

JAN 16 2014

S.B. NO. 2149

A BILL FOR AN ACT

RELATING TO FRAUDULENT RECORDS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. This legislature recognizes that in recent
2 years the Federal Bureau of Investigations have seen an uptake
3 of fraudulent filings of financial statements and liens on the
4 property of elected officials, judicial officers and other
5 people in various counties and states across the country for the
6 purposes of harassment and intimidation. The legislature also
7 recognizes that in many cases it is a long and expensive process
8 to remove invalid liens from property records, or to restore
9 valid liens on a property title improperly removed. Therefore,
10 it is the intention of this legislature to establish avenues
11 where administrative processes can be implemented to facilitate
12 valid title records are maintained.

13 SECTION 2. Chapter 490, Hawaii Revised Statutes, is
14 amended by adding a new section to be appropriately designated
15 and to read as follows:

16 **"Section 490- Fraudulent records.**

17 (a) Notwithstanding whether or not a criminal action is
18 pending under HRS §708-875, Filing Fraudulent or Otherwise



1 Improper Financing Statements, no person shall cause to be
2 communicated to the filing office for filing a record the person
3 knows or reasonably should know:

4 (1) Is not authorized or permitted under HRS §490;9-
5 509 or §490;9-708, of this Chapter; and

6 (2) Is not related to a valid existing or potential
7 commercial or financial transaction, an existing
8 agricultural or other lien, or a judgment of a court
9 of competent jurisdiction; and

10 (3) Is filed with the intent to harass or defraud the
11 person identified as debtor in the record or any other
12 person.

13 (b) A person who violates subsection (a) shall be liable in
14 a civil action to each injured person for:

15 (1) The greater of the actual damages caused by the
16 violation or up to \$10,000 in lieu of actual damages;

17 (2) Reasonable attorney's fees;

18 (3) court costs and other related expenses of bringing
19 an action, including reasonable investigative
20 expenses; and

21 (4) In the discretion of the court, exemplary damages
22 in an amount determined by the court or jury.



1 (c) A person identified as debtor in a filed record the
2 person believes was caused to be communicated to the filing
3 office in violation of subsection (a) may, under penalty of
4 perjury, file with the Lieutenant Governor an affidavit to that
5 effect. The Lieutenant Governor shall adopt and make available a
6 form affidavit for use under this section.

7 (d) Upon receipt of an affidavit filed under this section,
8 or upon administrative action by the Lieutenant Governor, the
9 Lieutenant Governor shall communicate to the secured party of
10 record on the record to which the affidavit or administrative
11 action relates and to the person that communicated the record to
12 the filing office, if different and known to the office, a
13 request for additional documentation supporting the
14 effectiveness of the record. The Lieutenant Governor shall
15 review all such documentation received within thirty days after
16 the first request for additional documentation is sent. The
17 Lieutenant Governor may terminate the record effective thirty
18 days after the first request for additional documentation is
19 sent if it has a reasonable basis for concluding that the record
20 was communicated to the filing office in violation of subsection
21 (a).

22 The Lieutenant Governor may refer the matter to the Attorney



1 General or any county or city prosecutor with regard to a filed
2 record if it has reason to believe, from information contained
3 in the record or obtained from the person that communicated the
4 record to the filing office, that the record was communicated to
5 the filing office in violation of subsection (a).

6 (e) The Lieutenant Governor may give heightened scrutiny to
7 a record that indicates that the debtor is a transmitting
8 utility or that indicates that the transaction to which the
9 record relates is a manufactured-home transaction or a public-
10 finance transaction.

11 (f) The Lieutenant Governor shall not charge a fee to file
12 an affidavit under this section and shall not return any fee
13 paid for filing a record terminated under this section.

14 (g) The Lieutenant Governor shall promptly communicate to
15 the secured party of record a notice of the termination of a
16 record under subsection (d). A secured party of record that
17 believes in good faith that the record was not communicated to
18 the filing office in violation of subsection (a) may file an
19 action to require that the record be reinstated by the filing
20 office.

21 (h) A person that communicated a record to the filing
22 office that the filing office rejected in reliance on Section



1 \$490;9-516(b), who believes in good faith that the record was
2 not communicated to the filing office in violation of section
3 \$490;9-516(b), may file an action to require that the record be
4 accepted by the filing office.

