

LIENS

CHAPTER 216

S. B. No. 83
(Baeverstad and Hernett)

CHATTEL MORTGAGES—FUTURE ADVANCES

AN ACT

To permit the giving of chattel mortgages to secure existing or contemporaneous debts and future advances, and to establish the priority and extent of the lien thereof.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1.) Personal property may be mortgaged to secure existing debts, to secure debts created simultaneously with the execution of the mortgage, and to secure advances then in contemplation but to be made in the future. The total amount of all future advances contemplated and to be subject to mortgage protection must be stated in the mortgage, provided the mortgagee may reserve the right, at the mortgagee's option to refuse to make all or any part thereof. The lien for said stated amount of said future advances shall have priority to the same extent as if the amount thereof had been actually advanced by the mortgagee to the mortgagor at the time of the execution of the mortgage. The mortgagee shall, upon demand of the mortgagor or a creditor, furnish a statement of all such advances and amounts paid on the principal sum secured, provided such statement shall not impair or affect the lien created for all advances. Upon receipt of such statement, or at any other time following the execution and delivery of the mortgage, the mortgagor may deliver written notice, duly acknowledged, to the mortgagee plainly stating that the mortgagor does not desire to request or apply for any future advances if none have been allowed, or for any further advances if additional advances have in fact been theretofore allowed under the mortgage, clearly identifying the mortgage by reference to its date, the parties thereto and the principal amount of the original indebtedness and the limit placed on contemplated future advances, if allowed. Upon the filing of such written notice by the mortgagor in the county and counties where the mortgage is filed, the lien of the mortgage shall continue to have priority, but only for the aggregate amount of the indebtedness then existing, including any

advances theretofore made, interest due and other charges as evidenced by the original loan-contract, and indebtedness thereafter accumulating on such basis, exclusive of any other future advances originally contemplated. Any lien entitled to actual priority over the lien of mortgage by force of any express provision of the laws of this state shall continue to have priority to the extent prescribed by law.

Approved February 26, 1955.

CHAPTER 217

S. B. No. 106
(Knudson)

RENEWAL AND LIMITATION OF CHATTEL MORTGAGES

AN ACT

Amending and reenacting section 35-0410 of the North Dakota Revised Code of 1943, relating to renewal and limitation of chattel mortgages.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Amendment.) Section 35-0410 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

35-0410. Renewal and Limitation: Cancellation and Satisfaction.) A mortgage of personal property ceases to be valid as against creditors of the mortgagor and subsequent purchasers and encumbrancers in good faith after the expiration of three years from the due date, except that it may be renewed for an additional period of three years from the expiration of the said period by filing in the office of the register of deeds of the county in which the mortgage was filed originally, within ninety days next preceding the expiration date of such term, a statement and affidavit setting forth the exact amount of the debt then existing for which the mortgagee, his agent, attorney, or assignee, claims a lien. Any chattel mortgage filed under the provisions of this section, and any renewal thereof, shall become void as against all persons and shall be cancelled of record at the end of six years from the due date of the original mortgage. All chattel mortgages or instruments of like nature shall be kept on file in the office of the register of deeds for a period of three years after they have expired and thereafter may be removed from the files

and stored for safekeeping. Mortgages of personal property belonging to public utility companies need not be renewed, and trust deeds or other trust conveyances, instruments, or chattel mortgages executed to secure bonds or other indebtedness of corporations need not be renewed, and shall remain in full force and effect so long as any bonds or indebtedness issued thereunder remain outstanding.

Approved March 2, 1955.

CHAPTER 218

S. B. No. 220
(Judiciary Committee)

ABSTRACT OF CROP LIENS

AN ACT

To amend and reenact section 35-0506 of the North Dakota Revised Code of 1943 relating to abstract of crop liens.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Amendment.)** Section 35-0506 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

35-0506. Abstract Of Crop Liens: Fees; Duty Of Register Of Deeds.) Any elevator company doing business in the state may make written application to the register of deeds for an abstract of all mortgages and liens upon grain grown during the year within the county. The application shall be made annually prior to June first, and shall state the name and post office address of the applicant and shall be accompanied by a fee of ten dollars in counties where the number of such liens abstracted in the preceding calendar year did not exceed two thousand five hundred; a fee of fifteen dollars in counties where the number of such liens abstracted in the preceding year exceeded two thousand five hundred and did not exceed five thousand; and a fee of twenty dollars in counties where the number of such liens abstracted in the preceding year exceeded five thousand. The register of deeds shall credit such fees to the county general fund. The register of deeds, on or before the fifteenth day of July of each year, shall mail to each applicant who has paid the fee for the year an abstract of all existing mortgages and liens upon grain or crops raised or to be raised during the year, showing the names of the

