# WEST VIRGINIA CODE: §61-5-27A

**§61-5-27a. Fraudulent official proceedings; causing a public employee or official to file a fraudulent legal process; impersonation of a public official, employee or tribunal; penalties.**

(a) Definitions. -- For the purpose of this section, the following terms have the meaning ascribed to them in section twenty-seven of this article: “Fraudulent”, “legal process”, “official proceeding”, “person”, “public official or employee”, “recorder”, and “tribunal”.

(b) Fraudulent official proceedings. -- It is unlawful for a person to knowingly engage in a fraudulent official proceeding or legal process.

(c) Fraudulent filings. -- It is unlawful for a person to knowingly cause a public official or employee to file, record or deliver a fraudulent claim of indebtedness, common law lien or other lien, financial statement, complaint, summons, judgment, warrant or other legal process, including those issued as the result of a fraudulent official proceeding.

(d) Fraudulent service. -- It is unlawful for a person to knowingly serve a public official or employee with a fraudulent claim of indebtedness, common law lien or other lien, financial statement, complaint, summons, judgment, warrant or other legal process, including those issued as the result of a fraudulent official proceeding.

(e) Impersonation. -- It is unlawful for a person to knowingly impersonate or purport to exercise any function of a public official, employee, tribunal or official proceeding without legal authority to do so and with the intent to induce a person to submit to or rely on the fraudulent authority of the person.

(f) First offense. -- Any person who violates a provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be confined in a county or regional jail for not more than one year or fined not more than $1,000, or both.

(g) Second offense. -- Any person convicted of a second or subsequent offense under this section is guilty of a felony and, shall be confined in the penitentiary not less than one nor more than ten years or fined not more than $2,000, or both.

(h) Civil cause of action. -- A person who violates this section is liable in a civil action to any person harmed by the violation for injury or loss to person or property incurred as a result of the commission of the offense and for reasonable attorney's fees, court costs and other expenses incurred as a result of prosecuting the civil action commenced under this subsection, which is not the exclusive remedy of a person who suffers injury or loss to person or property as a result of a violation of this section.

(i) Civil sanctions. -- In addition to the criminal and civil penalties set forth in this section, a

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fraudulent official proceeding or legal process brought in a tribunal in violation of this section shall be dismissed by the tribunal and the person may be ordered to reimburse the aggravated person for reasonable attorney's fees, court costs and other expenses incurred in defending or dismissing such action.

(1) Refusal to record. -- A recorder may refuse to record a clearly fraudulent lien or other legal process against a person or his or her property. The recorder does not have a duty to inspect or investigate whether a lien or other legal process is fraudulent nor is the recorder liable for refusing to record a lien or other legal process that the recorder believes is in violation of this section.

(2) If a fraudulent lien or other legal process against a person or his or her property is recorded then:

(A) Request to release lien. -- A person may send a written request by certified mail to the person who filed the fraudulent lien or legal process, requesting the person to release or dismiss the lien or legal process. If such lien or legal process is not properly released or dismissed within twenty-one days, then the person shall be presumed to have intended to have committed a violation of this section and shall be subject to the penalties provided for in this section; or

(B) Petition to circuit court. -- A person may petition the circuit court of the county where the fraudulent lien or legal process was recorded for an order that may be granted ex parte directing the person who filed the lien or legal process to appear before the court and show cause why the lien or legal process should not be released or dismissed, deemed fraudulent and the person penalized as provided for in this section.

(i) The petition shall set forth a concise statement of the facts and the grounds upon which relief is requested.

(ii) No filing fee shall be charged for the filing of such petitions.

(iii) The order to show cause shall be served upon the person who filed the lien or legal process according to rule 4 of the rules of civil procedure and the date of the hearing set within twenty-one days of the order.

(iv) The order to show cause shall clearly state that if the person who filed the lien or legal process fails to appear at the time and place noticed in the order, then the lien or legal process shall be released or dismissed, deemed fraudulent and the person shall be subject to the penalties provided for in this section.

(v) If a hearing takes place or if, on its own motion, the circuit court determines that the lien or legal process is fraudulent, then the circuit court shall release or dismiss it and subject the person to the penalties provided for in this section.

(vi) If the circuit court determines that the lien or legal process is valid, then the circuit

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court shall issue an order stating such and may award reasonable attorney's fees, court costs and other expenses to the prevailing party.

(j) A person's lack of belief in the jurisdiction or authority of this state or of the United States is no defense to prosecution of a civil or criminal action under this section.

(k)(1) Nothing in this section prohibits or in any way limits the lawful acts of a legitimate public official or employee.

(2) Nothing in this section prohibits or in any way limits a person's lawful and legitimate right to freely assemble, express opinions or designate group affiliation.

(3) Nothing in this section prohibits or in any way limits a person's lawful and legitimate access to a tribunal of this state, or prevents a person from instituting or responding to a lawful action.

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