

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**SESSION 2015**

**S**

**3**

**SENATE BILL 83**

**Corrected Copy 2/19/15**

**Judiciary II Committee Substitute Adopted 4/23/15**

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, 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~~



1        ~~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 ~~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 ~~the court shall enter~~  
8        ~~an order finding that the proposed filing recording is null and void and that it shall not be filed,~~  
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~~ 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~~ 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.