

HOUSE BILL NO. 1179

Introduced by

Judiciary Committee

(At the request of the Secretary of State)

1 A BILL for an Act to create and enact chapter 35-35 of the North Dakota Century Code, relating
2 to the filing of nonconsensual common-law liens; and to provide a penalty.

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

4 **SECTION 1.** Chapter 35-35 of the North Dakota Century Code is created and enacted
5 as follows:

6 **35-35-01. Definitions.**

- 7 1. "Filing officer" includes a county register of deeds, the secretary of state, and any
8 other government employee who is required in the course of the employee's duties
9 to file or record liens.
- 10 2. "Nonconsensual common-law lien" means a document that purports to assert a
11 lien against real or personal property of any person and:
12 a. Is not expressly provided for by a specific state or federal statute;
13 b. Does not depend upon the consent of the owner of the property affected; and
14 c. Is not an equitable or constructive lien imposed by a state or federal court of
15 competent jurisdiction.

16 **35-35-02. Nonconsensual lien unlawful - Penalty.**

- 17 1. Any person who submits for filing or recording a nonconsensual common-law lien
18 as defined in this chapter is guilty of a class B misdemeanor.
- 19 2. This section does not apply to a filing officer who acts in the course of the
20 employee's official duties in filing or recording an instrument submitted to the
21 employee for filing or recording.

22 **35-35-03. Filing officer may reject lien - Filing officer to accept notice of invalid**
23 **lien - Filing officer not liable.**

- 1 1. Any filing officer may reject for filing or recording any nonconsensual common-law
2 lien.
- 3 2. If a nonconsensual common-law lien has been accepted for filing or recording, the
4 filing officer shall accept for filing any sworn notice of invalid lien signed and
5 submitted by the person against whom such a lien was filed or that person's
6 attorney. The notice must be captioned "Notice of Invalid Lien" and must state the
7 name and address of the person on whose behalf the notice is filed, the name and
8 address of the lien claimant, and a clear reference to the document or documents
9 the person believes constitute a nonconsensual common-law lien. The notice must
10 be filed in such a manner that any search of the records which reveals the lien the
11 notice refers to will also reveal the notice of invalid lien. The filing officer shall mail
12 a copy of the notice of invalid lien to the lien claimant at the lien claimant's last
13 known address within one business day.
- 14 3. A filing officer, county, or the state may not be held liable for filing a nonconsensual
15 common-law lien, or for filing a sworn notice of invalid lien pursuant to this section.

35-35-04. Lien claimant may petition court - Procedure - Order to show cause -

Remedies - Order to be filed.

- 18 1. Any person who submits for filing or recording a lien against real or personal
19 property which is rejected by the filing officer as a nonconsensual common-law lien
20 may petition the district court of the county in which the document was rejected for
21 an order directing the filing officer to file or record the document pending a hearing
22 on whether the document constitutes a nonconsensual common-law lien. The
23 order may be granted ex parte. The lien claimant, as petitioner, shall appear at a
24 time scheduled by the court and show cause why the document should not be
25 declared a nonconsensual common-law lien with no legal effect and relief as
26 provided in section 35-35-06 granted to the person against whom the document
27 was attempted to be filed.
- 28 2. The petition must state the grounds upon which relief is sought and must be
29 supported by the affidavit of the petitioner or the petitioner's attorney setting forth a
30 concise statement of the facts upon which the claim for relief is based.

- 1 3. Any order rendered under this section must clearly state that if the lien claimant
2 fails to appear at the time and place noted in the order, the document must be
3 declared a nonconsensual common-law lien with no legal effect and the lien
4 claimant must be ordered to pay damages to the person against whom the
5 document was attempted to be filed in the amount of one thousand dollars or
6 actual damages, whichever is greater, and costs, including reasonable attorney's
7 fees.
- 8 4. If, after a hearing on the matter, the court determines that the document is a
9 nonconsensual common-law lien, the court shall issue an order so declaring, and
10 declaring the document to have no legal effect and awarding damages as provided
11 in section 35-35-06 to the person against whom the document was attempted to be
12 filed.
- 13 5. If the court determines that the document is not a nonconsensual common-law lien,
14 the court shall issue an order so stating and may award costs and reasonable
15 attorney's fees to the prevailing party.
- 16 6. The district court clerk shall file a copy of any order rendered pursuant to this
17 section in the office of the filing officer who rejected the document for filing.

18 **35-35-05. Petition to declare lien invalid - Procedure - Order to show cause -**
19 **Remedies - Order to be filed.**

- 20 1. Any person who has real or personal property or an interest therein, which is
21 subject to a filed or recorded nonconsensual common-law lien may petition the
22 district court for the county in which the lien is filed or recorded for an order
23 directing the lien claimant to appear before the court to show cause why the lien
24 should not be declared void and the relief provided for by section 35-35-06 granted
25 to the petitioner. The order directing the lien claimant to appear and show cause
26 may be granted ex parte. The petitioner shall serve the order and petition on the
27 lien claimant by personal service or by mailing copies of the petition and order to
28 the lien claimant at the lien claimant's last known address.
- 29 2. The petition must state the grounds upon which relief is requested, and must be
30 supported by the affidavit of the petitioner, or the petitioner's attorney, setting forth
31 a concise statement of the facts upon which the claim for relief is based.

- 1 3. Any order rendered under this section must clearly state that if the lien claimant
2 fails to appear at the time and place noted in the order, the lien must be declared
3 void ab initio and released and removed from the filing officer's files or records, and
4 the lien claimant must be ordered to pay damages of one thousand dollars or
5 actual damages, whichever is greater, and the costs incurred by the petitioner,
6 including reasonable attorney's fees.
- 7 4. If, after a hearing on the matter, the court determines that the document is a
8 nonconsensual common-law lien, the court shall issue an order declaring the lien
9 void ab initio, directing the filing officer to release and remove the lien from the files
10 and records and awarding damages as provided in section 35-35-06 to the
11 petitioner.
- 12 5. If the court determines that the lien is not a nonconsensual common-law lien, the
13 court shall issue an order so stating and may award costs and reasonable
14 attorney's fees to the prevailing party.
- 15 6. The district court clerk shall file a copy of any order rendered pursuant to this
16 section in the office where the lien was filed.

17 **35-35-06. Liability for submitting certain documents for filing - Penalty.** Any
18 person who submits for filing or recording to the office of a filing officer any document purporting
19 to create a nonconsensual common law lien against real or personal property is liable to the
20 person against whom the lien is claimed for actual damages or one thousand dollars, whichever
21 is greater, plus costs and reasonable attorney's fees. These damages and costs may be
22 awarded in any action brought under section 35-35-04 or 35-35-05 or in a separate action for
23 damages.