

SB 608

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# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1999



## ENROLLED

*Committee Substitute For*  
SENATE BILL NO. 608

(By Senator Wooten, et al)



PASSED MARCH 13, 1999  
In Effect NINETY DAYS FROM Passage

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OFFICE OF THE CLERK  
SENATE OF WEST VIRGINIA

## ENROLLED

COMMITTEE SUBSTITUTE

FOR

### Senate Bill No. 608

(SENATORS WOOTON, DITTMAR, BOLEY, KESSLER, HUNTER,  
BALL, PLYMALE AND PREZIOSO, *original sponsors*)

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[Passed March 13, 1999; in effect ninety days from passage.]

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AN ACT to amend chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article sixteen; to amend and reenact section twenty-seven, article five, chapter sixty-one of said code; and to further amend said article by adding thereto a new section, designated section twenty-seven-a, all relating to prohibiting the filing of fraudulent liens; establishing means of invalidating and removing fraudulent liens that have been filed or recorded; intimidation and retaliation against public officials, employees, jurors and witnesses; fraudulent official proceedings and legal processes and filing and serving fraudulent legal

processes; impersonating public officials, employees or tribunals; and civil and criminal penalties.

*Be it enacted by the Legislature of West Virginia:*

That chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article sixteen; that section twenty-seven, article five, chapter sixty-one of said code be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section twenty-seven-a, all to read as follows:

## **CHAPTER 38. LIENS.**

### **ARTICLE 16. FRAUDULENT COMMON LAW LIENS.**

#### **PART 1. DEFINITIONS.**

#### **§38-16-101. Definitions; application of definitions.**

1 For the purposes of this article, the words and phrases  
2 defined in the following sections of this part 1, and any  
3 variation of those words and phrases required by the  
4 context, have the meanings ascribed to them in this part 1.  
5 These definitions are applicable unless a different meaning  
6 clearly appears from the context.

#### **§38-16-102. Court of competent jurisdiction defined.**

1 "Court of competent jurisdiction" means a circuit court,  
2 magistrate court or administrative agency within this state  
3 or a court or administrative agency of another state, or a  
4 court or administrative agency of the federal government  
5 having jurisdiction and due legal authority to establish a  
6 charge against or an interest in real or personal property  
7 by ordering or authorizing the imposition of a lien against  
8 the property.

#### **§38-16-103. Federal government defined.**

1 "Federal government" means the government of the  
2 United States of America and includes the executive,  
3 legislative and judicial branches; and the term also  
4 includes quasi-public corporations and independent  
5 commissions or authorities primarily acting as instrumen-

6 talities or agencies of the United States, but does not  
7 include any contractor with the United States.

**§38-16-104. Federal official or employee defined.**

1 “Federal official or employee” means an officer or  
2 employee of the federal government temporarily or  
3 permanently in the service of the United States, members  
4 of the military or naval forces of the United States,  
5 members of the national guard, and persons acting on  
6 behalf of the United States in an official capacity, whether  
7 with or without compensation.

**§38-16-105. Lien defined.**

1 “Lien” means a charge against or an interest in property  
2 to secure payment of a debt or performance of an obliga-  
3 tion, and includes a security interest created by agreement,  
4 a judicial lien obtained by legal or equitable process or  
5 proceedings, a common-law lien, or a statutory lien.

**§38-16-106. Nonconsensual common law lien defined.**

1 “Nonconsensual common law lien” means a fraudulent  
2 lien that is misrepresented as a valid lien because it:

3 (1) Is not provided for by a specific statute;

4 (2) Does not derive its existence from the consent of the  
5 owner of the affected property; and

6 (3) Is not an equitable lien or other lien imposed by a  
7 court of competent jurisdiction.

**§38-16-107. Purported court defined.**

1 “Purported court” means a so-called common law court  
2 or other purported court or purported judicial entity that  
3 is not expressly created or established under the constitu-  
4 tion or the laws of this state or of the United States.

**§38-16-108. State or local official or employee defined.**

1 “State or local official or employee” means a person,  
2 whether appointed or elected, providing services to a  
3 branch of state government or to a political subdivision of  
4 this state, whether with or without compensation.

PART 2. COMMON LAW LIENS.

**§38-16-201. Bonafide liens are not affected by this article.**

1 Regardless of whether such liens may also be considered  
2 to be common law liens, nothing in this article is intended  
3 to affect:

4 (1) Statutory liens arising under an enactment of the  
5 Legislature;

6 (2) Equitable liens, constructive liens and other liens that  
7 are imposed by a court of competent jurisdiction; or

8 (3) Consensual liens now or hereafter recognized under  
9 the common law of this state.

**§38-16-202. Real property common law liens unenforceable;  
personal property common law liens limited.**

1 (a) A common law lien against real property is invalid  
2 and is not recognized or enforceable in this state.

3 (b) A common law lien claimed against personal property  
4 is invalid and is not recognized or enforceable if, at the  
5 time the lien is claimed, the claimant does not have:

6 (1) Actual possession, lawfully acquired, of specific  
7 personal property against which the lien is asserted; or

8 (2) Exclusive control, lawfully acquired, of specific  
9 personal property against which the lien is asserted.

