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HOUSE BILL 92

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

INTRODUCED BY

R. DAVID PEDERSON

FOR THE COURTS, CORRECTIONS AND CRIMINAL JUSTICE COMMITTEE

AN ACT

**RELATING TO THE EFFICIENT FILING AND RECORDING OF DOCUMENTS;
PROVIDING FOR THE PROTECTION OF PUBLIC OFFICIALS, PUBLIC
EMPLOYEES AND OTHERS AGAINST NONCONSENSUAL COMMON LAW LIENS;
ENACTING THE LIEN PROTECTION EFFICIENCY ACT.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**Section 1. SHORT TITLE. -- This act may be cited as the
"Lien Protection Efficiency Act".**

Section 2. FINDINGS--PURPOSE. --

A. The legislature finds:

**(1) there is a problem with the presentation
for filing or recording of invalid instruments that purport to
affect the real or personal property interests of persons,
including elected or appointed officials and employees of
state, local and federal government. These instruments, which**

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1 have no basis in fact or law, have serious disruptive effects
2 on property interests and title, appear on title searches and
3 other disclosures based on public records and are costly and
4 time-consuming to expunge. These instruments have serious
5 disruptive effects on the conduct of government business and
6 are costly and time-consuming to both government entities and
7 individual officials and employees;

8 (2) officials and employees authorized by law
9 to accept for filing or recording liens, deeds, instruments,
10 judgments or other documents purporting to establish
11 nonconsensual common law liens do not have discretionary
12 authority or mechanisms to prevent the filing, recording or
13 disclosure of frivolous lien claims if the documents comply
14 with certain minimum format requirements. It would be
15 inefficient and would require substantial government
16 expenditure to have the legal sufficiency of documents
17 submitted for filing or recording determined in advance of
18 acceptance; and

19 (3) it is necessary and in the best interest
20 of New Mexico and its citizens to legislatively provide a
21 means to relieve this problem, to prevent the filing,
22 recording or disclosure of frivolous lien claims and to
23 authorize actions to void frivolous lien claims.

24 B. The purpose of the Lien Protection Efficiency
25 Act is to provide for the efficient filing and recording of

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1 documents and the protection of public officials and employees
2 and the citizens of the state against nonconsensual common law
3 liens by imposing limitations on the circumstances in which
4 nonconsensual common law liens shall be recognized in the
5 state.

6 Section 3. DEFINITIONS. -- As used in the Lien Protection
7 Efficiency Act:

8 A. "court" means:

9 (1) a court created by the constitution of
10 the United States or pursuant to federal law, including but
11 not limited to the United States supreme court, the United
12 States courts of appeals, the United States district or
13 administrative courts or other federal courts of inferior
14 jurisdiction, but does not include administrative adjudicative
15 bodies;

16 (2) a court created by the constitution of
17 New Mexico or pursuant to New Mexico law, including but not
18 limited to the supreme court, the court of appeals, district
19 courts, magistrate courts, metropolitan courts and municipal
20 courts, but does not include administrative adjudicative
21 bodies; and

22 (3) a court comparable to any of those listed
23 in Paragraph (2) of this subsection that is created by the
24 constitution of another state or pursuant to the state law of
25 another state;

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1 B. "federal official or employee" means an
2 appointed or elected official or any employee of a federal
3 agency, board, commission or department in any branch of the
4 federal government;

5 C. "filing officer" means the secretary of state;
6 the clerk of any county or court; or any state, local or
7 federal official or employee authorized by law to accept for
8 filing and keep as a public record any lien, deed, instrument,
9 judgment or other document, whether paper, electronic or other
10 form;

11 D. "lien" means an encumbrance on property as
12 security for the payment of a debt;

13 E. "nonconsensual common law lien" means a
14 document, regardless of self-description, that purports to
15 assert a lien against the assets, real or personal, of any
16 person that:

17 (1) is not expressly provided for by a
18 specific state or federal statute;

19 (2) does not depend upon the consent of the
20 owner of the property affected or the existence of a contract
21 for its existence; or

22 (3) is not an equitable or constructive lien
23 imposed by a court of competent jurisdiction; and

24 F. "state or local official or employee" means an
25 appointed or elected official or any employee of a state

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1 agency, board, commission, department in any branch of state
2 government, or state institution of higher education, or a
3 school district, political subdivision or unit of local
4 government of this state.

5 Section 4. CONSTRUCTION. --

6 A. Nothing in the Lien Protection Efficiency Act
7 shall be construed to create a lien or interest in property
8 not otherwise existing under state or federal law.

9 B. Nothing in the Lien Protection Efficiency Act
10 is intended to affect any lien provided for by statute, any
11 consensual lien now or hereafter recognized under common law
12 of the state or the ability of the courts to impose equitable
13 or constructive liens.

