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**Testimony in Support of Senate Bill 58  
Presented to the House Committee on the Judiciary  
By Assistant Attorney General Steve Phillips  
March 15, 2021**

Chairman Patton and Members of the Committee:

I am Steve Phillips, an employee of the Kansas Attorney General's office. On behalf of the Office of Attorney General Derek Schmidt, I offer the following written testimony in favor of Senate Bill 58.

Senate Bill 58 is intended to strengthen Kansas statutes concerning "bogus" or fraudulent liens and other filings with the Secretary of State and local Registers of Deeds located in 105 Kansas counties.

Bogus liens are wrongful lien filings intended to harass various public officials and employees, often judges, law enforcement officers, county officials, but also various state officials including the Governor. Those who file bogus liens have included convicted murderers who seek retribution upon prosecutors and judges from their prison cell, but may also include those who do not recognize the legitimacy of our current system of Kansas government. Within the last year, we had to file an action to lift a bogus lien filed against two Sedgwick County District Court judges and the court clerk. It was filed by a family member of a criminal defendant. The defendant's family members had been making threats against the judges. The lien was not filed in good faith. It was a bogus lien.

I have attached a copy of an article on fraudulent liens that was written by the Nebraska Secretary of State, John C. Gale that provides a good explanation of why fraudulent liens are a concern and what other states have done to attempt to address them.<sup>1</sup>

Like many states, Kansas has a statutory mechanism providing for an expedited judicial review process to review bogus liens, K.S.A. 58-4301. That expedited process has worked well for getting liens promptly reviewed. The way the process works is that the bogus lien is not removed from the file, but the Court order which reviewed the lien is placed with it in the filing officer's system.

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<sup>1</sup> Gale, *Nebraska Law Protects Officials from Rogue Filers of Fraudulent Liens*, Vol. 22, No. 12, Stateline Midwest—The Midwestern Office of the Council of State Governments, p 9 (December 2013).

While the current system provides a mechanism for notifying those who search lien records that the bogus liens are not valid (assuming the person being filed against becomes aware of the bogus lien and seeks relief in court), the system does nothing to deter rogue filers from simply filing another bogus lien, leading to a repetitive and continuous process.

In order to address the problem of repeat rogue filers, in 2010, the Legislature added a provision, K.S.A. 58-4302, which, following a separate legal proceeding, would allow a court to award damages against a rogue filer. While that legislation was well intentioned, it suffered from the flaw that most rogue filers (such as prison inmates), are “judgment proof,” and the threat of a damages award against them has no significance to them and is not a deterrent.

Senate Bill 58 proposes two amendments to deal with the problem of repeat rogue filers.

Primarily, New Section 1 of Senate Bill 58 makes it a crime to knowingly file a false lien. The proposed amendment would make it a severity level 8, nonperson felony. A conviction would, of course, require a separate criminal charge and trial brought by a county or district attorney, or the Attorney General’s office.

Secondly, it includes a provision that when a court sets aside a fraudulent lien, the court must include a provision prohibiting the rogue filer from filing any future liens without the permission of the court. The intent here is to provide the rogue filer with actual knowledge that future bogus liens are wrongful.

We appreciate the Committee’s consideration of this proposal.

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