Justice Subcommittee; Wood
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 996

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 0 N, As CS	Krol	Cunningham
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

The bill creates s. 817.535, F.S., entitled “fraudulent creation of interest in real or personal property.” The bill makes it a third degree felony for a person, with the intent to defraud or harass another, to file or cause to be filed for recording in the official records a document related to real or personal property which the person knows to contain a material misstatement, misrepresentation, or omission of fact. Such documents include, but are not limited to:

- Deeds, leases, bills of sale, agreements, mortgages, notices of claim of lien, notices of levy, promissory notes, mortgage notes, or any other instrument that relates to the ownership, transfer, or encumbrance of or claim against real or personal property, or any interest in real or personal property.

The bill exempts persons who record construction liens from the offense and specifies that construction liens are subject to the fraud provisions of s. 713.31, F.S.

The bill may have a minimal fiscal impact on the Office of the State Courts Administrator because a few more cases may be filed as a result of the specific provisions of the bill.

The Criminal Justice Impact Conference met on January 30, 2012, and determined the bill would have an insignificant fiscal impact on the Department of Corrections.

The bill is effective on October 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida's Recording Act

Section 695.01, F.S., requires that any conveyance, transfer, mortgage, or other interest in real property be recorded in the public records of the county where the property is located. Every state in the United States has an analogous statutory recording system making information about interests in property available to the public.¹ The purpose of a public recording system for land titles is to allow access to any person such as a creditor, tax collector, or prospective purchaser to ascertain who owns the property and what encumbrances might exist to the title.² Because these records are open for the public to rely on and have the potential to call into question the owner's clear title to the property, having accurate property records is vital.³

Section 28.222(1), F.S., requires the clerk of the circuit court to record all of the instruments, such as deeds, liens, mortgages, etc., in the county where he or she is clerk. The clerk must record instruments presented to him or her for recording upon payment of the service charges prescribed by law.⁴ Florida law does not require the clerk to investigate the accuracy of any such instruments he or she records.

Fraud

Chapter 817, F.S., covers a variety of fraudulent practices. Section 817.54, F.S., makes it a third degree felony⁵ for a person to obtain a mortgage, mortgage note, or promissory note by false representation with the intent to defraud. Other chapters contain similar penalties specific to liens. For example, s. 713.31(3), F.S., makes it is a third degree felony for a person to fraudulently file a construction lien. A construction lien is considered fraudulent if the lienor purposely exaggerates the amount of the lien, includes work not performed, or compiles his or her claim with willful and gross negligence.⁶

Fraudulent Recording of Deeds

Florida law offers redress for a property owner where a fraudulent deed is recorded with respect to his or her property. A property owner who has a fraudulent deed recorded on his or her property may pursue a suit to quiet title, which is "an equitable action that involves clearing a title of an invalid charge against the title."⁷ The court may award costs as it considers equitable in a quiet title action, but such costs do not include attorney's fees.⁸ A property owner may also choose to sue for slander of title, a tort action for which damages may be recovered.⁹ A tort claim is not actionable as slander of title if the defendant acted without malice and with the belief that he or she had a valid claim against the property and was entitled to record that claim.¹⁰

Effect of the Bill

The bill creates s. 817.535, F.S., entitled "fraudulent creation of an interest in real or personal property." The bill makes it a third degree felony for a person, with the intent to defraud or harass another, to file or cause to be filed for recording in the official records a document related to real or personal property which the person knows to contain a material misstatement, misrepresentation, or omission of fact.

¹ Jesse Dukeminier and James E. Krier, PROPERTY, 662 (5th ed. 2002).

² *Id.*

³ *Id.*

⁴ Section 28.222(3), F.S.

⁵ Punishable by up to 5 years imprisonment and a fine of up to \$5,000. Sections 775.082 and 775.083, F.S.

⁶ Section 713.31(2)(a), F.S.

⁷ 65 AM. JUR. 2d, *Quieting Title and Determination of Adverse Claims* s. 2 (2011).

⁸ Section 86.081, F.S.; see also *Wiggins v. Wiggins*, 446 So. 2d 1078, 1079 (Fla. 1984) (citing *State ex rel. Royal Ins. Co. v. Barrs*, 99 So. 668 (Fla. 1924).

⁹ *Id.*

¹⁰ *McAllister v. Breakers Seville Ass'n Inc.*, 981 So. 2d 566, 575 (Fla. 4th DCA 2008).

The bill describes the term “document” as including, but not limited to:

- Deeds, leases, bills of sale, agreements, mortgages, notices of claim of lien, notices of levy, promissory notes, mortgage notes, or any other instrument that relates to the ownership, transfer, or encumbrance of or claim against real or personal property, or any interest in real or personal property.

The bill exempts persons who record construction liens from the offense and specifies that construction liens are subject to the fraud provisions of s. 713.31, F.S.

B. SECTION DIRECTORY:

Section 1. Creates s. 817.535, F.S., relating to fraudulent creation of interest in real or personal property.

Section 2. Provides an effective date of October 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The Criminal Justice Impact Conference met on January 30, 2012, and determined the bill would have an insignificant fiscal impact on the Department of Corrections.¹¹

According to the Office of the State Courts Administrator (OSCA), the bill may have a minimal fiscal impact because a few more cases may be filed as a result of the specific provisions of the bill. OSCA does not anticipate a large impact on judicial workload because existing law essentially covers the behavior the bill prohibits.¹²

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

¹¹ Criminal Justice Impact Conference. http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/CJIC_12.xls (last visited February 1, 2012).

¹² Office of the State Courts Administrator, 2012 Judicial Impact Statement, SB 996 (Dec. 7, 2011) (on file with the House Criminal Justice Subcommittee).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 31, 2012, the Criminal Justice Subcommittee adopted a strike all amendment and reported the bill favorably as a committee substitute. The amendment:

- Reorganizes and clarifies the elements of the crime created by the bill.
- Changes the phrase "filed with the clerk of the court" to "filed for recording in the official records" to ensure the crime will apply in counties where the documents addressed by the bill may be filed through an entity other than the clerk of court.
- Adds "harass" to the intent of the crime created by the bill.
- Exempts construction liens from violating the section of statute created by the bill and specifies that construction liens are subject to the fraud provisions of s. 713.31, F.S.

The analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.