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HOUSE BILL 366

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

R. David Pederson

FOR THE COURTS, CORRECTIONS AND CRIMINAL JUSTICE COMMITTEE

AN ACT

**RELATING TO PROPERTY; PROTECTING PUBLIC OFFICIALS, PUBLIC
EMPLOYEES AND CITIZENS 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) that 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**

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1 disruptive effects on property interests and title, appear on
2 title searches and other disclosures based on public records
3 and are costly and time-consuming to expunge. These
4 instruments have serious disruptive effects on the conduct of
5 government business and are costly and time-consuming to both
6 government entities and individual officials and employees;

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

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

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

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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 may 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
8 the United States or pursuant to federal law, including the
9 United States supreme court, the United States courts of
10 appeals, the United States district or administrative courts
11 or other federal courts of inferior jurisdiction, but does not
12 include administrative adjudicative bodies;

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

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

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

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

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

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

12 (1) is not expressly provided for by a
13 specific 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 an employee of a state
21 agency, board, commission, department in any branch of state
22 government, or state institution of higher education, or a
23 school district, political subdivision or unit of local
24 government of this state.

25 Section 4. CONSTRUCTION. --

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1 A. The Lien Protection Efficiency Act shall not be
2 construed to create a lien or interest in property not
3 otherwise existing under state or federal law.

4 B. The Lien Protection Efficiency Act is not
5 intended to affect a lien provided for by statute, a
6 consensual lien now or hereafter recognized under common law
7 of the state or the ability of the courts to impose equitable
8 or constructive liens.

9 Section 5. NON-ENFORCEABILITY OF NONCONSENSUAL COMMON
10 LAW LIENS. -- Nonconsensual common law liens against real
11 property shall not be recognized or be enforceable.
12 Nonconsensual common law liens claimed against personal
13 property shall not be recognized or be enforceable if, at the
14 time the lien is claimed, the claimant fails to retain actual
15 lawfully acquired possession or exclusive control of the
16 property.

17 Section 6. INVALIDITY OF CLAIM OF LIEN AGAINST A STATE
18 OR LOCAL OFFICIAL OR EMPLOYEE OR A FEDERAL OFFICIAL OR
19 EMPLOYEE-- FILING OF NOTICE OF INVALID LIEN. --

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

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1 statute authorizes the filing of the lien.

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

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

18 A. A filing officer does not have a duty to accept
19 for filing or recording a claim of lien, unless the lien is
20 authorized by statute or imposed by a court of competent
21 jurisdiction having jurisdiction over property affected by the
22 lien.

23 B. A filing officer does not have a duty to accept
24 for filing or recording a claim of lien against a state or
25 local official or employee or a federal official or employee

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1 based on the performance or nonperformance of that official's
2 or employee's duties, unless accompanied by a specific order
3 from a court of competent jurisdiction having jurisdiction
4 over property affected by the lien, authorizing the filing of
5 the lien.

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

18 D. A filing officer shall not be liable for
19 damages arising from a refusal to record or file or a failure
20 to disclose any claim of a nonconsensual common law lien of
21 record pursuant to this section.

22 E. A filing officer shall not be liable for
23 damages arising from the acceptance for filing of a claim of
24 lien as described in Subsection B of this section, or for the
25 acceptance for filing of a notice of invalid lien pursuant to

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1 Subsection B of Section 6 of the Lien Protection Efficiency
2 Act.

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

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

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

25 B. An order rendered pursuant to the petition and

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

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

22 Section 9. ORDERS--LIABILITY FOR COSTS AND ATTORNEY
23 FEES--DAMAGES.--

24 A. If, in proceedings pursuant to Section 8 of the
25 Lien Protection Efficiency Act, the lien claimant fails to

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1 appear at the time and place noted or if the lien claimant
2 appears and the district court determines that the claim of
3 lien is invalid, the district court shall issue an order
4 declaring the lien void ab initio, releasing the lien,
5 refunding any court docketing or filing fee to the petitioner
6 and awarding other costs and reasonable attorney fees and
7 damages as set forth in this section to the petitioner or any
8 other party to the proceeding, to be paid by the lien
9 claimant.

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

14 C. A person who offers to have filed and recorded
15 in the office of a filing officer a document purporting to
16 create a nonconsensual common law lien against real or
17 personal property, knowing or having reason to know that the
18 document is forged or groundless, contains a material
19 misstatement or false claim or is otherwise invalid, shall be
20 liable to the owner of the property affected for actual
21 damages or five thousand dollars (\$5,000), whichever is
22 greater, plus costs and reasonable attorney fees as provided
23 in this section.

24 D. A grantee or other person purportedly benefited
25 by a filed or recorded document that creates a nonconsensual

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

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

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

17 Section 11. EFFECTIVE DATE. --The effective date of the
18 provisions of this act is July 1, 1999.

1 FORTY-FOURTH LEGISLATURE
2 FIRST SESSION, 1999
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6 February 16, 1999
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8 Mr. Speaker:
9

10 Your BUSINESS AND INDUSTRY COMMITTEE, to whom has
11 been referred
12

13 HOUSE BILL 366
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15 has had it under consideration and reports same with
16 recommendation that it DO PASS, and thence referred to the
17 JUDICIARY COMMITTEE.

18 Respectfully submitted,
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22 _____
23 Debbie A. Rodella, Chairwoman
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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

3 HBIC/HB 366

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4 Adopted _____ Not Adopted _____

6 (Chief Clerk)

(Chief Clerk)

8 Date _____

10 The roll call vote was 7 For 0 Against

11 Yes: 7

12 Excused: Sanchez

13 Absent: Kissner, Lutz, Mohorovic, Taylor, J.

15 J: \99BillSWP\H0366

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1 FORTY- FOURTH LEGISLATURE
2 FIRST SESSION, 1999

3
4 February 22, 1999

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6
7 Mr. Speaker:

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9 Your JUDICIARY COMMITTEE, to whom has been referred

10 HOUSE BILL 366

11
12 has had it under consideration and reports same with
13 recommendation that it DO PASS.

14
15 Respectfully submitted,

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19 _____
20 R. David Pederson, Chairman
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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

3 HJC/HB 366

Page 15

4 Adopted _____ Not Adopted _____

6 (Chief Clerk)

(Chief Clerk)

8 Date _____

10 The roll call vote was 11 For 0 Against

11 Yes: 11

12 Excused: Luna

13 Absent: None

15 J: \99BillSWP\H0366

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