

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 112

INTRODUCER: Judiciary Committee and Senator Dean

SUBJECT: Property Fraud

DATE: March 7, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Cibula	JU	Fav/CS
2.	_____	_____	CJ	_____
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes
 B. AMENDMENTS..... Technical amendments were recommended
 Amendments were recommended
 Significant amendments were recommended

I. Summary:

CS/SB 112 creates the offense of filing or directing to file, with the intent to defraud or harass another, a document in an official records which contains materially false, fictitious, or fraudulent statements or representations that affect the owner’s interest in property described in the document. A person who commits the new offense is subject to punishment for a third-degree felony.¹ If a person commits this offense a second or subsequent time the person is liable to punishment for a second-degree felony.² The bill enhances the applicable punishment for the offender under circumstances outlined in the bill. The bill also provides that a person who files a fraudulent construction lien is subject to penalties under the Construction Lien Law, not the newly-created offense in the bill.

The bill amends the law relating to criminal actions under color of law or through use of simulated legal process, to revise definitions. For purposes of that law, the bill defines the term, “public officer or employee.” The bill specifies additional civil remedies to grant relief to public

¹ A third-degree felony is punishable by imprisonment of up to 5 years and the imposition of a fine of up to \$5,000.

² A second-degree felony is punishable by imprisonment of up to 15 years and the imposition of a fine of up to \$10,000.

officers or employees affected by the offense of filing of false statements or claims. The bill ranks offenses created in the bill in the severity ranking chart under the Criminal Punishment Code for purposes of sentencing.

The bill creates section 817.535, Florida Statutes.

This bill amends ss. 843.0855 and 921.0022, F.S.

II. Present Situation:

Fraud

Chapter 817, F.S., deals with a variety of fraudulent practices. Section 817.54, F.S., for example, states that a person commits a third-degree felony if he or she obtains a mortgage, mortgage note, or promissory note by false representation with the intent to defraud. Additionally, s. 817.155, F.S., makes it a third-degree felony to knowingly falsify any matter within the jurisdiction within the Department of State. The conduct subject to penalties appears to include filing fraudulent liens. Other provisions of law contain similar penalties specific to liens. Under s. 713.31(3), F.S., it is a third-degree felony to fraudulently file a construction lien. A construction lien is considered fraudulent if the person who filed the lien purposefully exaggerates the amount of the lien, includes work not performed, or compiles his or her claim with willful and gross negligence.³

In a 2011 federal case in Florida, the defendant filed false financial statements and liens against a number of federal officers who were involved in a separate criminal prosecutions against him.⁴ Although the liens in this case were “fantastic, delusional and incredible,”⁵ with each claiming the amount owed was “\$48,489,000.00 plus interest, penalties, and fees,”⁶ the court found that the sham documents could still be damaging to the credit of the federal officers because they were recorded in official state and local registries.⁷ The court found that the liens were fraudulent and void, and enjoined the defendant from filing future liens against federal employees absent a commercial relationship and a contract authorizing the filing.⁸ The defendant was subsequently sentenced to 30 months in prison for the fraudulent filings.⁹

Fraudulent Recording of Deeds

Property owners who have wild deeds¹⁰ recorded on their property may pursue a suit to quiet title, “an equitable action that involves clearing title of an invalid charge against the title.”¹¹ In

³ Section 713.31(2)(a), F.S.

⁴ *United States v. Leitner*, 2011 WL 2532745, No. 3:10cv454/RS/CJK. (N.D. Fla. June 6, 2011).

⁵ *Id.* at *7.

⁶ *Id.* at *5.

⁷ *Id.* at *7.

⁸ *Id.* at *9.

⁹ See Marie Yeung, *Man Sentenced for False Liens in Florida*, The Epoch Times, Oct. 3, 2011, <http://www.theepochtimes.com/n2/united-states/man-sentenced-for-false-liens-in-florida-62333.html> (last visited Jan. 4, 2013).

