

Introduced by

Representatives Vigesaa, D. Ruby, Weisz, Westlind

Senators Bakke, Clemens, Dwyer

1 A BILL for an Act to create and enact ~~two~~ new ~~sections~~section to chapter 35-13 of the North
2 Dakota Century Code, relating to the ~~sale of property subject to a repairman's lien and sale-~~
3 ~~proceeds~~nonjudicial disposition of property by lienholders; and to amend and reenact sections
4 35-13-01, 35-13-04, 35-13-05, and 35-13-06 of the North Dakota Century Code, relating to
5 repairman's liens, priority of liens, notice requirements, and assignments.

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

7 **SECTION 1. AMENDMENT.** Section 35-13-01 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **35-13-01. Repairman's lien authorized.**

10 Any blacksmith, machinist, farm equipment dealer, construction equipment dealer, welder,
11 garage keeper, mechanic, or aviation operator, having an established place of business in this
12 state who makes, alters, or repairs any automobile, truck, engine, combine, tractor, farm
13 equipment, construction equipment, well machine, aircraft, or watercraft at the request of the
14 owner or legal possessor of the property has a lien on that property, and on any accessories
15 and parts placed upon the property, for reasonable charges for work done ~~and~~ materials
16 furnished, storage fees, and transportation costs, until the charges are paid. If the cost of repair
17 ~~would exceed~~exceeds ~~four~~six thousand dollars or thirty percent or, ~~nine~~fifteen thousand dollars
18 or thirty percent for property used for agricultural or construction purposes, of the value of the
19 property, in the property's repaired condition, whichever is greater, and the repairman intends to
20 have the entire repair bill constitute a lien with priority over ~~the mortgage or financing-~~
21 ~~statement~~any liens of record, the repairman shall give notice by registered or certified mail to
22 the ~~recordholder of the mortgage or financing statement~~lienholders of record of the proposed
23 repair, the estimated cost of repair, and the estimated value of the property in its repaired

1 condition. Storage fees under this chapter may not begin to accrue until fifteen days after the
2 owner is requested to take possession of the property.

3 **SECTION 2. AMENDMENT.** Section 35-13-04 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **35-13-04. Priority of lien.**

6 A lien obtained under this chapter has priority over all other liens, chattel mortgages, or
7 encumbrances against the personal property upon which the lien is secured, but if the
8 repairman has failed to notify the ~~recordholder of the mortgage or financing statement~~lienholder
9 of record as provided in section 35-13-01, or if such notice was given and the ~~holder of the~~
10 ~~mortgage or financing statement~~lienholder of record, within five days after receiving such notice,
11 communicated in writing to the repairman an objection to all the proposed repair costs
12 becoming a lien against the property with priority over the ~~mortgage or financing~~
13 ~~statement~~existing liens of record, then only that portion of the repairman's lien up to ~~four~~six
14 thousand dollars or thirty percent, or ~~nine~~fifteen thousand dollars or thirty percent for property
15 used for agricultural or construction purposes, of the retail value, whichever is greater, in the
16 property's repaired condition, has priority over the ~~mortgage or financing statement~~existing lien
17 of record.

18 **SECTION 3. AMENDMENT.** Section 35-13-05 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **35-13-05. Notice before foreclosure**~~to prior mortgagee.~~

21 1. A person holding a lien under this chapter on property ~~which has been~~ encumbered
22 ~~previously by mortgage,~~by prior liens of record or before beginning any action or
23 proceeding for the foreclosure of the lien, ~~or for sale of the property under sections 3~~
24 ~~and 4 of this Act,~~ shall give ~~twenty~~ten days' notice in writing of the lienholder's intention
25 to foreclose the lien, ~~or intention to initiate a sale of the property under sections 3 and~~
26 ~~4 of this Act,~~ to the ~~recordholder of the mortgage~~lienholders of record and the owner of
27 the property. The notice may be served by registered or certified mail addressed to the
28 ~~recordholder~~lienholders of record and property owner at the ~~recordholder's~~lienholders
29 and property owner's last-known post-office address.

