

A Bill for an Act Relating to the Prevention of the Filing of Frivolous Financing Statements.

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

SECTION 1. Section 507D-2, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:  
 “‘Debtor’ means a person named as the debtor in a financing statement.  
 ‘Financing statement’ means a record filed under chapter 490:9.”

SECTION 2. Chapter 507D, Hawaii Revised Statutes, is amended by amending the title to read as follows:

**“NONCONSENSUAL COMMON LAW LIENS AND FRIVOLOUS  
 FINANCING STATEMENTS”**

SECTION 3. Section 507D-1, Hawaii Revised Statutes, is amended to read as follows:

“[~~§507D-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. Similarly, the public is in need of a mechanism to address the filing of frivolous financing statements.

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[-] and to remedy the filing of frivolous financing statements.”

SECTION 4. Section 507D-4, Hawaii Revised Statutes, is amended to read as follows:

**“§507D-4 Contesting validity of recorded instruments; injunctions.** (a) Any party in interest in real or personal property which is subject to a claim of nonconsensual common law lien, who believes the claim of lien is invalid, may file a petition in the appropriate circuit court to contest the validity of that purported lien and to enjoin the lien claimant from making further filings with the registrar. 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. The procedure for obtaining

injunctions and temporary restraining orders shall apply in cases brought under this section or section 507D-7(b).

(b) A debtor who believes the filing of a financing statement was unauthorized, may file a request with the registrar to determine the validity of the filing. Each such request shall identify the financing statement by document number and the requester shall be assessed a reasonable processing fee determined by the registrar. Upon the receipt of the request, the registrar shall send a demand to the secured party by certified or registered mail, at the address set forth on the financing statement, that the secured party provide a copy of the security agreement which purportedly authorized the filing of the financing statement to the registrar no later than thirty days following the postmarked date of the registrar's notice. If the registrar does not receive the security agreement within the thirty-day period, the registrar shall issue to the debtor and accept for filing, a notice of unauthorized filing of financing statement. The filing of a notice of unauthorized filing of financing statement shall effectively terminate the unauthorized financing statement.

~~[(b) Subsection]~~ (c) Subsections (a) and (b) shall not apply to any instrument that is recorded by the United States, the State, or any county.”

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2002.

(Approved June 7, 2002.)