

SENATE BILL NO. 195

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST

Introduced: 5/6/97

Referred: L&C, Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to common law liens, to remedies, costs, and fees imposed for
2 the registration, filing, or recording of certain nonconsensual common law liens,
3 and to penalties for recording common law liens."

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

5 * Section 1. AS 09.38.500(9) is amended to read:

6 (9) "lien" means

7 (A) a security interest;

8 (B) [, OR] a judicial or [,] statutory [, OR COMMON-LAW]

9 lien;

10 (C) a common law lien on property

11 (i) only if the lien was consented to by the owner of
12 the property affected; or

13 (ii) if not consented to by the owner of the property
14 affected as provided in (i) of this subparagraph, only when the lien

1 is accompanied by a specific order authorizing the recording or
 2 filing of the lien issued by a court of competent jurisdiction
 3 recognized under state or federal law, which order shall be
 4 recorded or filed with the lien; [,] or

5 (D) any [OTHER] interest in property other than one
 6 described in (A) - (C) of this paragraph securing payment of a debt or
 7 performance of an obligation;

8 * Sec. 2. AS 09.45 is amended by adding new sections to read:

9 **Article 2A. Actions Relating to Nonconsensual Common Law Liens.**

10 **Sec. 09.45.161. Lien against public servant.** If a nonconsensual common law
 11 lien is recorded or filed against the property of a public servant based upon the
 12 performance or nonperformance of the public servant's duties or having no stated basis
 13 and the nonconsensual common law lien was not accompanied by a specific order from
 14 a court of competent jurisdiction recognized under state or federal law authorizing the
 15 filing of the lien and recorded or filed with the lien, an attorney representing the public
 16 servant

17 (1) may sign, submit for recording or filing, and record or file a notice
 18 of invalid lien; and

19 (2) shall mail a copy of the notice of invalid lien submitted for
 20 recording or filing under (1) of this section to the person who recorded or filed the lien
 21 at the person's last known address.

22 **Sec. 09.45.164. Request for release of nonconsensual common law lien.** (a)
 23 A person whose real or personal property is subject to a claim of nonconsensual
 24 common law lien that has been recorded or filed may submit to a court of competent
 25 jurisdiction a request that the court order the release of the claim of the nonconsensual
 26 common law lien. The request must state the grounds upon which relief is sought and
 27 must be supported by the affidavit of the person making the request or that person's
 28 attorney setting out a concise statement of the facts upon which the request is based.

29 (b) If facts alleging the need for an expedited decision are averred, the request
 30 may ask the court to order the person claiming the nonconsensual common law lien
 31 to appear at a hearing within 20 days of the service of the request and order on the

lien claimant. The order may be granted ex parte and shall state that, if the lien claimant fails to appear at the time and place specified, the claim of nonconsensual common law lien shall be released, and the lien claimant shall be ordered to pay the costs and actual reasonable attorney fees incurred by the party making the request.

(c) If the court determines that the claim of nonconsensual common law lien is invalid, the court shall issue an order releasing the claim of lien and awarding costs and actual reasonable attorney fees to the party making the request. If the court determines that the claim of nonconsensual common law lien is valid, the court shall issue an order stating the claim of the lien is valid and shall award costs and actual reasonable attorney fees to the lien claimant.

Sec. 09.45.167. Liability of nonconsensual common law lien claimant or grantee. (a) A person who offers a claim of nonconsensual common law lien for recording or filing that is not accompanied by a specific order from a court of competent jurisdiction recognized under state or federal law authorizing the recording or filing of the lien is liable to the owner of the property affected by the lien for actual and punitive damages, as well as costs and actual reasonable attorney fees.

(b) A grantee or other person purportedly benefited by a claim of nonconsensual common law lien that has been recorded or filed who refuses to release the lien upon request of the owner of the property affected by the lien is liable to the owner for actual and punitive damages, as well as costs and actual reasonable attorney fees.

Sec. 09.45.169. Definitions. In AS 09.45.161 - 09.45.169,

(1) "filed" means the acceptance of a document by a department or person having responsibility for the receipt and filing of documents that may be filed and that are presented for filing in the place of filing designated by law, whether or not under applicable law the department or person is directed to file the document;

(2) "nonconsensual common law lien" means a lien on real or personal property that

(A) is not provided for by a specific state or federal statute;

(B) does not depend on the consent of the owner of the property affected for its existence; and

(C) is not an equitable, constructive, or other lien imposed by a court recognized under state or federal law;

(3) "public servant" means each of the following, whether compensated or not:

(A) an officer or employee of the state, a municipality or other political subdivision of the state, or a governmental instrumentality of the state;

(B) a person who serves as a member of a board or commission created by statute or by legislative, judicial, or administrative action by the state, a municipality or other political subdivision of the state, or a governmental instrumentality;