10 (c) A valid common law lien claimed against personal  
11 property is destroyed or terminated if the person entitled  
12 to the lien fails to retain possession or control of the  
13 property, unless the person against whom the lien is  
14 asserted agrees, in writing, that the lien may continue after  
15 delivery of the property from the possession of the  
16 lienholder.

PART 3. PROVISIONS GOVERNING THE FILING OF CLAIMS OF  
COMMON LAW LIENS.

**§38-16-301. Filing or recording a claim of nonconsensual com-  
mon law lien is of no force or effect.**

1 A nonconsensual common law lien is invalid and does  
2 not constitute a charge against property or create an  
3 interest in property. The filing or recording of a document  
4 that purports to evidence a nonconsensual common law  
5 lien is a nullity and is of no force or effect.

**§38-16-302. No duty to accept filing of purported common law  
lien; no duty to reject filing of purported com-  
mon law lien.**

1 (a) A clerk of a county commission or other person has  
2 no duty to accept for filing or recording any purported  
3 claim of a common law lien, because a common law lien is  
4 neither authorized by statute nor imposed by a court of  
5 competent jurisdiction. A clerk of a county commission or  
6 other person has no duty to reject for filing or recording  
7 any claim of a common law lien, and the inadvertent or  
8 negligent recordation of a claim of a common law lien by  
9 a clerk of a county commission or other recorder does not  
10 create a cause of action against that official.

**§38-16-303. Claim of lien against a federal official or employee  
or a state or local official or employee; perfor-  
mance of duties; validity; no duty to accept  
filing; notice of invalid lien.**

1 (a) Any claim of lien against a federal official or em-  
2 ployee or a state or local official or employee that is based  
3 on the performance or nonperformance of that official's or  
4 employee's duties is invalid unless it arises from a specific  
5 order of a court of competent jurisdiction authorizing the  
6 filing of the lien or unless a specific statute authorizes the  
7 filing of the lien.

8 (b) A person is not obligated to accept for filing any  
9 purported claim of lien against a federal official or  
10 employee or a state or local official or employee that is  
11 based on the performance or nonperformance of that  
12 official's or employee's duties unless the claim is accompa-  
13 nied by a specific order from a court of competent jurisdic-  
14 tion authorizing the filing of such lien or unless a specific  
15 statute authorizes the filing of such lien. A person has no  
16 duty to reject for filing or recording any claim of lien  
17 against a federal official or employee or a state or local

18 official or employee that is based on the performance or  
19 nonperformance of that official's or employee's duties, and  
20 the inadvertent or negligent recordation of such a claim by  
21 a clerk of a county commission or other recorder does not  
22 create a cause of action against that official.

23 (c) If a claim of lien as described in subsection (a) of this  
24 section has been accepted for filing, the recording officer  
25 shall accept for filing a notice of invalid lien signed and  
26 submitted by the assistant United States attorney or other  
27 counsel representing the federal agency of which the  
28 individual is an official or employee; the assistant attorney  
29 general or other counsel representing the state agency,  
30 board, commission, department, or institution of higher  
31 education of which the individual is an official or em-  
32 ployee; or the prosecuting attorney or municipal attorney  
33 or other counsel representing the school district, political  
34 subdivision, or unit of local government of this state of  
35 which the individual is an official or employee. A copy of  
36 the notice of invalid lien shall be mailed by the attorney to  
37 the person who filed the claim of lien, at his or her last  
38 known address. The clerk of the county commission shall  
39 file and index the notice of invalid lien in the same class of  
40 records in which the purported claim of lien was originally  
41 filed.

**§38-16-304. No duty to disclose record of common law lien.**

1 No person has a duty to disclose an instrument of record  
2 or file that attempts to give notice of a common law lien.  
3 This section does not relieve any person of any duty which  
4 otherwise may exist to disclose a claim of lien authorized  
5 by statute or imposed by order of a court of competent  
6 jurisdiction.

**§38-16-305. Immunity from liability for failure to accept filing or disclose common law lien.**

1 A clerk of the county commission or other person is not  
2 liable for the acceptance for filing of an invalid claim of a  
3 nonconsensual common law lien, nor for the acceptance  
4 for filing of a notice of invalid lien. A clerk of the county  
5 commission or other person is not liable for damages  
6 arising from a refusal to record or file or a failure to

7 disclose any claim of a purported common law lien of  
8 record.

**§38-16-306. No duty to disclose fraudulent lien record; lien of  
purported court is a nullity.**

1 (a) An attorney, title insurance company or other title  
2 examiner does not have a duty to disclose a fraudulent  
3 court record, document, or instrument purporting to create  
4 a nonconsensual common law lien asserting a claim on real  
5 property or an interest in real property in connection with  
6 a sale, conveyance, mortgage, or other transfer of the real  
7 property or interest in real property.

8 (b) A purported judgment lien or document establishing  
9 or purporting to establish a judgment lien against property  
10 in this state, that is issued or purportedly issued by a court  
11 or a purported court other than a court established under  
12 the laws of this state or the United States, is a nullity and  
13 has no effect in the determination of any title or right to  
14 the property.

