

SENATE BILL No. 372

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; notice; criminal penalties;
3 amending K.S.A. 2019 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 Section 1. K.S.A. 2019 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) The filing officer shall not collect a filing fee for filing a district
10 court's findings of fact and conclusions of law as provided in this section.

11 (4) *If the court orders that the lien or claim is set aside, the court's*
12 *findings of fact and conclusions of law shall also include: (A) An order*
13 *prohibiting the person who filed such lien or claim from filing any future*
14 *lien or claim with any filing officer without approval of the court that*
15 *enters the order; and (B) a provision stating that a violation of the order*
16 *may subject the party in violation to civil and criminal penalties.*

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

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

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

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

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

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

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

43 Sec. 2. K.S.A. 2019 Supp. 58-4302 is hereby amended to read as

1 follows: 58-4302. (a) After the court has made a finding that a lien or
2 claim is fraudulent pursuant to K.S.A. 58-4301, and amendments thereto,
3 the aggrieved person may bring a civil action for damages and injunctive
4 relief against the person who filed or recorded the fraudulent documents.
5 No action may be brought under this section against the filing office or
6 filing officer as those terms are described in ~~subsection (f) of~~ K.S.A. 58-
7 4301(f), and amendments thereto.

8 (b) In such an action, the burden shall be on the plaintiff to prove by a
9 preponderance of the evidence that the defendant knew or should have
10 known that the documents filed or recorded were in violation of K.S.A.
11 58-4301, and amendments thereto.

12 (c) Such an action shall be bifurcated from an action under K.S.A.
13 58-4301, and amendments thereto, and service shall be made in
14 accordance with article 3 of chapter 60 of the Kansas Statutes Annotated,
15 and amendments thereto.

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

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

22 (1) Order the defendant to pay actual and liquidated damages up to
23 \$10,000 or, if actual damages exceed \$10,000, all actual damages, to the
24 plaintiff for each violation of K.S.A. 58-4301, and amendments thereto;

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

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

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

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

38 New Sec. 3. (a) It shall be unlawful for any person to:

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

1 (2) cause to be presented to a recorder of record for filing in any
2 public record any document that purports to assert a lien against real or
3 personal property of any person or entity that is not expressly provided for
4 by the constitution or laws of this state or of the United States, does not
5 depend on the consent of the owner of the real or personal property
6 affected and is not an equitable or constructive lien imposed by a court
7 with jurisdiction created or established under the constitution or laws of
8 this state or of the United States;

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

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

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

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

24 (c) This section shall be a part of and supplemental to the Kansas
25 criminal code.

26 Sec. 4. K.S.A. 2019 Supp. 58-4301 and 58-4302 are hereby repealed.

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