

**FIRST ENGROSSMENT
with House Amendments**

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 28-01-17, 28-05-09, 35-15-06, 35-21-01, 35-27-02, 35-27-04, 35-27-13, 35-27-14,
4 35-27-16, 35-27-18, 35-27-22, 35-27-24, 35-27-25, and 47-18-04 of the North Dakota Century
5 Code, relating to mechanic's and construction liens; and to repeal sections 35-27-05, 35-27-11,
6 35-27-12, and 35-27-26 of the North Dakota Century Code, relating to outdated mechanic's lien
7 provisions.

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

9 **SECTION 1. AMENDMENT.** Section 28-01-17 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **28-01-17. Actions having three-year limitations - Exceptions.** The following actions
12 must be commenced within three years after the claim for relief has accrued:

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

21 **SECTION 2. AMENDMENT.** Section 28-05-09 of the North Dakota Century Code is
22 amended and reenacted as follows:

1 **28-05-09. When lis pendens not required.** ~~No~~ A notice of the pendency of an action
2 in a district court is not required if the action is for the foreclosure of a mortgage or for the
3 enforcement of a ~~mechanic's~~ construction lien or miner's lien.

4 **SECTION 3. AMENDMENT.** Section 35-15-06 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **35-15-06. Foreclosure - When lienholders joined in action.** Any person holding a
7 miner's lien may foreclose the same in the same manner as a ~~mechanic's~~ construction lien may
8 be foreclosed. In an action for the foreclosure of such lien, ~~all persons~~ each person claiming
9 ~~liens~~ a lien upon the property charged must be made ~~parties~~ a party to the action, and the
10 rights of all parties must be determined by the court and such order made in regard thereto as
11 shall preserve and protect the rights of all parties.

12 **SECTION 4. AMENDMENT.** Section 35-21-01 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **35-21-01. Release of lien by undertaking authorized.** When any ~~mechanic's~~
15 construction lien, garage storage lien, repairman's lien, agricultural processor's lien, agricultural
16 supplier's lien, unpaid earned insurance premium lien, or miner's lien is filed against the
17 property of a resident of this state, the property affected may be released by an undertaking in
18 the manner provided in this chapter.

19 **SECTION 5. AMENDMENT.** Section 35-27-02 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **35-27-02. Persons entitled to mechanic's construction lien - Notice.** Any person
22 ~~who that~~ improves real estate ~~by the contribution of labor, skill, or materials~~, whether under
23 contract with the owner of such real estate or under contract with any agent, trustee, contractor,
24 or subcontractor of the owner, has a lien upon the improvement and upon the land on which ~~it~~
25 the improvement is situated or to which ~~it~~ the improvement may be removed for the price or
26 value of such contribution. Provided, however, that the amount of the lien is only for the
27 difference between the price paid by the owner or agent and the price or value of the
28 contribution. If the owner or agent has paid the full price or value of the contribution, no lien is
29 allowed. Provided further that if the owner or an agent of the owner has received a waiver of
30 lien signed by the person ~~who that~~ improves the real estate ~~by the contribution of labor, skill, or~~
31 ~~materials~~, ~~no~~ a lien is not allowed.

1 Any person ~~who~~ that extends credit or makes a contract with any agent, trustee,
2 contractor, or subcontractor of the owner for the improvement of real estate, ~~shall~~, upon
3 demand, ~~have~~ has the right to request and secure evidence of the legal description of the real
4 estate upon which the improvement is located, including the name of the title owner of the real
5 estate. Written notice that a lien will be claimed must be given to the owner of the real estate
6 by certified mail at least ten days before the recording of the construction lien.

7 **SECTION 6. AMENDMENT.** Section 35-27-04 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **35-27-04. When lien attaches - Exception - ~~Notice~~ - Filing.** As against a mortgage
10 given in good faith for the purpose of providing funds for the payment of materials or labor for
11 the improvement, ~~no such~~ a lien may not be preferred ~~to such mortgage~~ even though such
12 mortgage is recorded ~~subsequent to~~ after the time the first item of material or labor is furnished
13 upon the premises, or ~~subsequent to~~ after the actual visible beginning of the improvement
14 unless the person furnishing such labor, skill, or material for such improvement ~~shall, prior to~~
15 before the recording of such mortgage, ~~file~~ files for record a ~~notice of the person's intention to~~
16 claim a mechanic's construction lien pursuant to the provisions of section 35-27-05.

17 **SECTION 7. AMENDMENT.** Section 35-27-13 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **35-27-13. How lien perfected - ~~Mechanic's~~ Construction lien recorded.** Every
20 person desiring to perfect the person's lien shall record with the recorder of the county in which
21 the property to be charged with the lien is situated, within ninety days after all the person's
22 contribution is done, and having complied with the provisions of this chapter, a ~~mechanic's~~ lien
23 describing the property and stating the amount due, the dates of the first and last contribution,
24 and the person with which the claimant contracted.

25 **SECTION 8. AMENDMENT.** Section 35-27-14 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **35-27-14. Lien not lost for failure to file within time - Exception.** A failure to file ~~the~~
28 ~~lien account~~ within ninety days does not defeat the lien except as against purchasers or
29 encumbrancers in good faith and for value whose rights accrue ~~after the ninety days and before~~
30 ~~any claim for~~ the lien is filed, and as against the owner to the extent of the amount paid to a
31 contractor ~~after the expiration of the ninety days and before the filing~~ recording of the ~~account~~

1 lien. A lien may not be filed more than three years after the date of the first item of material is
2 furnished.