PART 4. ACTIONS TO STRIKE OR REMOVE NONCONSENSUAL  
COMMON LAW LIEN.

**§38-16-401. Notice by clerk of fraudulent lien.**

1 (a) If a clerk of the county commission has a reasonable  
2 basis to believe in good faith that a document or instru-  
3 ment purporting to evidence an invalid nonconsensual  
4 common law lien has been filed or recorded or offered for  
5 filing or recording, the clerk shall provide a written notice  
6 as follows:

7 (1) If the document is a purported judgment or other  
8 document purporting to memorialize or evidence an act, an  
9 order, a directive, or process of a purported court, the clerk  
10 shall provide written notice of the filing, recording, or  
11 submission for filing or recording to the stated or last  
12 known address of the person against whom the purported  
13 judgment, act, order, directive, or process is rendered; or

14 (2) If the document or instrument purports to create a  
15 lien or assert a claim on real or personal property or an  
16 interest in real or personal property, provide written



17 notice of the filing, recording, or submission for filing or  
18 recording to the stated or last known address of the person  
19 named in the document or instrument as the obligor or  
20 debtor and to any person named as owning any interest in  
21 the real or personal property described in the document or  
22 instrument.

23 (b)(1) If the document is not yet filed or recorded, the  
24 clerk shall provide written notice under subsection (a) not  
25 later than the second business day after the date that the  
26 document is submitted for filing or recording; or

27 (2) If the document or instrument has been previously  
28 filed or recorded, the clerk shall provide written notice  
29 under subsection (a) not later than the second business day  
30 after the date that the clerk becomes aware that the  
31 document or instrument may be fraudulent.

32 (c) For purposes of this section, a document or instru-  
33 ment is presumed to be fraudulent if:

34 (1) The document is styled as a judgment or other  
35 document purporting to memorialize or evidence an act, an  
36 order, a directive, or process of a purported court; or

37 (2) The document or instrument purports to create a lien  
38 or security interest or otherwise create a charge against  
39 real or personal property and:

40 (A) It is not a document or instrument provided for by  
41 the constitution or laws of this state or of the United  
42 States;

43 (B) It is not created by implied or express consent or  
44 agreement of the alleged obligor, debtor, or the owner of  
45 the real or personal property or an interest in the real or  
46 personal property, or by implied or express consent or  
47 agreement of an agent, fiduciary, or other representative  
48 of that person; or

49 (C) It is not an equitable, constructive, or other lien  
50 imposed by a court of competent jurisdiction.

**§38-16-402. Action on fraudulent judgment lien.**

1 (a) A person against whom a purported judgment was  
2 rendered who has reason to believe that a document  
3 previously filed or recorded or submitted for filing or for  
4 filing and recording is fraudulent may complete and file  
5 with the clerk of the circuit court a motion, verified by  
6 affidavit, that contains, at a minimum, the information in  
7 the following suggested form:

8 IN THE CIRCUIT COURT OF \_\_\_\_\_ COUNTY,  
9 WEST VIRGINIA

10 In Re: A Purported Judgment Lien Against

11 (Name of Purported Debtor)

12 MOTION FOR JUDICIAL REVIEW OF A DOCUMENT  
13 PURPORTING TO CREATE A JUDGMENT LIEN

14 Now comes (name) and files this motion requesting a  
15 judicial determination of the status of a court, judicial  
16 entity, or judicial officer purporting to have taken an  
17 action that is the basis of an purported judgment lien filed  
18 in the office of the clerk of the county commission, and in  
19 support of the motion would show the court as follows:

20 I.

21 (Name), movant herein, is the person against whom the  
22 purported judgment was rendered.

23 II.

24 On (date), in the exercise of official duties as Clerk of  
25 the County Commission of (county name) County, West  
26 Virginia, the county clerk received and filed or filed and  
27 recorded the attached documentation containing (number)  
28 pages. The documentation purports to have been rendered  
29 on the basis of a judgment, act, order, directive, or process  
30 of a court, judicial entity, or judicial officer called "(name  
31 of purported court)" against one (name of purported  
32 debtor).

33 III.

34 Movant alleges that the purported court referred to in  
35 the attached documentation is one described in W.Va.

36 Code, §38-16-108, as not legally created or established  
37 under the constitution or laws of this state or of the United  
38 States, and that the document is therefore not be accorded  
39 lien status.

40 IV.

41 Movant further attests that the assertions contained  
42 herein are true and correct.

43 PRAYER

44 Movant requests the court to review the attached  
45 documentation and enter an order determining whether it  
46 should be accorded lien status, together with such other  
47 orders as the court deems appropriate.

48 Respectfully submitted,

49 \_\_\_\_\_

50 (Signature and typed name and address)

51 (b) The acknowledgment must be as follows:

52 THE STATE OF WEST VIRGINIA,  
53 COUNTY OF \_\_\_\_\_, To-wit:

54 I, \_\_\_\_\_, a notary public of said  
55 county; (or other officer or person authorized to take  
56 acknowledgments), do certify that \_\_\_\_\_,  
57 whose name (or names) is (or are) signed to the attached  
58 motion, dated the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_,  
59 has (or have) this day acknowledged the same before me,  
60 in my said \_\_\_\_\_.

