

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

CONFERENCE COMMITTEE
SUBSTITUTE FOR ENGROSSED
HOUSE BILL NO. 1003

By: Beutler, Askins, Begley,
Blackburn, Bonny,
Dunegan, Ervin, Hager,
Langmacher, Matlock,
Sadler, Staggs, Thomas
and Wells of the House

and

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the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to sham legal process; amending 21 O.S. 1991, Section 1533, as amended by Section 1, Chapter 13, O.S.L. 1993 (21 O.S. Supp. 1996, Section 1533), which relates to false personation; prohibiting certain acts in relation to sham legal process; providing penalties; defining terms; amending 12 O.S. 1991, Section 29, which relates to duties of court clerks; authorizing court clerks and county clerks to refuse to file certain documents; authorizing person aggrieved by such refusal to petition for writ of mandamus; authorizing filing of notice of refusal for certain purpose; providing form for notice of refusal; requiring attachment of refused document to notice of refusal; requiring that mandamus action be filed within certain time; providing for refund of court filing fee if aggrieved party prevails; providing for notice of pendency of action; providing that court order contain certain directives if aggrieved party prevails; providing for retroactive filing date; providing immunity for clerks from civil suit; requiring certain posting; providing that failure to post is not a defense; prohibiting county clerks from accepting for filing liens against certain persons based upon performance or nonperformance of duties unless accompanied by court order authorizing the filing; providing procedure for filing notice of invalid lien if such lien has been accepted for filing; limiting scope of application of section of law; amending 12 O.S. 1991, Section 1141, which relates to quiet title actions; providing for award of costs, attorneys fees and treble damages if action is based on sham legal process; providing that quiet title action is independent of criminal action; amending 16 O.S. 1991, Sections 75 and 79, which relate to marketable record title; authorizing county clerks to refuse to file certain documents; authorizing person aggrieved by such refusal to petition for writ of mandamus; authorizing filing of notice of refusal for certain purpose; providing form for notice of refusal; requiring attachment of refused document to notice of refusal; requiring that mandamus action be filed within certain time; providing for refund of court

filing fee if aggrieved party prevails; providing for notice of pendency of action; providing that court order contain certain directives if aggrieved party prevails; providing for retroactive filing date; providing immunity for clerks from civil suit; requiring certain posting; providing that failure to post is not a defense; authorizing treble damages for quiet title actions based on sham legal process or slander of title; providing that quiet title action is independent of criminal action; repealing 21 O.S. 1991, Section 552, which relates to the requirement of proof of three instances of exciting suits or proceedings at law before a person can be convicted of common barratry; providing for codification; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 21 O.S. 1991, Section 1533, as amended by Section 1, Chapter 13, O.S.L. 1993 (21 O.S. Supp. 1996, Section 1533), is amended to read as follows:

Section 1533. A. ~~Every~~ Except as provided in subsection B of this section, every person who falsely personates any public officer, civil or military, any fireman, any law enforcement officer, any emergency medical technician or other emergency medical care provider, or any private individual having special authority by law to perform any act affecting the rights or interests of another, or who assumes, without authority, any uniform or badge by which such officers or persons are usually distinguished, and in such assumed character does any act whereby another person is injured, defrauded, harassed, vexed or annoyed, upon conviction, is guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six (6) months, or by a fine not exceeding Two Thousand Dollars (\$2,000.00), or by both such fine and imprisonment.

B. Every person who falsely personates any public officer or any law enforcement officer in connection with or relating to any sham legal process shall, upon conviction, be guilty of a felony. Beginning July 1, 1998, a violation of this subsection shall be a schedule F felony. The fine for a violation of this subsection shall not exceed Five Thousand Dollars (\$5,000.00).

C. Every person who falsely asserts authority of law not provided for by federal or state law in connection with any sham legal process shall, upon conviction, be guilty of a felony. Beginning July 1, 1998, a violation of this subsection shall be a schedule F felony. The fine for a violation of this subsection shall not exceed Five Thousand Dollars (\$5,000.00).