3 **SECTION 9. AMENDMENT.** Section 35-27-16 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **35-27-16. Inaccuracies in lien statement.** ~~In no case may the liens~~ A lien given by
6 this chapter ~~be~~ is not affected by any inaccuracy in the particulars of the lien ~~account~~, but, as
7 against all persons except the owner of the property, the lien claimant must be concluded by
8 the dates therein given, showing the first and last items of the claimant's account. ~~In no case~~
9 ~~may a~~ A lien may not exist for a greater amount than the sum claimed in the lien ~~account~~, nor
10 for any amount, if it be made to appear that the claimant has knowingly demanded ~~in the~~
11 ~~statement~~ more than is justly due.

12 **SECTION 10. AMENDMENT.** Section 35-27-18 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **35-27-18. Mechanic's Construction lien on railway contracts obtainable.** Every
15 person ~~who~~ that furnishes any labor, skill, or material for constructing, altering, or repairing any
16 line of railway, or any improvement or structure appertaining to any line of railway by virtue of
17 any contract with the owner, or the owner's agent, contractor, or subcontractor authorized in
18 writing to contract for the owner, has a lien upon such line of railway and the right of way
19 ~~thereof~~ of such railway, and upon all bridges, depots, offices, and other structures appertaining
20 to the line of railway, and all franchises, privileges, and immunities granted to the owner of the
21 line of railway for the construction and operation thereof, to secure the payment for the labor,
22 skill, and materials, upon ~~filing~~ recording a statement of the person's demand therefor in
23 ~~accordance with the provisions of section 35-27-13~~ lien, within ninety days from the last day of
24 the month in which the labor or material was furnished, but a failure to ~~file the same~~ record
25 within the ~~time aforesaid~~ ninety days does not defeat the lien except to the extent specified in
26 section 35-27-14.

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

29 **35-27-22. Order of priority of classes of mechanics' construction liens.**

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

- 1 ~~1-~~ a. For manual labor.
2 ~~2-~~ b. For materials.
3 ~~3-~~ c. Subcontractors other than manual laborers.
4 ~~4-~~ d. Original contractors.
5 2. Liens for manual labor filed within the ninety-day period must share ratably in the
6 security. Liens for manual labor filed ~~thereafter~~ after the ninety-day period have
7 priority in the order of the filing of such liens. Liens for materials filed within the
8 ninety-day period must share ratably in the security and ~~such~~ liens filed ~~thereafter~~
9 after the ninety-day period have priority in the order of the filing of such liens.

10 **SECTION 12. AMENDMENT.** Section 35-27-24 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **35-27-24. Action to enforce ~~mechanic's~~ construction lien - Notice of - Deficiency**
13 **judgment.** Any person having a lien by virtue of this chapter may bring an action to enforce
14 the lien in the district court of the county in which the property is situated. Any number of
15 persons claiming liens against the same property may join in the action and when separate
16 actions are commenced the court may consolidate ~~them~~ the actions. Before a lienholder may
17 enforce a lien, the lienholder shall give written notice of the lienholder's intention so to do, which
18 notice must be given by personal service upon the record owner of the property affected at
19 least ten days before an action to enforce the lien is commenced, or by registered mail directed
20 to the owner's last-known address at least twenty days before the action is commenced. The
21 judgment may direct that in the event that a deficiency remains after the sale of the real ~~or~~
22 ~~personal~~ property subject to the lien an execution may issue for such deficiency.

23 **SECTION 13.** A new section to chapter 35-27 of the North Dakota Century Code is
24 created and enacted as follows:

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

28 **SECTION 14. AMENDMENT.** Section 35-27-25 of the North Dakota Century Code is
29 amended and reenacted as follows:

30 **35-27-25. Requiring suit to be commenced - Demand - Limitations of action.**
31 Upon written demand of the owner, that person's agent, or contractor, served on the person

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

13 **SECTION 15. AMENDMENT.** Section 47-18-04 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **47-18-04. When homestead subject to execution.** A homestead is subject to
16 execution or forced sale in satisfaction of judgments obtained in the following cases:

- 17 1. On debts secured by mechanics', construction, or laborers' liens for work or labor
18 done or performed or material furnished exclusively for the improvement of the
19 same.
- 20 2. On debts secured by mortgage on the premises executed and acknowledged by
21 both husband and wife, or an unmarried claimant.
- 22 3. On debts created for the purchase thereof and for all taxes accruing and levied
23 thereon.
- 24 4. On all other debts when, upon an appraisal as provided by section 47-18-06, it
25 appears that the value of said homestead is more than eighty thousand dollars
26 over and above liens or encumbrances ~~thereon~~ on the homestead, and then only
27 to the extent of any value in excess of the sum total of such liens and
28 encumbrances plus said eighty thousand dollars.

29 **SECTION 16. REPEAL.** Sections 35-27-05, 35-27-11, 35-27-12, and 35-27-26 of the
30 North Dakota Century Code are repealed.