61 Given under my hand this \_\_\_\_\_ day of  
62 \_\_\_\_\_, \_\_\_\_\_.

63 \_\_\_\_\_  
64 Notary Public, State of West Virginia

65 Notary's printed name:

66 My commission expires:

67 (c) A motion filed under this section may be ruled on by  
68 a circuit judge in the county where the subject documenta-

69 tion was filed. The court's finding may be made solely on  
70 a review of the documentation attached to the movant's  
71 motion and without hearing any testimonial evidence. The  
72 court's review may be made ex parte without delay or  
73 notice of any kind.

74 (d) The clerk of the circuit court may not charge a filing  
75 fee for filing a motion under this section.

76 (e) After reviewing the documentation attached to a  
77 motion under this section, the circuit judge shall enter  
78 appropriate findings of fact and conclusions of law, which  
79 must be filed and indexed in the same class of records in  
80 which the subject documentation or instrument was  
81 originally filed.

82 (f) The county clerk may not collect a filing fee for filing  
83 a district judge's findings of fact and conclusions of law  
84 under this section.

85 (g) A suggested form order appropriate to comply with  
86 this section is as follows:

87 IN THE CIRCUIT COURT OF \_\_\_\_\_ COUNTY,  
88 WEST VIRGINIA

89 In Re: A Purported Judgment Lien Against

90 (Name of Purported Debtor)

91 JUDICIAL FINDINGS OF FACT AND CONCLUSIONS  
92 OF LAW REGARDING A DOCUMENTATION  
93 PURPORTING TO CREATE A JUDGMENT LIEN

94 On the (number) day of (month), (year), in the above  
95 entitled action, this Court reviewed a motion verified by  
96 (name) and the documentation attached thereto. No  
97 testimony was taken from any party, nor was there any  
98 notice of the Court's review, the Court having made the  
99 determination that a decision could be made solely on  
100 review of the documentation under the authority vested in  
101 the Court under W.Va. Code, §38-16-101, *et seq.*

102 The Court finds as follows (only an item checked and  
103 initialed is a valid court ruling):

104 [ ] \_\_\_ The documentation attached to the motion herein  
105 refers to a legally constituted court, judicial entity,  
106 or judicial officer created by or established under  
107 the constitution or laws of this state or of the  
108 United States. This judicial finding and conclusion  
109 of law does not constitute a finding as to any  
110 underlying claims of the parties.

111 [ ] \_\_\_ The documentation attached to the motion herein  
112 DOES NOT refer to a legally constituted court,  
113 judicial entity, or judicial officer created by or  
114 established under the constitution or laws of this  
115 state or of the United States. There is no valid  
116 judgment lien created by the documentation.

117 This court makes no finding as to any underlying claims  
118 of the parties involved and expressly limits its findings of  
119 fact and conclusions of law to a ministerial act. The  
120 county clerk shall file this finding of fact and conclusion  
121 of law in the same class of records as the subject documen-  
122 tation was originally filed, and the court directs the county  
123 clerk to index it using the same names that were used in  
124 indexing the subject document.

125 Signed this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

126

127 \_\_\_\_\_  
Judge,

128 Circuit Court of \_\_\_\_\_ County, West Virginia

**§38-16-403. Action on fraudulent lien on property.**

1 (a) A person who is the purported debtor or obligor or  
2 who owns real or personal property or an interest in real  
3 or personal property, and who has reason to believe that  
4 the document purporting to create a lien or a claim against  
5 the real or personal property or an interest in the real or  
6 personal property previously filed or submitted for filing  
7 and recording is fraudulent, may complete and file with  
8 the clerk of the circuit court a verified motion that con-  
9 tains, at a minimum, the information in the following  
10 suggested form:

11 IN THE CIRCUIT COURT OF \_\_\_\_\_,  
12 WEST VIRGINIA

13 In Re: A Purported Lien or Claim Against

14 (Name of Purported Debtor)

15 MOTION FOR JUDICIAL REVIEW OF  
16 DOCUMENTATION PURPORTING TO  
17 CREATE A LIEN OR CLAIM

18 Now comes (name) and files this motion requesting a  
19 judicial determination of the status of documentation or  
20 an instrument purporting to create an interest in real or  
21 personal property or a lien or claim on real or personal  
22 property or an interest in real or personal property filed in  
23 the office of the Clerk of (county name) County, West  
24 Virginia, and in support of the motion would show the  
25 court as follows:

26 I.

27 (Name), movant herein, is the purported obligor or  
28 debtor or person who owns the real or personal property or  
29 the interest in real or personal property described in the  
30 documentation.

31 II.

32 On (date), in the exercise of official duties as Clerk of the  
33 County Commission of (county name) County, West  
34 Virginia, the county clerk received and filed and recorded  
35 the documentation attached hereto and containing (num-  
36 ber) pages. The documentation purports to have created  
37 a lien on real or personal property or an interest in real or  
38 personal property against one (name of purported debtor).

39 III.

40 Movant alleges that the documentation or instrument  
41 attached hereto is fraudulent, as defined by W.Va. Code,  
42 §38-16-101, *et seq.*, and that the documentation or instru-  
43 ment should therefore not be accorded lien status.

