

CHAPTER 125  
SENATE BILL No. 537

AN ACT concerning liens and claims against real or personal property; amending K.S.A. 58-4301 and repealing the existing section.

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

New Section 1. (a) After the court has made a finding that a lien or claim is fraudulent pursuant to K.S.A. 58-4301, and amendments thereto, the aggrieved person may bring a civil action for damages and injunctive relief against the person who filed or recorded the fraudulent documents. No action may be brought under this section against the filing office or filing officer as those terms are described in subsection (f) of K.S.A. 58-4301, and amendments thereto.

(b) In such an action, the burden shall be on the plaintiff to prove by a preponderance of the evidence that the defendant knew or should have known that the documents filed or recorded were in violation of K.S.A. 58-4301, and amendments thereto.

(c) Such an action shall be bifurcated from an action under K.S.A. 58-4301, and amendments thereto, and service shall be made in accordance with article 3 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto.

(d) The court shall award the prevailing party the costs of the proceeding arising under this section and may award the prevailing party reasonable attorney's fees.

(e) After trial, and if the court makes a finding that a lien or claim is fraudulent pursuant to K.S.A. 58-4301, and amendments thereto, the court may:

(1) Order the defendant to pay actual and liquidated damages up to \$10,000 or, if actual damages exceed \$10,000, all actual damages, to the plaintiff for each violation of K.S.A. 58-4301, and amendments thereto;

(2) enjoin the defendant from filing any future liens or claims, or future liens or claims against persons specified by the court, with any filing officer without approval of the court that enters the order; and

(3) enjoin the defendant from filing any future liens or claims that would violate K.S.A. 58-4301, and amendments thereto.

(f) Any order set forth in subsection (e) shall be subject to modification and termination by the court that enters the order.

(g) Each violation of any order set forth in subsection (e) may be considered contempt of court, punishable by a fine not to exceed \$1,000, imprisonment in the county jail for not more than 120 days, or both such fine and imprisonment.

Sec. 2. K.S.A. 58-4301 is hereby amended to read as follows: 58-4301. (a) (1) Any person who owns real or personal property or an interest in real or personal property or who is the purported debtor or obligor and who has reason to believe that any document or instrument purporting to create a lien or claim against the real or personal property or an interest in real or personal property previously filed or submitted for filing and recording is fraudulent as defined in subsection (e) may complete and file, at any time without any time limitation, with the district court of the county in which such lien or claim has been filed or submitted for filing, or with the district court of the county in which the property or the rights appertaining thereto is situated, a motion for judicial review of the status of documentation or instrument purporting to create a lien or claim as provided in this section. Such motion shall be supported by the affidavit of the movant or the movant's attorney setting forth a concise statement of the facts upon which the claim for relief is based. Such motion shall be deemed sufficient if in substantial compliance with the form set forth by the judicial council.

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

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

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

review of a district court's findings as provided in this section.

(c) (1) After review, the district court shall enter appropriate findings of fact and conclusions of law in a form as provided in subsection (d) regarding the documentation or instrument purporting to create a lien or claim, which shall be filed and indexed in the same filing office in the appropriate class of records in which the original documentation or instrument in question was filed.

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

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

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

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

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

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

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

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

(f) As used in this ~~subsection~~ section, filing office or filing officer refers to the officer and office where a document or instrument as described in this section is appropriately filed as provided by law, including, but not limited to the register of deeds, the secretary of state and the district court and filing officers related thereto.

Sec. 3. K.S.A. 58-4301 is hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 19, 2010.

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