

SB

195

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. SB 195

Revision Date (Note if correction) _____ Dept. Affected Law
 Title An Act relating to common law liens, to remedies, BRU Criminal Division/Civil Division
costs, and fees imposed for the registration, filing or recording ... Component 1st-4th Jud Dist., OSPA; Collections
 Sponsor Senate Rules Committee & Support, Gov't Affairs, Special Lit.
 Requester Senate Labor and Commerce Committee Component Serial No. 2198-99, 2261, 79, 01, 03;

| Expenditures/Revenues | (Thousands of Dollars) | | | | | 2210, 2207, 2213 |
|------------------------|------------------------|------------|------------|------------|------------|------------------|
| OPERATING EXPENDITURES | FY 99 | FY 00 | FY 01 | FY 02 | FY 03 | FY 04 |
| Personal Services | | | | | | |
| Travel | | | | | | |
| Contractual | | | | | | |
| Supplies | | | | | | |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

| | | | | | | |
|----------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | |
|----------------------|--|--|--|--|--|--|

| | | | | | | |
|------------------------|--|--|--|--|--|--|
| CHANGE IN REVENUES () | | | | | | |
|------------------------|--|--|--|--|--|--|

| FUND SOURCE | (Thousands of Dollars) | | | | | |
|--------------------------|------------------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other (Specify Type) | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY98) cost: _____

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: *(Attach a separate page if necessary)*

SB 195 makes it easier, and faster, to remove a nonconsensual common law lien against the personal property of a public servant that was not filed accompanied by a specific court order. In addition, a person filing such a lien would be liable for actual and punitive damages, as well as cost and reasonable attorneys fees. Criminal penalties for offering a false instrument for recording are created by this bill.

If the nonconsensual lien was filed against the property of a public servant employed by the Executive or Judicial Branch based on their performance or nonperformance of their duties, the Department of Law would represent them. Unless someone were to file wholesale liens against many public servants at once, as has happened in Montana and Texas, the department believes the effect of the bill to be minimal and is not submitting a fiscal note with costs.

Prepared by Joan M. Kasson *Joan M. Kasson* Phone 465-5370
 Division Attorney General's Office Date 1/25/98
 Approved by Commissioner Bruce M. Botelho, Attorney General Date 1/26/98
 Agency Department of Law

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FISCAL NOTE

No. 2
 Bill Version: SB 195
 (S) Publish Date: 1-28-98

STATE OF ALASKA
 1998 LEGISLATIVE SESSION

Revision Date (Note if correction) _____ Dept. Affected Law
 Title An Act relating to common law liens, to remedies, BRU Criminal Division/Civil Division
costs, and fees imposed for the registration, filing or recording ... Component 1st-4th Jud Dist., OSPA, Collections
 Sponsor Senate Rules Committee & Support, Gov't Affairs, Special Lit.
 Requester Senate Labor and Commerce Committee Component Serial No. 2198-99, 2261, 79, 01, 03;

| Expenditures/Revenues | (Thousands of Dollars) | | | | | | 2210, 2207, 2213 |
|------------------------|------------------------|------------|------------|------------|------------|------------|------------------|
| OPERATING EXPENDITURES | FY 99 | FY 00 | FY 01 | FY 02 | FY 03 | FY 04 | |
| Personal Services | | | | | | | |
| Travel | | | | | | | |
| Contractual | | | | | | | |
| Supplies | | | | | | | |
| Equipment | | | | | | | |
| Land & Structures | | | | | | | |
| Grants & Claims | | | | | | | |
| Miscellaneous | | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

| | | | | | | |
|----------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | |
|----------------------|--|--|--|--|--|--|

| | | | | | | |
|------------------------|--|--|--|--|--|--|
| CHANGE IN REVENUES () | | | | | | |
|------------------------|--|--|--|--|--|--|

| FUND SOURCE | (Thousands of Dollars) | | | | | |
|--------------------------|------------------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other (Specify Type) | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY98) cost: _____

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: *(Attach a separate page if necessary)*

SB 195 makes it easier, and faster, to remove a nonconsensual common law lien against the personal property of a public servant that was not filed accompanied by a specific court order. In addition, a person filing such a lien would be liable for actual and punitive damages, as well as cost and reasonable attorneys fees. Criminal penalties for offering a false instrument for recording are created by this bill.

If the nonconsensual lien was filed against the property of a public servant employed by the Executive or Judicial Branch based on their performance or nonperformance of their duties, the Department of Law would represent them. Unless someone were to file wholesale liens against many public servants at once, as has happened in Montana and Texas, the department believes the effect of the bill to be minimal and is not submitting a fiscal note with costs.