14 Section 5. NON-ENFORCEABILITY OF NONCONSENSUAL COMMON

15 LAW LIENS. -- Nonconsensual common law liens against real
16 property shall not be recognized or be enforceable.
17 Nonconsensual common law liens claimed against personal
18 property shall not be recognized or be enforceable if, at the
19 time the lien is claimed, the claimant fails to retain actual
20 lawfully acquired possession or exclusive control of the
21 property.

22 Section 6. INVALIDITY OF CLAIM OF LIEN AGAINST A STATE
23 OR LOCAL OFFICIAL OR EMPLOYEE OR A FEDERAL OFFICIAL OR
24 EMPLOYEE-- FILING OF NOTICE OF INVALID LIEN. --

25 A. A claim of lien against a state or local

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1 official or employee or a federal official or employee based
2 on the performance or nonperformance of that official's or
3 employee's duties shall be invalid unless accompanied by a
4 specific order from a court of competent jurisdiction
5 authorizing the filing of such a lien or unless a specific
6 statute authorizes the filing of such a lien.

7 B. If a claim of lien as described in Subsection A
8 of this section has been accepted for filing, the filing
9 officer shall accept for filing a notice of invalid lien
10 signed and submitted by an assistant attorney general
11 representing the state agency, board, commission or department
12 of which the individual is an official or employee; an
13 attorney representing the state institution of higher
14 education, school district, political subdivision or unit of
15 local government of this state of which the individual is an
16 official or employee; or an assistant United States attorney
17 representing the federal agency of which the individual is an
18 official or employee. A copy of the notice of invalid lien
19 shall be mailed by the attorney to the person who filed the
20 claim of lien at that person's last known address.

21 Section 7. NO DUTY TO ACCEPT OR TO DISCLOSE A
22 NONCONSENSUAL COMMON LAW LIEN--IMMUNITY FROM LIABILITY. --

23 A. A filing officer does not have a duty to accept
24 for filing or recording a claim of lien unless the lien is
25 authorized by statute or imposed by a court of competent

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1 jurisdiction having jurisdiction over property affected by the
2 lien.

3 B. A filing officer does not have a duty to accept
4 for filing or recording a claim of lien against a state or
5 local official or employee or a federal official or employee
6 based on the performance or nonperformance of that official's
7 or employee's duties unless accompanied by a specific order
8 from a court of competent jurisdiction having jurisdiction
9 over property affected by the lien, authorizing the filing of
10 the lien.

11 C. A filing officer does not have a duty to
12 disclose an instrument of record or filing that attempts to
13 give notice of a nonconsensual common law lien. This
14 subsection does not relieve a filing officer of a duty that
15 otherwise may exist to disclose a claim of a lien authorized
16 by statute or imposed by order of a court of competent
17 jurisdiction having jurisdiction over property affected by the
18 lien. The existence of a claim of a nonconsensual common law
19 lien in the public record does not constitute a defect in the
20 title of or an encumbrance on the real property described and
21 does not affect the marketability of the title to the real
22 property.

23 D. A filing officer shall not be liable for
24 damages arising from a refusal to record or file or a failure
25 to disclose any claim of a nonconsensual common law lien of

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1 record pursuant to this section.

2 E. A filing officer shall not be liable for
3 damages arising from the acceptance for filing of a claim of
4 lien as described in Subsection B of this section, or for the
5 acceptance for filing of a notice of invalid lien pursuant to
6 Subsection B of Section 6 of the Lien Protection Efficiency
7 Act.

8 F. Except as otherwise provided by law, a filing
9 officer shall not be required to defend decisions to accept or
10 reject documents pursuant to Section 6 of the Lien Protection
11 Efficiency Act.

12 Section 8. ACTION TO VOID LIEN--ORDER TO SHOW CAUSE--
13 SERVICE OF PROCESS.--

14 A. A person whose real or personal property is
15 subject to a recorded claim of a nonconsensual common law lien
16 who believes the claim of lien is invalid may petition the
17 district court of the county in which the claim of lien has
18 been recorded for an order, which may be granted ex parte,
19 directing the lien claimant to appear before the district
20 court, at a time no earlier than six days nor later than
21 twenty-one days following the date of service of the petition
22 and order on the lien claimant, and show cause, if any, why
23 the claim of lien should not be stricken and other relief
24 provided for by Section 9 of the Lien Protection Efficiency
25 Act should not be granted. The petition shall state the

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1 grounds upon which relief is requested and shall be supported
2 by the affidavit of the petitioner or petitioner's attorney
3 setting forth a concise statement of the facts upon which the
4 claim for relief is based.

