

2021 Kansas Statutes

58-4302. Civil action against person filing fraudulent lien or claim; procedure; orders. (a) After the court has made a finding that a lien or claim is fraudulent pursuant to K.S.A. 58-4301, and amendments thereto, the aggrieved person may bring a civil action for damages and injunctive relief against the person who filed or recorded the fraudulent documents. No action may be brought under this section against the filing office or filing officer as those terms are described in K.S.A. 58-4301(f), and amendments thereto.

(b) In such an action, the burden shall be on the plaintiff to prove by a preponderance of the evidence that the defendant knew or should have known that the documents filed or recorded were in violation of K.S.A. 58-4301, and amendments thereto.

(c) Such an action shall be bifurcated from an action under K.S.A. 58-4301, and amendments thereto, and service shall be made in accordance with article 3 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto.

(d) The court shall award the prevailing party the costs of the proceeding arising under this section and may award the prevailing party reasonable attorney fees.

(e) After trial, and if the court makes a finding that a lien or claim is fraudulent pursuant to K.S.A. 58-4301, and amendments thereto, the court may:

- (1) Order the defendant to pay actual and liquidated damages up to \$10,000 or, if actual damages exceed \$10,000, all actual damages, to the plaintiff for each violation of K.S.A. 58-4301, and amendments thereto;
- (2) enjoin the defendant from filing any future liens or claims, or future liens or claims against persons specified by the court, with any filing officer without approval of the court that enters the order; and
- (3) enjoin the defendant from filing any future liens or claims that would violate K.S.A. 58-4301, and amendments thereto.

(f) Any order set forth in subsection (e) shall be subject to modification and termination by the court that enters the order. Such order shall also include a provision stating that a violation of the order may subject the party in violation to civil and criminal penalties.

History: L. 2010, ch. 125, § 1; L. 2021, ch. 82, § 15; July 1.