

LIENS

CHAPTER 302

HOUSE BILL NO. 1477
(Olson, Gunderson)

AGRICULTURAL LIENS

AN ACT to amend and reenact sections 35-09-01, 35-09-02, 35-09-03, and 35-09-04 of the North Dakota Century Code, relating to fertilizer, farm chemicals, and seed liens, procedure to obtain lien, priority of lien, and penalty for wrongful use of fertilizer, farm chemicals, and seed.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 35-09-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-09-01. FERTILIZER, FARM CHEMICALS, AND SEED LIEN AUTHORIZED.) Any person who furnishes or applies fertilizer, farm chemicals, or seed to another to be spread, applied, sown, or planted on lands owned or contracted to be purchased or used, occupied, or rented, upon filing the statement provided in section 35-09-02, shall have a lien upon all the crop produced from the fertilizer, farm chemicals, or seed so furnished to secure the payment of the purchase price thereof.

SECTION 2. AMENDMENT.) Section 35-09-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-09-02. PROCEDURE TO OBTAIN FERTILIZER, FARM CHEMICALS, OR SEED LIEN.) Any person entitled to a lien under this chapter, within ninety days after the fertilizer, farm chemicals, or seed is furnished or applied, shall file in the office of the register of deeds of the county in which the fertilizer, farm chemicals, or seed is to be spread, applied, sown, or planted a statement in writing, verified by oath, showing the kind and quantity of the fertilizer, farm chemicals, or seed, its value, the name of the person to whom furnished, and a description of the land upon which the same is to be and has been spread, applied, 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.

SECTION 3. AMENDMENT.) Section 35-09-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-09-03. PRIORITY OF FERTILIZER, FARM CHEMICALS, OR SEED

LIEN.) A seed lien acquired pursuant to the provisions of this chapter shall have priority, as to crops covered thereby, over all other liens and encumbrances except threshing liens and crop production liens. A fertilizer or farm chemicals liens acquired pursuant to this chapter shall have priority over all other liens and encumbrances, except a seed lien and those liens acquired pursuant to chapters 35-07 and 35-08.

SECTION 4. AMENDMENT.) Section 35-09-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-09-04. WRONGFUL USE OF SEED, FERTILIZER, OR FARM CHEMICALS COVERED BY FERTILIZER, FARM CHEMICALS, OR SEED LIEN - MISDEMEANOR.) Every person who procures fertilizer, farm chemicals, or seed on credit under the provisions of this chapter, to be spread, applied, sown, or planted upon any designated tract or piece of land, who:

1. Uses the fertilizer, farm chemicals, seed, or any part thereof for any other purpose; or
2. Spreads, applies, sows, or plants the fertilizer, farm chemicals, seed, or any part thereof upon any tract or piece of land other than that designated without the written consent of the person who furnished the fertilizer, farm chemicals, or seed,

is guilty of a class B misdemeanor.

Approved April 5, 1975

CHAPTER 303

SENATE BILL NO. 2264
(Longmire)

MECHANIC'S LIENS

AN ACT to amend and reenact sections 35-27-02, 35-27-03, 35-27-05, 35-27-09, 35-27-11, 35-27-17, 35-27-18, and 35-27-21 of the North Dakota Century Code, relating to entitlement to a mechanic's lien, when a lien attaches, intention to claim lien, withholding payment to contractors, itemized account and demand for payment, proportioning amount of claim, mechanic's lien on railway contracts, and a lien on an independent building.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 35-27-02 of the 1973 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-27-02. WHO ENTITLED TO MECHANIC'S LIEN.) Any person who improves real estate by the contribution of labor, skill, or materials under contract with the owner of such real estate shall have a lien upon the improvement, and upon the land on which it is situated or to which it may be removed, for the price or value of such contribution. Provided, however, that the amount of the lien shall only be for the difference between the price paid by the owner and the price or value of the contribution. If the owner has paid the full price or value of the contribution, no lien shall be allowed. No person shall have a lien for improving real estate resulting from extending credit to or making a contract with any agent, trustee, contractor, or subcontractor of such owner, unless such person first notifies the owner in writing of the provisions of chapter 35-27 and obtains a copy of the contract by which the owner authorizes his agent, trustee, contractor, or subcontractor to seek credit or make contracts in the owner's name, or by which the owner personally assumes responsibility for payment upon default by the owner's agent, trustee, contractor, or subcontractor. In all latter cases, any person claiming a lien for improving real estate shall first proceed by judicial action against the owner's agent, trustee, contractor, or subcontractor and exhaust his remedies of collection upon obtaining judgment before he shall have a lien upon the improvement, or upon the land on which it is situated or to which it may be removed.