persons against whom liens are claimed arranged alphabetically, the names of the persons holding or claiming liens, a description of the land upon which the grain upon which a lien is claimed is to be raised, the kind of grain, and the amount of the lien. The abstract also shall contain a list of all mortgages and liens filed against crops or grain grown in such crop year which have been satisfied. At least once each week during the balance of the calendar year, the register of deeds shall mail to each of the applicants a similar abstract of liens, mortgages, and releases filed in his office since the date of the preceding abstract.

Approved March 9, 1955.

CHAPTER 219

S. B. No. 237
(Knudson)

SEED LIEN; PROCEDURE

AN ACT

To amend and reenact section 35-0902 of the North Dakota Revised Code of 1943, relating to procedure for obtaining a seed lien.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Amendment.)** Section 35-0902 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

35-0902. Procedure To Obtain Seed Lien.) Any person entitled to a lien under this chapter, within ninety days after the seed is furnished, shall file in the office of the register of deeds of the county in which the seed is to be sown or planted a statement in writing, verified by oath, showing the kind and quantity of the seed, its value, the name of the person to whom furnished, and a description of the land upon which the same is to be or has been planted or sown. Unless the person entitled to the lien shall file the statement within the time herein provided, he shall be deemed to have waived his right thereto.

Approved March 3, 1955.

CHAPTER 220

S. B. No. 90
(Schmit)

HOUSE MOVER'S LIEN

AN ACT

To amend and reenact section 35-2013 of the 1953 Supplement to the North Dakota Revised Code of 1943, relating to house mover's liens.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Amendment.)** Section 35-2013 of the 1953 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

35-2013. Lien Statement For House Mover's Lien; When Required; Contents; Filing; Enforcement; Requiring Suit To Be Commenced.) The lien provided for in section 35-2012 must be perfected within ninety days after such moving is completed by recording a verified statement showing:

1. The labor performed and the materials furnished;
2. The price agreed upon, or if no price was agreed upon, the reasonable value of the work done and the materials furnished;
3. The name of the person for whom the work was performed; and
4. A description of the building moved and the description of the land upon which the building is located.

Such statement must be recorded in the office of the register of deeds of the county in which such building remains after moving. Unless such statement is recorded as aforesaid, any lien hereunder shall be deemed to be lost and waived. The house mover's lien provided for herein shall be enforced according to the provisions and procedure set out in section 35-1221; and the owner, his agent, or contractor may require suit to be commenced according to the provisions and procedure set out in section 35-1222.

Approved March 9, 1955.

CHAPTER 221

H. B. No. 570

(Brooks, Gefreh, Langseth)

LIEN FOR OIL OR GAS WELL DRILLING OR
PIPELINE CONSTRUCTION

AN ACT

Providing for a lien in favor of persons performing labor or furnishing material or services in relation to the drilling or operating of oil or gas wells or in the construction of pipelines or in constructing or repairing of any material used or employed therein, and providing for the filing, perfection and enforcement of said lien.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Definitions.)** The following words when used in this Act, unless the context clearly indicates otherwise, shall have the meanings ascribed to them in this section:

1. "Person" means an individual, corporation, firm, partnership, or association;
2. "Owner" means a person holding any interest in the legal or equitable title or both to any leasehold for oil or gas purposes, or any pipeline, or his agent, and shall include purchasers under executory contract, receivers, and trustees;
3. "Contract" means a contract, written or oral, express or implied, or partly express and partly implied, or executory or executed, or partly executory and partly executed;
4. "Material" means material, machinery, equipment, appliances, buildings, structures, tools, bits, or supplies but does not include rigs or hoists or their integral component parts except wire lines;
5. "Labor" means work performed in return for wages;
6. "Services" means work performed exclusive of labor, including the hauling of material, whether or not involving the furnishing of material;
7. "Furnish" means sell or rent;
8. "Drilling" means drilling, digging, torpedoeing, acidizing, cementing, completing or repairing;
9. "Operating" means all operations in connections with or necessary to the production of oil or gas;

10. "Construction" means construction, maintenance, operation, or repair;
11. "Pipeline" means any pipeline laid and designed as a means of transporting natural gas, oil, or gasoline, or their components or derivatives, and the right of way therefor;
12. "Original contractor" means any person for whose benefit a lien is prescribed under section 2 of this Act.

