

## 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.

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.

#### Example

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.

#### Senate Judiciary Committee – added – the words \* “in writing” page 2 line 12

**When there is a prosecution under this section it is an affirmative defense that the owner of the property affected has consented \* in writing to the lien.**

<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.**