

**SB**

**129**





Amendment #1 - FAILED  
to CS8B 129 (JUI) by Rep. Gara)

Change the requisite mental state from  
"reckless disregard" to "intentionally"

# ALASKA STATE LEGISLATURE

Senate District H  
600 E. Railroad Avenue  
Wasilla AK 99654  
907-376-4866  
907-373-4724 - Fax  
Senator\_Charlie\_Huggins@legis.state.ak.us



State Capitol, Room 417  
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[www.akrepublicans.org/huggins/](http://www.akrepublicans.org/huggins/)

**Charlie Huggins**  
**Senator**

April 12, 2005

To: Representative Lesil McGuire, Chairman  
House Judiciary Committee

From: Senator Charlie Huggins

Subject: Request to Schedule CSSB 129(JUD)

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I respectfully request the scheduling of CSSB 129(JUD), "An Act relating to the wrongful recording of a notice of pendency of an action relating to title to or right to possession of real property", for a hearing before your committee at your convenience.

Thank you.

Attachments

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## Charlie Huggins Senator

3/23/05

### Sponsor Statement

**CSSB 129(JUD) – An act relating to the wrongful recording of a notice of pendency of an action relating to title to or right to possession of real property**

---

CSSB 129(JUD) seeks to discourage abusive filings of illegal lis pendens notices and in fact makes it a Class A misdemeanor to file a wrongful "notice of lis pendens"<sup>1</sup>. While the filing does not create a formal lien, such a notice can have an impact similar to that of a lien on the ability of the targeted person to do business with the affected real estate.

CSSB 129(JUD) responds to instances of nuisance filings used as a form of retribution against public officials. Current law is clear that lis pendens are only supposed to be filed against property for which the title or right to possession is subject to litigation, but the recorder's office currently has no way to prevent people from filing improper lis pendens. Ordinarily, the improper filing is against property that is not subject to dispute; however, the filing is made simply because the filer has a grievance against the owner or someone connected with the owner.

In one case in 2003, a former state employee filed lis pendens targeting the home, development property and mining claims of members of the Alaska Board of Game, an assistant attorney general, and a real estate developer. None of the properties were actually the subject of a title or possession dispute, but the case took months and thousands of dollars of attorney time to resolve.

In a prosecution under this bill it is an affirmative defense that the owner of the property affected has consented in writing to the lien or the filing of the notice.

<sup>1</sup>*Notice of lis pendens* . – A notice filed on public records for the purpose of warning all persons that the title to certain property is in litigation, and that they are in danger of being bound by an adverse judgment. The notice is for the purpose of preserving rights pending litigation.

**Contact Information – Deborah Grundmann 465-4711**



## Alaska State Legislature

Senate Majority Web: [www.akrepublicans.org](http://www.akrepublicans.org)

Sponsor: Senator Charlie Huggins  
Current Version: CSSB 129 (JUD)  
Contact: Deborah Grundmann, 465-3878

### Fact Sheet for: Senate Bill 129

Short Title: WRONGFUL FILING OF LIS PENDENS

#### Summary:

- Makes it a Class A misdemeanor to file a wrongful notice that an action is pending that affects title to real property when the notice is filed with reckless disregard that the action would not affect title to the property, or no action is actually pending.

#### Benefits:

- Prohibits abusive real estate filings used for improper retribution against public servants.
- Eliminates public expense and unnecessary workload for court system and other staff.

#### Background:

- SB 129 relates to the wrongful recording of a notice of "lis pendens," which notifies a potential purchaser or lender that title to the property is subject to litigation. While the filing does not create a formal lien, such a notice can have an impact similar to that of a lien on the ability of the targeted person to do business with the affected real estate. The bill responds to instances of nuisance liens filed as a form of retribution against public officials. Current law clarifies that lis pendens are only supposed to be filed against property for which the title or right to possession is subject to litigation, but the recorder's office currently has no way to prevent people from filing improper lis pendens. Ordinarily, this is a filing against property that is not subject to dispute made simply because the filer has a grievance against the owner or someone connected with the owner. In one case in 2003, a former state employee filed lis pendens targeting the home, development property and mining claims of members of the Alaska Board of Game and an assistant attorney general. None of the properties were actually the subject of a title or possession dispute, but the case took months and thousands of dollars of attorney time to resolve.

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## Charlie Huggins Senator

### Sectional Analysis of CSSB 129(JUD) (wrongful recording of notice of pendency of action relating to title or possession of real property)

CSSB 129(JUD) seeks to discourage abusive filings of illegal lis pendens notices. There is currently no penalty for filing illegal lis pendens notices. Filing a lis pendens notice creates property title "clouds" that can interfere with property sales or financing.

