

ACT 24

H.B. NO. 3346

A Bill for an Act Relating to Recordation of Instruments in the Bureau of Conveyances or Land Court.

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

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER  
NONCONSENSUAL COMMON LAW LIENS**

§ -1 **Findings and purpose.** The legislature finds that there is a problem with the recording at the land court or the bureau of conveyances of invalid instruments which purport to affect the property interests of various persons, including but not limited to government officers and employees. These instruments, which have no basis in fact or law, have a seriously disruptive effect on property interests and title. They appear on title searches and other disclosures based on public records, and are costly and time-consuming to expunge. When they so appear, they may obstruct a property owner’s ability to transfer title or obtain title insurance and financing.

The bureau of conveyances does not have the discretionary authority to refuse to record instruments so long as those instruments comply with certain minimal format requirements. It would be inefficient and require substantial governmental expenditures to have the bureau of conveyances determine the legal sufficiency of instruments submitted for recordation. The land court’s registrar screens instruments submitted for recordation, but has no mechanism to prevent the filing of frivolous lien claims during the pendency of litigation.

The legislature finds that it is necessary and in the best interests of the State and private parties to legislatively provide a means to relieve this problem, and to limit the circumstances in which nonconsensual common law liens shall be recognized in this State.

§ -2 **Definitions.** As used in this chapter:

“Court” means any court described in the laws of the United States or any state.

“Federal official or employee” means an employee of the federal government as defined for purposes of the federal tort claims act, 28 U.S.C. Sec. 2671.

“Frivolous” means without any basis in law or fact.

“Lien” means a recorded encumbrance on property.

“Lien claimant” means the purported lien holder.

“Nonconsensual common law lien” means a lien that:

- (1) Is not provided for by a specific statute;
- (2) Does not depend upon the consent of the owner of the property affected for its existence; and
- (3) Is not a court-imposed equitable or constructive lien.

“Registrar” means the registrar of the land court or the bureau of conveyances.

“State or local officer or employee” means an appointed or elected officer or employee of a state or county department, agency, board, authority, or commission.

§ **-3 Scope of chapter.** Nothing in this chapter is intended to affect:

- (1) Any lien provided for by statute;
- (2) Any consensual liens now or hereafter recognized under the common law of this State; or
- (3) The ability of courts to impose equitable or constructive liens.

§ **-4 Contesting validity of recorded instruments.** (a) Any person whose real or personal property is subject to a recorded claim of nonconsensual common law lien, who believes the claim of lien is invalid, may file a petition to commence a proceeding in the appropriate circuit court to contest the validity of that instrument. The petition shall state the grounds upon which relief is requested, and shall be supported by the affidavit of the petitioner or the petitioner’s attorney setting forth a concise statement of the facts upon which the petition is based.

(b) Subsection (a) shall not apply to any instrument that is recorded by the United States, the State, or any county.

(c) In any action brought under subsection (a), the court may rule without a hearing, on the basis of the affidavits submitted by the parties, unless one of the parties establishes a genuine issue of material fact.

(d) If the court finds that the petition raises a genuine issue of material fact, it shall issue an order, which may be granted ex parte, directing the lien claimant to appear before the court at a time no earlier than six nor later than twenty-one days following the order, and show cause, if any, why the claim of lien should not be stricken and other relief granted. The order shall clearly state that if the lien claimant fails to appear at the time and place stated, the claim of lien shall be stricken and released and the lien claimant shall be ordered to pay actual damages, costs, and reasonable attorneys’ fees. The order shall further state that if the court finds the lien to be frivolous, the court may order the lien claimant to pay either actual damages or \$5,000, whichever is greater.

§ **-5 Liens against public officers and employees.** 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 be invalid unless accompanied by a specific order from a court of competent jurisdiction authorizing the filing of such lien or unless a specific statute authorizes the filing of such lien.

§ -6 **Filing a notice of invalid lien.** If a claim of lien as described in section -5 has been accepted for filing, the registrar shall accept for filing a notice of invalid lien signed and submitted by the assistant United States attorney representing the federal agency of which the individual is an official or employee, or the attorney representing the state or county department, agency, board, authority, or commission of which the individual is an officer or employee. A copy of the notice of invalid lien shall be mailed by the government attorney to the lien claimant at his or her last known address. The registrar or registrar's assistants shall not be liable for accepting for filing either a claim of lien as described in section -5 or a notice of invalid lien pursuant to this section.

§ -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. If the circuit court finds the purported lien is frivolous, the prevailing party in any action brought under section -4 shall be awarded costs of suit, reasonable attorneys' fees, and either actual damages or \$5,000, whichever is greater.

(b) If any person submits or is responsible for submitting an instrument for recordation which is frivolous, as determined by the court, more than two times in a calendar year, upon application of either the person aggrieved, the registrar, or the government counsel representing the government officer or employee affected by the lien, the appropriate circuit court may issue an order to the registrar directing the registrar not to record during the next five years any further instruments submitted for recordation by that person, unless that person obtains leave of court to file another instrument. This order may be presented to the registrar for recordation. This subsection shall not preclude a person from proceeding under section -4 and recovering damages, penalties, costs, and attorneys' fees.

(c) Nothing in this chapter shall inhibit or preclude any person from seeking any other common law, statutory, or other equitable remedy."

SECTION 3.<sup>1</sup> 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.<sup>1</sup> This Act shall take effect upon its approval.

(Approved April 22, 1996.)

**Note**

1. So in original.