Prepared by Joan M. Kasson Phone 465-5370
 Division Attorney General's Office Date 1/26/98
 Approved by Commissioner Bruce M. Botelho, Attorney General Date 1/26/98
 Agency Department of Law

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SENATE COMMITTEE REPORT

DATE: 1/28/98

FURTHER:

DATE TURNED
IN TO OFFICE: 2-16-98

Judiciary Committee considered

SENATE BILL NO. 195

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

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:**
- same title
 - new title
- House Bill:**
- same title
 - technical title
 - new: SCR# _____

| SIGNING DO. BASS | DP | OTHER RECOMMENDATIONS | NR | DNP | AM |
|----------------------------|----|----------------------------|----|-----|----|
| Mike Miller | ✓ | John R. Farrell Deacono | ✓ | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| CHAIR: <i>Adrian Lopez</i> | | CHAIR: | | | |

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

| Department | Date | Zero | Fiscal |
|------------|------|------|--------|
| | | | |
| | | | |
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| | | | |

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

| Department | Date | Zero | Fiscal |
|---------------------------------|---------|------|--------|
| #1 Court System TRIAL COURTS | 1-28-98 | φ | |
| #2 LAW - CRIM./CIVIL | 1-28-98 | φ | |
| | | | |
| | | | |
| | | | |
| | | | |

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

No. 1

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL # Bill Version: SB 195
(S) Publish Date: 1-28-98

Revision Date: 01/23/98 Dept. Affected: Alaska Court System
 Title: Common Law Liens BRU: Trial Courts
 Sponsor: Senate Rules by Request Component: _____
 Requestor: Senate L&C COMPONENT SERIAL NO. 768

| Expenditures/Revenues | (Thousands of Dollars) | | | | | |
|-------------------------------|------------------------|-------|-------|-------|-------|-------|
| OPERATING EXPENDITURES | FY 99 | FY 00 | FY 01 | FY 02 | FY 03 | FY 04 |
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS & CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | | | | | | |
| CAPITAL EXPENDITURES | | | | | | |
| CHANGE IN REVENUES () | | | | | | |

| Fund Source | (Thousands of Dollars) | | | | | |
|--------------------------|------------------------|--|--|--|--|--|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other | | | | | | |
| TOTAL | | | | | | |

Estimate of any current year (FY 98) cost: \$ None

| Positions | | | | | | |
|-----------|--|--|--|--|--|--|
| Full-Time | | | | | | |
| Part-Time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Doug Wooliver, Administrative Attorney
 Agency: Alaska Court System

Approved by: Stephanie J. Cole, Administrative Director
 Agency: Alaska Court System

Phone: 264-8265
 Date: 01/23/98

Date: 01/23/98

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ALASKA COURT SYSTEM
State of Alaska
Office Of The Administrative Director

Doug Woolver
Administrative Attorney

820 West 4th Avenue
Anchorage, Alaska 99501-2005
(907) 264-8265
FAX (907) 264-8291

February 3, 1998

Senator Robin Taylor, Chair
Senate Judiciary Committee
Alaska State Legislature
State Capitol
Juneau, Alaska 99801

Dear Senator Taylor:

The Alaska Court System respectfully requests that SB 195 be scheduled for a hearing before the Senate Judiciary Committee at your earliest convenience.

This bill seeks to address the growing problem of bogus common law liens being filed against the real and personal property of Alaskans. It has become common in recent years for patriot groups to record such liens against the property of public officials and private citizens with whom they disagree. The person generally finds out about the lien when he or she attempts to obtain a loan or sell property, and discovers that he or she cannot do so until the lien has been released. This may take many months.

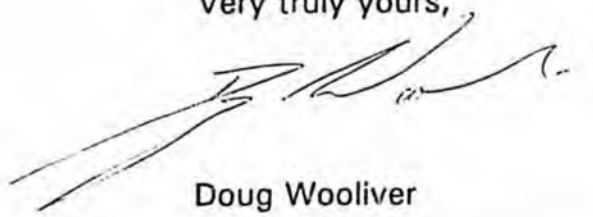
Until recently, this activity has not been of major concern in Alaska. Last year, however, a number of employees and elected officials of the Municipality of Anchorage discovered that nonconsensual common law liens had been recorded against their property. The long list of persons who were targeted by these liens included Mayor Rick Mystrom, and the members of the Anchorage Assembly.

SB 195 forbids and makes it a misdemeanor to record a nonconsensual common law lien without specific authorization from a court. It streamlines the judicial process for releasing a lien, and authorizes the attorney for a public servant to record a notice of invalid lien if such a lien is recorded against the property of a public servant. Finally, it provides for civil penalties against persons who record or benefit from nonconsensual common law liens.

SUPPORTING
DOCUMENTS

Thank you for your consideration of this bill. If I can be of any assistance or provide you with any additional information please let me know.

Very truly yours,

A handwritten signature in black ink, appearing to read 'D. Wooliver', with a long horizontal flourish extending to the left.