(C) an officer or employee of a federal agency, a member of the military or naval forces of the United States, a member of the National Guard while engaged in training or duty, or a person acting on behalf of a federal agency in an official capacity, temporarily or permanently in the service of the United States, whether with or without compensation; or

(D) a person nominated, elected, appointed, employed, or designated to act in a capacity defined in (A) - (C) of this paragraph, but who does not occupy the position;

(4) "record" means the acceptance of a document by the recorder that the recorder has determined is recordable under AS 40.17 and that is presented for recording in the place of recording designated for the recording district where affected property is located whether or not the place of recording is in that district and whether or not under applicable law the recorder is directed to record the document;

(5) "recorder" means the commissioner of natural resources or the person designated by the commissioner of natural resources to perform the duties set out in AS 40.17.

* **Sec. 3.** AS 11.46.550 is amended to read:

Sec. 11.46.550. Offering a false instrument for recording in the first degree. (a) A person commits the crime of offering a false instrument for recording in the first degree if, knowing that a written instrument relating to or affecting property or directly affecting a contractual relationship contains a false statement or

1 false information, and with intent to defraud, the person presents or offers it to a public
 2 office or a public servant intending that it be registered, filed, or recorded or become
 3 a part of the records of that public office or public servant.

4 (b) Offering a false instrument for recording in the first degree is a class C
 5 felony.

6 * **Sec. 4.** AS 11.46 is amended by adding a new section to read:

7 **Sec. 11.46.560. Offering a false instrument for recording in the second**
 8 **degree.** (a) A person commits the crime of offering a false instrument for recording
 9 in the second degree if,

10 (1) under AS 40.17, the person presents a lien to the recorder for
 11 registration, filing, or recording with reckless disregard that the lien is not

12 (A) provided for by a specific state or federal statute; or

13 (B) a lien imposed or authorized by a court recognized under
 14 state or federal law; or

15 (2) under a law authorizing the receipt and filing of a document, the
 16 person presents a lien to a department or person having responsibility to accept a lien
 17 for filing with reckless disregard that the lien is not

18 (A) provided for by a specific state or federal statute; or

19 (B) a lien imposed or authorized by a court recognized under
 20 state or federal law.

21 (b) In a prosecution under (a) of this section, it is an affirmative defense that
 22 the owner of the property affected has consented to the lien.

23 (c) In this section,

24 (1) "lien" means an encumbrance on property as security for the
 25 payment of a debt;

26 (2) "recorder" means the commissioner of the Department of Natural
 27 Resources or the person designated by the commissioner of natural resources to
 28 perform the duties set out in AS 40.17.

29 (d) Offering a false instrument for recording in the second degree is a class
 30 A misdemeanor.

31 * **Sec. 5.** AS 34.35 is amended by adding a new section to read:

1 **Sec. 34.35.950. Nonconsensual common law liens.** (a) A nonconsensual
 2 common law lien is invalid unless the lien is authorized by an order of a court of
 3 competent jurisdiction recognized under state or federal law.

4 (b) A person may not submit a nonconsensual common law lien under
 5 AS 40.17 to the recorder in order to record the lien unless the lien is accompanied by
 6 a specific order authorizing the recording of the lien issued by a court of competent
 7 jurisdiction recognized under state or federal law. When a nonconsensual common law
 8 lien is submitted for recording under this subsection, the court order accompanying the
 9 lien shall be recorded with the lien.

10 (c) A person may not submit a nonconsensual common law lien under a law
 11 authorizing the filing of a lien against personal property in order to file the lien unless
 12 the lien is accompanied by a specific order authorizing the filing of the lien issued by
 13 a court of competent jurisdiction recognized under state or federal law. When a
 14 nonconsensual common law lien is submitted for filing under this subsection, the court
 15 order accompanying the lien shall be filed with the lien.

16 (d) In this section,

17 (1) "filed" means the acceptance of a document by a department or
 18 person having responsibility for the receipt and filing of documents that may be filed
 19 and that are presented for filing in the place of filing designated by law, whether or
 20 not under applicable law the department or person is directed to file the document;

21 (2) "nonconsensual common law lien" means a lien on real or personal
 22 property that

23 (A) is not provided for by a specific state or federal statute;

24 (B) does not depend on the consent of the owner of the property
 25 affected for its existence; and

26 (C) is not an equitable, constructive, or other lien imposed by
 27 a court recognized under state or federal law;

28 (3) "record" means the acceptance of a document by the recorder that
 29 the recorder has determined is recordable under AS 40.17 and that is presented for
 30 recording in the place of recording designated for the recording district where affected
 31 property is located whether or not the place of recording is in that district and whether

1 or not under applicable law the recorder is directed to record the document;
2 (4) "recorder" means the commissioner of natural resources or the
3 person designated by the commissioner of natural resources to perform the duties set
4 out in AS 40.17.