44 IV.

45 Movant attests that assertions herein are true and correct.

46 V.

47 Movant does not request the court to make a finding as  
48 to any underlying claim of the parties involved and  
49 acknowledges that this motion does not seek to invalidate  
50 a legitimate lien. Movant further acknowledges that  
51 movant may be subject to sanctions, as provided by Rule  
52 11 of the West Virginia Rules of Civil Procedure for Trial  
53 Courts of Record, if this motion is determined to be  
54 frivolous.

55 PRAYER

56 Movant requests the court to review the attached  
57 documentation and enter an order determining whether it  
58 should be accorded lien status, together with such other  
59 orders as the court deems appropriate.

60 Respectfully submitted,

61 \_\_\_\_\_  
62 (Signature and typed name and address)

63 (b) The acknowledgment must be as follows:

64 THE STATE OF WEST VIRGINIA,  
65 COUNTY OF \_\_\_\_\_, To-wit:

66 I, \_\_\_\_\_, a notary public of said  
67 county; (or other officer or person authorized to take  
68 acknowledgments), do certify that \_\_\_\_\_,  
69 whose name (or names) is (or are) signed to the attached  
70 motion, dated the \_\_\_\_\_ day of \_\_\_\_\_,  
71 has (or have) this day acknowledged the same before me,  
72 in my said \_\_\_\_\_.

73 Given under my hand this \_\_\_\_\_ day of  
74 \_\_\_\_\_, \_\_\_\_\_.

75 \_\_\_\_\_  
76 Notary Public, State of West Virginia

77 Notary's printed name:

78 My commission expires:

79 (c) A motion under this section may be ruled on by a  
80 circuit judge in the county where the subject document  
81 was filed. The court's finding may be made solely on a

82 review of the documentation attached to the motion and  
83 without hearing any testimonial evidence. The court's  
84 review may be made *ex parte* without delay or notice of  
85 any kind.

86 (d) The clerk of the circuit court may not collect a filing  
87 fee for filing a motion under this section.

88 (e) After reviewing the documentation attached to a  
89 motion under this section, the circuit judge shall enter  
90 appropriate findings of fact and conclusions of law, which  
91 must be filed and indexed in the same class of records in  
92 which the subject documentation or instrument was  
93 originally filed. A copy of the findings of fact and conclu-  
94 sions of law shall be sent, by first class mail, to the movant  
95 and to the person who filed the fraudulent lien or claim at  
96 the last known address of each person within seven days of  
97 the date that the finding of fact and conclusion of law is  
98 issued by the judge.

99 (f) The county clerk may not collect a fee for filing a  
100 district judge's finding of fact and conclusion of law under  
101 this section.

102 (g) A suggested form order appropriate to comply with  
103 this section is as follows:

104 IN THE CIRCUIT COURT OF \_\_\_\_\_ COUNTY,  
105 WEST VIRGINIA

106 In Re: A Purported Judgment Lien Against

107 (Name of Purported Debtor)

108 JUDICIAL FINDINGS OF FACT AND CONCLUSIONS  
109 OF LAW REGARDING A DOCUMENTATION  
110 PURPORTING TO CREATE A JUDGMENT LIEN

111 On the (number) day of (month), (year), in the above  
112 entitled action, this court reviewed a motion verified by  
113 (name) and the documentation attached thereto. No  
114 testimony was taken from any party, nor was there any  
115 notice of the court's review, the court having made the  
116 determination that a decision could be made solely on  
117 review of the documentation under the authority vested in  
118 the court under W.Va, Code, §38-16-101, *et seq.*



119 The court finds as follows (only an item checked and  
120 initialed is a valid court ruling):

121 [ ] \_\_ The documentation or instrument attached to the  
122 motion herein IS asserted against real or personal  
123 property or an interest in real or personal property  
124 and:

125 (1) IS provided for by specific state or federal  
126 statutes or constitutional provisions;

127 (2) IS created by implied or express consent or  
128 agreement of the obligor, debtor, or the  
129 owner of the real or personal property or  
130 an interest in the real or personal property,  
131 or by consent of an agent, fiduciary, or  
132 other representative of that person; or

133 (3) IS an equitable, constructive, or other lien  
134 imposed by a court of competent jurisdic-  
135 tion created or established under the con-  
136 stitution or laws of this state or of the  
137 United States.

138 [ ] \_\_ The documentation or instrument attached to the  
139 motion:

140 (1) IS NOT provided for by specific state or federal  
141 statutes or constitutional provisions;

142 (2) IS NOT created by implied or express consent  
143 or agreement of the obligor, debtor, or the  
144 owner of the real or personal property or  
145 an interest in the real or personal property,  
146 or by implied or express consent or agree-  
147 ment of an agent, fiduciary, or other repre-  
148 sentative of that person;

149 (3) IS NOT an equitable, constructive, or other lien  
150 imposed by a court of competent jurisdic-  
151 tion created by or established under the  
152 constitution or laws of this state or the  
153 United States; or

154 (4) IS NOT asserted against real or personal prop-  
155 erty or an interest in real or personal prop-

156 erty. There is no valid lien or claim cre-  
157 ated by this documentation or instrument.

