

LEGISLATIVE BILL 655

Approved by the Governor May 29, 2003

Introduced by Schimek, 27

AN ACT relating to liens; to amend sections 52-131, 52-135, 52-136, 52-201, and 70-641, Reissue Revised Statutes of Nebraska; to prohibit nonconsensual common-law liens as prescribed; to change provisions relating to construction liens, artisan liens, and contractor's bonds; to provide a duty for the Revisor of Statutes; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

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

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

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

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

Sec. 2. If a person submits for filing or recording to the Secretary of State, county clerk, register of deeds, or clerk of any court any document purporting to create a nonconsensual common-law lien against real or personal property in violation of this section or section 76-296 and such document is so filed or recorded, the person submitting the document is liable to the person or entity against whom the lien is claimed for actual damages plus costs and reasonable attorney's fees.

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

Sec. 4. Any lien determined to be a nonconsensual common-law lien pursuant to any proceeding shall be stricken from the record of the Secretary of State, county clerk, register of deeds, or clerk of any court upon the issuing of a valid court order from a court of competent jurisdiction. There shall be no filing fee for a court order issued pursuant to this section.

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

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

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

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

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

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

(6) Foreclosure of a lien under ~~sections 52-125 to 52-159~~ the act is governed by section 52-155, and the time within which an action to foreclose must be brought by section 52-140.

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

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

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

(b) The name and address of the person with whom the claimant

contracted;

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

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

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

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

(g) The amount unpaid to the claimant for services or materials, whether or not due, or if no amount is fixed by the contract, a good faith estimate of the amount designated as an estimate; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

that the payment:

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

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

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

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

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

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

70-641. All provisions of section 52-118, with reference to contractors' bonds, shall be applicable and effective as to any contract let pursuant to the provisions of sections 70-637 to 70-640, except that with respect to any electric generating facility, the penal sum of any contractor's bond shall be the lesser of the contract amount or two hundred million dollars. The bond required by section 52-118 may be satisfied by a corporate surety or letter of credit, or combination thereof, approved by the district.

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

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