¹⁰ A wild deed is a recorded deed that is not in the chain of title, usu. because a previous instrument connected to the chain of title has not been recorded.

the alternative, property owners may sue for slander of title, a tort action for which damages may be recovered.¹² The court may award costs as it considers equitable in a quiet title action, but such costs do not include attorney's fees.¹³ 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.¹⁴

Florida Recording Statute

Florida has a recording statute which states:

No conveyance, transfer, or mortgage of real property, or of any interest therein, nor any lease for a property, or of any interest therein, nor any lease for a term of 1 year or longer, shall be good and effectual in law or equity against creditors or equity against creditors or subsequent purchasers for a valuable consideration and without notice, unless the same be recorded according to law; nor shall any such instrument made or executed by virtue of any power of attorney be good or effectual in law or in equity against creditors or subsequent purchasers for a valuable consideration and without notice unless the power of attorney be recorded before the accruing of the right of such creditor or subsequent purchaser.¹⁵

Section 695.01, F.S., is a notice-recording statute and "Florida courts over time have described and applied Florida's recording statute in a manner that is consistent with a 'notice' type of recording statute."¹⁶ The recording system serves two purposes: it protects existing property owners and protects new buyers.¹⁷ The system does so by allowing 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. 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. Clerks of court have very little control over which documents are recorded, because the law generally does not require that the clerk examine a document for its validity or accuracy.¹⁸

III. Effect of Proposed Changes:

The bill creates the offense of filing or directing to file, with the intent to defraud or harass another, a document in an official record which contains materially false, fictitious, or fraudulent statements or representations that affect the owner's interest in property described in the document. A person who commits the new offense is subject to punishment for a third-degree felony.¹⁹ If a person commits this offense a second or subsequent time, the person is liable to

¹¹ See 65 AM. JUR.2D *Quieting Title* s. 2 (2012).

¹² *Id.*

¹³ Section 86.081, F.S., and see also *Wiggins v. Wiggins*, 446 So. 2d 1078, 1079 (Fla. 1984).

¹⁴ *McAllister v. Breakers Seville Ass'n Inc.*, 981 So. 2d 566 (Fla. 4th DCA 2008).

¹⁵ Section 695.01(1), F.S.

¹⁶ *Argent Mortg. Co., LLC v. Wachovia Bank N.A.*, 52 So. 3d 796, 799 (Fla. 5th DCA 2010) (citation omitted).

¹⁷ John G. Sprankling, *UNDERSTANDING PROPERTY Law*, 394-95 (2000).

¹⁸ *Cf.* Sprankling, 395.

¹⁹ A third-degree felony is punishable by imprisonment of up to 5 years and the imposition of a fine of up to \$5,000.

punishment for a second-degree felony.²⁰ The bill enhances the applicable punishment for the offender if the owner of the property is a public officer or employee or if the offender is convicted of the crime while incarcerated or on probation. The bill also enhances the applicable punishment for the offender if the owner of the property incurs financial loss as a result of the document being recorded in the official record.

The bill also provides that a person who fraudulently records a claim for a construction lien pursuant to part I of chapter 713, F.S., is subject to penalties under the Construction Lien Law, and not the offense created under the bill. If a person is convicted of the offense created in the bill, the court must issue an order declaring the document forming the basis of the conviction void and may enjoin the person convicted of the offense from filing any document in an official record without review and approval by a circuit or county judge. The court may order the document forming the basis of the conviction to be sealed from the official record and removed from any applicable electronic database.

The bill gives a cause of action to a person adversely affected by a document filed in an official record which contains a materially false, fictitious, or fraudulent statement or representation. A *notice of lis pendens*²¹ must be filed which specifically describes the document under challenge and the real or personal property affected by the document. If a court finds that the document contains a materially false, fictitious, or fraudulent statement or representation such that the document does not establish a legitimate property or lien interest in favor of another person, then the court must enter a judgment that:

- Determines whether the entire document or parts of the document are void from the beginning. If the court finds the entire document void, it may order the document sealed from the official record and removed from any electronic database used for indexing or locating documents in the official record.
- Awards actual and punitive damages upon a finding of an intent to defraud or harass, awarding the person adversely affected by the document a civil penalty of \$2,500 for each document found to be in violation of the bill.
- Enjoins the defendant who filed the document from filing any other document in the official records without prior review and approval for filing by a circuit or county court judge.
- Grants any other relief or remedy that the court determines is just and proper.

