RECALLED

April 10, 2014

**H. 4742**

Introduced by Reps. G.M. Smith, Weeks, Bannister, Delleney and Lucas

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Read the first time February 20, 2014.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 29‑1‑60 SO AS TO PROHIBIT FILING A FALSE LIEN OR ENCUMBRANCE IN CERTAIN PUBLIC RECORDS 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 FOR THE PERFORMANCE OF THE OFFICIAL DUTIES OF THE PUBLIC OFFICER OR PUBLIC EMPLOYEE WHEN THE PARTY FILING THE LIEN KNOWS OR HAS REASON TO KNOW THAT THE LIEN OR ENCUMBRANCE IS FALSE OR CONTAINS A MATERIALLY FALSE, FICTITIOUS, OR FRAUDULENT STATEMENT OR REPRESENTATION; TO PROVIDE A VIOLATION CONSTITUTES A FELONY AND TO PROVIDE RELATED PENALTIES; TO DEFINE NECESSARY TERMINOLOGY; TO PROVIDE A REGISTER OF DEEDS OR CLERK OF COURT MAY REFUSE TO FILE A LIEN OR ENCUMBRANCE WHEN HE HAS A REASONABLE SUSPICION THAT THE LIEN OR ENCUMBRANCE IS FALSE, TO LIMIT HIS LIABILITY FOR THIS REFUSAL, TO PROVIDE CIRCUMSTANCES WHEN A COURT MAY ORDER THE FILING, AND TO PROVIDE EXCEPTIONS FROM THE PROVISIONS OF THIS SECTION, AMONG OTHER THINGS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 1, Title 29 of the 1976 Code is amended by adding:

“Section 29‑1‑60. (A) It is unlawful for any person to present for filing 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 for the performance of the public officer or public employee’s official duties, when the person attempting to file the lien knows or has 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. A person who violates this section is guilty of a felony and must be fined not more than fifteen thousand dollars, imprisoned not more than five years, or both.

(B) If a register of deeds or clerk of court has a reasonable suspicion that a lien or encumbrance presented for filing is false, he may refuse to file the lien or encumbrance. The register of deeds or clerk of court may not be liable for filing or refusing to file a lien or encumbrance under this section. If the filing of the lien or encumbrance is denied, the register of deeds or clerk of court shall allow the filing of a Notice of Denied Lien or Encumbrance Filing on a form adopted by the Secretary of State, for which no filing fee must be collected. The Notice of Denied Lien or Encumbrance Filing must not itself constitute a lien or encumbrance. If the filing of the lien or encumbrance is denied, an interested person may file a special proceeding in the county where the filing was denied within ten business days after the filing of the Notice of Denied Lien or Encumbrance Filing asking the court to find that the proposed filing has a statutory or contractual basis and to order that the document be filed. If, after hearing, upon a minimum of a five day notice and an 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 filing, the court shall order the document filed. A lien or encumbrance filed upon order of the court under this subsection shall have a priority interest as of the time of the filing of the Notice of Denied Lien or Encumbrance Filing. If the court finds that there is no statutory or contractual basis for the proposed filing, the court shall order that the proposed filing is null and void and that it shall not be filed, indexed, or recorded and a copy of that order must be filed by the register of deeds or clerk of court that originally denied the filing. The review by the judge under this subsection must not be considered a finding of an underlying claim of the parties involved. If a special proceeding is not filed under this subsection within ten business days after the filing of the Notice of Denied Lien or Encumbrance Filing, the lien or encumbrance is considered null and void.

(C) Upon being presented with an order duly issued by a court of this State declaring that a filed lien or encumbrance is false, and therefore null and void, the register of deeds or clerk of court that received the filing, in addition to filing the order, shall conspicuously mark on the first page of the original record previously filed the following statement: ‘THE CLAIM ASSERTED IN THIS DOCUMENT IS FALSE AND IS NOT PROVIDED FOR BY THE GENERAL LAWS OF THIS STATE.’

(D) In addition to any criminal penalties provided in this section, a violation of this section shall constitute a violation of the South Carolina Unfair Trade Practices Act.

(E) Subsections (B) and (C) shall not apply to filings under the Uniform Commercial Code.”

SECTION 2. This act takes effect upon approval by the Governor.

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