

House Research Act Summary

CHAPTER: 170

SESSION: 1999 Regular Session

TOPIC: Public Official Lien Protections

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Overview

This act prohibits filing a lien against the property of a public official or employee based on the individual's job performance and not authorized by court order or statute. It provides a remedy for an official or employee who has such a lien filed against property.

1 Nonconsensual common law liens.

Subd. 1. Definitions. "Public official or employee" means an elected or appointed official or employee of state or local government or a federal employee.

"Lien" means an encumbrance on property to secure debt but does not mean a nonconsensual common law lien.

"Nonconsensual common law lien" means a purported lien not provided for by state or federal statute, not consented to by the affected property owner, and not imposed by state district or tax court or federal district court.

Subd. 2. No duty to accept nonconsensual common law liens. Provides there is no duty to accept a nonconsensual common law lien for filing or recording unless

(1) it is accompanied by a court order authorizing filing, (2) there is an affidavit of personal service or certified mail service of notice of the proposed lien, and (3) the lien statement includes the mailing address of the lien claimant.

Provides that a recording officer, recording office, or government entity is not liable for accepting or rejecting the filing of a claim of nonconsensual common law lien.

Subd. 3. Petition for release of lien. A person with an interest in real or personal property that is subject to a nonconsensual common law lien may petition the district court in the county where the lien was recorded to have the lien held invalid. An order may be granted ex parte that directs the lien claimant to appear between six and 21 days after service of the petition to show cause why the lien should not be held invalid. Allows for service on the lien claimant by

personal service, by mail to the claimant's last address, or as the court deems appropriate, including by publication. Published notice must be for at least two consecutive weeks in a general newspaper in the county where the lien is recorded.

The order to show cause must state that if the claimant does not appear in court, the lien is stricken and released and the claimant may be ordered to pay damages and attorney fees and costs to the petitioner.

If after a hearing the court decides the lien is invalid, it must release the claim and award actual damages, costs, and attorney fees to the petitioner. If the court finds the lien is valid, it must issue an order to that effect and may award attorney fees and costs to the lien claimant.

Subd. 4. Liens against public officials and employees. Provides that a lien claim against a public official or employee based on performance or nonperformance of the individual's duties is invalid unless accompanied by a court order authorizing it or unless authorized by a specific statute.

Subd. 5. Penalties. Someone who submits a document attempting to create a nonconsensual common law lien against real property, with knowledge or reason to know that the document is forged or groundless, contains a false claim, or is otherwise invalid, is liable to the property owner for the greater of \$5000 or actual damages, plus costs and attorney fees. Authorizes punitive damages. Someone purportedly benefitted by a recorded document creating a nonconsensual lien against real property who willfully refuses to release the document upon request of the property owner is liable to the owner for the damages and attorney fees provided in this section.

Subd. 6. Sunset. This section expires August 1, 2002.