§ 2. Who Entitled To Lien; Amount of Lien.) Any person who shall, under contract with the owner of any leasehold for oil or gas purposes or any pipeline, perform any labor or furnish any material or services used or employed, or furnished to be used or employed in the drilling or operating of any oil or gas well upon such leasehold, or in the construction of any pipeline, or in the constructing, putting together, or repairing of any material so used or employed, or furnished to be used or employed, shall be entitled to a lien under this Act, whether or not a producing well is obtained and whether or not such material is incorporated in or becomes a part of the completed oil or gas well, or pipeline, for the amount due him for the performance of such labor or the furnishing of such material or services, including without limitation transportation and mileage charges connected therewith, and interest from the date the same was due.

§ 3. Property Subject To Lien.) Liens created under section 2 of this Act shall extend to:

1. The whole of the leasehold for oil or gas purposes to which the materials or services were furnished, or for which the labor was performed, and the appurtenances thereunto belonging; and
2. All materials and fixtures owned by the owner or owners of such leasehold and used or employed, or furnished to be used or employed in the drilling or operating of any oil or gas well located thereon; and
3. All oil or gas wells located on such leasehold, and the oil or gas produced therefrom, and the proceeds thereof inuring to the working interest therein as such working interest existed on the date such labor was first performed or such material or services were first furnished; or
4. The whole of the pipeline to which the materials or services were furnished, or for which labor was performed, and all buildings and appurtenances thereunto belonging, including, without limiting the generality of

the foregoing, gates, valves, pumps, pump stations, and booster stations, and upon all materials and fixtures owned by the owner of such pipeline and used or employed or furnished to be used or employed in the construction thereof.

§ 4. Subcontractor's Lien.) Any person who shall, under contract, perform any labor or furnish any material or services as a subcontractor under an original contractor or for or to an original contractor or a subcontractor under an original contractor, shall be entitled to a lien upon all the property upon which the lien of an original contractor may attach to the same extent as an original contractor, and the lien provided for in this section shall further extend and attach to all materials and fixtures owned by such original contractor or subcontractor to or for whom the labor is performed or material or services furnished and used or employed, or furnished to be used or employed in the drilling or operating of such oil or gas wells, or in the construction of such pipeline.

§ 5. Forfeiture Or Failure of Title.) Forfeiture of a leasehold estate shall not impair any lien as to material, appurtenances and fixtures located thereon and to which said lien has attached prior to forfeiture. If a lien provided for in this Act attaches to an equitable interest or to a legal interest contingent upon the happening of a condition subsequent, failure of such interest to ripen into legal title or such condition subsequent to be fulfilled, shall not impair any lien as to material, appurtenances and fixtures located thereon and to which said lien had attached prior to such failure.

§ 6. Notice To Purchaser Of Oil And Gas.) Anything in this Act to the contrary notwithstanding, any lien claimed by virtue of this Act insofar as it may extend to oil or gas or the proceeds of the sale of oil or gas shall not be effective against any purchaser of such oil or gas until written notice of such claim has been delivered to such purchaser. Such notice shall state the name of the claimant, his address, the amount for which the lien is claimed, and a description of the leasehold upon which the lien is claimed. Such notice shall be delivered personally to the purchaser or by registered letter deposited in the United States mails. Until such notice is delivered as above provided, no such purchaser shall be liable to the claimant for any oil or gas produced from the leasehold upon which the lien is claimed or the proceeds thereof except to the extent of such part of the purchase price of such oil or gas or the proceeds thereof as may be owing by such purchaser at the time of delivery of such written notice. Such purchaser shall withhold payments for such oil or gas runs to the extent of the lien amount claimed until delivery of notice in writing that the claim has been paid.

§ 7. Rights of Subcontractor Against Contract Price.) Nothing in this Act shall be deemed to fix a greater liability upon an owner in favor of any claimant under an original contractor than the amount for which the owner would be liable to the original contractor; provided, however, that the risk of all payments made to the original contractor shall be upon the owner after the receipt of notice that a lien is claimed by a person other than the original contractor; and provided further, that an owner shall not have the right to offset obligations of the original contractor unless such obligations arise out of the original contract.

§ 8. Date Lien Arises; Preference Over Other Encumbrances.) The lien provided for in this Act arises on the date of the furnishing of the first item of material or services or the date of performance of the first labor. Upon compliance with the provisions of section 11, such lien shall be preferred to all other titles, charges, liens or encumbrances which may attach to or upon any of the property upon which a lien is given by this Act subsequent to the date the lien herein provided for arises.

