

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

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May 17, 2005

Representative Molepske:

I have done this bill as a preliminary draft because the written instructions that were submitted to me are unclear and I am unsure of your intent, although I've tried to reconcile some of the ambiguities. One of the instructions seems to say that no instrument may be recorded by a register of deeds that contains a **complete** social security number, but that the last four digits may appear on the instrument. The instructions aren't clear as to what would happen if a register of deeds is presented with an instrument that contains between five and eight characters from a social security number. Would he or she have to record it? Does the instruction mean that the first five characters of a social security number may not appear on any instrument that is presented for recording, but the last four characters may appear? The instructions aren't clear as to the circumstances under which a register of deeds may remove the first five, or all, characters of a social security number from an instrument to be recorded. See your written instructions, s. 705.05 (2a) (intro.), (1) and (2).

Based on the totality of the instructions, I tried to resolve these ambiguities in the draft. Please review created s. 59.43 (1m) (a) and (b) to see whether I've captured your intent.

The next instruction states that the first general rule [from instruction s. 705.05 (2a) (intro.) and (1)] doesn't apply to federal tax liens, except that the register of deeds may block the first five characters of the social security number, or the entire number. It's unclear to me how the federal tax lien exception works. Can a complete social security number appear on a federal tax lien? Does the "except" clause only apply to federal tax liens? Does your instruction s. 705.05 (2a) (2) mean that register of deeds can remove the first five characters, or all characters, of a social security number from any instrument or only from federal tax liens? I drafted the bill so that none of the rules apply to federal tax liens. Is this your intent?

The forfeiture language in your instruction s. 705.05 (2b) states that there may be imposed "damages of **up to** \$5,000 plus actual damages resulting from the violation." This "up to" language is ambiguous because it doesn't give a court any guidance as to under what circumstances a court could impose a \$5,000 forfeiture or a \$1 forfeiture. Also, by "actual" damages, do you mean that a person harmed by the recording of an instrument with his or her social security number must actually pay, out of pocket, at

least \$1 to get “actual” damages? What if an individual has his identity stolen because someone obtained his social security number and the individual didn’t have any actual expenses, but had to spend 50 hours on the phone clearing up the mess with banks, credit reporting agencies, etc. Would that individual, if he had unlimited local calling on his phone and thus incurred no “actual” damages, be ineligible to be compensated for the time he spent?

I would be happy to discuss with you any issues raised in this drafter’s note. Please let me know if you’d like to discuss the bill or indicate the changes you’d like me to make in the bill and I will redraft it and prepare an analysis.

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