

Sixty-first
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2250

Introduced by

Senators Holmberg, Triplett

1 A BILL for an Act to create and enact a new section to chapter 35-27 of the North Dakota
2 Century Code, relating to attorney's fees under construction liens; to amend and reenact
3 sections 11-18-14, 28-01-17, 28-05-09, 35-15-06, 35-21-01, 35-27-02, 35-27-04, 35-27-13,
4 35-27-14, 35-27-16, 35-27-18, 35-27-22, 35-27-24, 35-27-25, and 47-18-04 of the North Dakota
5 Century Code, relating to mechanic's and construction liens; and to repeal sections 35-27-05,
6 35-27-11, 35-27-12, and 35-27-26 of the North Dakota Century Code, relating to outdated
7 mechanic's lien provisions.

8 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

9 **SECTION 1. AMENDMENT.** Section 11-18-14 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **11-18-14. Recorder to remove and destroy certain documents - Records to be**
12 **made.** The recorder in each county in this state, unless otherwise earlier permitted by law,
13 shall remove from the files in the recorder's office, and destroy, all chattel mortgages,
14 agricultural processor's liens, agricultural supplier's liens, agister's liens, ~~mechanic's liens,~~
15 repairman's liens, unpaid earned insurance premium liens, and sales contracts together with
16 any releases for the instrument upon which a claim for relief has accrued and which claim for
17 relief is more than ten years old. At the time of destroying the files the recorder shall note on
18 the margin of the index opposite the record of each instrument so removed and destroyed the
19 date when the instrument was destroyed.

20 **SECTION 2. AMENDMENT.** Section 28-01-17 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **28-01-17. Actions having three-year limitations - Exceptions.** The following actions
23 must be commenced within three years after the claim for relief has accrued:

- 1 1. An action against a sheriff or coroner upon a liability incurred by the doing of an act
- 2 in the sheriff's or coroner's official capacity and by virtue of that office, or by the
- 3 omission of an official duty, including the nonpayment of money collected upon an
- 4 execution. However, this subsection does not apply to an action for an escape.
- 5 2. An action upon a statute for a penalty or forfeiture, if the action is given to the party
- 6 aggrieved, or to such party and the state, unless the statute imposing it prescribes
- 7 a different limitation.
- 8 3. An action for the foreclosure of a ~~mechanic's~~ construction lien.

9 **SECTION 3. AMENDMENT.** Section 28-05-09 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **28-05-09. When lis pendens not required.** ~~No~~ A notice of the pendency of an action
12 in a district court is not required if the action is for the foreclosure of a mortgage or for the
13 enforcement of a ~~mechanic's~~ construction lien or miner's lien.

14 **SECTION 4. AMENDMENT.** Section 35-15-06 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **35-15-06. Foreclosure - When lienholders joined in action.** Any person holding a
17 miner's lien may foreclose the same in the same manner as a ~~mechanic's~~ construction lien may
18 be foreclosed. In an action for the foreclosure of such lien, ~~all persons~~ each person claiming
19 ~~liens~~ a lien upon the property charged must be made ~~parties~~ a party to the action, and the
20 rights of all parties must be determined by the court and such order made in regard thereto as
21 shall preserve and protect the rights of all parties.

22 **SECTION 5. AMENDMENT.** Section 35-21-01 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **35-21-01. Release of lien by undertaking authorized.** When any ~~mechanic's~~
25 construction lien, garage storage lien, repairman's lien, agricultural processor's lien, agricultural
26 supplier's lien, unpaid earned insurance premium lien, or miner's lien is filed against the
27 property of a resident of this state, the property affected may be released by an undertaking in
28 the manner provided in this chapter.

29 **SECTION 6. AMENDMENT.** Section 35-27-02 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **35-27-02. Persons entitled to mechanic's construction lien.** Any person ~~who~~ that
2 improves real estate ~~by the contribution of labor, skill, or materials~~, whether under contract with
3 the owner of such real estate or under contract with any agent, trustee, contractor, or
4 subcontractor of the owner, has a lien upon the improvement and upon the land on which ~~it~~ the
5 improvement is situated or to which ~~it~~ the improvement may be removed for the price or value
6 of such contribution. Provided, however, that the amount of the lien is only for the difference
7 between the price paid by the owner or agent and the price or value of the contribution. If the
8 owner or agent has paid the full price or value of the contribution, no lien is allowed. Provided
9 further that if the owner or an agent of the owner has received a waiver of lien signed by the
10 person ~~who~~ that improves the real estate ~~by the contribution of labor, skill, or materials~~, ~~no a~~
11 lien is not allowed.

