

State of South Dakota

SEVENTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 1997

664A0161

HOUSE ENGROSSED NO. **SB97** - 2/7/97

Introduced by: The Committee on Judiciary at the request of the Chief Justice

1 FOR AN ACT ENTITLED, An Act to prohibit the harassment of certain individuals by
2 fraudulent legal proceedings or liens.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 7-9 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 A register of deeds may refuse to record any document that the law does not require or
7 authorize a register to record or any document that the register has reasonable cause to believe
8 is a counterfeit lien as defined in section 8 of this Act.

9 Section 2. That chapter 7-9 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 Any person whose document or lien is refused for recording by the register of deeds pursuant
12 to section 1 of this Act may commence an action in the circuit court for that county for an order
13 directing the register to file the document. If the court determines that the register is required or
14 authorized by law to record the document or that the lien is not counterfeit, it shall order the
15 register to record the document.

16 Section 3. That chapter 7-9 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 If a court determines that the register acted reasonably or in good faith in refusing to record
3 a document that the register believed should not be recorded or a document that the register
4 believed to be a counterfeit lien, the register is not liable for any civil damages resulting from the
5 refusal.

6 Section 4. That chapter 16-2 be amended by adding thereto a NEW SECTION to read as
7 follows:

8 A clerk of courts may refuse to file or docket any document that the law does not require or
9 authorize a clerk to file or docket or any document that the clerk has reasonable cause to believe
10 is a counterfeit lien as defined in section 8 of this Act.

11 Section 5. That chapter 16-2 be amended by adding thereto a NEW SECTION to read as
12 follows:

13 Any person whose document or lien is refused for filing or docketing by the clerk of courts
14 pursuant to section 4 of this Act may commence an action in the circuit court for that county for
15 an order directing the clerk to file or docket the document. If the court determines that the clerk
16 is required or authorized by law to file or docket the document or that the lien is not counterfeit,
17 it shall order the clerk to file or docket the document.

18 Section 6. That chapter 16-2 be amended by adding thereto a NEW SECTION to read as
19 follows:

20 If a court determines that the clerk acted reasonably or in good faith in refusing to file or
21 docket a document that the clerk believed should not be filed or docketed or a document that
22 the clerk believed to be a counterfeit lien, the clerk is not liable for any civil damages resulting
23 from the refusal.

24 Section 7. That chapter 22-11 be amended by adding thereto a NEW SECTION to read as
25 follows:

1 Any person who offers a counterfeit lien for filing, registering, or recording in a public office
2 knowing or having reason to know that the lien is counterfeit is guilty of a Class 1 misdemeanor.
3 A second or subsequent conviction for a violation of this section is a Class 6 felony. The person's
4 lack of belief in the jurisdiction or authority of the state or of the United States is no defense to
5 a prosecution under this section.

6 Section 8. For purposes of section 7 of this Act, the term, offers, includes the mailing of the
7 instrument to a public office with the knowledge or belief that it will be filed with, registered, or
8 recorded in, or otherwise become a part of, the records of the public office.

9 For purposes of section 7 of this Act, the term, counterfeit lien, means a lien that:

- 10 (1) Is not provided for by a specific state or federal statute;
- 11 (2) Does not depend upon the consent of the owner of the property affected for its
12 existence; and
- 13 (3) Is not an equitable or constructive lien imposed by a court recognized under the U.S.
14 Constitution, federal laws, or the constitution or laws of this state.

15 Section 9. Any person who violates section 7 of this Act is liable in a civil action to any
16 person for any injury, death, or loss to person or property incurred as a result of the commission
17 of the offense and for reasonable attorney's fees, court costs, and other reasonable expenses
18 incurred as a result of prosecuting a civil action commenced under this section. A civil action
19 under this section is not the exclusive remedy of a person who incurs injury, death, or loss to
20 person or property as a result of a violation of section 7 of this Act.

21 Section 10. That chapter 22-11 be amended by adding thereto a NEW SECTION to read as
22 follows:

23 Any person who harasses an individual by sending or delivering, or causing to be sent or
24 delivered, any letter, paper, document, notice of intent to bring suit, or other notice or demand
25 that simulates a form of court or legal process and that threatens the individual, directly or

1 indirectly, with incarceration, monetary fines or penalties, or with the imposition of a counterfeit
2 lien on the real or personal property of the individual is guilty of a Class 1 misdemeanor. A
3 second or subsequent conviction for a violation of this section is a Class 6 felony. The person's
4 lack of belief in the jurisdiction or authority of the state or of the United States is no defense to
5 a prosecution under this section.

6 Section 11. For purposes of section 10 of this Act, the term, harasses, means a knowing and
7 willful course of conduct directed at the individual which seriously alarms or annoys the
8 individual and which serves no legitimate legal purpose.

9 For purposes of section 10 of this Act, the term, course of conduct, means a pattern of
10 conduct composed of a series of acts over a period of time, however short, evidencing a
11 continuity of purpose.

12 Section 12. Any person who violates section 10 of this Act is liable in a civil action to any
13 person for any injury, death, or loss to person or property incurred as a result of the commission
14 of the offense and for reasonable attorney's fees, court costs, and other reasonable expenses
15 incurred as a result of prosecuting a civil action commenced under this section. A civil action
16 under this section is not the exclusive remedy of a person who incurs injury, death, or loss to
17 person or property as a result of a violation of section 10 of this Act.

18 Section 13. That chapter 22-11 be amended by adding thereto a NEW SECTION to read as
19 follows:

20 Any person who, without authority under the U.S. Constitution, federal law, or the
21 constitution or laws of this state, acts as a supreme court justice, a circuit court judge, a
22 magistrate judge, a lay magistrate, a clerk of court or deputy, a juror or other official holding
23 authority to determine a controversy or adjudicate the rights or interests of others, or signs a
24 document in such capacity, is guilty of a Class 1 misdemeanor. It is no defense to a prosecution
25 under this section that the judicial office the person pretended to hold does not exist.

1 Section 14. Any person who violates section 13 of this Act is liable in a civil action to any
2 person for any injury, death, or loss to person or property incurred as a result of the commission
3 of the offense and for reasonable attorney's fees, court costs, and other reasonable expenses
4 incurred as a result of prosecuting a civil action commenced under this section. A civil action
5 under this section is not the exclusive remedy of a person who incurs injury, death, or loss to
6 persons or property as a result of a violation of section 13 of this Act.

1 **BILL HISTORY**

2 1/16/97 First read in Senate and referred to Judiciary. S.J. 48

3 1/22/97 Scheduled for Committee hearing on this date.

4 1/22/97 Judiciary Do Pass Amended, AYES 7, NAYS 0.

5 1/24/97 Deferred to another day. S.J. 164

6 1/27/97 Senate Do Pass Amended, AYES 34, NAYS 0. S.J. 179

7 1/27/97 Amended title. S.J. 179

8 1/28/97 First read in House and referred to Judiciary. H.J. 181

9 1/31/97 Scheduled for Committee hearing on this date.

10 2/3/97 Scheduled for Committee hearing on this date.

11 2/3/97 Judiciary Do Pass, AYES 12, NAYS 0. H.J. 254

12 2/4/97 Deferred to another day. H.J. 309

13 2/6/97 House of Representatives Do Pass Amended, AYES 60, NAYS 5. H.J. 356