

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 770

(Senator Raskin, *et al.*)

Judicial Proceedings

Judiciary

Criminal Law - Fraudulent Liens - Prohibition

This bill prohibits a person from filing a lien or encumbrance in a public or private record against the real or personal property of a public officer or public employee, if (1) the lien was filed in response to the performance of the public officer's or public employee's official duties or the lien was filed in response to an individual filing a complaint with or requesting official action by a public officer or a public employee and (2) the person filing the complaint knows that the lien or encumbrance is false or contains or is based on a materially false, fictitious, or fraudulent statement or representation. The bill also prohibits a person from filing a lien or encumbrance in a public or private record against the real or personal property of another person if the person knows that the lien or encumbrance is false or contains or is based on a materially false, fictitious, or fraudulent statement or representation. In addition to the criminal penalties contained in the bill, a person is authorized to seek injunctive or other equitable relief in the circuit court to remove the fraudulent lien, and a court may award the prevailing party compensatory damages and reasonable attorneys' fees.

Violators are guilty of a misdemeanor, punishable by imprisonment for up to one year and/or a \$10,000 maximum fine for a first offense and imprisonment for up to five years and/or a \$10,000 maximum fine for each subsequent offense.

The bill takes effect June 1, 2013.

Fiscal Summary

State Effect: Minimal increase in general fund revenues and expenditures due to the bill's penalty provisions.

Local Effect: Minimal increase in local revenues and expenditures due to the bill's penalty provisions.

Small Business Effect: None.

Analysis

Current Law: Under federal law, it is illegal to retaliate against an officer or employee of the federal government by filing a false lien or encumbrance against the officer/employee's real or personal property on account of the officer/employee's performance of his/her official duties. Violators face fines and/or imprisonment for up to 10 years.

Background: According to a 2012 report by the National Association of Secretaries of State, fraudulent or bogus filings of financing statements under the Uniform Commercial Code (UCC) are a persistent problem for state filing offices and the individuals targeted by the spurious filings. Fraudulent filings are often used as a retaliatory measure by anti-government groups, prison inmates, and individuals seeking to harass or intimidate public officials, corporations, or lending institutions.

According to the report, at least 10 states have laws that make it a crime to fraudulently submit a filing, and at least 14 states authorize civil penalties for fraudulent filings.

In November 2011, a Prince George's County man was convicted in federal court of filing a false retaliatory lien against a federal prosecutor and for filing three false claims for income tax refunds. The defendant had been previously convicted in 2007 for filing a false claim for an income tax refund. Soon after he was released from prison for that conviction, he filed a UCC Financing Statement with the State Department of Assessments and Taxation, falsely claiming that the federal prosecutor in his case owed him \$1.3 billion. According to the evidence, the defendant had also filed a similar lien against a State prosecutor for her role in prosecuting him for related crimes. The defendant claimed that he had filed the liens because the prosecutors had "done him wrong."

State Revenues: General fund revenues increase minimally as a result of the bill's monetary penalty provisions from cases heard in the District Court.

State Expenditures: General fund expenditures increase minimally as a result of the bill's incarceration penalties due to more people being committed to State correctional facilities and increased payments to counties for reimbursement of inmate costs. The number of people convicted of this proposed crime is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Currently, the average total cost per inmate, including overhead, is estimated at

\$2,900 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new State inmate (including variable medical care and variable operating costs) is about \$370 per month. Excluding all medical care, the average variable costs total \$180 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or a State correctional facility. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. Currently, the State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system. A \$45 per diem grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the State but are confined in a local facility. The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in State correctional facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Local Revenues: Revenues increase minimally as a result of the bill's monetary penalty provisions from cases heard in the circuit courts.

Local Expenditures: Expenditures increase minimally as a result of the bill's incarceration penalties. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. A \$45 per diem State grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the State but are confined in a local facility. Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years.

Additional Information

Prior Introductions: None.

Cross File: Although HB 941 (Delegates Arora and DeBoy - Judiciary) is designated as a cross file, it is different.

Information Source(s): Charles and Frederick counties, City of Bowie, Washington Suburban Sanitary Commission, Maryland Association of Counties, Judiciary (Administrative Office of the Courts), Office of the Public Defender, Maryland State Commission on Criminal Sentencing Policy, Department of Public Safety and Correctional Services, Department of Budget and Management, U.S. Department of Justice, GPO.gov, National Center for State Courts, *State Strategies to Subvert Fraudulent Uniform Commercial Code (UCC) Filings* – National Association of Secretaries of State (August 27, 2012), Department of Legislative Services

Fiscal Note History: First Reader - March 7, 2013
mc/kdm Revised - Senate Third Reader - March 29, 2013

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