

SB

195

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 official to record a "notice of invalid lien" pending the release of the lien by the court. 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.

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."