

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 Criminal Justice Committee

BILL: CS/CS/SB 996

INTRODUCER: Criminal Justice Committee; Judiciary Committee; and Senator Dean

SUBJECT: Property Fraud

DATE: February 22, 2012 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Connor	Cibula	JU	Fav/CS
2.	Cellon	Cannon	CJ	Fav/CS
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|-----------------------------------------|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill defines the offense of fraudulent creation of an interest in real or personal property. The bill subjects a person who commits the new offense to punishment for a third-degree felony. A person commits the offense if the person, with the intent to defraud another, files or causes to be filed for recording in the official records any document against real or personal property that the person knows to contain a material misstatement, misrepresentation, or omission of fact. The bill clarifies that a person who files a fraudulent construction lien is subject to the provisions of s. 713.31, F.S., not this newly-created section of law.

This bill creates section 817.535, Florida Statutes.

II. Present Situation:

Florida's Recording Act

Florida law 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.¹ Every state in the

¹ Section 695.01, F.S.

United States has an analogous statutory recording system making information about interests in property available to the public.² 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.³ 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.

Fraud

Chapter 817, F.S., covers 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 chapters 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 lienor purposely exaggerates the amount of the lien, includes work not performed, or compiles his or her claim with willful and gross negligence.⁴

In a recent Florida federal case, the defendant filed false financial statements and liens against a number of federal officers who were involved in a separate criminal prosecution against him.⁵ Although the liens in this case were “fantastic, delusional, and incredible,”⁶ with each claiming the amount owed was “\$48,489,000,000 plus interest, penalties, and fees,”⁷ 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.⁸ 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.⁹ He was subsequently sentenced to 30 months in prison for the fraudulent filings.¹⁰

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.”¹¹ A property owner may also choose to sue for slander of title, a tort action for which damages may be recovered.¹² The court may award costs as it

² Jesse Dukeminier and James E. Krier, *PROPERTY*, 662 (5th ed. 2002).

³ *Id.*

⁴ Section 713.31(2)(a), F.S.

⁵ *United States v. Leitner*, 2011 WL 2532745, No. 3:10cv454/RS/CJK, (N.D. Fla. June 6, 2011).

⁶ *Id.* at *7.

⁷ *Id.* at *5.

⁸ *Id.* at *7.

⁹ *Id.* at *9.

¹⁰ See Marie Young, *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. 25, 2012).

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

¹² *Id.*

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

III. Effect of Proposed Changes:

The bill defines the offense of fraudulent creation of an interest in real or personal property. The bill subjects a person who commits the new offense to punishment for a third-degree felony. A person commits the offense if the person, with the intent to defraud another, files or causes to be filed for recording in the official records any document against real or personal property that the person knows to contain a material misstatement, misrepresentation, or omission of fact.

Although ss. 817.54 and 713.31(3), F.S., provide penalties for fraud relating to mortgages and construction liens respectively, the bill language criminalizes a broader range of fraudulent filings that may not otherwise be specifically addressed under the Florida Statutes. The bill clarifies that a person who files a fraudulent construction lien is subject to the provisions of s. 713.31, F.S., not this newly-created section of law.

The bill provides an effective date of October 1, 2012.

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:

None.

B. Private Sector Impact:

A person found guilty of the third-degree felony offense articulated in the bill is subject to a fine of up to \$5,000¹⁵ and up to five years in prison.¹⁶

¹³ 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)).

¹⁴ *McAllister v. Breakers Seville Ass'n Inc.*, 981 So. 2d 566, 575 (Fla. 4th DCA 2008).

¹⁵ Section 775.083(1)(c), F.S.

¹⁶ Section 775.082(3)(d), F.S.

C. Government Sector Impact:

According to the Office of the State Courts Administrator (the office), 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 statute. The office does not anticipate a large impact on judicial workload because existing statute essentially covers the behavior the bill prohibits.¹⁷

On January 30, 2012, the Criminal Justice Impact Conference estimated that the bill will have an insignificant impact on the Department of Corrections.

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/CS by Criminal Justice on February 22, 2012:**

The bill clarifies that a person who files a fraudulent construction lien is subject to the provisions of s. 713.31, F.S., not this newly-created section of law.

CS by Judiciary on January 25, 2012:

The committee substitute lays out the elements of the crime created by the bill with more clarity. It also 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 the bill addresses may be filed through an entity other than the clerk of court.

B. Amendments:

None.

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

¹⁷ Office of the State Courts Administrator, *2012 Judicial Impact Statement, SB 996* (Dec. 7, 2011) (on file with the Senate Committee on Judiciary).