§ 9. Parity Of Liens; Exception.) All liens affixed by virtue of this Act upon the same property shall be of equal standing except that liens of persons for the performance of labor shall be preferred to all other liens affixed by virtue of this Act.

§ 10. Continuing Deliveries Under Single Contract.) All labor performed or materials or services furnished by any person entitled to a lien under this Act upon the same leasehold for oil and gas purposes or the same pipeline shall for the purposes of this Act be considered as having been performed or furnished under a single contract regardless of whether or not the same was performed or furnished at different times or on separate orders, provided that no more than six months shall have elapsed between the date of performance of such labor or the date of furnishing such material or services and the date on which labor is next performed or materials or services are next furnished.

§ 11. Contents and Filing of Statement of Lien.) Every person claiming a lien under this Act, shall file with the clerk of district court of the county in which such leasehold, or pipeline, or some part thereof, is situated, a statement verified by affidavit setting forth the amount claimed and the items thereof, the dates on which labor was performed or material or services furnished, the name of the owner of the leasehold, or pipeline, if known, the name of the claimant and his mailing address, a description of the leasehold, or pipeline, and if the claimant be a claimant under section 4, the name of the person

for whom the labor was immediately performed or the material or services were immediately furnished. Said statement of lien must be filed within six months after the date on which the claimant's labor was last performed or his material or services were last furnished under a single contract as provided for in section 10.

§ 12. Recording of Statement of Lien.) Immediately upon receipt of the statement of lien mentioned in section 11, the clerk of the district court shall give such statement a file number and shall file the same and in addition shall enter a record of the same in a book kept by him for that purpose, to be called "Oil and Gas Lien Record", which shall be ruled off into separate columns with headings as follows: "File Number", "When Filed", "Name of Owner", "Name of Claimant", "Amount Claimed", "Description of" and "Remarks", and the clerk of the district court shall make the proper entries under each column. The fee to be charged by the clerk of the district court for the filing of such lien statement shall be one dollar.

§ 13. Bond To Indemnify Against Liens.)

1. Whenever any lien or liens shall be fixed or attempted to be fixed under the provisions of this Act then the owner of the property on which the lien or liens are claimed or the contractor or subcontractor through whom such lien or liens are claimed, or either of them, may file a bond with the clerk of the district court of the county in which the property is located as herein provided. Such bond shall describe the property on which lien or liens are claimed, shall refer to the lien or liens claimed in manner sufficient to indemnify [identify] them and shall be in double the amount of the claimed lien or liens referred to and shall be payable to the party or parties claiming same. Such bond shall be executed by the party filing same as principal and by a corporate surety authorized under the laws of this state, to execute such bonds as surety and shall be conditioned substantially that the principal and surety will pay to the obligees named or their assigns the amounts of the liens so claimed by them with all costs in the event same shall be proven to be liens on such property.
2. Upon the filing of such bond, the clerk of the district court shall send a notice thereof, together with a copy of the bond, to all obligees named therein, by registered mail addressed to such obligees at the address set forth in their respective claims for lien.
3. Such bond, when filed, and such notice, when mailed, shall be recorded by the clerk of the district court in the

oil and gas lien records, and any purchaser or lender may rely upon the record of such bond and notice in acquiring any interest in said property and shall absolutely be protected thereby.

4. Such bond, when filed, shall take the place of the property against which any claim for lien referred to in such bond is asserted. At any time within the period of time provided in section 14 any person claiming such lien may sue upon such bond but no action shall be brought upon such bond after the expiration of such period. One action upon said bond shall not exhaust the remedies thereon but each obligee or assignee of an obligee named therein may maintain a separate suit thereon in any court having jurisdiction.
5. In case the lien holder shall recover in a suit upon the bond he shall be entitled to recover a reasonable attorney's fee, to be fixed by the court, which shall be taxed as costs in the action.

§ 14. Duration Of Lien; Suit To Foreclose.) Any lien provided for by this Act may be enforced by civil action in the district court of the county in which the leasehold, or pipeline, or some part thereof, is situated. Such action shall be brought within two years from the time of the filing of the lien statement as provided for in section 11. Any lien statement may be amended by leave of court in furtherance of justice as pleadings may be in any matter except that the amount claimed shall not be increased.

