AN ACT

ENTITLED, An Act to prohibit the harassment of certain individuals by fraudulent legal proceedings or liens.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That chapter 7-9 be amended by adding thereto a NEW SECTION to read as follows:

A register of deeds may refuse to record any document that the law does not require or authorize a register to record or any document that the register has reasonable cause to believe is a counterfeit lien as defined in section 8 of this Act.

Section 2. That chapter 7-9 be amended by adding thereto a NEW SECTION to read as follows:

Any person whose document or lien is refused for recording by the register of deeds pursuant to section 1 of this Act may commence an action in the circuit court for that county for an order directing the register to file the document. If the court determines that the register is required or authorized by law to record the document or that the lien is not counterfeit, it shall order the register to record the document.

Section 3. That chapter 7-9 be amended by adding thereto a NEW SECTION to read as follows:

If a court determines that the register acted reasonably or in good faith in refusing to record a document that the register believed should not be recorded or a document that the register believed to be a counterfeit lien, the register is not liable for any civil damages resulting from the refusal.

Section 4. That chapter 16-2 be amended by adding thereto a NEW SECTION to read as follows:

A clerk of courts may refuse to file or docket any document that the law does not require or

authorize a clerk to file or docket or any document that the clerk has reasonable cause to believe is a counterfeit lien as defined in section 8 of this Act.

Section 5. That chapter 16-2 be amended by adding thereto a NEW SECTION to read as follows:

Any person whose document or lien is refused for filing or docketing by the clerk of courts pursuant to section 4 of this Act may commence an action in the circuit court for that county for an order directing the clerk to file or docket the document. If the court determines that the clerk is required or authorized by law to file or docket the document or that the lien is not counterfeit, it shall order the clerk to file or docket the document.

Section 6. That chapter 16-2 be amended by adding thereto a NEW SECTION to read as follows:

If a court determines that the clerk acted reasonably or in good faith in refusing to file or docket a document that the clerk believed should not be filed or docketed or a document that the clerk believed to be a counterfeit lien, the clerk is not liable for any civil damages resulting from the refusal.

Section 7. That chapter 22-11 be amended by adding thereto a NEW SECTION to read as follows:

Any person who offers a counterfeit lien for filing, registering, or recording in a public office knowing or having reason to know that the lien is counterfeit is guilty of a Class 1 misdemeanor. A second or subsequent conviction for a violation of this section is a Class 6 felony. The person's lack of belief in the jurisdiction or authority of the state or of the United States is no defense to a prosecution under this section.

Section 8. For purposes of section 7 of this Act, the term, offers, includes the mailing of the instrument to a public office with the knowledge or belief that it will be filed with, registered, or recorded in, or otherwise become a part of, the records of the public office.

For purposes of section 7 of this Act, the term, counterfeit lien, means a lien that:

(1) Is not provided for by a specific state or federal statute;

(2) Does not depend upon the consent of the owner of the property affected for its existence; and

(3) Is not an equitable or constructive lien imposed by a court recognized under the U.S. Constitution, federal laws, or the constitution or laws of this state.

Section 9. Any person who violates section 7 of this Act is liable in a civil action to any person for any injury, death, 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 reasonable expenses incurred as a result of prosecuting a civil action commenced under this section. A civil action under this section is not the exclusive remedy of a person who incurs injury, death, or loss to person or property as a result of a violation of section 7 of this Act.

Section 10. That chapter 22-11 be amended by adding thereto a NEW SECTION to read as follows:

Any person who harasses an individual by sending or delivering, or causing to be sent or delivered, any letter, paper, document, notice of intent to bring suit, or other notice or demand that simulates a form of court or legal process and that threatens the individual, directly or indirectly, with incarceration, monetary fines or penalties, or with the imposition of a counterfeit lien on the real or personal property of the individual is guilty of a Class 1 misdemeanor. A second or subsequent conviction for a violation of this section is a Class 6 felony. The person's lack of belief in the jurisdiction or authority of the state or of the United States is no defense to a prosecution under this section.

Section 11. For purposes of section 10 of this Act, the term, harasses, means a knowing and willful course of conduct directed at the individual which seriously alarms or annoys the individual and which serves no legitimate legal purpose.

For purposes of section 10 of this Act, the term, course of conduct, means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose.

Section 12. Any person who violates section 10 of this Act is liable in a civil action to any person for any injury, death, 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 reasonable expenses incurred as a result of prosecuting a civil action commenced under this section. A civil action under this section is not the exclusive remedy of a person who incurs injury, death, or loss to person or property as a result of a violation of section 10 of this Act.

Section 13. That chapter 22-11 be amended by adding thereto a NEW SECTION to read as follows:

Any person who, without authority under the U.S. Constitution, federal law, or the constitution or laws of this state, acts as a supreme court justice, a circuit court judge, a magistrate judge, a lay magistrate, a clerk of court or deputy, 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, is guilty of a Class 1 misdemeanor. It is no defense to a prosecution under this section that the judicial office the person pretended to hold does not exist.

Section 14. Any person who violates section 13 of this Act is liable in a civil action to any person for any injury, death, 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 reasonable expenses incurred as a result of prosecuting a civil action commenced under this section. A civil action under this section is not the exclusive remedy of a person who incurs injury, death, or loss to persons or property as a result of a violation of section 13 of this Act.

An Act to prohibit the harassment of certain individuals by fraudulent legal proceedings or liens.

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I certify that the attached Act originated in the

SENATE as Bill No. 97

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Secretary of the Senate

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_____
President of the Senate

Attest:

_____
Secretary of the Senate

_____
Speaker of the House

Attest:

_____
Chief Clerk

Senate Bill No. 97
File No. ____
Chapter No. _____

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Received at this Executive Office this ____ day of _____ ,

19___ at _____ M.

By _____
for the Governor

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The attached Act is hereby approved this _____ day of _____ , A.D., 19___

_____
Governor

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STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____ , 19___
at _____ o'clock __ M.

_____
Secretary of State

By _____
Asst. Secretary of State