D. Every person who, while acting falsely in asserting authority of law, attempts to intimidate or hinder a public official or law enforcement officer in the discharge of official duties by means of threats, harassment, physical abuse, or use of sham legal process, shall be guilty of a felony. Beginning July 1, 1998, a violation of this subsection shall be a schedule F felony. The fine for a violation of this subsection shall not exceed Five Thousand Dollars (\$5,000.00).

E. Any person who, without authority under federal or state law, acts as a supreme court justice, a district court judge, an associate district judge, a special judge, a magistrate, a clerk of the court or deputy, a notary public, a juror or other official holding authority to determine a controversy or adjudicate the rights or interests of others, or signs a document in such capacity, shall be guilty of a felony. Beginning July 1, 1998, a violation of this subsection shall be a schedule F felony. The fine for a violation of this subsection shall not exceed Five Thousand Dollars (\$5,000.00).

F. Every person who uses any motor vehicle or motor-driven cycle usually distinguished as a law enforcement vehicle or equips any motor vehicle or motor-driven cycle with any spot lamps, audible sirens, or flashing lights, in violation of Sections 12-217, 12-218 or 12-227 of Title 47 of the Oklahoma Statutes for the purpose of falsely personating a law enforcement officer and who in such assumed character commits any act whereby another person is injured, defrauded, harassed, vexed or annoyed shall, upon conviction, be guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding one (1) year, or by a fine not exceeding Ten Thousand Dollars (\$10,000.00), or by both such fine and imprisonment.

G. As used in this section:

1. "Sham legal process" means the issuance, display, delivery, distribution, reliance on as lawful authority, or other use of an instrument that is not lawfully issued, whether or not the instrument is produced for inspection or actually exists, and purports to do any of the following:

- a. to be a summons, subpoena, judgment, arrest warrant, search warrant, or other order of a court recognized by the laws of this state, a law enforcement officer commissioned pursuant to state or federal law or the law of a federally recognized Indian Tribe, or a legislative, executive, or administrative agency established by state or federal law or the law of a federally recognized Indian Tribe,
- b. to assert jurisdiction or authority over or determine or adjudicate the legal or equitable status, rights, duties, powers, or privileges of any person or property, or
- c. to require or authorize the search, seizure, indictment, arrest, trial, or sentencing of any person or property; and

2. "Lawfully issued" means adopted, issued, or rendered in accordance with the applicable statutes, rules, regulations, and ordinances of the United States, a state, or a political subdivision of a state.

H. It shall not be a defense to a prosecution under subsection B, C, D or E of this section that:

1. The recipient of the sham legal process did not accept or believe in the authority falsely asserted in the sham legal process;

2. The person violating subsection B, C, D or E of this section does not believe in the jurisdiction or authority of this state or of the United States government; or

3. The office the person violating subsection B, C, D or E of this section purports to hold does not exist or is not an official office recognized by state or federal law.

SECTION 2. AMENDATORY 12 O.S. 1991, Section 29, is amended to read as follows:

Section 29. A. It is the duty of the clerk of each of the courts to file together and carefully preserve in his office, all papers delivered to him for that purpose, except as provided in subsection B of this section, in every action or special proceeding.

B. The court clerk may refuse to file any document presented for filing if the clerk believes that the document constitutes sham legal process, as defined by Section 1533 of Title 21 of the Oklahoma Statutes.

C. 1. Any person aggrieved by the refusal of a court clerk to file any document provided for in subsection A of this section may petition the district court for a writ of mandamus to compel the clerk to file the tendered document.

2. At the time of refusal, the person aggrieved shall file a notice of refusal with the court clerk for the purpose of tolling any applicable statute of limitations in the event the person prevails in any action so commenced, if the person wishes for the statute of limitations to be tolled. The refusal notice shall be submitted on a form provided by the court clerk, but must be filled out by the aggrieved party. A copy of the instrument that the clerk refused to file must be attached to the notice of refusal. The court clerk shall stamp the date of refusal on the notice of refusal.