SECTION 2. AMENDMENT.) Section 35-27-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-27-03. WHEN LIEN ATTACHES.) As against the owner of the land, subject to section 35-27-02, such liens shall attach and take effect from the time the first item of material or labor is furnished upon the premises for the beginning of the improvement. As against a bona fide purchaser, mortgagee, or encumbrancer without notice, no lien shall attach prior to the actual and visible beginning of the improvement on the ground. Subject to the exception set forth in section 35-27-04, all such liens shall be preferred to any mortgage or other encumbrance not then of record, unless the lienholder had actual notice thereof.

SECTION 3. AMENDMENT.) The introductory language to section 35-27-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-27-05. NOTICE OF INTENTION TO CLAIM LIEN - FILING.) Any person having a contract for the improvement of land in accordance with section 35-27-02 may file for record, with the clerk of court of the county within which the land is situated, a notice of intention to claim a mechanic's lien, which notice shall be notice to all of his intention to perfect a lien for the contract price or value of all contributions to such improvement thereafter made by him or at his instance. Such notice of intention to claim a mechanic's lien shall contain the following:

SECTION 4. AMENDMENT.) Section 35-27-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-27-09. PAYMENT TO CONTRACTORS WITHHELD.) The owner may withhold from his contractor so much of the contract price as may be necessary to meet the demands of all persons, other than such contractor, having a lien upon the premises for labor, skill, or material furnished for the improvement, and for which the contractor is liable, and he may pay and discharge all such liens and deduct the cost thereof from such contract price. Any such person having a lien under the contractor in accordance with section 35-27-02, may serve upon the owner at any time, a notice of his claim. The owner, within fifteen days after the completion of the contract, may require any person having a lien hereunder, by written request therefor, to furnish to him an itemized and verified account of his claim, the amount thereof, and his name and address, and no action or other proceeding shall be commenced for the enforcement of such lien until ten days after such statement is so furnished. The word "owner", as used in this section, includes any person interested in the premises otherwise than as a lienor thereunder.

SECTION 5. AMENDMENT.) Subsection 2 of section 35-27-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Serve a written notice by registered or certified mail upon the owner, subject to section 35-27-02, demanding payment of such account and notifying such owner if payment is not made within fifteen days of the date of

mailing such notice a lien will be perfected according to law; and

SECTION 6. AMENDMENT.) The introductory language to section 35-27-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-27-17. SINGLE CONTRACT FOR SEVERAL BUILDINGS - AMOUNT OF CLAIM APPORTIONED.) If labor is done or materials furnished under a single contract for several buildings, structures, or improvements, the person furnishing the same shall be entitled to a lien therefor, subject to section 35-27-02, as follows:

SECTION 7. AMENDMENT.) Section 35-27-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-27-18. MECHANIC'S LIEN ON RAILWAY CONTRACTS OBTAINABLE.) Every person who furnishes any labor, skill, or material for constructing, altering, or repairing any line of railway, or any improvement or structure appertaining to any line of railway by virtue of any contract with the owner, or his agent, contractor, or subcontractor authorized in writing to contract for the owner, shall have a lien upon such line of railway and the right-of-way thereof, and upon all bridges, depots, offices, and other structures appertaining to the line of railway, and all franchises, privileges, and immunities granted to the owner of the line of railway for the construction and operation thereof, to secure the payment for the labor, skill, and materials, upon filing a statement of his demand therefor in accordance with the provisions of section 35-27-13, 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 within the time aforesaid shall not defeat the lien except to the extent specified in section 35-27-14.

SECTION 8. AMENDMENT.) Section 35-27-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-27-21. COMPLETE AND INDEPENDENT BUILDING - LIEN INDEPENDENT OF LAND - NOTICE TO OWNER.) In addition to the lien provided by this chapter, but subject to the conditions of section 35-27-02, when material is furnished or labor performed in the erection or construction of an original, complete, and independent building, structure, or improvement, whether the same is placed upon a foundation or not, the lien shall attach to the building or improvement in preference to any prior title, claim, lien, encumbrance, or mortgage upon the land upon which the building, erection, or improvement is erected. Upon the foreclosure of the lien, the building or improvement may be sold separately from the land and may be removed from the land within thirty days after the sale. The sale and removal of a structure or improvement separately from the land shall operate as a full satisfaction and discharge of the lien upon the real estate. At the time the material is furnished for such improvement, the seller shall notify the purchaser by delivering to him a written notice stating that the seller claims the right to foreclose the lien under the laws of the state, and in the

event that there is a default in payment for the improvement, to remove the building from the real estate upon which it is placed regardless of whether or not said building is placed upon a foundation.

Approved March 22, 1975