158 This court makes no finding as to any underlying claims  
159 of the parties involved and expressly limits its finding of  
160 fact and conclusion of law to a ministerial act. The county  
161 clerk shall file this finding of fact and conclusion of law in  
162 the same class of records as the subject documentation was  
163 originally filed, and the court directs the county clerk to  
164 index it using the same names that were used in indexing  
165 the subject document.

166 Signed this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

167 \_\_\_\_\_  
168 Judge,  
169 Circuit Court of \_\_\_\_\_ County, West Virginia

**§38-16-404. Costs and attorneys' fees.**

1 If, following a hearing on the matter, the court deter-  
2 mines that the claim of lien is invalid, the court shall issue  
3 an order awarding costs and reasonable attorneys' fees to  
4 the petitioner to be paid by the lien claimant. If the court  
5 determines that the claim of lien is valid, the court shall  
6 issue an order so stating and may award costs and reason-  
7 able attorneys' fees to the lien claimant to be paid by the  
8 movant.

**§38-16-405. Warning sign.**

1 A clerk of the county commission shall post a sign, in  
2 letters at least one inch in height, that is clearly visible to  
3 the general public in or near the clerk's office stating that  
4 it is a crime to intentionally or knowingly file a fraudulent  
5 court record or a fraudulent instrument with the clerk.

**§38-16-406. Documents filed with secretary of state.**

1 (a) If the lien or other claim that is the subject of judicial  
2 findings of fact and conclusions of law authorized by this  
3 article is one that is authorized by law to be filed with the  
4 secretary of state, any person may file a certified copy of  
5 the judicial findings of fact and conclusions of law in the  
6 records of the secretary of state, who shall file the certified  
7 copy of the finding in the same class of records as the

8 subject document or instrument was originally filed and  
9 index it using the same names that were used in indexing  
10 the subject document or instrument.

11 (b) The secretary of state may charge a filing fee of five  
12 dollars for filing a certified copy of judicial findings of  
13 fact and conclusions of law under this section.

PART 5. LIABILITY FOR FRAUDULENT COURT RECORD OR A  
FRAUDULENT LIEN.

**§38-16-501. Liability.**

1 (a) A person may not make, present, or use a document  
2 or other record with:

3 (1) Knowledge that the document or other record is a  
4 fraudulent court record or a fraudulent lien or claim  
5 against real or personal property or an interest in real or  
6 personal property;

7 (2) Intent that the document or other record be given the  
8 same legal effect as a court record or document of a court  
9 created by or established under the constitution or laws of  
10 this state or the United States, evidencing a valid lien or  
11 claim against real or personal property or an interest in  
12 real or personal property; and

13 (3) Intent to cause another person to suffer:

14 (A) Physical injury;

15 (B) Financial injury; or

16 (C) Mental anguish or emotional distress.

17 (b) A person who violates Subsection (a) is liable to each  
18 injured person for:

19 (1) The greater of:

20 (A) \$10,000; or

21 (B) The actual damages caused by the violation;

22 (2) Court costs;

23 (3) Reasonable attorney's fees; and

24 (4) Exemplary damages in an amount determined by the  
25 court.

**§38-16-502. Cause of action.**

1 (a) The following persons may bring an action to enjoin  
2 violation of this article or to recover damages under this  
3 article:

4 (1) In the case of a fraudulent judgment lien, the person  
5 against whom the judgment is rendered; and

6 (2) In the case of a fraudulent lien or claim against real  
7 or personal property or an interest in real or personal  
8 property, the obligor or debtor, or a person who owns an  
9 interest in the real or personal property.

**§38-16-503. Venue.**

1 An action under this part 5 may be brought in any  
2 circuit court in the county in which the recorded document  
3 is recorded or in which the real property is located.

**§38-16-504. Filing fees.**

1 (a) The fee for filing an action under this chapter is  
2 fifteen dollars. The plaintiff must pay the fee to the clerk  
3 of the court in which the action is filed. Except as pro-  
4 vided by subsection (b), the plaintiff may not be assessed  
5 any other fee, cost, charge, or expense by the clerk of the  
6 court or other public official in connection with the action.

7 (b) The fee for service of notice of an action under this  
8 section charged to the plaintiff may not exceed:

9 (1) Twenty dollars if the notice is delivered in person; or

10 (2) The cost of postage if the service is by registered or  
11 certified mail.

12 (c) A plaintiff who is unable to pay the filing fee and fee  
13 for service of notice may file with the court an affidavit of  
14 inability to pay.

15 (d) Since the fee imposed under subsection (a) of this  
16 section is less than the filing fee the court imposes for  
17 filing other similar actions, if the plaintiff prevails in the

18 action, the court may order a defendant to pay to the court  
19 the differences between the fee paid under subsection (a)  
20 and the filing fee the court imposes for filing other similar  
21 actions.

**§38-16-505. Plaintiff's costs.**

1 (a) The court shall award the plaintiff the costs of  
2 bringing the action if:

3 (1) The plaintiff prevails; and

4 (2) The court finds that the defendant, at the time the  
5 defendant caused the recorded document to be recorded or  
6 filed, knew or should have known that the recorded  
7 document is fraudulent.

