

E & R AMENDMENTS TO LB 655

1           1.     Strike the original sections and all amendments  
2 thereto and insert the following new sections:

3           "Section 1. For purposes of sections 1 to 4 of this act,  
4 nonconsensual common-law lien means a document that purports to  
5 assert a lien against real or personal property of any person or  
6 entity and:

7           (1) Is not expressly provided for by a specific state or  
8 federal statute;

9           (2) Does not depend on the consent of the owner of the  
10 real or personal property affected; and

11           (3) Is not an equitable or constructive lien imposed by a  
12 state or federal court of competent jurisdiction.

13           Sec. 2. Any person who submits for filing or recording  
14 to the Secretary of State, county clerk, register of deeds, or  
15 clerk of any court any document purporting to create a  
16 nonconsensual common-law lien against real or personal property in  
17 violation of this section or section 76-296 is liable to the person  
18 or entity against whom the lien is claimed for actual damages plus  
19 costs and reasonable attorney's fees.

20           Sec. 3. The Secretary of State, county clerk, register  
21 of deeds, or clerk of any court shall refuse to accept for filing  
22 any nonconsensual common-law lien.

23           Sec. 4. Any lien determined to be a nonconsensual  
24 common-law lien pursuant to any proceeding shall be stricken from

1 the record of the Secretary of State, county clerk, register of  
2 deeds, or clerk of any court upon the issuing of a valid court  
3 order from a court of competent jurisdiction. There shall be no  
4 filing fee for a court order issued pursuant to this section.

5           Sec. 5.     Section 52-131, Reissue Revised Statutes of  
6 Nebraska, is amended to read:

7           52-131. (1) A person who furnishes services or materials  
8 pursuant to a real estate improvement contract has a construction  
9 lien, only to the extent provided in ~~sections 52-125 to 52-159~~ the  
10 Nebraska Construction Lien Act, to secure the payment of his or her  
11 contract price.

12           (2) A lien arises under ~~sections 52-125 to 52-159~~ the act  
13 only if the claimant records a lien within the time specified by  
14 section 52-137.

15           (3) Real estate to which a construction lien attaches is  
16 specified by section 52-133, and limitations on the existence of a  
17 lien for materials are specified by section 52-134.

18           (4) The amount of a claimant's lien is specified by  
19 section 52-136. The content of the notice of the right to assert a  
20 lien liability to be given to the owner under section 52-136 is  
21 specified by section 52-135.

22           (5) The priority of a claimant's lien as against other  
23 construction-lien claimants is specified in section 52-138, and  
24 priority as against claimants other than construction-lien  
25 claimants is specified in section 52-139.

26           (6) Foreclosure of a lien under ~~sections 52-125 to 52-159~~  
27 the act is governed by section 52-155, and the time within which an

1 action to foreclose must be brought by section 52-140.

2           Sec. 6.     Section 52-135, Reissue Revised Statutes of  
3 Nebraska, is amended to read:

4           52-135. (1) At any time after a claimant has entered  
5 into the contract under which he or she may claim a lien under  
6 ~~sections 52-125 to 52-159~~ the Nebraska Construction Lien Act, he or  
7 she may give a notice of the right to assert a lien ~~liability~~ to  
8 the contracting owner. The notice of the right to assert a lien  
9 ~~liability~~ must be in writing, state that it is a notice of a right  
10 to assert a lien against real estate for services or materials  
11 furnished in connection with improvement of the real estate, and  
12 contain:

13           (a) The name of the claimant and the address to which the  
14 owner or others may send communications to the claimant;

15           (b) The name and address of the person with whom the  
16 claimant contracted;

17           (c) The name of the owner against whom a lien is or may  
18 be claimed;

19           (d) A general description of the services or materials  
20 provided or to be provided;

21           (e) A description sufficient to identify the real estate  
22 against which the lien is or may be claimed;

23           (f) A statement that the claimant ~~has recorded a lien and~~  
24 ~~the date of recording or, if the lien has not been recorded, a~~  
25 ~~statement that the claimant~~ is entitled to record a lien;

26           (g) The amount unpaid to the claimant for services or  
27 materials, whether or not due, or if no amount is fixed by the

1 contract, a good faith estimate of the amount designated as an  
2 estimate; and

3 (h) The following statement in type no smaller than that  
4 used in providing the information required by subdivisions (1)(a)  
5 ~~to~~ through (1)(g) of this subsection:

6 Warning. If you did not contract with the person giving  
7 this notice, any future payments you make in connection with this  
8 project may subject you to double liability.

9 (2) A claimant may notify the contracting owner, either  
10 in the notice of the right to assert a lien liability or  
11 separately, that the claimant must be notified of the recording of  
12 any termination of the notice of commencement. The notice to the  
13 owner must be in writing and, if not part of the notice of the  
14 right to assert a lien, liability, shall contain the information  
15 specified in subdivisions (1)(a) ~~to~~ through (1)(e) of this section.  
16 In addition, the notice shall state that a written notice of the  
17 recording of any notice of termination must be given to the  
18 claimant at least three weeks before the effective date of the  
19 notice of termination.

20 (3) The claimant shall send a copy of a recorded lien to  
21 the contracting owner within ten days after recording, and the  
22 recording shall be within the time specified for the filing of  
23 liens under section 52-137.

24 (4) If the contracting owner has held out another person  
25 as contracting owner, either by naming that person in the notice of  
26 commencement or otherwise, a notice directed to and received by  
27 that person is effective against the contracting owner.