The refusal notice shall be in the following form:

STATE OF OKLAHOMA

 COUNTY

NOTICE OF REFUSAL

The Office of Court Clerk of _____ County, Oklahoma, has on _____ (date) refused to file a document designated _____ (title of document or brief description of document). A copy of the refused document must be attached to this notice of refusal or the clerk cannot accept it for filing.

Signed: _____
Court Clerk

Signed: _____
Aggrieved party or attorney

County, Oklahoma

for aggrieved party

Address:

3. The action for mandamus must be filed with the district court within twenty (20) days after the notice of refusal is filed with the county clerk. If the writ of mandamus is granted, the court clerk shall refund the fee for filing the action. Notice of the pendency of a mandamus action filed pursuant to this section shall be filed in accordance with Section 2004.2 of this title. If the court determines that the tendered document is not sham legal process, the court shall order the clerk to file the tendered paper or papers. For any instrument which the court orders to be filed pursuant to this subsection, the date of filing shall be retroactive to the date the notice of refusal was filed.

D. If a court clerk improperly files or refuses to file a document provided for in subsection B of this section, the clerk shall be immune from liability for such action in any civil suit.

E. A clerk shall post a sign, in letters at least one (1) inch in height, that is clearly visible to the general public in or near the clerk's office stating that it is a felony to intentionally or knowingly file or attempt to file sham legal process with the clerk. Failure of the clerk to post such a sign shall not create a defense to any criminal or civil action based on sham legal process.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 267 of Title 19, unless there is created a duplication in numbering, reads as follows:

A. The county clerk may refuse to file any instrument presented for filing if the clerk believes that the instrument constitutes sham legal process, as defined by Section 1533 of Title 21 of the Oklahoma Statutes.

B. 1. Any person aggrieved by the refusal of a county clerk to file an instrument may petition the district court for a writ of mandamus to compel the county clerk to record the instrument.

2. At the time of refusal, the person aggrieved shall file a notice of refusal with the county clerk for the purpose of

preserving priority of filing in the event the person prevails in any action so commenced, if the person wishes to preserve priority of filing. The refusal notice shall be submitted on a form provided by the county clerk, but must be filled out by the aggrieved party. A copy of the instrument that the clerk refused to file must be attached to the notice of refusal. The county clerk shall stamp the date of refusal on the notice of refusal.

3. The refusal notice shall be in the following form:

STATE OF OKLAHOMA

_____ COUNTY

NOTICE OF REFUSAL

The Office of County Clerk of _____ County, Oklahoma, has on _____ (date) refused to file a document designated _____ (title of document or brief description of document). The document constitutes a claim or lien on the following property: _____

_____ (Description of property. In case of real property, description must be the legal description for the property.) A copy of the refused document must be attached to this notice of refusal or the clerk cannot accept it for filing.

Signed: _____

County Clerk
_____ County, Oklahoma

Signed: _____

Aggrieved party or attorney
for aggrieved party

Address: _____

4. The action for mandamus must be filed with the district court within twenty (20) days after the notice of refusal is filed with the county clerk. If the writ of mandamus is granted, the court clerk shall refund the fee for filing the action. Notice of the pendency of a mandamus action filed pursuant to this section shall be filed in accordance with Section 2004.2 of Title 12 of the Oklahoma Statutes. A file-stamped copy of the notice of the pendency of the action, identifying the case and the court in which the action is pending and the legal description of the land affected by the action shall be filed with the county clerk. If

the court determines that the instrument is not sham legal process or is not for the purpose of slandering title, the court shall order the county clerk to record the instrument. The court order shall include a notation of the book and page number of the index in which the notice of refusal is located and a statement that abstractors shall not show the pages on which the attachment to the notice of refusal is located in any abstract. For any instrument which the court orders to be filed pursuant to this subsection, the date of filing shall be retroactive to the date the notice of refusal was filed.

5. If the court determines that the instrument is sham legal process, the court shall issue an order that abstractors shall not show the pages of the index on which the attachment to the notice of refusal is located in any abstract.

