

SESSION OF 2021

SUPPLEMENTAL NOTE ON SENATE BILL NO. 58

As Amended by House Committee on Judiciary

Brief*

SB 58, as amended, would add a provision to the Kansas Criminal Code that would prohibit the filing of certain liens or claims against real or personal property and provide for criminal penalties, as follows.

The bill would provide it is a severity level 8, nonperson felony for any person to present for filing in any public record:

- Any lien or claim against any real or personal property when such person knows or reasonably should know that such lien or claim is false or contains any materially false, fictitious or fraudulent statement or representation;
- Any document that purports to assert a lien against real or personal property of any person or entity that is not expressly provided for in Kansas or federal law, does not depend on the consent of the owner of the real or personal property affected, and is not an equitable or constructive lien imposed by a court with proper jurisdiction;
- Any financing statement pursuant to article 9 of the Uniform Commercial Code, when such person knows or reasonably should know that the financing statement is not based on a *bona fide* security agreement or was not authorized or authenticated by the alleged debtor identified in the

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

financing statement or the debtor's authorized representative; or

- Any document filed in an attempt to harass an entity, individual or public official, or obstruct a governmental operation or judicial proceeding, when such person knows or reasonably should know that the document contains false information.

Under the new crime, it also would be unlawful for any person to violate a court order issued pursuant to the statute governing an expedited process to review and determine the validity of liens and claims against real or personal property. In that statute, the bill would add to this process a requirement that, if the court orders the lien or claim to be set aside, the court's findings of fact and conclusions of law must include:

- An order prohibiting the person who filed such lien or claim from filing any future lien or claim with any filing officer without approval of the court that enters the order; and
- A provision stating that a violation of the order may subject the party in violation to civil and criminal penalties.

The bill also would require any order finding that a lien or claim is fraudulent to include a provision stating a violation of the order may result in civil and criminal penalties, and remove a provision providing for a specific penalty of imprisonment of up to 120 days, a fine not to exceed \$1,000, or both.

The bill would make technical amendments to ensure consistency in statutory references and phrasing.

The bill would be in effect upon publication in the *Kansas Register*.

Background

The bill was introduced in the Senate Committee on Judiciary at the request of the Office of the Attorney General (OAG).

Senate Committee on Judiciary

In the Senate Committee hearing on February 3, 2021, representatives of the OAG, Kansas District Judges Association, League of Kansas Municipalities, and the Office of the Secretary of State, and a representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs Association testified as **proponents** on the bill. The proponents generally stated this bill is needed to address fraudulent lien filings made with the intent to harass public officials and employees. No other testimony was provided.

House Committee on Judiciary

In the House Committee hearing on March 15, 2021, the conferees appearing in the Senate Committee again testified as **proponents** on the bill. No other testimony was provided.

On March 18, 2021, the House Committee amended the bill to make it effective upon publication in the *Kansas Register*.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill as introduced, the Office of Judicial Administration (OJA) indicates enactment of the bill could have a fiscal effect on the Judicial Branch because it creates a new crime, which could result in more time spent by court employees and judges processing and deciding these cases. Enactment of the bill could also increase the amount of

supervision of offenders required by court service officers. OJA also estimates enactment of the bill could result in the collection of docket fees and supervision fees assessed in those cases filed under the bill's provisions.

The Kansas Sentencing Commission (Commission) indicates enactment of the bill could have an effect on prison admissions and beds; however, the Commission estimates the effect would be negligible.

Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2022 Governor's Budget Report*.

Personal property; real property; fraudulent liens; criminal penalties