

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Judiciary Committee
 2 Representative Combee offered the following:

3

4 **Amendment (with title amendment)**

5 Remove lines 54-188 and insert:

6 bill of sale, agreement, notice of claim of lien, notice of
 7 levy, promissory note, mortgage note, release, partial release
 8 or satisfaction of any of the foregoing, or any other document
 9 that relates to or attempts to restrict the ownership, transfer,
 10 or encumbrance of, or claim against, real or personal property,
 11 or any interest in real or personal property.

12 (d) "Official record" means the series of instruments,
 13 regardless of how they are maintained, which a clerk of the
 14 circuit court, or any person or entity designated by general
 15 law, special law, or county charter, is required or authorized
 16 by law to record. The term also includes a series of instruments
 17 pertaining to the Uniform Commercial Code filed with the
 18 Secretary of State or with any entity under contract with the
 19 Secretary of State to maintain Uniform Commercial Code records

Amendment No. 1

20 and a database of judgment liens maintained by the Secretary of
21 State.

22 (e) "Public officer or employee" means, but is not limited
23 to:

24 1. A person elected or appointed to a local, state, or
25 federal office, including any person serving on an advisory
26 body, board, commission, committee, council, or authority.

27 2. An employee of a state, county, municipal, political
28 subdivision, school district, educational institution, or
29 special district agency or entity, including judges, attorneys,
30 law enforcement officers, deputy clerks of court, and marshals.

31 3. A state or federal executive, legislative, or judicial
32 officer, employee, or volunteer authorized to perform actions or
33 services for any state or federal executive, legislative, or
34 judicial office, or agency.

35 4. A person who acts as a general or special magistrate,
36 auditor, arbitrator, umpire, referee, hearing officer, or
37 consultant to any state or local governmental entity.

38 5. A person who is a candidate for public office or
39 judicial position.

40 (2) (a) A person who files or directs a filer to file, with
41 the intent to defraud or harass another, any instrument
42 containing a materially false, fictitious, or fraudulent
43 statement or representation that purports to adversely affect an
44 owner's interest in the property described in the instrument
45 commits a felony of the third degree, punishable as provided in
46 s. 775.082, s. 775.083, or s. 775.084.

Amendment No. 1

47 (b) A person who violates paragraph (a) a second or
48 subsequent time commits a felony of the second degree,
49 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

50 (3) If a person is convicted of violating subsection (2)
51 and the owner of the property adversely affected by the false
52 instrument is a public officer or employee, the offense shall be
53 reclassified as follows:

54 (a) In the case of a felony of the third degree, to a
55 felony of the second degree, punishable as provided in s.
56 775.082, s. 775.083, or s. 775.084.

57 (b) In the case of a felony of the second degree, to a
58 felony of the first degree, punishable as provided in s.
59 775.082, s. 775.083, or s. 775.084.

60 (4) (a) If a person is convicted of violating subsection
61 (2) and the person committed the offense while incarcerated in a
62 jail or correctional institution or while participating in a
63 pretrial diversion program under any form of pretrial release or
64 bond, on probation or parole, or under any postrelease
65 supervision, the offense shall be reclassified as follows:

66 1. In the case of a felony of the third degree, to a
67 felony of the second degree, punishable as provided in s.
68 775.082, s. 775.083, or s. 775.084.

69 2. In the case of a felony of the second degree, to a
70 felony of the first degree, punishable as provided in s.
71 775.082, s. 775.083, or s. 775.084.

72 (b) If a person's offense has been reclassified pursuant
73 to this subsection, the sentencing court shall issue a written
74 finding that the offense occurred while incarcerated in a jail

Amendment No. 1

75 or correctional institution and direct that a copy of the
76 written finding and judgment of conviction be forwarded to the
77 appropriate state institution or county facility for
78 consideration of disciplinary action and forfeiture of all gain-
79 time or any early release credits accumulated up to the date of
80 the violation.

81 (5) If the person is convicted of violating subsection (2)
82 and the owner of the property adversely affected by the false
83 instrument incurs financial loss as a result of the instrument
84 being recorded in the official record, including costs and
85 attorney fees incurred in correcting, sealing, or removing the
86 false instrument from the official record as described herein,
87 the offense shall be reclassified as follows:

88 (a) In the case of a felony of the third degree, to a
89 felony of the second degree, punishable as provided in s.
90 775.082, s. 775.083, or s. 775.084.

91 (b) In the case of a felony of the second degree, to a
92 felony of the first degree, punishable as provided in s.
93 775.082, s. 775.083, or s. 775.084.

94 (6) A person who fraudulently records a claim of lien in
95 the official records pursuant to part I of chapter 713 is
96 subject to the fraud provisions of s. 713.31 and not this
97 section.

98 (7) If a person is convicted of violating this section,
99 the sentencing court shall issue an order declaring the
100 instrument forming the basis of the conviction null and void and
101 may enjoin the person from filing any instrument in an official
102 record absent prior review and approval for filing by a circuit

Amendment No. 1

103 or county court judge. The sentencing court may also order the
104 instrument forming the basis of the conviction sealed from the
105 official record and removed from any applicable electronic
106 database used for recording instruments in the official record.

107 (8) (a) Any person adversely affected by an instrument
108 filed in the official record which contains a materially false,
109 fictitious, or fraudulent statement or representation has a
110 civil cause of action under this section without regard to
111 whether criminal charges are pursued under subsection (2). A
112 notice of lis pendens in accord with s. 48.23 shall be filed
113 which specifically describes the instrument under challenge and
114 the real or personal property affected by the instrument.

115 (b) Upon a finding that the instrument contains a
116 materially false, fictitious, or fraudulent statement or
117 representation such that the instrument does not establish a
118 legitimate property or lien interest in favor of another person:

119 1. The court shall determine whether the entire instrument
120 or certain parts thereof are null and void ab initio. If the
121 court finds the instrument void in its entirety, it may order
122 the instrument sealed from the official record and removed from
123 any electronic database used for indexing or locating
124 instruments in the official record. The court may also,
125 permanently or for a period of time, enjoin the defendant who
126 filed the instrument or who directed the filer to file the
127 instrument from filing or directing a person to file an
128 instrument in the official records without prior review and
129 approval for filing by a circuit or county court judge.

130 However, as it relates to third parties who may have given value

Amendment No. 1

131 for an interest described or granted by any instrument filed in
132 violation of the injunction, the instrument shall be deemed
133 validly filed and provides constructive notice, notwithstanding
134 any failure to comply with the terms of the injunction.

135 2. Upon a finding of intent to defraud or harass, the
136 court or jury shall award actual damages and punitive damages,
137 subject to the criteria in s. 768.72, to the person adversely
138 affected by the instrument. The court may also levy a civil
139 penalty of \$2,500 for each instrument determined to be in
140 violation of this subsection.

141
142
143
144
145
146
147
148
149

T I T L E A M E N D M E N T

Remove lines 2-3 and insert:

An act relating to fraudulent actions; creating s. 817.535,
F.S.;