

SESSION OF 2010

**CONFERENCE COMMITTEE REPORT BRIEF
SENATE BILL NO. 537**

As Agreed to March 29, 2010

Brief*

SB 537, as amended, would create new law to authorize any person aggrieved by an alleged violation of the statute on expedited determination of validity of liens to bring a civil action against the person who filed or recorded the documents, after the court makes a finding that a lien or claim is fraudulent. The bill would specify, however, that no action may be brought against the filing office or filing officer. The burden would be on the plaintiff to prove, by a preponderance of the evidence, that the defendant knew or should have known that documents filed or recorded were in violation of the statute on expedited determination of validity of liens.

The court would be required to award costs to the prevailing party. The court would be granted the discretion to award attorney's fees. After trial, and if the court makes a finding the lien or claim is fraudulent, the court may:

- Order the defendant to pay actual and liquidated damages of up to \$10,000 for each violation of KSA 58-4301 (expedited determination of validity of liens) or actual damages for any specific violation of KSA 58-4301, whichever is greater;
- Enjoin the defendant from filing any future liens or claims against persons specified by the court, with any filing officer without approval of the court that enters the order; and

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- Enjoin the defendant from filing any future liens or claims that would violate the statute on expedited determination of validity of liens.

Conference Committee Action

The Conference Committee agreed to:

- Require the court make a finding pursuant to KSA 58-4301 that the lien or claim is fraudulent prior to any civil action being filed (House position);
- Expressly prohibit actions against a filing officer or office (House position);
- Require the court to award court costs and give the court discretion to award attorney's fees to the prevailing party (modified House and Senate position);
- Require the court to award actual and liquidated damages up to \$10,000 for each violation of KSA 58-4301 or actual damages for any specific violation of KSA 58-4301, whichever is greater;
- Strike the language setting the fine and jail time (House position); and
- Authorize a court to issue a restraining order protecting persons specified by the court from a violation of the statute on expedited determination of validity of liens.

Background

Representatives of the Haskell County Counselor's Office and the Kansas Association of Chiefs of Police appeared as proponents of the bill in the Senate Committee hearing. There was no testimony in opposition to the bill in the Senate Committee hearing.

The Senate Committee amended the bill to:

- Clarify that the burden of proof would 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 the statute on expedited determination of validity of liens; and
- Add a provision authorizing a contempt action by any person aggrieved by a violation of any order by the court after trial, regardless of whether such person was a party to the original civil action.

Representatives of the Haskell County Counselor's Office, the Kansas Association of Chiefs of Police, the Kansas Sheriffs' Association, and the Kansas Peace Officers Association appeared as proponents of the bill in the House Committee hearing. No opponents appeared.

The House Committee made several amendments to the bill. First, the Committee modified the bill's existing language to clarify that an aggrieved person may bring a civil action for damages and injunctive relief against the person who filed or recorded the documents, after the court makes a finding that a lien or claim is fraudulent. An additional amendment makes clear that no action may be brought against the filing office or filing officer. The Committee also amended the bill to allow the court to award costs, fees, \$500 in actual damages for each violation, and injunctive relief to the prevailing party. Finally, the Committee deleted existing language that would have:

- Required a court to make findings of fact and award costs of the proceeding to the prevailing party and allowing a court to grant injunctive relief;
- For contempt penalties, set \$1,000 as the limit for contempt fines and 120 days as the limit for imprisonment in the county jail; and

- Given any aggrieved person the ability to bring a contempt action, regardless of whether that person was a party to the original civil action.

According to the fiscal note on the bill, as introduced, it would increase litigation in the courts when there is an attempt to abuse the lien system. The Office of Judicial Administration indicates that there may be a fiscal effect on the operations of the court system, but it would be negligible and not require additional resources. This fiscal note may no longer be applicable, however, due to the House Committee's amendments.

Liens