C. If a county clerk files an instrument that is sham legal process or refuses to file an instrument because the clerk believes the instrument is sham legal process, the clerk shall be immune from liability for such action in any civil suit.

D. A clerk shall post a sign, in letters at least one (1) inch in height, that is clearly visible to the general public in or near the clerk's office stating that it is a felony to intentionally or knowingly file or attempt to file sham legal process with the clerk. Failure of the clerk to post such a sign shall not create a defense to any criminal or civil action based on sham legal process.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 268 of Title 19, unless there is created a duplication in numbering, reads as follows:

A. The county clerk shall not accept for filing any claim of lien against a federal, state, or local official or employee based on the performance or nonperformance of that official's or employee's duties unless accompanied by a specific order from a court of competent jurisdiction, recognized by the laws of this state, authorizing the filing of such lien.

B. If a claim of lien as described in subsection A of this section has been accepted for filing, the county shall accept for

filing a notice of invalid lien signed and submitted by the assistant United States attorney representing the federal agency of which the individual is an official or employee, the assistant attorney general representing the state agency, board, commission, department, or institution of higher education of which the individual is an official or employee, or the attorney representing the school district, political subdivision, or unit of local government of this state of which the individual is an official or employee. A copy of the notice of invalid lien shall be mailed by the attorney to the person who filed the claim of lien at his or her last-known address. No clerk or county shall be liable for the acceptance for filing of a claim of lien as described in subsection A of this section, nor for the acceptance for filing of a notice of invalid lien pursuant to this subsection.

C. This section shall not construed to permit rejection of a document that is shown to be authorized by contract, lease or statute or imposed by a state or federal court of competent jurisdiction or filed by a licensed attorney, financial institution including, but not limited to, any commercial bank, savings and loan association, credit union, mortgage company or mortgage broker.

SECTION 5. AMENDATORY 12 O.S. 1991, Section 1141, is amended to read as follows:

Section 1141. A. An action may be brought by any person in possession, by himself or tenant, of real property against any person who claims an estate or any interest therein adverse to the person bringing the action for the purpose of determining such adverse estate or interest, and such action may be joined with an action to recover possession of such real property by any person not in possession. The person or persons bringing such action shall not be required to allege the particular estate or interest claimed adversely by the person or persons against whom the action is brought, but may allege that the defendants' claim is adverse to that of the plaintiffs.

B. If a written request for the correction of a title defect has been refused without reasonable cause and an action is brought pursuant to the provisions of this section, the court may award reasonable attorneys fees to the prevailing party.

C. If an action is brought to quiet title alleging that the adverse claim is sham legal process, as defined by Section 1553 of Title 21 of the Oklahoma Statutes, the court may award costs and reasonable attorneys fees to the prevailing party. If the plaintiff prevails in the action, the court shall order the defendant to pay the plaintiff three times the damages that the plaintiff may have sustained as a result of the sham legal process. A quiet title action pursuant to this subsection shall be independent of any criminal action that may be filed against the defendant, and there shall be no requirement that the defendant in such an action be convicted of any criminal act.

SECTION 6. AMENDATORY 16 O.S. 1991, Section 75, is amended to read as follows:

Section 75. A. To be effective and to be entitled to ~~record~~ be recorded, the notice ~~above~~ of claim of interest in land, referred to in Section 74 of this title, shall contain an accurate and full description of all land affected by such notice which description shall be set forth in particular terms and not by general inclusions; but if said claim is founded upon a recorded instrument, then the description in such notice may be the same as that contained in such recorded instrument. Such notice shall be filed for record in the county clerk's office of the county or counties where the land described therein is situated. ~~The~~ Except as provided in subsection B of this section, the county clerk of each county shall accept all such notices presented to him which describe land located in the county in which he serves and shall enter, record and index the same in the same way that deeds are recorded and each county clerk shall be entitled to charge the same fees for the recording thereof as are charged for recording deeds. In indexing such notices in his office, each county clerk shall enter such notices in the index of deeds and in the

numerical index. The names of the claimants appearing in such notices are to be entered as grantees in such indexes.

