

SENATE BILL NO. 197—SENATOR BROWER

MARCH 2, 2015

Referred to Committee on Judiciary

SUMMARY—Prohibits the filing of false or fraudulent liens or encumbrances against certain persons.
(BDR 15-653)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to liens; prohibiting the filing of a lien or other encumbrance against the property of certain persons under certain circumstances; revising provisions concerning the validity of certain liens filed against certain persons; providing criminal and civil penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law establishes the crime of making a false representation concerning title, and provides that a person who makes a false representation concerning title is guilty of a category C felony. If the person engages in a pattern of making false representations concerning title, the person is guilty of a category B felony. In addition, a person who commits this crime is subject to a civil penalty of not more than \$5,000, and the owner or the holder of the beneficial interest in the real property may bring a civil action for damages suffered because of the false representation and for attorney's fees and costs. (NRS 205.395) Existing law also provides that a person who willfully promotes the filing of or causes the filing of a record in the Office of the Secretary of State which is forged or fraudulently altered, contains a false statement of material fact or is filed in bad faith for the purpose of harassing or defrauding any person is liable in a civil action for each violation. (NRS 225.084) Additionally, existing law makes it a category C felony to knowingly procure or offer any false or forged instrument to be filed, registered or recorded in any public office. (NRS 239.330)

Section 1 of this bill similarly prohibits a person from filing, registering, recording or presenting, in any public office, a lien or other encumbrance against the property of a public officer, candidate for public office, public employee or participant in an official proceeding or a member of the immediate family of such



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persons, if the lien or encumbrance is forged or fraudulently altered, contains a false statement of material fact or is filed, registered, recorded or presented in bad faith for the purpose of harassing or defrauding such persons. A person who violates **section 1** is guilty of a category B felony and may be punished by imprisonment in the state prison for not less than 2 years or by a fine of not more than \$20,000, or both. If the person commits a second or subsequent offense, or engages in a pattern or practice of filing such liens or encumbrances, the person may be punished by imprisonment in the state prison for up to 20 years or a fine of up to \$150,000, or both. **Section 1** also provides a civil penalty of \$20,000 for each violation and authorizes a person to bring a civil action for damages suffered and attorney's fees and costs.

Existing law provides that a lien filed against a public officer or employee which is based on the performance of or failure to perform an official duty is invalid unless the filing of the lien is authorized by a specific statute or court order. (NRS 281.405) **Section 5** of this bill extends such invalidity: (1) to encompass any encumbrance filed against real or personal property; and (2) to include candidates for public office, participants in official proceedings and the immediate families of public officers, candidates for public office, public employees and such participants.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 205 of NRS is hereby amended by adding thereto a new section to read as follows:

1. A person shall not file, register or record, or present for filing, registration or recording, in any public office, a lien or other encumbrance against the real or personal property of a public officer, candidate for public office, public employee or participant in an official proceeding, or a member of the immediate family of a public officer, candidate for public office, public employee or participant, which is based on the performance of or failure to perform a duty relating to the office, employment or participation by the public officer, candidate for public office, public employee or participant if the person knows or has reason to know that the lien or encumbrance:

(a) Is forged or fraudulently altered;
(b) Contains a false statement of material fact; or
(c) Is being filed, registered, recorded or presented in bad faith or for the purpose of harassing or defrauding any person.

2. Except as otherwise provided in subsection 3, a person who violates this section is guilty of a category B felony and shall be punished:

(a) For a first offense, by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 10 years, or by a fine of not more than \$20,000, or by both fine and imprisonment.



1 (b) For a second or subsequent offense, by imprisonment in
2 the state prison for a minimum term of not less than 4 years and a
3 maximum term of not more than 20 years, or by a fine of not more
4 than \$50,000, or by both fine and imprisonment.

5 3. A person whose violation of this section is part of a pattern,
6 or consistent with a practice, of committing such violations is
7 guilty of a category B felony and shall be punished:

8 (a) For a first offense, by imprisonment in the state prison for
9 a minimum term of not less than 6 years and a maximum term of
10 not more than 20 years, or by a fine of not more than \$100,000, or
11 by both fine and imprisonment.

12 (b) For a second or subsequent offense, by imprisonment in
13 the state prison for a minimum term of not less than 8 years and a
14 maximum term of not more than 20 years, or by a fine of not more
15 than \$150,000, or by both fine and imprisonment.

16 4. In addition to the criminal penalties imposed for a
17 violation of this section, a person who violates this section is
18 subject to a civil penalty of not more than \$20,000 for each
19 violation. This penalty may be recovered in a civil action, brought
20 in the name of the State of Nevada by the Attorney General. In
21 such an action, the Attorney General may recover reasonable
22 attorney's fees and costs.

23 5. A person who violates this section is liable in a civil action
24 brought pursuant to this section for:

25 (a) Actual damages caused by each separate violation of this
26 section or \$20,000 for each separate violation of this section,
27 whichever is greater;

28 (b) All costs of bringing and maintaining the action, including
29 investigative expenses and fees for expert witnesses;

30 (c) Reasonable attorney's fees; and

31 (d) Any punitive damages that the facts may warrant.