8 (b) For purposes of this section, the costs of bringing the  
9 action include all court costs, attorney's fees, and related  
10 expenses of bringing the action, including investigative  
11 expenses.

**§38-16-506. Effect on other law.**

1 This part 5 is cumulative of other law under which a  
2 person may obtain judicial relief with respect to a re-  
3 corded document or other record.

**CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

**ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.**

**§61-5-27. Intimidation of and retaliation against public officers  
and employees, jurors and witnesses; fraudulent  
official proceedings and legal processes against  
public officials and employees; penalties.**

1 (a) *Definitions.* – As used in this section:

2 (1) “Fraudulent” means not legally issued or sanctioned  
3 under the laws of this state or of the United States,  
4 including forged, false and materially misstated;

5 (2) “Legal process” means an action, appeal, document  
6 instrument or other writing issued, filed or recorded to  
7 pursue a claim against person or property, exercise  
8 jurisdiction, enforce a judgement, fine a person, put a lien  
9 on property, authorize a search and seizure, arrest a

10 person, incarcerate a person or direct a person to appear,  
11 perform or refrain from performing a specified act. "Legal  
12 process" includes, but is not limited to, a complaint,  
13 decree, demand, indictment, injunction, judgment, lien,  
14 motion, notice, order, petition, pleading, sentence, sub-  
15 poena, summons, warrant or writ;

16 (3) "Official proceeding" means a proceeding involving  
17 a legal process or other process of a tribunal of this state  
18 or of the United States;

19 (4) "Person" means an individual, group, association,  
20 corporation or any other entity;

21 (5) "Public official or employee" means an elected or  
22 appointed official or employee a state or federal court,  
23 commission, department, agency, political subdivision or  
24 any governmental instrumentality;

25 (6) "Recorder" means a clerk or other employee in charge  
26 of recording instruments in a court, commission or other  
27 tribunal of this state or of the United States; and

28 (7) "Tribunal" means a court or other judicial or quasi-  
29 judicial entity, or an administrative, legislative or execu-  
30 tive body, or that of a political subdivision, created or  
31 authorized under the constitution or laws of this state or  
32 of the United States.

33 (b) *Intimidation; Harassment.* – It is unlawful for a  
34 person to use intimidation, physical force, harassment or  
35 a fraudulent legal process or official proceeding, or to  
36 threaten or attempt to do so, with the intent to:

37 (1) Impede or obstruct a public official or employee from  
38 performing his or her official duties;

39 (2) Impede or obstruct a juror or witness from perform-  
40 ing his or her official duties in an official proceeding;

41 (3) Influence, delay or prevent the testimony of any  
42 person in an official proceeding; or

43 (4) Cause or induce a person to: (A) withhold testimony,  
44 or withhold a record, document or other object from an  
45 official proceeding; (B) alter, destroy, mutilate or conceal

46 a record, document or other object impairing its integrity  
47 or availability for use in an official proceeding; (C) evade  
48 an official proceeding summoning a person to appear as a  
49 witness or produce a record, document or other object for  
50 an official proceeding; or (D) be absent from an official  
51 proceeding to which such person has been summoned.

52 (c) *Retaliation.* – It is unlawful for a person to cause  
53 injury or loss to person or property, or to threaten or  
54 attempt to do so, with the intent to:

55 (1) Retaliate against a public official or employee for the  
56 performance or nonperformance of an official duty;

57 (2) Retaliate against a juror or witness for performing his  
58 or her official duties in an official proceeding;

59 (3) Retaliate against any other person for attending,  
60 testifying or participating in an official proceeding, or for  
61 the production of any record, document or other object  
62 produced by a person in an official proceeding.

63 (d) *Subsection (b) offense.* – A person who is convicted of  
64 an offense under subsection (b) is guilty of a misdemeanor  
65 and shall be confined in jail for not more than one year or  
66 fined not more than one thousand dollars, or both.

67 (e) *Subsection (c) or subsequent offense.* – A person  
68 convicted of a offense under subsection (c) or a second  
69 offense under subsection (b) is guilty of a felony and shall  
70 be confined in the penitentiary not less than one nor more  
71 than ten years or fined not more than two thousand  
72 dollars, or both.

73 (f) *Civil cause of action.* – A person who violates this  
74 section is liable in a civil action to any person harmed by  
75 the violation for injury or loss to person or property  
76 incurred as a result of the commission of the offense and  
77 for reasonable attorney's fees, court costs and other  
78 expenses incurred as a result of prosecuting a civil action  
79 commenced under this subsection, which is not the exclu-  
80 sive remedy of a person who suffers injury or loss to  
81 person or property as a result of a violation of this section.

82 (g) *Civil sanctions.* – In addition to the criminal and civil  
83 penalties set forth in this section, any fraudulent official  
84 proceeding or legal process brought in a tribunal of this  
85 state in violation of this section shall be dismissed by the  
86 tribunal and the person may be ordered to reimburse the  
87 aggravated person for reasonable attorney’s fees, court  
88 costs and other expenses incurred in defending or dismiss-  
89 ing such action.