§ 15. Parties To Suit To Foreclose.) In such actions all persons whose liens are filed as herein provided and other encumbrancers may be made parties and the issues shall be made and the trials shall be conducted as in other civil cases. Where such action is brought by any person other than an original contractor, the original contractor through whom such person claims a lien shall be made a party defendant and shall at his own expense defend against the claim and if the contractor fails to make such defense, the owner may make the same at the expense of such original contractor. Until all claims, costs and expenses are finally adjudicated and defeated or satisfied, the owner shall be entitled to retain from the original contractor the amount thereof.

§ 16. Consolidation Of Suits To Foreclose; Intervention.) If several actions brought to enforce liens under this Act on the same property be pending at the same time, the court may order them to be consolidated. Any claimant having filed his statement of lien as herein provided shall be entitled to intervene in any pending action brought to enforce a lien on the same property.

§ 17. Removal Prohibited; Injunction; Lien Follows Property Wrongfully Removed.) When any lien provided for by this Act shall have attached to the property covered thereby, it shall be unlawful for any person to remove such property, or any part thereof, or cause the same to be removed from the land or premises where located at the time such lien attached or otherwise dispose of the same without the written consent of the holder of such lien. In the event such property, or some part thereof, is about to be removed or disposed of in violation of this section, the district court of the county where such property, or any part thereof, is located may upon the verified application of the holder of such lien enjoin all persons alleged in such application to be about to remove or dispose of such property, or some part thereof, from removing or disposing of the same. In the event such property, or any part thereof, shall have been removed or disposed of in violation of this section, the holder of such lien shall be entitled in any action to foreclose the same to the appointment of a receiver to take possession of such removed or disposed of property wherever the same may be located within this state; provided, however, that this section shall not preclude the appointment of receiver in actions brought to foreclose liens given by this Act upon any equitable grounds warranting such appointment. This section shall not apply to any lien claims which have been discharged by the filing of a bond as provided by section 13 of this Act.

§ 18. Sale Pursuant To Foreclosure.) In all cases where judgment may be rendered in favor of any person to enforce a lien under the provisions of this Act, the leasehold, pipeline, or other property shall be ordered to be sold as in other cases of sales of real estate or chattels, whichever may apply.

§ 19. Allowance of Reasonable Attorney's Fees In Foreclosure.) In any action brought to enforce a lien prescribed by this Act, the party for whom judgment is rendered shall be entitled to recover a reasonable attorney's fee, to be fixed by the court, which shall be taxed as costs in the action.

§ 20. Personal Actions.) Nothing in this Act shall be construed to impair or affect the right of any person to whom any debt may be due for work performed or materials or services furnished to maintain a personal action against the person liable for such debt.

§ 21. Waivers.) The taking of any note or any additional security by any person given a lien by this Act shall not constitute a waiver of the lien given by this Act unless made a waiver by express agreement of the parties in writing. The claiming of a lien under this Act shall not constitute a waiver

of any other right or security held by the claimant unless made a waiver by express agreement of the parties in writing.

§ 22. Assignment of Liens and Actions.) All claims for liens and likewise all actions to recover therefor under this Act shall be assignable so as to vest in the assignee all rights and remedies herein given subject to all defenses thereto that might be raised if such assignment had not been made. Where a statement of lien has been filed as herein provided, such assignment may be made by an entry on the same page of the oil and gas lien record containing a record of the lien signed by the claimant or his lawful representative and attested by the clerk of the district court or such assignment may be made by a separate instrument in writing.

§ 23. Saving Clause.) All liens granted by this Act shall be perfected and enforced in accordance with the provisions hereof whether such liens arise before or after the effective date of this Act; provided, however, that any unperfected lien granted under any statute in effect prior to the effective date of this Act and which could be subsequently perfected in accordance with such prior statute were it not for the existence of this Act may be perfected and enforced in accordance with the provisions of this Act if the statement of lien required to be filed under section 12 is filed within the time therein required or within two months after the effective date of this Act, whichever period is longer; and provided further that the validity of any lien perfected prior to the effective date of this Act in accordance with the requirements of any statute in effect prior to such effective date shall be determined on the basis of such prior statute but the enforcement thereof shall insofar as possible be governed by the provisions of this Act.

§ 24. Liberal Construction.) This Act shall be given liberal construction in favor of all persons entitled to any lien under it.

§ 25. Severability.) Should any part of this Act be adjudged invalid or unconstitutional, such adjudication shall affect only the part of this Act specifically covered thereby and shall not affect any other provisions or parts of this Act.

§ 26. Repeal of Conflicting Laws.) All acts or parts of acts in conflict herewith are hereby repealed.

Approved March 8, 1955.