32 ↪ The civil action may be brought by any person who is damaged
33 by a violation of this section, including, without limitation, any
34 person who is damaged as the result of an action taken in reliance
35 on a lien or encumbrance that is filed, registered or recorded in
36 violation of this section.

37 6. For the purposes of this section, a person's violation of this
38 section is part of a pattern, or consistent with a practice, of
39 committing such violations if the person commits one or more
40 violations of this section in two or more transactions:

41 (a) Which have the same or similar pattern, purposes, results,
42 accomplices, victims or methods of commission, or are otherwise
43 interrelated by distinguishing characteristics;

44 (b) Which are not isolated incidents within the immediately
45 preceding 4 years; and



(c) *In which the aggregate loss or intended loss is more than \$250.*

7. *As used in this section:*

(a) *"Encumbrance" includes, without limitation, a lis pendens or other notice of the pendency of an action.*

(b) *"Immediate family" means persons who are related by blood, adoption or marriage, within the first degree of consanguinity or affinity.*

(c) *"Lien" means a charge against or an interest in property which is used as security for the payment of a debt or the performance of an obligation. The term includes, without limitation, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, a statutory lien and a security interest.*

(d) *"Participant in an official proceeding" includes, without limitation, a juror or witness in a judicial or administrative proceeding or a referee, arbitrator, appraiser, assessor or other person authorized by law to hear or determine any controversy or matter.*

(e) *"Public employee" has the meaning ascribed to it in NRS 281A.150.*

(f) *"Public officer" has the meaning ascribed to it in NRS 281A.160.*

Sec. 2. NRS 205.395 is hereby amended to read as follows:
205.395 1. Every person who:

(a) Claims an interest in, or a lien or encumbrance against, real property in a document that is recorded in the office of the county recorder in which the real property is located and who knows or has reason to know that the document is forged or groundless, contains a material misstatement or false claim or is otherwise invalid;

(b) Executes or notarizes a document purporting to create an interest in, or a lien or encumbrance against, real property, that is recorded in the office of the county recorder in which the real property is located and who knows or has reason to know that the document is forged or groundless, contains a material misstatement or false claim or is otherwise invalid; or

(c) Causes a document described in paragraph (a) or (b) to be recorded in the office of the county recorder in which the real property is located and who knows or has reason to know that the document is forged or groundless, contains a material misstatement or false claim or is otherwise invalid,

➔ has made a false representation concerning title.

2. A person who makes a false representation concerning title in violation of subsection 1 is guilty of a category C felony and shall be punished as provided in NRS 193.130.



3. A person who engages in a pattern of making false representations concerning title is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 3 years and a maximum term of not more than 20 years, or by a fine of not more than \$50,000, or by both fine and imprisonment.

4. In addition to the criminal penalties imposed for a violation of this section, any person who violates this section is subject to a civil penalty of not more than \$5,000 for each violation. This penalty must be recovered in a civil action, brought in the name of the State of Nevada by the Attorney General. In such an action, the Attorney General may recover reasonable attorney's fees and costs.

5. Except as otherwise provided in this subsection, the owner or holder of the beneficial interest in real property which is the subject of a false representation concerning title may bring a civil action in the district court in and for the county in which the real property is located to recover any damages suffered by the owner or holder of the beneficial interest plus reasonable attorney's fees and costs. The owner or holder of the beneficial interest in the real property must, before bringing a civil action pursuant to this subsection, send a written request to the person who made the false representation to record a document which corrects the false representation. If the person records such a document not later than 20 days after the date of the written request, the owner or holder of the beneficial interest may not bring a civil action pursuant to this subsection.

6. As used in this section ~~the "pattern"~~ :

(a) *"Encumbrance" includes, without limitation, a lis pendens or other notice of the pendency of an action.*

(b) *"Pattern" of making false representations concerning title*" means one or more violations of a provision of subsection 1 committed in two or more transactions:

~~(a)~~ (1) Which have the same or similar pattern, purposes, results, accomplices, victims or methods of commission, or are otherwise interrelated by distinguishing characteristics;

~~(b)~~ (2) Which are not isolated incidents within the preceding 4 years; and

~~(c)~~ (3) In which the aggregate loss or intended loss is more than \$250.

Sec. 3. NRS 225.083 is hereby amended to read as follows:

225.083 1. The Secretary of State shall prominently post the following notice at each office and each location on his or her Internet website at which documents are accepted for filing:



1 The Secretary of State is not responsible for the content,
2 completeness or accuracy of any document filed in this office.
3 Customers should periodically review the documents on file
4 in this office to ensure that the documents pertaining to them
5 are complete and accurate.

6
7 Pursuant to NRS 239.330, any person who knowingly offers
8 any false or forged instrument for filing in this office is guilty
9 of a category C felony and shall be punished by imprisonment
10 in the state prison for a minimum term of not less than 1 year
11 and a maximum term of not more than 5 years and may be
12 further punished by a fine of not more than \$10,000.
13 Additionally, any person who knowingly offers any false or
14 forged instrument for filing in this office may also be subject
15 to civil liability.