Doug Wooliver
Administrative Attorney

Alaska Court System

Doug Wooliver
Administrative Attorney

Telephone: (907) 264-8265
Facsimile: (907) 264-8291

SECTIONAL ANALYSIS OF SB 195

Section 1 is a conforming amendment to AS 09.38.500(9) (the definition section of the Alaska Exemptions Act) that adds a reference to common law liens within the definition of "lien." The new reference states that, to be valid, a common law lien must either be consented to by the owner or accompanied by a court order.

Section 2 adds article 2A to AS 9.45 (Actions Relating to Real Property). The new article is entitled "Actions Relating to Nonconsensual Common Law Liens" and contains 4 sections.

- A) Section 09.45.161 states that if a nonconsensual common law lien is recorded or filed against the property of a public servant and is not accompanied by a court order, an attorney representing the public servant may submit for recording or filing a notice of invalid lien. A copy of the notice is sent to the person who recorded or filed the common law lien.
- B) Section 09.45.164 provides for an expedited court proceeding to have an invalid nonconsensual common law lien released. Under the provisions of this section, a person submits a request to the court containing an affidavit setting out the facts upon which the request is based. If the facts support the need for an expedited hearing, the court can order the person who recorded or filed the lien to appear at a hearing within 20 days. If the court finds that the lien is invalid, or if the person who recorded or filed the lien does not appear, the court can grant the order releasing the lien and order the lien claimant to pay the costs and actual reasonable attorney fees incurred by the party making the request.
- C) Section 09.45.167 states that a person who records or files an invalid nonconsensual common law lien is liable to the owner for actual and punitive damages as well as actual reasonable attorney fees. This section also provides for the liability of a person who is a grantee of an invalid nonconsensual common law lien if he or she refuses to release the lien when requested by the owner of the property affected.

- D) Section 09.45.169 provides definitions for "filed," "nonconsensual common law lien," "public servant," "record," and "recorder."

Section 3 amends AS 11.46.550 (offering a false instrument for recording) by making this current crime the crime of offering a false instrument for recording in the first degree. This section is a conforming amendment that is necessary for the creation of the new crime of "offering a false instrument for recording in the second degree" added by section 4 of the bill. Section 3 does not make any substantive changes.

Section 4 amends AS 11.46.550 by creating the new crime of offering a false instrument for recording in the second degree. This section makes it a class A misdemeanor to record or file an invalid common law lien against real or personal property.

Section 5 amends AS 34.35 (the liens chapter in title 34) by adding a new section entitled "Nonconsensual common law liens." This section prohibits the recording or filing of nonconsensual common law liens against real or personal property without an accompanying court order. This section also provides definitions for the terms "filed," "nonconsensual common law liens," "record," and "recorder."

BILL: SB 195 SHORT TITLE: COMMON LAW LIENS
BILL VERSION:
SPONSOR(S): RULES BY REQUEST

CURRENT STATUS: (S) JUD STATUS DATE: 01/28/98

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

| | | | |
|----------|------|-----|-----------------------------------|
| 05/06/97 | 1717 | (S) | READ THE FIRST TIME - REFERRAL(S) |
| 05/06/97 | 1717 | (S) | L&C, JUD |
| 01/28/98 | 2328 | (S) | L&C RPT 3DP |
| 01/28/98 | 2328 | (S) | DP: LEMAN, KELLY, MACKIE |
| 01/28/98 | 2328 | (S) | ZERO FISCAL NOTES (COURT, LAW) |
| 01/28/98 | 2328 | (S) | REFERRED TO JUDICIARY |

THE ALASKA COURT SYSTEM

Doug Wooliver
Administrative Attorney

Telephone (907) 264-8265
Facsimile (907) 264-8291

Sponsor Statement SB 195

The Alaska Court System asks that the legislature consider SB 195. This bill addresses the growing problem of bogus common law liens being filed against the property of Alaskans. It has become common in recent years for patriot groups and others to record such liens against the property of public officials and private citizens with whom they disagree. The person generally finds out about the lien when he or she attempts to obtain a loan or sell property, and discovers that he or she cannot do so until the lien has been released. This may take many months.

Until recently, this activity has not been of major concern in Alaska. Last year, however, a number of employees and elected officials of the Municipality of Anchorage discovered that nonconsensual common law liens had been recorded against their property. The long list of persons who were targeted by these liens included Mayor Rick Mystrom, and the members of the Anchorage Assembly.

SB 195 makes it a misdemeanor to record a nonconsensual common law lien without the specific authorization of a court. It streamlines the judicial process for releasing a lien, and authorizes the attorney for a public servant to record a notice of invalid lien if such a lien is recorded against the property of a public servant. Finally, it provides for civil penalties against persons who record or benefit from nonconsensual common law liens.

The Alaska Court System requests your support for this bill.