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HOUSE BILL 1136

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

R. DAVID PEDERSON

AN ACT

RELATING TO THE EFFICIENT FILING AND RECORDING OF DOCUMENTS;  
PROVIDING FOR THE PROTECTION OF PUBLIC OFFICIALS AND EMPLOYEES  
AND OTHERS AGAINST NONCONSENSUAL COMMON LAW LIENS.

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 have no  
basis in fact or law, have serious disruptive effects on

1 property interests and title, appear on title searches and other  
2 disclosures based on public records and are costly and time-  
3 consuming to expunge. As against public officials and  
4 employees, these instruments have serious disruptive effects on  
5 the conduct of government business and are costly and time-  
6 consuming to both government entities and individual officials  
7 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 with  
14 certain minimum format requirements. It would be inefficient  
15 and would require substantial government expenditure to have the  
16 legal sufficiency of documents submitted for filing or recording  
17 determined in advance of acceptance; and

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

23 B. The purpose of the Lien Protection Efficiency Act  
24 is to provide for the efficient filing and recording of  
25 documents and the protection of public officials and employees

1 and the citizens of the state against nonconsensual common law  
2 liens by imposing limitations on the circumstances in which  
3 nonconsensual common law liens shall be recognized in the state.

4 Section 3. DEFINITIONS. --As used in the Lien Protection  
5 Efficiency Act:

6 A. "court" means:

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

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

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

23 B. "federal official or employee" means an appointed  
24 or elected official or any employee of a federal agency, board,  
25 commission or department in any branch of the federal

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1 government;

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

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

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

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

14 (2) does not depend upon the consent of the  
15 owner of the property affected or the existence of a contract  
16 for its existence; or

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

19 F. "state or local official or employee" means an  
20 appointed or elected official or any employee of a state agency,  
21 board, commission, department in any branch of state government,  
22 or state institution of higher education, or a school district,  
23 political subdivision or unit of local government of this state;

24 Section 4. CONSTRUCTION. --

25 A. Nothing in the Lien Protection Efficiency Act

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1 shall be construed to create a lien or interest in property not  
2 otherwise existing under state or federal law.

3 B. Nothing in this act is intended to affect any  
4 lien provided for by statute, any consensual lien now or  
5 hereafter recognized under common law of the state or the  
6 ability of the courts to impose equitable or constructive liens.

7 Section 5. NON-ENFORCEABILITY OF NONCONSENSUAL COMMON LAW  
8 LIENS. -- Nonconsensual common law liens against real property  
9 shall not be recognized nor be enforceable. Nonconsensual  
10 common law liens claimed against any personal property shall not  
11 be recognized nor be enforceable if, at any time the lien is  
12 claimed, the claimant fails to retain actual lawfully acquired  
13 possession or exclusive control of the property.

14 Section 6. INVALIDITY OF CLAIM OF LIEN AGAINST A STATE,  
15 LOCAL OR FEDERAL OFFICIAL OR EMPLOYEE-- FILING OF NOTICE OF  
16 INVALID LIEN. --

17 A. Any claim of lien against a state, local or  
18 federal official or employee based on the performance or  
19 nonperformance of that official's or employee's duties shall be  
20 invalid unless accompanied by a specific order from a court of  
21 competent jurisdiction authorizing the filing of such a lien or  
22 unless a specific statute authorizes the filing of such a lien.

23 B. If a claim of lien as described in Subsection A  
24 of this section has been accepted for filing, the filing officer  
25 shall accept for filing a notice of invalid lien signed and

1 submitted by an assistant attorney general representing the  
2 state agency, board, commission or department of which the  
3 individual is an official or employee; the attorney representing  
4 the state institution of higher education, school district,  
5 political subdivision or unit of local government of this state  
6 of which the individual is an official or employee; or an  
7 assistant United States attorney representing the federal agency  
8 of which the individual is an official or employee. A copy of  
9 the notice of invalid lien shall be mailed by the attorney to  
10 the person who filed the claim of lien at that person's last  
11 known address.

12 Section 7. NO DUTY TO ACCEPT OR TO DISCLOSE COMMON LAW  
13 LIEN--IMMUNITY FROM LIABILITY. --

14 A. No filing officer has a duty to accept for filing  
15 or recording any claim of lien unless the lien is authorized by  
16 statute or imposed by a court of competent jurisdiction having  
17 jurisdiction over property affected by the lien.

18 B. No filing officer has a duty to accept for filing  
19 or recording any claim of lien against a state, local or federal  
20 official or employee based on the performance or nonperformance  
21 of that official's or employee's duties unless accompanied by a  
22 specific order from a court of competent jurisdiction having  
23 jurisdiction over property affected by a lien, authorizing the  
24 filing of such a lien.

25 C. No filing officer has the duty to disclose an

1 instrument of record or filing that attempts to give notice of a  
2 common law lien. This subsection does not relieve any filing  
3 officer of any duty that otherwise may exist to disclose a claim  
4 of a lien authorized by statute or imposed by order of a court  
5 of competent jurisdiction having jurisdiction over property  
6 affected by the lien.