**Sec. 1.** The first section of the bill adds an additional type of conduct to the actions designated in AS 11.46.560(a) as comprising "the crime of offering a false instrument for recording in the second degree." This crime is a Class A misdemeanor. Under CSSB 129(JUD) criminal liability is extended to those who file notices of lis pendens with the recorder of deeds with knowing or reckless disregard for the fact that the court action specified in the notice does not concern either the title to, or the right to possess, the real property referred to in the notice. Liability is also extended to those who file such a notice with knowing or reckless disregard for the fact that there is no pending court action at all that concerns either the title to, or the right to possess, the real property referred to in the notice.

The language in section 1 tracks AS 09.45.940, which sets out the circumstances under which it is proper to file with the recorder of deeds a notice of the pendency of an action affecting title to real property or the right to possession of real property. The common legal term for these notices is "notices of lis pendens." Under CSSB 129(JUD), a person knowingly or recklessly using a notice of lis pendens in circumstances not provided in AS 09.45.940 will, in general, be subject to prosecution.

**Sec. 2.** Section 2 makes it a complete defense to criminal liability if the person filing the wrongful notice shows that the owner of the property consented in writing to the filing. Thus, even if the filing of the notice is not within the law as set out in AS 09.45.940, the person making the filing is not guilty of a misdemeanor if the owner of the property consented in writing to let the wrongful document be filed with the recorder of deeds.

# ALASKA LAND TITLE ASSOCIATION

P.O. Box 241811 • Anchorage, Alaska 99524

March 22, 2005

The Honorable Charlie Huggins  
Alaska State Senate  
State Capitol Building  
Juneau, Alaska

Subject: Letter of Support for SB 129

Dear Senator Huggins:

The Legislative Committee of the Alaska Land Title Association (ALTA) has met and discussed SB129, an Act relating to wrongful recording of lis pendens. This letter is to express support by ALTA for SB129.

The Alaska Land Title Association is the state professional association and voice of the title insurance industry. ALTA members search, review and insure land titles to protect home buyers and mortgage lenders who invest in real estate. Members of the association are in business in communities throughout Alaska.

During our review and discussion on the bill, it was felt that SB129 would help prohibit abusive recordings of lis pendens against blameless property owners. While it is hard to imagine why someone would take such disingenuous methods, history has shown that this, indeed, can happen.

Thank you for sponsoring this bill and allowing us this opportunity to express support.

Sincerely,



Sheila Bader, President  
Alaska Land Title Association  
[Sheila@aktitle.com](mailto:Sheila@aktitle.com)

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

KENNETH H. MANNING, JD, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 ALASKA BOARD OF GAME, GREG )  
 ROCZICKA, Chair, GEORGE MATTZ, )  
 MIKE FI EAGLE, DANA PRUHS, )  
 BEN GRUSSENDORF, Vice Chair, )  
 GREG STREVELER, JULIE MAIER, )  
 STATE OF ALASKA DEPT. OF LAW, )  
 KEVIN SAXBY, ASSISTANT )  
 ATTORNEY GENERAL, State of )  
 Alaska Department of Law, )  
 )  
 Defendants. )

Case No. 3AN-02-4392 Ci

**AFFIDAVIT OF MARK SPARROW**

Mark Sparrow, being first duly sworn, deposes and states:

1. My name is Mark Sparrow. I am a resident of Anchorage, Alaska and am over the age of eighteen. I make this affidavit on personal knowledge.
2. I am not a defendant in this case.
3. I have never been a member of the Alaska Board of Game.
4. I do not know Kenneth Manning, and to my knowledge I have never had any contact with him.
5. Since February, 2003, I have been one of the owners of Lot 9A, Block 6, Plat 71-256, District 301 (hereafter "Lot 9A").

6. Lot 9A is an integral part of a 28-unit condominium development project that is scheduled for construction this summer.

7. Lot 9A is under contract for sale at a price of \$244,500. The title company for the transaction is First American Title.

8. First American Title has informed me that it will not insure the title of Lot 9A until the *lis pendens* filed by Mr. Manning is removed. Title insurance is required for the transaction to proceed.

9. If the *lis pendens* is not removed promptly, I believe I will suffer serious financial harm.

\_\_\_\_\_  
Mark Sparrow

STATE OF ALASKA  
ANCHORAGE, ~~SSC~~

)  
) ss.

THIRD JUDICIAL DISTRICT

Personally appeared before me the above-named Mark Sparrow this \_\_\_ day of April, 2004, and made oath that the foregoing statements are true to the best of his knowledge.

