



## 1997 SENATE BILL 193

April 30, 1997 - Introduced by Senators RISSER, HUELSMAN, CLAUSING, PANZER, BRESKE, FARROW and ROSENZWEIG, cosponsored by Representatives M. LEHMAN, HANSON, GOETSCH, R. YOUNG, DOBYNS, JENSEN, LA FAVE, NASS, POWERS, OLSEN, SYKORA, KELSO, PLALE and WASSERMAN. Referred to Committee on Judiciary, Campaign Finance Reform and Consumer Affairs.

1     **AN ACT to renumber and amend** 946.68 (1); **to amend** 409.404 (1) (d), 706.13  
2           (1), 943.60 (1), 946.68 (2) and 946.69 (2) (intro.); and **to create** 946.68 (1g) and  
3           946.68 (1r) (c) of the statutes; **relating to:** criminal slander of title, civil slander  
4           of title, simulating legal process, falsely assuming to act as a public officer,  
5           public employe or utility employe, failing to file a statement terminating a  
6           security interest under a financing statement and providing penalties.

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### *Analysis by the Legislative Reference Bureau*

This bill changes current law governing criminal and civil slander of title, simulating legal process, falsely assuming to act as a public officer, public employe or utility employe and failure to file a statement terminating a security interest under a financing statement. Specifically, current law, and the changes made by this bill, are as follows:

#### ***Slander of title***

The current law prohibition against slander of title provides that no person may submit for filing, entering or recording any legal instrument relating to title in real or personal property if he or she knows that the contents or any part of the contents of the instrument are false, a sham or frivolous. This bill specifies that a financing statement relating to a security interest in property is included in the kinds of legal instruments covered by this prohibition.

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Currently, a person who violates the prohibition against slander of title may be subject to civil penalties or criminal penalties or both. The civil penalties include punitive damages of \$1,000 plus any actual damages caused by the filing, entering or recording. The criminal penalties are imprisonment of not more than 2 years or a fine of not more than \$10,000 or both. This bill increases the criminal penalties for violating the prohibition by providing that a violator may be imprisoned for not more than 5 years or fined not more than \$10,000 or both.

***Simulating legal process***

Under current law, no person may, with the intent to induce payment of a claim, send or deliver to another person any document that simulates a summons, complaint or court process. A person who violates this prohibition may be imprisoned for not more than 90 days or fined not more than \$1,000 or both.

The bill expands the prohibition under current law by providing that no person may send or deliver a document that simulates any legal process and by removing the requirement that the simulated legal process be sent or delivered with the intent to induce payment of a claim. The bill also increases the penalties for violating the prohibition by providing that a violator may be imprisoned for not more than 2 years or fined not more than \$10,000 or both, except that if the document is sent or delivered with the intent to induce payment of a claim or if the document simulates any criminal process the violator may be imprisoned for not more than 5 years or fined not more than \$10,000 or both.

***Falsely assuming to act as a public officer, public employe or employe of a utility***

Under current law, no person may do any of the following: 1) assume to act in an official capacity or assume to perform an official function if the person knows that he or she is not the public officer, public employe or utility employe that he or she assumes to be; or 2) exercise any function of a public office if the person knows that he or she is not qualified to exercise that function or that he or she no longer has the right to exercise that function. A person who violates these prohibitions may be imprisoned for not more than 9 months or fined not more than \$10,000 or both. This bill increases the penalty for violating these prohibitions by providing that a violator may be imprisoned for not more than 2 years or fined not more than \$10,000 or both.

***Failure to terminate a security interest under a financing statement***

Under current law, a person having a security interest in goods (a secured party) must, in certain circumstances, file a Uniform Commercial Code financing statement in order to perfect the security interest in the goods. Depending on the type of goods, the financing statement must be filed with a county register of deeds or the department of financial institutions. If, after the financing statement is filed, there ceases to be an outstanding obligation secured by the security interest perfected by the financing statement, the secured party must generally file a termination statement to the effect that the secured party no longer claims a security interest under the financing statement. A secured party who fails to file a termination statement when that is required is liable to the owner of the goods for \$25 and for any loss caused to the owner by the failure to file the termination statement.

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This bill increases the penalty for failing to file a termination statement by providing that the secured party is liable to the owner for \$500 and, in addition to paying the owner's losses for the failure, is liable for reasonable attorney fees and court costs incurred by the owner due to the secured party's failure to file the termination statement.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 409.404 (1) (d) of the statutes is amended to read:

2           409.404 (1) (d) *Failure to file a termination statement.* If the affected secured  
3 party fails to file a termination statement as required by this subsection, or to send  
4 such a termination statement within 10 days after receipt of the debtor's written  
5 demand the secured party is liable to the debtor for ~~\$25~~ \$500, and in addition is liable  
6 for any loss caused to the debtor by such failure and for reasonable attorney fees and  
7 court costs incurred by the debtor due to such failure.

8           **SECTION 2.** 706.13 (1) of the statutes is amended to read:

9           706.13 (1) In addition to any criminal penalty or civil remedy provided by law,  
10 any person who submits for filing, entering in the judgment and lien docket or  
11 recording, any lien, claim of lien, lis pendens, writ of attachment, financing  
12 statement or any other instrument relating to a security interest in or the title in to  
13 real or personal property, knowing and who knows or should have known that the  
14 contents or any part of the contents to be of the instrument are false, a sham or  
15 frivolous, is liable in tort to any person interested in the property whose title is  
16 thereby impaired, for punitive damages of \$1,000 plus any actual damages caused  
17 by the filing, entering or recording.

18           **SECTION 3.** 943.60 (1) of the statutes is amended to read:

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1           943.60 (1) Any person who submits for filing, entering or recording any lien,  
2 claim of lien, lis pendens, writ of attachment, financing statement or any other  
3 instrument relating to a security interest in or title in to real or personal property,  
4 knowing and who knows or should have known that the contents or any part of the  
5 contents ~~to be~~ of the instrument are false, a sham or frivolous, is guilty of a Class E  
6 D felony.

7           **SECTION 4.** 946.68 (1) of the statutes is renumbered 946.68 (1r) (a) and  
8 amended to read:

9           946.68 (1r) (a) ~~Whoever~~ Except as provided in pars. (b) and (c), whoever sends  
10 or delivers to another any document which simulates a ~~summons, complaint, or court~~  
11 legal process is guilty of a Class E felony.

12           (b) If the document under par. (a) is sent or delivered with intent thereby to  
13 induce payment of a claim, the person is guilty of a Class B ~~misdemeanor~~ D felony.

14           **SECTION 5.** 946.68 (1g) of the statutes is created to read:

15           946.68 (1g) In this section, "legal process" includes a subpoena, summons,  
16 complaint, warrant, injunction, writ, notice, pleading, order or other document that  
17 directs a person to perform or refrain from performing a specified act and compliance  
18 with which is enforceable by a court or governmental agency.

19           **SECTION 6.** 946.68 (1r) (c) of the statutes is created to read:

20           946.68 (1r) (c) If the document under par. (a) simulates any criminal process,  
21 the person is guilty of a Class D felony.

22           **SECTION 7.** 946.68 (2) of the statutes is amended to read:

23           946.68 (2) Proof that ~~the~~ a document specified under sub. (1r) was mailed or  
24 was delivered to any person with intent that it be forwarded to the intended recipient  
25 is sufficient proof of sending.