1           ~~(4)~~ (5) If the contracting owner has held out a  
2 fictitious or nonexisting person as contracting owner either by  
3 naming that person in the notice of commencement or otherwise, a  
4 notice to that fictitious or nonexisting person delivered at an  
5 address held out by the contracting owner as the address of the  
6 fictitious or nonexisting person is effective against the  
7 contracting owner.

8           ~~(5)~~ (6) This section shall apply to a lien claimant only  
9 when the contracting owner is a protected party.

10           Sec. 7.     Section 52-136, Reissue Revised Statutes of  
11 Nebraska, is amended to read:

12           52-136. (1) Subject to subsection (3) of this section:

13           (a) The lien of a prime contractor is for the unpaid part  
14 of his or her contract price; and

15           (b) Except as against a protected party contracting  
16 owner, the lien of a claimant other than a prime contractor is for  
17 the amount unpaid under the claimant's contract.

18           (2) Except as modified by subsections (4) and (5) of this  
19 section, as against a protected party contracting owner, the lien  
20 of a claimant other than a prime contractor is for the lesser of:

21           (a) The amount unpaid under the claimant's contract; or

22           (b) The amount unpaid under the prime contract through  
23 which the claimant claims at the time the contracting owner  
24 receives the claimant's notice of the right to assert a lien.  
25 ~~liability.~~

26           (3) The lien of a claimant is reduced by the sum of the  
27 liens of claimants who claim through him or her.

1           (4) If a protected party contracting owner's lien  
2 liability under a particular prime contract as provided in  
3 subsection (5) of this section is less than the sum of claims of  
4 all claimants claiming through that particular prime contractor:

5           (a) Lien claimants whose liens attach at different times  
6 have liens in the order of attachment until the owner's lien  
7 liability is exhausted; and

8           (b) Among claimants whose liens attach, or may attach, at  
9 the same time, each claimant's lien is for his or her pro rata  
10 portion of the amount of the contracting owner's lien liability to  
11 claimants whose liens attach at that time.

12           (5) A protected party contracting owner's lien liability  
13 under a particular prime contract is the prime contract price less  
14 payments properly made thereon. A payment is properly made on a  
15 prime contract to the extent that the payment:

16           (a) Is made in good faith before the receipt by the  
17 contracting owner of a copy of a recorded lien or of a notice of  
18 the right to assert a lien; ~~liability,~~ or

19           (b) If made after receipt by the contracting owner of a  
20 copy of a recorded lien or of a notice of the right to assert a  
21 lien, ~~liability,~~ is made in good faith and leaves unpaid a part of  
22 the prime contract price sufficient to satisfy the unpaid claims of  
23 all claimants who have provided a copy of a recorded lien or who  
24 have given notice of the right to assert a lien ~~liability~~ and whose  
25 claims are not being satisfied by the payment.

26           Sec. 8. Section 52-201, Reissue Revised Statutes of  
27 Nebraska, is amended to read:

1           52-201. (1) Any person who makes, alters, repairs, or in  
2 any way enhances the value of any vehicle, automobile, machinery,  
3 farm implement, or tool, or shoes a horse or ~~horses,~~ ~~or~~ mule ~~or~~  
4 ~~mules,~~ at the request of or with the consent of the owner, or  
5 owners thereof, shall have a lien on such vehicle, automobile,  
6 machinery, farm implement, ~~or~~ tool, ~~or~~ horse or ~~horses,~~ mule ~~or~~  
7 ~~mules,~~ while in ~~his~~ such person's possession, for ~~his~~ the  
8 reasonable or agreed charges for the work done or material  
9 furnished, and shall have the right to retain such property until  
10 such charges are paid.

11           (2) Any person who exercises the right to retain such  
12 property shall not assess any additional fee beyond the reasonable  
13 or agreed charges for the work done or material furnished unless  
14 the person first sends, by certified mail, (a) a notice of  
15 possession of such property, intent to assess an additional  
16 reasonable fee beginning with the date that the notice is sent, and  
17 the amount or rate of the additional reasonable fee to the owner or  
18 owners for whom the work was performed and (b) a copy of such  
19 notice to any lienholder noted on the certificate of title if  
20 applicable.

21           Sec. 9. Section 70-641, Reissue Revised Statutes of  
22 Nebraska, is amended to read:

23           70-641. All provisions of section 52-118, with reference  
24 to contractors' bonds, shall be applicable and effective as to any  
25 contract let pursuant to the provisions of sections 70-637 to  
26 70-640, except that with respect to any electric generating  
27 facility, the penal sum of any contractor's bond shall be the

1 lesser of the contract amount or two hundred million dollars. The  
2 bond required by section 52-118 may be satisfied by a corporate  
3 surety or letter of credit, or combination thereof, approved by the  
4 district.

5           Sec. 10. The Revisor of Statutes shall assign sections 1  
6 to 4 of this act to Chapter 52.

7           Sec. 11. Original sections 52-131, 52-135, 52-136,  
8 52-201, and 70-641, Reissue Revised Statutes of Nebraska, are  
9 repealed.".

10           2. On page 1, strike beginning with "section" in line 1  
11 through line 5 and insert "sections 52-131, 52-135, 52-136, 52-201,  
12 and 70-641, Reissue Revised Statutes of Nebraska; to prohibit  
13 nonconsensual common-law liens as prescribed; to change provisions  
14 relating to construction liens, artisan liens, and contractor's  
15 bonds; to provide a duty for the Revisor of Statutes; and to repeal  
16 the original sections.".