The prevailing party in the civil cause of action created in the bill may recover costs and reasonable attorney fees.

The custodian of any official record must, upon payment of appropriate fees, provide a certified copy of the sealed document to the person who is adversely affected by the document for use in subsequent court proceedings or in addressing or correcting adverse effects on the person's credit

²⁰ A second-degree felony is punishable by imprisonment of up to 15 years and the imposition of a fine of up to \$10,000.

²¹ "The term *lis pendens* means a pending suit" Henry P. Trawick Jr., *Trawick's Florida Practice and Procedure*, s. 8:25 (2007 ed.). "The notice must be recorded in the office of the clerk of the circuit court of the county where the property is located. [The notice of *lis pendens*] must contain the name of the court, the names of all of the parties, the time of institution of the action, a description of the property affected and a statement of the relief sought concerning the property." *Id.* and s. 48.23(1), F.S.

or property rights. The custodian of any official record must, upon payment of appropriate fees, provide a certified copy of the sealed instrument to a federal, state, or local law enforcement agency. If feasible, the custodian of the official record where the document is recorded must record any court order finding that parts of the document or that the entire document is void. The bill requires the voided instrument be removed from electronic databases used for recording instruments in the public record, but be maintained so that the document may be reduced to paper form. The bill authorizes a government agency to provide legal representation to a public officer or employee if the document at issue appears to have been filed to defraud or harass the public officer or employee on account of the performance of that officer's or employee's official duties. If the public officer or employee is the prevailing party, the award of reasonable attorney fees must be paid to the government agency that provided the legal representation.

The bill provides that the requirements of the bill do not apply to the procedures for sealing or expunging criminal history records in s. 943.0585 and 943.059, F.S.

The bill amends s. 843.0855, F.S., relating to criminal actions under color of law or through use of simulated legal process, to revise definitions. For purposes of s. 843.0855, F.S., the bill defines the term, "public officer or employee" to include, but not be limited to: a person elected or appointed to a state or federal office, including a person serving on an advisory body, board, commission, committee, council, or authority; an employee of a state, county, municipal, political subdivision, school district, educational institution, or special district agency or entity, including all judges, attorneys, law enforcement officers, deputy clerks of courts or marshals; a state or federal executive, legislative, or judicial officer, employee, or volunteer authorized to perform actions or services for any executive, legislative, or judicial office, agency, officer, or employee; a person who acts as a general or special magistrate, auditor, arbitrator, umpire, referee hearing officer, or consultant to any state or local governmental entity; and a person who is a candidate for public office or judicial position.

The bill provides criminal penalties for a person who impersonates a public official or employee or who, under the color of law, intimidates certain specified officials. The bill revises the offense severity ranking chart under the Criminal Punishment Code to rank as level seven offenses for purposes of sentencing: the filing of false liens or other unauthorized documents; impersonation of a public officer or tribunal; unlawful simulation of legal process; and the intimidation of a public officer or tribunal. The bill ranks the following offenses as level eight offenses: a second or subsequent offense of issuing or filing a false document; and the filing of a false lien or other unauthorized document affecting a public officer or employee. The bill ranks the following offense as a level nine offense: the filing of a false document where the property owner is a public official or employee.

The bill takes effect October 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill requires that upon payment of the appropriate fee the custodian of any official record must provide a certified copy of the sealed instrument to the party who is adversely affected by the filing of a fraudulent record.

Additionally, the custodian of any official record must upon payment of appropriate fees, provide a certified copy of the sealed instrument to a federal, state, or local law enforcement agency.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Office of the State Courts Administrator has not completed a judicial impact statement for the bill for the bill as amended.

The Criminal Justice Impact Conference has not yet considered the impact of this bill on jail beds.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on March 6, 2013:

The committee substitute revises the elements of the offense of fraudulently filing a document in the official records. The committee substitute provides circumstances for which an enhanced punishment may be imposed for violating the offense created in the

committee substitute. The committee substitute specifies additional civil remedies to grant relief to public officers or employees affected by the offense of filing of false statements or claims. The committee substitute ranks offenses created in the committee substitute in the severity ranking chart under the Criminal Punishment Code for purposes of sentencing.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