7 D. No filing officer shall be liable for damages  
8 arising from a refusal to record or file or a failure to  
9 disclose any claim of common law lien of record pursuant to this  
10 section.

11 E. No filing officer shall be liable for damages  
12 arising from the acceptance for filing a claim of lien as  
13 described in Subsection B of this section, nor for the  
14 acceptance for filing of a notice of invalid lien pursuant to  
15 Subsection B of Section 6.

16 F. Except as otherwise provided by law, no filing  
17 officer shall be required to defend decisions to accept or  
18 reject documents pursuant to Section 6 of this section.

19 Section 8. ACTION TO VOID LIEN--ORDER TO SHOW CAUSE--  
20 SERVICE OF PROCESS. --

21 A. Any person whose real or personal property is  
22 subject to a recorded claim of common law lien who believes the  
23 claim of lien is invalid may petition the district court of the  
24 county in which the claim of lien has been recorded for an  
25 order, which may be granted ex parte, directing the lien

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1 claimant to appear before the district court, at a time no  
2 earlier than six nor later than twenty-one days following the  
3 date of service of the petition and order on the lien claimant,  
4 and show cause, if any, why the claim of lien should not be  
5 stricken and other relief provided for by Section 9 of the Lien  
6 Protection Efficiency Act should not be granted. The petition  
7 shall state the grounds upon which relief is requested and shall  
8 be supported by the affidavit of the petitioner or petitioner's  
9 attorney setting forth a concise statement of the facts upon  
10 which the claim for relief is based.

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

19 C. The petition and order shall be served upon the  
20 lien claimant by personal service, or, when the district court  
21 determines that service by mail is likely to give actual notice,  
22 the district court may order that service to be made by any  
23 person over eighteen years of age who is competent to be a  
24 witness, other than a party, by mailing copies of the petition  
25 and order to the lien claimant's last known address or any other

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1 address determined by the district court to be appropriate. Two  
2 copies shall be mailed, postage prepaid, one by ordinary first-  
3 class mail and the other by a form of mail requiring a signed  
4 receipt showing when and to whom it was delivered. The  
5 envelopes must bear the return address of the sender.

6 Section 9. ORDERS--LIABILITY FOR COSTS AND ATTORNEY FEES--  
7 DAMAGES. --

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

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

22 C. Any person who offers to have filed and recorded  
23 in the office of a filing officer any document purporting to  
24 create a nonconsensual common law lien against real or personal  
25 property, knowing or having reason to know that such document is

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1 forged or groundless, contains a material misstatement or false  
2 claim or is otherwise invalid, shall be liable to the owner of  
3 the property affected for actual damages or five thousand  
4 dollars (\$5,000), whichever is greater, plus costs and  
5 reasonable attorney fees as provided in this section.

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

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

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

24 Section 11. EFFECTIVE DATE.--The effective date of the  
25 provisions of this act is July 1, 1997.

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**State of New Mexico**  
**House of Representatives**

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2  
3 FORTY-THIRD LEGISLATURE  
4  
5 FIRST SESSION, 1997  
6  
7

8 March 4, 1997  
9

10  
11 Mr. Speaker:  
12

13 Your GOVERNMENT AND URBAN AFFAIRS COMMITTEE, to  
14 whom has been referred

15 HOUSE BILL 1136  
16

17 has had it under consideration and reports same with  
18 recommendation that it DO PASS, amended as follows:  
19

20 1. On page 5, line 9, strike the word "nor" and insert in  
21 lieu thereof "or".

22 2. On page 5, line 11, strike the word "nor" and insert in  
23 lieu thereof "or".  
24

25 3. On page 7, line 13, strike the word "nor" and insert in

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lieu thereof "or".

4. On page 7, line 18, strike the word "of" and insert in lieu thereof "or".

5. On page 8, line 22, strike the word "to"., and thence referred to the JUDICIARY COMMITTEE.

Respectfully submitted,

\_\_\_\_\_  
Lynda M. Lovejoy, Chairwoman

Adopted \_\_\_\_\_

Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

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FORTY-THIRD LEGISLATURE  
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The roll call vote was 7 For 0 Against

Yes: 7

Excused: Hobbs

Absent: None

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# State of New Mexico House of Representatives

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

March 12, 1997

Mr. Speaker:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 1136, as amended

has had it under consideration and reports same with  
recommendation that it DO PASS, amended as follows:

1. On page 7, line 6, after the period insert:

"The existence of a claim of a common law lien in the public  
record does not constitute a defect in the title of or an  
encumbrance on the real property described and does not affect the  
marketability of the title to the property. "

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Respectfully submitted,

\_\_\_\_\_  
Thomas P. Foy, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 9 For 0 Against

Yes: 9

Excused: Mallory, Rios, Sanchez, Stewart

Absent: None

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FORTY-THIRD LEGISLATURE  
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FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

March 20, 1997

Mr. President:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 1136, as amended

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

Respectfully submitted,

---

Fernando R. Macias, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

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(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 7 For 0 Against

Yes: 7

No: 0

Excused: Tsosie

Absent: None

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