12 Any person ~~who~~ that extends credit or makes a contract with any agent, trustee,
13 contractor, or subcontractor of the owner for the improvement of real estate, ~~shall~~, upon
14 demand, ~~have~~ has the right to request and secure evidence of the legal description of the real
15 estate upon which the improvement is located, including the name of the title owner of the real
16 estate.

17 **SECTION 7. AMENDMENT.** Section 35-27-04 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **35-27-04. When lien attaches - Exception - Notice - Filing.** As against a mortgage
20 given in good faith for the purpose of providing funds for the payment of materials or labor for
21 the improvement, ~~no such a~~ lien may not be preferred ~~to such mortgage~~ even though such
22 mortgage is recorded ~~subsequent to~~ after the time the first item of material or labor is furnished
23 upon the premises, or ~~subsequent to~~ after the actual visible beginning of the improvement
24 unless the person furnishing such labor, skill, or material for such improvement ~~shall, prior to~~
25 before the recording of such mortgage, file files for record a ~~notice of the person's intention to~~
26 ~~claim a mechanic's construction lien pursuant to the provisions of section 35-27-05.~~

27 **SECTION 8. AMENDMENT.** Section 35-27-13 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **35-27-13. How lien perfected - Mechanic's Construction lien recorded.** Every
30 person desiring to perfect the person's lien shall record with the recorder of the county in which
31 the property to be charged with the lien is situated, within ninety days after all the person's

1 contribution is done, and having complied with the provisions of this chapter, a ~~mechanic's~~ lien
2 describing the property and stating the amount due, the dates of the first and last contribution,
3 and the person with which the claimant contracted.

4 **SECTION 9. AMENDMENT.** Section 35-27-14 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **35-27-14. Lien not lost for failure to file within time - Exception.** A failure to file the
7 ~~lien account~~ within ninety days does not defeat the lien except as against purchasers or
8 encumbrancers in good faith and for value whose rights accrue ~~after the ninety days and before~~
9 ~~any claim for~~ the lien is filed, and as against the owner to the extent of the amount paid to a
10 contractor ~~after the expiration of the ninety days and before the filing~~ recording of the ~~account~~
11 lien. A lien may not be filed more than three years after the date of the first item of material is
12 furnished.

13 **SECTION 10. AMENDMENT.** Section 35-27-16 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **35-27-16. Inaccuracies in lien statement.** ~~In no case may the liens~~ A lien given by
16 this chapter ~~be~~ is not affected by any inaccuracy in the particulars of the lien ~~account~~, but, as
17 against all persons except the owner of the property, the lien claimant must be concluded by
18 the dates therein given, showing the first and last items of the claimant's account. ~~In no case~~
19 ~~may a~~ A lien may not exist for a greater amount than the sum claimed in the lien ~~account~~, nor
20 for any amount, if it be made to appear that the claimant has knowingly demanded ~~in the~~
21 ~~statement~~ more than is justly due.

22 **SECTION 11. AMENDMENT.** Section 35-27-18 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **35-27-18. ~~Mechanic's~~ Construction lien on railway contracts obtainable.** Every
25 person ~~who~~ that furnishes any labor, skill, or material for constructing, altering, or repairing any
26 line of railway, or any improvement or structure appertaining to any line of railway by virtue of
27 any contract with the owner, or the owner's agent, contractor, or subcontractor authorized in
28 writing to contract for the owner, has a lien upon such line of railway and the right of way
29 ~~thereof~~ of such railway, and upon all bridges, depots, offices, and other structures appertaining
30 to the line of railway, and all franchises, privileges, and immunities granted to the owner of the
31 line of railway for the construction and operation thereof, to secure the payment for the labor,

skill, and materials, upon ~~filing recording a statement of the person's demand therefor in~~
~~accordance with the provisions of section 35-27-13~~ lien, within ninety days from the last day of
the month in which the labor or material was furnished, but a failure to ~~file the same record~~
within the ~~time aforesaid~~ ninety days does not defeat the lien except to the extent specified in
section 35-27-14.

