

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S

D

SENATE BILL 83
Corrected Copy 2/19/15
PROPOSED COMMITTEE SUBSTITUTE S83-PCS15235-TJ-22

Short Title: Criminal Law/Filing False Document.

(Public)

Sponsors:

Referred to:

February 16, 2015

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CRIMINAL LAW CONCERNING THE FILING OR RECORDING OF FALSE LIENS OR ENCUMBRANCES KNOWING OR HAVING REASON TO KNOW THAT THE LIEN OR ENCUMBRANCE IS FALSE OR CONTAINS A MATERIALLY FALSE, FICTITIOUS, OR FRAUDULENT STATEMENT OR REPRESENTATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-118.6 reads as rewritten:

"§ 14-118.6. Filing false lien or encumbrance.

(a) It shall be unlawful for any person to present for filing or recording in a public record or a private record generally available to the public a false lien or encumbrance against the real or personal property of a public officer, a public employee, or an immediate family member of the public officer or public employee on account of the performance of the public officer or public employee's official duties, knowing or having reason to know that the lien or encumbrance is false or contains a materially false, fictitious, or fraudulent statement or representation. For purposes of this subsection, the term "immediate family member" means a spouse or a child. Any person who violates this subsection shall be guilty of a Class I felony.

(b) ~~In the case of a lien or encumbrance presented to the register of deeds for filing.~~ When presented to the register of deeds for recording, if ~~the~~ a register of deeds has a reasonable suspicion that the lien or encumbrance is ~~false,~~ false, as described in subsection (a) of this section, the register of deeds may refuse to ~~file-record~~ the lien or encumbrance. Neither the register of deeds nor any other entity shall be liable for ~~filing or refusing to file recording or the refusal to record~~ a lien or encumbrance ~~under this section as~~ described in subsection (a) of this section. If the ~~filing-recording~~ of the lien or encumbrance is denied, the register of deeds shall allow the ~~filing-recording~~ of a Notice of Denied Lien or Encumbrance Filing on a form adopted by the Secretary of State, for which no filing fee shall be collected. The Notice of Denied Lien or Encumbrance Filing shall not itself constitute a lien or encumbrance. ~~If the filing of the lien or encumbrance~~ When recording is denied, any interested person may ~~file initiate~~ a special proceeding in the county where the ~~filing-recording~~ was denied within ten (10) business days of the filing of the Notice of Denied Lien or Encumbrance Filing asking the ~~court~~ superior court of the respective county to find that the proposed ~~filing-recording~~ has a statutory or contractual basis and to order that the document be ~~filed-recorded.~~ If, after hearing, upon a minimum of five (5) days' notice as provided in Rule 5 of the Rules of Civil Procedure and opportunity to be heard to all interested persons and all persons claiming an ownership interest in the property, the court finds that there is a statutory or contractual basis for the proposed



* S 8 3 - P C S 1 5 2 3 5 - T J - 2 2 *

1 ~~filing-recording~~, the court shall order the document ~~filed-recorded~~. A lien or encumbrance ~~filed~~
2 ~~recorded~~ upon order of the court under this subsection shall have a priority interest as of the
3 time of the filing of the Notice of Denied Lien or Encumbrance Filing. If the court finds that
4 there is no statutory or contractual basis for the proposed ~~filing-recording~~, the court shall ~~enter~~
5 ~~an order finding~~ that the proposed ~~filing-recording~~ is null and void and that it shall not be filed,
6 indexed, or recorded and a certified copy of that order shall be ~~filed-recorded~~ by the register of
7 deeds that originally denied the ~~filing-recording~~. The review by the judge under this subsection
8 shall not be deemed a finding as to any underlying claim of the parties involved. If a special
9 proceeding is not ~~filed-initiated~~ under this subsection within ten (10) business days of the filing
10 of the Notice of Denied Lien or Encumbrance Filing, the lien or encumbrance is deemed null
11 and ~~void-void~~ as a matter of law.

12 (b1) When a lien or encumbrance is presented to a clerk of superior court for filing and
13 the clerk of court has a reasonable suspicion that the lien or encumbrance is false as described
14 in subsection (a) of this section, the clerk of court may refuse to file the lien or encumbrance.
15 Neither the clerk of court nor the clerk's staff shall be liable for filing or the refusal to file a lien
16 or encumbrance under this subsection. The clerk of superior court shall file stamp the
17 document, but shall not index or docket the document against the property of a public officer or
18 public employee until that document is approved for filing by the clerk of superior court by any
19 judge of the judicial district having subject matter jurisdiction in the same manner as the denial
20 of the recording of a false lien or encumbrance by a register of deeds as provided in subsection
21 (c) of this section. If the judge determines that the filing is not false, the clerk shall index the
22 claim of lien and the filing date shall be the date and time it was initially file stamped by the
23 clerk's office. A lien or encumbrance filed upon order of the court under this subsection shall
24 have a priority interest as of the time of the original file stamp of the clerk of superior court
25 when first presented for filing. If the court finds that there is no statutory or contractual basis
26 for the proposed filing, the court shall enter an order that the proposed filing is null and void as
27 a matter of law, and that it shall not be filed or indexed. The original denied filing shall be
28 returned to the person or entity that presented it, and should the filing not be retrieved by that
29 individual or entity within 30 days of the entry of the court's order of upholding the clerk's
30 denial to file, the clerk may destroy the filing.

31 (c) Upon being presented with an order duly issued by a court of competent jurisdiction
32 of this State declaring that a ~~filed~~-lien or encumbrance already recorded or filed is false, as
33 described in subsection (a) of this section, and therefore null and ~~void-void~~ as a matter of law,
34 the register of deeds or clerk of court that received the recording or filing, in addition to
35 recording or filing the ~~order~~, court's order finding the lien or encumbrance to be false, shall
36 conspicuously mark on the first page of the original record previously filed the following
37 statement: "THE CLAIM ASSERTED IN THIS DOCUMENT IS FALSE AND IS NOT
38 PROVIDED FOR BY THE GENERAL LAWS OF THIS STATE."

39 (d) In addition to any criminal penalties provided for in this section, a violation of this
40 section shall constitute a violation of G.S. 75-1.1.

41 (e) Subsections ~~(b)~~(b), (b1), and (c) of this section shall not apply to filings under
42 Article 9 of Chapter 25 of the General Statutes or under Chapter 44A of the General Statutes."

43 **SECTION 2.** This act is effective when it becomes law and applies to all filings on
44 or after that date.