30 2. The notice before foreclosure must include:

31 a. A description of the property subject to the lien;

- 1 b. The grounds for the lien;
- 2 c. The name, address, and telephone number of the lienholder;
- 3 d. The amount owed;
- 4 e. The date after which the property subject to the lien will be offered for sale; and
- 5 f. A statement that the ~~recordholder~~lienholder of record or property owner may
6 reclaim the property subject to the lien before the property is offered for sale by
7 paying the amount owed.

8 **SECTION 4. AMENDMENT.** Section 35-13-06 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **35-13-06. ~~Mortgage~~Lienholder may pay amount of lien - Assignment of lien.**

11 The holder~~recordholder of any mortgage~~record lienholder of any lien against property on
12 which a lien has been filed under the provisions of this chapter may pay the amount due on the
13 lien at any time ~~previous to~~before a sale upon the foreclosure thereof of the property. Upon
14 payment of the lien by a mortgageholder~~recordholder~~lienholder, the holder of the lien shall
15 assign it to such mortgageholder~~the recordholder~~ the lienholder, and thereafter the
16 mortgageholder~~recordholder~~lienholder then is entitled to all the rights which the person filing the
17 lien had before the lien was paid.

18 ~~SECTION 5. A new section to chapter 35-13 of the North Dakota Century Code is created~~
19 ~~and enacted as follows:~~

20 ~~Sale of property:~~

- 21 ~~1. A lienholder in possession of property may sell the property as provided under this~~
22 ~~chapter if:~~
- 23 ~~a. The recordholder of the property subject to the lien does not pay the amount due~~
24 ~~pursuant to section 35-13-06 within the time specified under section 35-13-05; or~~
- 25 ~~b. The property owner does not reclaim the property before the date the property is~~
26 ~~offered for sale under section 35-13-05.~~
- 27 ~~2. A lienholder that sells property under this chapter may retain from the sale proceeds:~~
- 28 ~~a. The amount owed on the lien;~~
- 29 ~~b. The reasonable costs of transporting, storing, and maintaining the property;~~
- 30 ~~c. The notice and publication costs incurred by the lienholder under this chapter;~~
31 ~~and~~

1 ~~_____ d. The costs associated with the sale of the property.~~

2 ~~_____ 3. After a lienholder has been compensated as authorized under subsection 2, the~~
3 ~~lienholder shall remit any remaining proceeds to entitled lienholders and secured~~
4 ~~parties.~~

5 ~~_____ 4. If sale proceeds remain after satisfying entitled lienholders and secured parties under~~
6 ~~subsection 3, the lienholder shall hold the remaining sale proceeds for the benefit of~~
7 ~~the property owner for ninety days after the date of the sale. If the property owner fails~~
8 ~~to claim the remaining sale proceeds within the ninety-day period, the lienholder shall~~
9 ~~deliver the proceeds to the administrator of the state abandoned property office in~~
10 ~~accordance with chapter 47-30.1.~~

11 ~~_____ SECTION 6. A new section to chapter 35-13 of the North Dakota Century Code is created~~
12 ~~and enacted as follows:~~

13 ~~_____ **Sale proceeds – Vehicle title.**~~

14 ~~_____ If a lien is not satisfied under subsection 1 of section 4 of this Act, a lienholder in possession~~
15 ~~of a motor vehicle that is subject to chapter 39-05 may obtain from the department of~~
16 ~~transportation a certificate of title for the motor vehicle, free and clear of all liens,~~
17 ~~encumbrances, and other claims of ownership. Upon receipt of the title to the motor vehicle, the~~
18 ~~lienholder shall remove and destroy the original number plates displayed on the motor vehicle.~~

19 **SECTION 5.** A new section to chapter 35-13 of the North Dakota Century Code is created
20 and enacted as follows:

21 **Nonjudicial disposition of property.**

22 The person holding a lien under this chapter has the rights of a secured party under article
23 nine of the Uniform Commercial Code for purposes of nonjudicial disposition of the property. A
24 person holding a lien under this chapter who chooses to use nonjudicial disposition of the
25 property shall dispose of the property in the manner prescribed for security interests under
26 article nine of the Uniform Commercial Code.