SECTION 12. AMENDMENT. Section 35-27-22 of the North Dakota Century Code is
amended and reenacted as follows:

35-27-22. Order of priority of classes of mechanics' construction liens.

1. Liens perfected under ~~the provisions of~~ this chapter have priority in the following
order:

~~1.~~ a. For manual labor.

~~2.~~ b. For materials.

~~3.~~ c. Subcontractors other than manual laborers.

~~4.~~ d. Original contractors.

2. Liens for manual labor filed within the ninety-day period must share ratably in the
security. Liens for manual labor filed ~~thereafter~~ after the ninety-day period have
priority in the order of the filing of such liens. Liens for materials filed within the
ninety-day period must share ratably in the security and ~~such~~ liens filed ~~thereafter~~
after the ninety-day period have priority in the order of the filing of such liens.

SECTION 13. AMENDMENT. Section 35-27-24 of the North Dakota Century Code is
amended and reenacted as follows:

35-27-24. Action to enforce mechanic's construction lien - Notice of - Deficiency

judgment. Any person having a lien by virtue of this chapter may bring an action to enforce
the lien in the district court of the county in which the property is situated. Any number of
persons claiming liens against the same property may join in the action and when separate
actions are commenced the court may consolidate ~~them~~ the actions. Before a lienholder may
enforce a lien, the lienholder shall give written notice of the lienholder's intention so to do, which
notice must be given by personal service upon the record owner of the property affected at
least ten days before an action to enforce the lien is commenced, or by registered mail directed
to the owner's last-known address at least twenty days before the action is commenced. The

judgment may direct that in the event that a deficiency remains after the sale of the real ~~or~~
~~personal~~ property subject to the lien an execution may issue for such deficiency.

SECTION 14. A new section to chapter 35-27 of the North Dakota Century Code is
created and enacted as follows:

Costs and attorney's fees. Any owner that successfully contests the validity or
accuracy of a construction lien or of a notice of intention to claim a construction lien by any
action in district court must be awarded the full amount of all costs and reasonable attorney's
fees incurred by the owner.

SECTION 15. AMENDMENT. Section 35-27-25 of the North Dakota Century Code is
amended and reenacted as follows:

35-27-25. Requiring suit to be commenced - Demand - Limitations of action.

Upon written demand of the owner, that person's agent, or contractor, served on the person
holding the lien, suit must be commenced and filed with the clerk of court within thirty days
thereafter or the lien is forfeited. The demand must contain a provision informing the person
holding the lien that if suit is not commenced within thirty days, the person holding the lien
forfeits the lien. ~~No~~ A lien is not valid or effective as such, nor may be enforced in any case,
unless the holder ~~thereof~~ of the lien asserts the same by complaint filed with the clerk of court
within three years after the date of recording of the ~~verified notice of intention to claim a~~
~~mechanic's~~ lien. If a summons and complaint asserting the validity of the lien is not filed in the
office of the clerk of court of the county in which the lien is recorded within the limitations
provided by this section, the lien is deemed satisfied and the clerk of court ~~shall~~, upon request
of any interested person, shall certify to the recorder that no summons and complaint has been
filed and the lien is deemed satisfied under this section, who then shall record the verified
certificate.

SECTION 16. AMENDMENT. Section 47-18-04 of the North Dakota Century Code is
amended and reenacted as follows:

47-18-04. When homestead subject to execution. A homestead is subject to
execution or forced sale in satisfaction of judgments obtained in the following cases:

1. On debts secured by mechanics', construction, or laborers' liens for work or labor
done or performed or material furnished exclusively for the improvement of the
same.

- 1 2. On debts secured by mortgage on the premises executed and acknowledged by
- 2 both husband and wife, or an unmarried claimant.
- 3 3. On debts created for the purchase thereof and for all taxes accruing and levied
- 4 thereon.
- 5 4. On all other debts when, upon an appraisal as provided by section 47-18-06, it
- 6 appears that the value of said homestead is more than eighty thousand dollars
- 7 over and above liens or encumbrances ~~thereon~~ on the homestead, and then only
- 8 to the extent of any value in excess of the sum total of such liens and
- 9 encumbrances plus said eighty thousand dollars.

10 **SECTION 17. REPEAL.** Sections 35-27-05, 35-27-11, 35-27-12, and 35-27-26 of the
11 North Dakota Century Code are repealed.