\_\_\_\_\_  
Notary Public IN AND FOR ALASKA

Printed name:

My commission expires: \_\_\_\_\_

# ALASKA STATE LEGISLATURE

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## Charlie Huggins Senator

3/23/05

### Sponsor Statement

**CSSB 129(JUD) – An act relating to the wrongful recording of a notice of pendency of an action relating to title to or right to possession of real property**

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CSSB 129(JUD) seeks to discourage abusive filings of illegal lis pendens notices and in fact makes it a Class A misdemeanor to file a wrongful "notice of lis pendens"<sup>1</sup>. While the filing does not create a formal lien, such a notice can have an impact similar to that of a lien on the ability of the targeted person to do business with the affected real estate.

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Sponsor: Senator Charlie Huggins  
Current Version: CSSB 129 (JUD)  
Contact: Deborah Grundmann, 465-3878

### Fact Sheet for: Senate Bill 129

**Short Title:** WRONGFUL FILING OF LIS PENDENS

**Summary:**

- Makes it a Class A misdemeanor to file a wrongful notice that an action is pending that affects title to real property when the notice is filed with reckless disregard that the action would not affect title to the property, or no action is actually pending.

**Benefits:**

- Prohibits abusive real estate filings used for improper retribution against public servants.
- Eliminates public expense and unnecessary workload for court system and other staff.

**Background:**

- SB 129 relates to the wrongful recording of a notice of "lis pendens," which notifies a potential purchaser or lender that title to the property is subject to litigation. While the filing does not create a formal lien, such a notice can have an impact similar to that of a lien on the ability of the targeted person to do business with the affected real estate. The bill responds to instances of nuisance liens filed as a form of retribution against public officials. Current law clarifies that lis pendens are only supposed to be filed against property for which the title or right to possession is subject to litigation, but the recorder's office currently has no way to prevent people from filing improper lis pendens. Ordinarily, this is a filing against property that is not subject to dispute made simply because the filer has a grievance against the owner or someone connected with the owner. In one case in 2003, a former state employee filed lis pendens targeting the homes, development property and mining claims of members of the Alaska Board of Game and an assistant attorney general. None of the properties were actually the subject of a title or possession dispute, but the case took months and thousands of dollars of attorney time to resolve.

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Alaska Land Title Association  
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THIRD JUDICIAL DISTRICT AT ANCHORAGE

KENNETH H. MANNING, JD, )  
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 Plaintiff, )  
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 ALASKA BOARD OF GAME, GREG )  
 ROCZICKA, Chair, GEORGE MATTZ, )  
 MIKE FLEAGLE, DANA PRUHS, )  
 BEN GRUSSENDORF, Vice Chair, )  
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 STATE OF ALASKA DEPT. OF LAW, )  
 KEVIN SAXBY, ASSISTANT )  
 ATTORNEY GENERAL, State of )  
 Alaska Department of Law, )  
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Mark Sparrow

STATE OF ALASKA      )  
ANCHORAGE, ss      ) ss.

THIRD JUDICIAL DISTRICT

Personally appeared before me the above-named Mark Sparrow this \_\_\_ day of April, 2004, and made oath that the foregoing statements are true to the best of his knowledge.

\_\_\_\_\_  
Notary Public IN AND FOR ALASKA

Printed name:

My commission expires: \_\_\_\_\_

# FISCAL NOTE

STATE OF ALASKA  
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2  
Bill Version: CSSB 129(JUD)  
(S) Publish Date: 3/24/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: LAW  
Title "An Act relating to the wrongful recording of a RDU CIVIL  
notice of pendency..." Component Torts & Workers' Compensation  
Sponsor Senator Huggins  
Requester Senate Judiciary Component No. \_\_\_\_\_

**Expenditures/Revenues**

(Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

The proposed legislation would make it a Class A misdemeanor to present a lis pendens to a recorder with reckless disregard for the fact that the underlying action does not concern title to or possession of the property at issue. The intent of the legislation is to deter the use of improper restraints on real property of public officials and members of the public as a means of retribution or intimidation.

Passage of this legislation will have no fiscal impact on the Department of Law.

Prepared by: Kathryn Daughhete, Director  
Division: Administrative Services Division  
Approved by: K. Daughhete for Scott Nordstrand, Acting Attorney General  
Agency: Department of Law

Phone: 465-3673  
Date/Time: 3/18/05 2:32 PM  
Date: 3/18/2005

# FISCAL NOTE

STATE OF ALASKA  
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: CSSB 129(JUD)  
(S) Publish Date: 3/24/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: \_\_\_\_\_  
Title Wrongful Filing of Lis Pendens BRU Alaska Court System  
Component Trial Courts  
Sponsor Senator Huggins  
Requester \_\_\_\_\_ Component No. 768

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1007 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)  
The court system does not anticipate any fiscal impact from the passage of SB 129.

Prepared by: Douglas Wooliver, Administrative Attorney Phone 463-4750  
Division Alaska Court System Date/Time 3/21/05 11:35 AM  
Approved by: Doug Wooliver for Stephanie Cole, Administrative Director Date 3/21/2005  
Agency Alaska Court System