

SENATE BILL No. 10

By Committee on Judiciary

1-10

Proposed Amendments to SB 10
Senator Pilcher-Cook
January 30, 2017
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Office of Revisor of Statutes

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. 2016 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. 2016 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

strike in line 2

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.*

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

16 (4)(5) A copy of the findings of fact and conclusions of law shall be
17 mailed to the movant and the person who filed the lien or claim at the last
18 known address of each person within seven days of the date that the
19 findings of fact and conclusions of law is issued by the district court.

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

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

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

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

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

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

42 New Sec. 2. (a) It shall be unlawful for any person to present to a
43 recorder of record for filing in any public record any lien or claim against

1 the real or personal property of a public official, when such person knows
2 or reasonably should know that such lien or claim is false or contains any
3 materially false, fictitious or fraudulent statement or representation.

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

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

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

9 Sec. 3. K.S.A. 2016 Supp. 58-4301 is hereby repealed.

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

any

strike in line 1

strike in lines 5-7