90 (1) *Refusal to record.* – A recorder may refuse to record  
91 a clearly fraudulent lien or other legal process against a  
92 public official or employee or his or her property. The  
93 recorder does not have a duty to inspect or investigate  
94 whether a lien or other legal process is fraudulent nor is  
95 the recorder liable for refusing to record a lien or other  
96 legal process that the recorder believes is in violation of  
97 this section.

98 (2) If a fraudulent lien or other legal process against a  
99 public official or employee or his or her property is  
100 recorded then:

101 (A) *Request to release lien.* – The public official or  
102 employee may send a written request by certified mail to  
103 the person who filed the fraudulent lien or legal process,  
104 requesting the person to release or dismiss the lien or legal  
105 process. If such lien or legal process is not properly  
106 released or dismissed within twenty-one days, then it shall  
107 be inferred that the person intended to harass the public  
108 official or employee in violation of subsection (b) of this  
109 section and shall be subject to the criminal penalties in  
110 subsection (d) of this section and any other remedies  
111 provided for in this section; or

112 (B) *Notice of fraudulent lien.* – A government attorney on  
113 behalf of the public official or employee may record a  
114 notice of fraudulent lien or legal process with the recorder  
115 who accepted the lien or legal process for filing. Such  
116 notice shall invalidate the fraudulent lien or legal process  
117 and cause it to be removed from the records. No filing fee  
118 shall be charged for the filing of the notice.



119 (h) A person's lack of belief in the jurisdiction or author-  
120 ity of this state or of the United States is no defense to  
121 prosecution of a civil or criminal action under this section.

122 (i)(1) Nothing in this section prohibits or in any way  
123 limits the lawful acts of legitimate public officials or  
124 employees.

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

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

**§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.**

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

6 (b) *Fraudulent official proceedings.* – It is unlawful for a  
7 person to knowingly engage in a fraudulent official  
8 proceeding or legal process.

9 (c) *Fraudulent filings.* – It is unlawful for a person to  
10 knowingly cause a public official or employee to file,  
11 record or deliver a fraudulent claim of indebtedness,  
12 common law lien or other lien, financial statement,  
13 complaint, summons, judgement, warrant or other legal  
14 process, including those issued as the result of a fraudulent  
15 official proceeding.

16 (d) *Fraudulent service.* – It is unlawful for a person to  
17 knowingly serve a public official or employee with a  
18 fraudulent claim of indebtedness, common law lien or  
19 other lien, financial statement, complaint, summons,

20 judgement, warrant or other legal process, including those  
21 issued as the result of a fraudulent official proceeding.

22 (e) *Impersonation.* – It is unlawful for a person to  
23 knowingly impersonate or purport to exercise any function  
24 of a public official, employee, tribunal or official proceed-  
25 ing without legal authority to do so and with the intent to  
26 induce a person to submit to or rely on the fraudulent  
27 authority of the person.

28 (f) *First offense.* – Any person who violates a provision of  
29 this section is guilty of a misdemeanor, and upon convic-  
30 tion thereof, shall be confined in a county or regional jail  
31 for not more than one year or fined not more than one  
32 thousand dollars, or both.

33 (g) *Second offense.* – Any person convicted of a second or  
34 subsequent offense under this section is guilty of a felony  
35 and shall be confined in the penitentiary not less than one  
36 nor more than ten years or fined not more than two  
37 thousand dollars, or both.

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

47 (i) *Civil sanctions.* – In addition to the criminal and civil  
48 penalties set forth in this section, a fraudulent official  
49 proceeding or legal process brought in a tribunal in  
50 violation of this section shall be dismissed by the tribunal  
51 and the person may be ordered to reimburse the aggra-  
52 vated person for reasonable attorney's fees, court costs and  
53 other expenses incurred in defending or dismissing such  
54 action.

55 (1) *Refusal to record.* – A recorder may refuse to record  
56 a clearly fraudulent lien or other legal process against a  
57 person or his or her property. The recorder does not have

58 a duty to inspect or investigate whether a lien or other  
59 legal process is fraudulent nor is the recorder liable for  
60 refusing to record a lien or other legal process that the  
61 recorder believes is in violation of this section.

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

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

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

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

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

85 (iii) The order to show cause shall be served upon the  
86 person who filed the lien or legal process according to rule  
87 4 of the rules of civil procedure and the date of the hearing  
88 set within twenty-one days of the order.

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

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

100 (vi) If the circuit court determines that the lien or legal  
101 process is valid, then the circuit court shall issue an order  
102 stating such and may award reasonable attorney's fees,  
103 court costs and other expenses to the prevailing party.

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

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

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

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

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Rady Schoonover*  
.....  
Chairman Senate Committee

*Jack F. Smith*  
.....  
Chairman House Committee

Originating in the Senate.

In effect ninety days from passage.

*Harrell Holmes*  
.....  
Clerk of the Senate

*Burgoyne D. Sims*  
.....  
Clerk of the House of Delegates

*Carl Ray Tomblin*  
.....  
President of the Senate

*John H. Harman*  
.....  
Speaker House of Delegates

The within..... *approved* ..... this the *2nd* .....

Day of..... *April* ....., 1999

*Paul D. Leavitt*  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date 4/1/99

Time 10:35 am