16
17 *Pursuant to section 1 of this act, any person who presents*
18 *for filing in this office a lien against the real or personal*
19 *property of a public officer, candidate for public office,*
20 *public employee or participant in an official proceeding, or*
21 *a member of the immediate family of a public officer,*
22 *candidate for public office, public employee or participant,*
23 *which is based on the performance of or failure to perform*
24 *a duty relating to the office, employment or participation by*
25 *the public officer, candidate for public office, public*
26 *employee or participant if the person knows or has reason to*
27 *know that the lien is forged or fraudulently altered, contains*
28 *a false statement of material fact or is being filed in bad*
29 *faith or for the purpose of harassing or defrauding any*
30 *person is guilty of a category B felony and shall be punished*
31 *by imprisonment in the state prison for a minimum term of*
32 *not less than 2 years and a maximum term of not more than*
33 *20 years and may be further punished by a fine of not more*
34 *than \$150,000. The person may also be subject to civil*
35 *liability.*

36
37 2. The Secretary of State may adopt regulations prescribing
38 procedures to prevent the filing of ~~false or forged~~ documents in his
39 or her office ~~H~~ *that are false, forged or fraudulently altered,*
40 *contain a false statement of material fact or are being filed in bad*
41 *faith or for the purpose of harassing or defrauding any person.*

42 **Sec. 4.** NRS 225.084 is hereby amended to read as follows:

43 225.084 1. A person shall not willfully file, promote the
44 filing of, or cause to be filed, or attempt or conspire to file, promote



1 the filing of, or cause to be filed, any record in the Office of the
2 Secretary of State if the person has actual knowledge that the record:

- 3 (a) Is forged or fraudulently altered;
4 (b) Contains a false statement of material fact; or
5 (c) Is being filed in bad faith or for the purpose of harassing or
6 defrauding any person.

7 2. Any person who violates this section is liable in a civil
8 action brought pursuant to this section for:

9 (a) Actual damages caused by each separate violation of this
10 section or \$10,000 for each separate violation of this section,
11 whichever is greater;

12 (b) All costs of bringing and maintaining the action, including
13 investigative expenses and fees for expert witnesses;

14 (c) Reasonable attorney's fees; and

15 (d) Any punitive damages that the facts may warrant.

16 3. A civil action may be brought pursuant to this section by:

17 (a) Any person who is damaged by a violation of this section,
18 including, without limitation, any person who is damaged as the
19 result of an action taken in reliance on a record filed in violation of
20 this section; or

21 (b) The Attorney General, in the name of the State of Nevada, if
22 the matter is referred to the Attorney General by the Secretary of
23 State and if the Attorney General, after due inquiry, determines that
24 a civil action should be brought pursuant to this section. Any money
25 recovered by the Attorney General pursuant to this paragraph, after
26 deducting all costs and expenses incurred by the Attorney General
27 and the Secretary of State to investigate and act upon the violation,
28 must be deposited in the State General Fund.

29 4. For the purposes of this section, each filing of a single
30 record that constitutes a violation of this section shall be deemed to
31 be a separate violation.

32 5. The rights, remedies and penalties provided pursuant to this
33 section are cumulative and do not abrogate and are in addition to
34 any other rights, remedies and penalties that may exist at law or in
35 equity, including, without limitation, any criminal penalty that may
36 be imposed pursuant to NRS 239.330 ~~+~~ *or section 1 of this act.*

37 6. The Secretary of State may adopt regulations prescribing
38 procedures for correcting any record filed in violation of this
39 section.

40 7. As used in this section, "record" means information that is:

41 (a) Inscribed on a tangible medium or that is stored in an
42 electronic or other medium and is retrievable in perceivable form;
43 and



(b) Filed or offered for filing by a person pursuant to any provision of title 7 of NRS or Article 9 of the Uniform Commercial Code.

Sec. 5. NRS 281.405 is hereby amended to read as follows:

281.405 1. Any lien *or other encumbrance* which is filed or otherwise claimed against *the real or personal property of* a public officer ~~to~~, *candidate for public office, public employee or participant in an official proceeding, or a member of the immediate family of a public officer, candidate for public office, public employee or participant*, which is based on the performance of or failure to perform a duty relating to the office, ~~to~~ employment *or participation* of the officer, ~~to~~ employee *or participant* is invalid unless the filing of the lien *or encumbrance* is authorized by a specific statute or by an order of a court of competent jurisdiction.

2. As used in this section ~~to~~ *“lien”*:

(a) *“Encumbrance” includes, without limitation, a lis pendens or other notice of the pendency of an action.*

(b) *“Immediate family” means persons who are related by blood, adoption or marriage, within the first degree of consanguinity or affinity.*

(c) *“Lien” means ~~an encumbrance on~~ a charge against or an interest in* property which is used as security for the payment of a debt ~~to~~ *or the performance of an obligation. The term includes, without limitation, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, a statutory lien and a security interest.*

(d) *“Participant in an official proceeding” includes, without limitation, a juror or witness in a judicial or administrative proceeding or a referee, arbitrator, appraiser, assessor or other person authorized by law to hear or determine any controversy or matter.*