B. The county clerk may refuse to file any notice of interest in land provided for in subsection A of this section, if the clerk believes that the instrument constitutes sham legal process, as defined by Section 1533 of Title 21 of the Oklahoma Statutes, or if the clerk believes the notice is being presented for the purpose of slandering the title to land.

C. 1. Any person aggrieved by the refusal of a county clerk to file any notice provided for in subsection A of this section may petition the district court for a writ of mandamus to compel the county clerk to record the notice.

2. At the time of refusal, the person aggrieved shall file a notice of refusal with the county clerk for the purpose of preserving priority of filing in the event the person prevails in any action so commenced, if the person wishes to preserve priority of filing. The refusal notice shall be submitted on a form provided by the county clerk, but must be filled out by the aggrieved party. A copy of the instrument that the clerk refused to file must be attached to the notice of refusal. The county clerk shall stamp the date of refusal on the notice of refusal.

3. The refusal notice shall be in the following form:

STATE OF OKLAHOMA

COUNTY

NOTICE OF REFUSAL

The Office of County Clerk of _____ County, Oklahoma, has on _____ (date) refused to file a document designated _____ (title of document or brief description of document).

The document constitutes a claim or lien on the following property: _____

(Description of

property. In case of real property, description must be the legal description for the property.) A copy of the refused document must be attached to this notice of refusal or the clerk cannot accept it for filing.

Signed: _____

Signed: _____

County Clerk
County, Oklahoma

Aggrieved party or attorney
for aggrieved party
Address: _____

4. The action for mandamus must be filed with the district court within twenty (20) days after the notice of refusal is filed with the county clerk. If the writ of mandamus is granted, the court clerk shall refund the fee for filing the action. Notice of the pendency of a mandamus action filed pursuant to this section shall be filed in accordance with Section 2004.2 of Title 12 of the Oklahoma Statutes. A file-stamped copy of the notice of the pendency of the action, identifying the case and the court in which the action is pending and the legal description of the land affected by the action shall be filed with the county clerk. If the court determines that the notice provided for in subsection A of this section is not sham legal process or is not for the purpose of slandering title, the court shall order the county clerk to record the notice. The court order shall include a notation of the book and page number of the index in which the notice of refusal is located and a statement that abstractors shall not show the pages on which the attachment to the notice of refusal is located in any abstract. For any notice which the court orders to be filed pursuant to this subsection, the date of filing shall be retroactive to the date the notice of refusal was filed.

5. If the court determines that the notice of claim of interest in land is sham legal process, the court shall issue an order that abstractors shall not show the pages on which the attachment to the notice of refusal is located in any abstract.

D. If a county clerk files a notice of interest in land that is sham legal process or refuses to file a notice of interest in land because the clerk believes the notice to be sham legal process, the clerk shall be immune from liability for such action in any civil suit.

E. A clerk shall post a sign, in letters at least one inch in height, that is clearly visible to the general public in or near

the clerk's office stating that it is a felony to intentionally or knowingly file or attempt to file sham legal process with the clerk. Failure of the clerk to post such a sign shall not create a defense to any criminal or civil action based on sham legal process.

SECTION 7. AMENDATORY 16 O.S. 1991, Section 79, is amended to read as follows:

Section 79. A. No person shall use the privilege of filing notices hereunder for the purpose of slandering the title to land and, in any action brought for the purpose of quieting title to land, if the court shall find that any person has filed a claim for that reason, he shall award the plaintiff all the costs of such action, including such attorney fees as the court may allow to the plaintiff, and, in addition, shall decree that the defendant asserting such claim shall pay to plaintiff ~~all~~ three times the damages that plaintiff may have sustained as the result of such notice of claim having been so filed for record.

B. A quiet title action shall be independent of any criminal action that may be filed against the defendant, and there shall be no requirement that the defendant in a quiet title action be convicted of any criminal act.

SECTION 8. REPEALER 21 O.S. 1991, Section 552, is hereby repealed.

SECTION 9. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

46-1-7757 SD