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MEMORANDUM

To: Senate Committee on Judiciary
From: Office of Revisor of Statutes
Date: February 3, 2021
Subject: Bill Brief for SB 58

Senate Bill 58 prohibits the filing of certain liens or claims against real or personal property and provides for criminal penalties.

Section 1 would enact a new statute that would be part of and supplemental to the Kansas criminal code. It would be unlawful for any person to: (1) 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; (2) present for filing in any public record any document that purports to assert a lien against real or personal property of any person or entity that is not provided for by law; (3) present for filing in any public record 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 lawful; (4) present for filing in any public record 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; or (5) violate a court order issued pursuant to K.S.A. 58-4301. Violation of this section would be a severity level 8, nonperson felony.

Section 2 amends K.S.A. 58-4301, which provides for an expedited process to review and determine the validity of liens and claims against real or personal property. Under current law, a person may file a motion for judicial review of documentation or an instrument purporting to create a lien or claim if they believe that the documentation or instrument is fraudulent. The court may make findings of fact and conclusions of law including an order setting aside the lien and directing the filing officer to nullify the lien instrument. The bill would add a provision requiring that if the court orders that the lien or claim is set aside, the court's findings of fact and conclusions of law shall also include: (1) 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 (2) a provision stating that a violation of the order may subject the party in violation to civil and criminal penalties.

Section 3 amends K.S.A. 58-4302, which provides that after a court has made a finding that a lien or claim is fraudulent pursuant to K.S.A. 58-4301, the aggrieved person may bring a civil action for damages and injunctive relief against the person who filed or recorded the fraudulent documents. Current law provides that violation of an order or injunction entered under this section may be punished with civil and criminal penalties. The bill would preserve the civil action but punishment for violations of an order or injunction would be under the criminal provisions in Section 1.