

A Bill for an Act Relating to Nonconsensual Common Law Liens.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 507D-5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§507D-5]] Liens against public officers and employees.~~ (a) Any claim of lien against a federal, state, or county officer or employee based on the performance or nonperformance of that officer’s or employee’s duties shall designate in the pleading header that the claim is directed to a federal, state, or county officer or employee, and shall be invalid unless accompanied by a [specific] certified order from a state or federal court of competent jurisdiction authorizing the filing of such lien [or unless a specific statute authorizes the filing of such lien].

(b) The registrar shall not accept for filing a claim for nonconsensual common law lien unless the claim is accompanied by a certified state or federal court order authorizing the filing of the lien.’”

SECTION 2. Section 507D-7, Hawaii Revised Statutes, is amended to read as follows:

“§507D-7 Expungement of invalid lien; penalties; sanctions for frivolous filings. (a) If the circuit court finds the purported lien invalid, it shall order the registrar to expunge the instrument purporting to create it, and order the lien claimant to pay actual damages, costs of suit, and reasonable attorneys’ fees. This order shall be presented to the registrar for recordation and shall have the effect of voiding the lien from its inception. If the circuit court finds the purported lien is frivolous, the prevailing party in any action brought under section 507D-4 shall be awarded costs of suit, reasonable attorneys’ fees, and either actual damages or \$5,000, whichever is greater. The foregoing award shall be made in the form of a joint and several judgment issued in favor of the prevailing party and against each lien claimant and also against each person who owns or controls the activities of the lien claimant if the lien claimant is not a natural person.

(b) If the circuit court finds the purported lien is frivolous, upon application of a party in interest, the registrar, or the government counsel representing the government officer or employee affected by the purported lien, the court may also issue appropriate injunctive relief against the lien claimant to preclude further filings of any kind with the registrar for a period of five years, unless that person obtains leave of court to file another instrument with the registrar. The order shall be enforced in the manner for enforcement of injunctions. This order may be presented to the registrar for recordation. Proceedings under this subsection shall not preclude a person from proceeding under subsection (a) or section 507D-4 and recovering damages, penalties, costs, and attorneys’ fees.

(c) Any person who knowingly submits for filing an invalid court order in support of a nonconsensual common law lien against a federal, state, or county officer or employee, shall be guilty of tampering with a government record under section 710-1017.

[(c)] (d) Nothing in this chapter shall inhibit or preclude any party in interest from seeking any other common law, statutory, or other equitable remedy.”

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved May 16, 2000.)