5 (i) If a court or tribunal in an action under this section
6 determines that a record terminated under this section or
7 rejected in reliance on section 9-516(b) should be reinstated or
8 accepted, the court or tribunal shall provide a copy of its
9 order to that effect to the Lieutenant Governor. On receipt of
10 an order reinstating a terminated record, the Lieutenant
11 Governor shall refile the record along with a notice indicating
12 that the record was refiled pursuant to this section and its
13 initial filing date. On receipt of an order requiring that a
14 rejected record be accepted, the Lieutenant Governor shall
15 promptly file the record along with a notice indicating that the
16 record was filed pursuant to this section and the date on which
17 it was communicated for filing. A rejected record that is filed
18 pursuant to an order of a court or tribunal shall have the
19 effect described in Section \$490;9-516(d) for a record the
20 filing office refuses to accept for a reason other than one set
21 forth in Section \$490;9-516(b).



1 (j) A terminated record that is refiled under subsection
2 (i) is effective as a filed record from the initial filing date.
3 If the period of effectiveness of a refiled record would have
4 lapsed during the period of termination, the secured party may
5 file a continuation statement within thirty days after the
6 record is refiled and the continuation statement shall have the
7 same effect as if it had been filed during the six month period
8 described in section §490;9-515(d). A refiled record shall be
9 considered never to have been ineffective against all persons
10 and for all purposes except that it shall not be effective as
11 against a purchaser of the collateral that gave value in
12 reasonable reliance on the absence of the record from the files.

13 (k) Neither the filing office nor any of its employees
14 shall incur liability for the termination or failure to
15 terminate a record under this section or for the refusal to
16 accept a record for filing in the lawful performance of the
17 duties of the office or employee.

18 (l) This section does not apply to a record communicated to
19 the filing office by a regulated financial institution or by a
20 representative of a regulated financial institution except that
21 the Lieutenant Governor may request from the secured party of
22 record on the record or from the person that communicated the



1 record to the filing office, if different and known to the
2 office, additional documentation supporting that the record was
3 communicated to the filing office by a regulated financial
4 institution or by a representative of a regulated financial
5 institution. The term "regulated financial institution" means a
6 financial institution subject to regulatory oversight or
7 examination by a state or federal agency and includes banks,
8 savings banks, savings associations, building and loan
9 associations, credit unions, consumer finance companies,
10 industrial banks, industrial loan companies, insurance
11 companies, investment companies, investment funds, installment
12 sellers, mortgage servicers, sales finance companies, and
13 leasing companies.

14 (m) Except for sub-section (b) of this section, this
15 section applies where a record was communicated within two years
16 preceding the effective date of this section.

17 (n) This section does not exclude, alter or amend any
18 remedy or cause of action or provide any defense as may be
19 provided elsewhere by law."

20 SECTION 2. New statutory material is underscored.

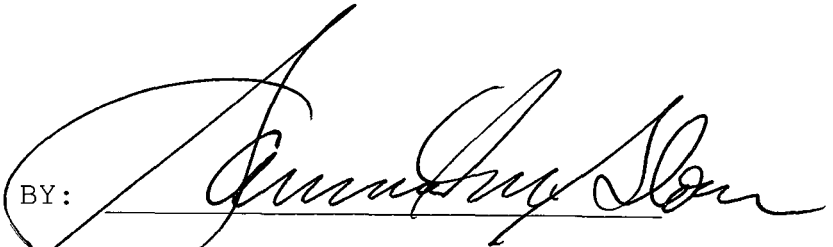
21 SECTION 3. This Act shall take effect upon its approval.

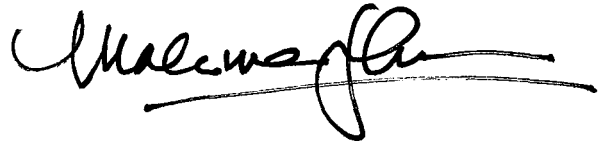


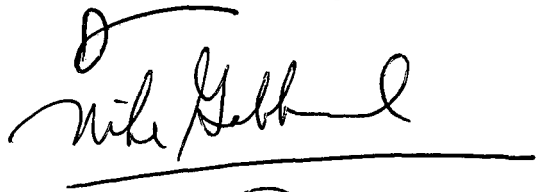
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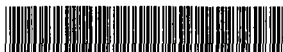
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Report Title:

Fraudulent records; civil actions and administrative procedures

Description:

Adds a new section to the Commercial Code that provides for civil actions and administrative procedures to clear a title of a fraudulent lien or reinstate a valid lien on title.
Complements the Penal Code provisions for fraudulent filings.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