5 B. An order rendered pursuant to the petition and
6 directing the lien claimant to appear shall clearly state that
7 if the lien claimant fails to appear at the time and place
8 noted, the claim of the lien shall be declared void ab initio
9 and released and that the lien claimant shall be ordered to
10 pay the costs incurred by the petitioner or any other party to
11 the proceeding, including reasonable attorney fees, and
12 damages as set forth in Section 9 of the Lien Protection
13 Efficiency Act.

14 C. The petition and order shall be served upon the
15 lien claimant by personal service, or, when the district court
16 determines that service by mail is likely to give actual
17 notice, the district court may order that service be made by a
18 person over eighteen years of age who is competent to be a
19 witness, other than a party, by mailing copies of the petition
20 and order to the lien claimant's last known address or any
21 other address determined by the district court to be
22 appropriate. Two copies shall be mailed, postage prepaid, one
23 by ordinary first-class mail and the other by a form of mail
24 requiring a signed receipt showing when and to whom it was
25 delivered. The envelopes must bear the return address of the

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1 sender.

2 Section 9. ORDERS--LIABILITY FOR COSTS AND ATTORNEY
3 FEES-- DAMAGES. --

4 A. If, in proceedings pursuant to Section 8 of the
5 Lien Protection Efficiency Act, the lien claimant fails to
6 appear at the time and place noted or, if, the lien claimant
7 having appeared, the district court determines that the claim
8 of lien is invalid, the district court shall issue an order
9 declaring the lien void ab initio, releasing the lien,
10 refunding any court docketing or filing fee to the petitioner
11 and awarding other costs and reasonable attorney fees and
12 damages as set forth in this section to the petitioner or any
13 other party to the proceeding, to be paid by the lien
14 claimant.

15 B. If the district court determines that the claim
16 of lien is valid, the district court shall issue an order so
17 stating and may award costs and reasonable attorney fees to
18 the lien claimant to be paid by the petitioner.

19 C. A person who offers to have filed and recorded
20 in the office of a filing officer a document purporting to
21 create a nonconsensual common law lien against real or
22 personal property, knowing or having reason to know that the
23 document is forged or groundless, contains a material
24 misstatement or false claim or is otherwise invalid, shall be
25 liable to the owner of the property affected for actual

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1 damages or five thousand dollars (\$5,000), whichever is
2 greater, plus costs and reasonable attorney fees as provided
3 in this section.

4 D. A grantee or other person purportedly benefited
5 by a filed or recorded document that creates a nonconsensual
6 common law lien against real or personal property, knowing or
7 having reason to know that the filed or recorded document is
8 forged or groundless, contains a material misstatement or
9 false claim or is otherwise invalid, who willfully refuses to
10 release the filed or recorded document upon request of the
11 owner of the property affected, shall be liable to the owner
12 for actual damages or five thousand dollars (\$5,000),
13 whichever is greater, plus costs and reasonable attorney fees
14 as provided in this section.

15 E. A certified copy of an order rendered pursuant
16 to this section shall be filed by the clerk of the district
17 court in the office of the appropriate filing officer.

18 Section 10. SEVERABILITY. --If any part or application of
19 the Lien Protection Efficiency Act is held invalid, the
20 remainder of that act or its application to other situations
21 or persons shall not be affected.

22 Section 11. EFFECTIVE DATE. --The effective date of the
23 provisions of this act is July 1, 1998.

1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998
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6 January 28, 1998
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9 Mr. Speaker:
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11 Your RULES AND ORDER OF BUSINESS COMMITTEE, to
12 whom has been referred
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17 has had it under consideration and finds same to be GERMANE
18 in accordance with constitutional provisions.
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21 Respectfully submitted,
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R. David Pederson, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 10 For 0 Against

Yes: 10

Excused: Lujan, Picraux, Sanchez, Taylor, James G., Williams,

S. M

Absent: None

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1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998
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6 February 4, 1998
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8 Mr. Speaker:
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10 Your JUDICIARY COMMITTEE, to whom has been referred
11

12 HOUSE BILL 92
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14 has had it under consideration and reports same with
15 recommendation that it DO PASS.
16

17 Respectfully submitted,
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20 _____
21 Thomas P. Foy, Chairman
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1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998

3 Page 15

4 Adopted _____ Not Adopted _____

5
6 (Chief Clerk)

(Chief Clerk)

7
8 Date _____

9
10 The roll call vote was 10 For 0 Against

11 Yes: 10

12 Excused: Larranaga, Luna, Sanchez

13 Absent: None

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FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

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FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

February 13, 1998

Mr. President:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 92

has had it under consideration and reports same with
recommendation that it DO PASS.

Respectfully submitted,

Fernando R. Macias, Chairman

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FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

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Adopted _____ Not

Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 6 For 0 Against

Yes: 6

No: 0

Excused: Vernon, McSorley

Absent: None

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