

As Amended by House Committee

Session of 2021

SENATE BILL No. 58

By Committee on Judiciary

1-21

1 AN ACT concerning liens or claims against real or personal property;
2 relating to prohibitions on certain filings; notice; criminal penalties;
3 amending K.S.A. 2020 Supp. 58-4301 and 58-4302 and repealing the
4 existing sections.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 New Section 1. (a) It shall be unlawful for any person to:

8 (1) Cause to be presented to a recorder of record for filing in any
9 public record any lien or claim against any real or personal property when
10 such person knows or reasonably should know that such lien or claim is
11 false or contains any materially false, fictitious or fraudulent statement or
12 representation;

13 (2) cause to be presented to a recorder of record for filing in any
14 public record any document that purports to assert a lien against real or
15 personal property of any person or entity that is not expressly provided for
16 by the constitution or laws of this state or of the United States, does not
17 depend on the consent of the owner of the real or personal property
18 affected and is not an equitable or constructive lien imposed by a court
19 with jurisdiction created or established under the constitution or laws of
20 this state or of the United States;

21 (3) cause to be presented to a recorder of record for filing in any
22 public record any financing statement pursuant to article 9 of chapter 84 of
23 the Kansas Statutes Annotated, and amendments thereto, when such person
24 knows or reasonably should know that the financing statement is not based
25 on a bona fide security agreement or was not authorized or authenticated
26 by the alleged debtor identified in the financing statement or an authorized
27 representative of the alleged debtor;

28 (4) cause to be presented to a recorder of record for filing in any
29 public record any document filed in an attempt to harass an entity,
30 individual or public official, or obstruct a governmental operation or
31 judicial proceeding, when such person knows or reasonably should know
32 that the document contains false information; or

33 (5) violate a court order issued pursuant to K.S.A. 58-4301, and
34 amendments thereto.

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

36 (c) This section shall be a part of and supplemental to the Kansas

1 criminal code.

2 Sec. 2. K.S.A. 2020 Supp. 58-4301 is hereby amended to read as
3 follows: 58-4301. (a) (1) Any person who owns real or personal property
4 or an interest in real or personal property or who is the purported debtor or
5 obligor and who has reason to believe that any document or instrument
6 purporting to create a lien or claim against the real or personal property or
7 an interest in real or personal property previously filed or submitted for
8 filing and recording is fraudulent as defined in subsection (e) may
9 complete and file, at any time without any time limitation, with the district
10 court of the county in which such lien or claim has been filed or submitted
11 for filing, or with the district court of the county in which the property or
12 the rights appertaining thereto is situated, a motion for judicial review of
13 the status of documentation or instrument purporting to create a lien or
14 claim as provided in this section. Such motion shall be supported by the
15 affidavit of the movant or the movant's attorney setting forth a concise
16 statement of the facts upon which the claim for relief is based. Such
17 motion shall be deemed sufficient if in substantial compliance with the
18 form set forth by the judicial council.

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

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

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

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

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

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

42 (4) *If the court orders that the lien or claim is set aside, the court's*
43 *findings of fact and conclusions of law shall also include:*

1 (A) *An order prohibiting the person who filed such lien or claim from*
2 *filing any future lien or claim with any filing officer without approval of*
3 *the court that enters the order; and*

4 (B) *a provision stating that a violation of the order may subject the*
5 *party in violation to civil and criminal penalties.*

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

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

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

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

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

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

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

32 Sec. 3. K.S.A. 2020 Supp. 58-4302 is hereby amended to read as
33 follows: 58-4302. (a) After the court has made a finding that a lien or
34 claim is fraudulent pursuant to K.S.A. 58-4301, and amendments thereto,
35 the aggrieved person may bring a civil action for damages and injunctive
36 relief against the person who filed or recorded the fraudulent documents.
37 No action may be brought under this section against the filing office or
38 filing officer as those terms are described in ~~subsection (f)~~ of K.S.A. 58-
39 4301 *(f)*, and amendments thereto.

40 (b) In such an action, the burden shall be on the plaintiff to prove by a
41 preponderance of the evidence that the defendant knew or should have
42 known that the documents filed or recorded were in violation of K.S.A.
43 58-4301, and amendments thereto.

1 (c) Such an action shall be bifurcated from an action under K.S.A.
2 58-4301, and amendments thereto, and service shall be made in
3 accordance with article 3 of chapter 60 of the Kansas Statutes Annotated,
4 and amendments thereto.

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

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

11 (1) Order the defendant to pay actual and liquidated damages up to
12 \$10,000 or, if actual damages exceed \$10,000, all actual damages, to the
13 plaintiff for each violation of K.S.A. 58-4301, and amendments thereto;

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

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

19 (f) Any order set forth in subsection (e) shall be subject to
20 modification and termination by the court that enters the order. *Such order*
21 *shall also include a provision stating that a violation of the order may*
22 *subject the party in violation to civil and criminal penalties.*

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

27 Sec. 4. K.S.A. 2020 Supp. 58-4301 and 58-4302 are hereby repealed.

28 Sec. 5. This act shall take effect and be in force from and after its
29 publication in the ~~statute book~~ **Kansas register**.