

HOUSE BILL No. 2569

By Committee on Judiciary

2-6

1 AN ACT concerning liens or claims against real or personal property;
2 relating to prohibitions on certain filings; public officials; notice;
3 criminal penalties; amending K.S.A. 2013 Supp. 58-4301 and repealing
4 the existing section.
5

6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2013 Supp. 58-4301 is hereby amended to read as
8 follows: 58-4301. (a) (1) Any person who owns real or personal property
9 or an interest in real or personal property or who is the purported debtor or
10 obligor and who has reason to believe that any document or instrument
11 purporting to create a lien or claim against the real or personal property or
12 an interest in real or personal property previously filed or submitted for
13 filing and recording is fraudulent as defined in subsection (e) may
14 complete and file, at any time without any time limitation, with the district
15 court of the county in which such lien or claim has been filed or submitted
16 for filing, or with the district court of the county in which the property or
17 the rights appertaining thereto is situated, a motion for judicial review of
18 the status of documentation or instrument purporting to create a lien or
19 claim as provided in this section. Such motion shall be supported by the
20 affidavit of the movant or the movant's attorney setting forth a concise
21 statement of the facts upon which the claim for relief is based. Such
22 motion shall be deemed sufficient if in substantial compliance with the
23 form set forth by the judicial council.

24 (2) The completed form for ordinary certificate of acknowledgment
25 shall be deemed sufficient if in substantial compliance with the form set
26 forth by the judicial council.

27 (3) The clerk of the district court shall not collect a filing fee for
28 filing a motion as provided in this section.

29 (b) The court's findings may be made solely on a review of the
30 documentation or instrument attached to the motion and without hearing
31 any testimonial evidence. The district court's review may be made ex parte
32 without delay or notice of any kind. An appellate court shall expedite
33 review of a district court's findings as provided in this section.

34 (c) (1) After review, the district court shall enter appropriate findings
35 of fact and conclusions of law in a form as provided in subsection (d)
36 regarding the documentation or instrument purporting to create a lien or

1 claim, which shall be filed and indexed in the same filing office in the
2 appropriate class of records in which the original documentation or
3 instrument in question was filed.

4 (2) The court's findings of fact and conclusions of law may include an
5 order setting aside the lien and directing the filing officer to nullify the lien
6 instrument purporting to create the lien or claim. If the lien or claim was
7 filed pursuant to the uniform commercial code, such order shall act as a
8 termination statement filed pursuant to such code.

9 (3) *If the court orders that the lien or claim is set aside, the court's*
10 *findings of fact and conclusions of law shall also include an order*
11 *prohibiting the person who filed such lien or claim from filing any future*
12 *lien or claim with any filing officer without approval of the court that*
13 *enters the order. Upon receipt of a copy of such order, the register of deeds*
14 *or the secretary of state shall not accept further liens or claims from such*
15 *person unless such filing is accompanied by a court order approving the*
16 *filing of such lien or claim by such person.*

17 ~~(4)~~ (4) The filing officer shall not collect a filing fee for filing a
18 district court's findings of fact and conclusions of law as provided in this
19 section.

20 ~~(5)~~ (5) A copy of the findings of fact and conclusions of law shall be
21 mailed to the movant and the person who filed the lien or claim at the last
22 known address of each person within seven days of the date that the
23 findings of fact and conclusions of law is issued by the district court.

24 (d) The findings of fact and conclusions of law shall be deemed
25 sufficient if in substantial compliance with the form set forth by the
26 judicial council.

27 (e) As used in this section, a document or instrument is presumed to
28 be fraudulent if the document or instrument purports to create a lien or
29 assert a claim against real or personal property or an interest in real or
30 personal property and:

31 (1) Is not a document or instrument provided for by the constitution
32 or laws of this state or of the United States;

33 (2) is not created by implied or express consent or agreement of the
34 obligor, debtor or the owner of the real or personal property or an interest
35 in the real or personal property, if required under the laws of this state, or
36 by implied or express consent or agreement of an agent, fiduciary or other
37 representative of that person; or

38 (3) is not an equitable, constructive or other lien imposed by a court
39 with jurisdiction created or established under the constitution or laws of
40 this state or of the United States.

41 (f) As used in this section, filing office or filing officer refers to the
42 officer and office where a document or instrument as described in this
43 section is appropriately filed as provided by law, including, but not limited

1 to, the register of deeds, the secretary of state and the district court and
2 filing officers related thereto.

3 New Sec. 2. (a) As used in this section, "public official" means any
4 person who is a public officer, candidate for public office or public
5 employee.

6 (b) A public official may file a written request to be notified of any
7 lien or claim filed on such public official's real property with the register
8 of deeds in the county in which such property is located and with the
9 secretary of state. Such written request shall expire after five years and
10 such public official may file a new written request at any time.

11 (c) After receipt of a written request pursuant to this section, the
12 office receiving a lien or claim on such public official's real property shall
13 notify such public official within three business days that a lien or claim
14 has been filed on such public official's real property. The notice
15 requirement in this subsection shall not apply to a lien placed on the public
16 official's real property by a recognized financial institution.

17 New Sec. 3. (a) It shall be unlawful for any person to file, in any
18 public record or in any private record which is generally available to the
19 public, any lien or claim against the real or personal property of a public
20 official, when such person knows or reasonably should know that such lien
21 or claim is false or contains any materially false, fictitious, or fraudulent
22 statement or representation.

23 (b) Violation of this section is a severity level 8, nonperson felony

24 (c) As used in this section, "public official" means any person who is
25 a public officer, candidate for public office or public employee.

26 (d) This section shall be part of and supplemental to the Kansas
27 criminal code.

28 Sec. 4. K.S.A. 2013 Supp. 58-4301 is hereby repealed.

29 Sec. 5. This act shall take effect and be in force from and after its
30 publication in the statute book.