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SENATE BILL 343

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Howie Morales and Zachary J. Cook

AN ACT

RELATING TO LIENS; ELIMINATING EXCEPTIONS FOR NOTICE AND
RECORDING REQUIREMENTS FOR CLAIMS RELATED TO MECHANICS' AND
MATERIALMEN'S LIENS; REQUIRING WRITTEN NOTICE FOR CLAIMS
RELATED TO CERTAIN LIENS; REQUIRING THAT THE DATE AND METHOD OF
DELIVERY OF NOTICE BE PROVIDED ON THE RECORDED LIEN FOR CLAIMS
RELATED TO CERTAIN LIENS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 48-2-2.1 NMSA 1978 (being Laws 1990,
Chapter 92, Section 2, as amended) is amended to read:

"48-2-2.1. PROCEDURE FOR PERFECTING CERTAIN MECHANICS'
AND MATERIALMEN'S LIENS.--

~~[A. The provisions of Subsections B through D of
this section do not apply to claims of liens made on
residential property containing four or fewer dwelling units,~~

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1 ~~to claims of liens made by an original contractor or to claims~~
2 ~~of liens made by mechanics or materialmen who contract directly~~
3 ~~with the original contractor. For purposes of this section,~~
4 ~~"original contractor" means a contractor that contracts~~
5 ~~directly with the owner.~~

6 ~~B.~~ A. No lien ~~[of a mechanic or a materialman]~~
7 claimed ~~[in an amount of more than five thousand dollars~~
8 ~~(\$5,000)] pursuant to the provisions of Chapter 48, Article 2~~
9 NMSA 1978 may be enforced by action or otherwise unless the
10 lien claimant has given notice in writing of the claimant's
11 right to claim a lien in the event of nonpayment and that
12 notice was given not more than sixty days after initially
13 furnishing work or materials, or both, by either certified
14 mail, return receipt requested, facsimile with acknowledgment
15 or personal delivery to:

16 (1) the owner or reputed owner of the property
17 upon which the improvements are being constructed; or

18 (2) the original contractor, if any.

19 ~~G.~~ B. If the owner or the original contractor
20 claims lack of notice as a defense to the enforcement of a lien
21 described in Subsection ~~[B]~~ A of this section, the owner or
22 contractor shall show that upon the request of the mechanic or
23 materialman that the owner or contractor furnished to the lien
24 claimant not more than five days after such request was made:

25 (1) the original contractor's name, address

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1 and license number, if there is an original contractor on the
2 project;

3 (2) the owner's name and address;

4 (3) a description of the property or a
5 description sufficiently specific for actual identification of
6 the property; and

7 (4) the name and address of any bonding
8 company or other surety that is providing either a payment or
9 performance bond for the project.

10 ~~[D-]~~ C. The notice required to be given by the
11 claimant pursuant to the provisions of Subsection ~~[B]~~ A of this
12 section shall contain:

13 (1) a description of the property or a
14 description sufficiently specific for actual identification of
15 the property;

16 (2) the name, address and phone number, if
17 any, of the claimant; and

18 (3) the name and address of the person with
19 whom the claimant contracted or to whom the claimant furnished
20 labor or materials, or both.

21 ~~[E-]~~ D. A person required by the provisions of
22 Subsection ~~[B]~~ A of this section to give notice to enforce the
23 person's claim of lien may elect not to give the notice but may
24 give the required notice at a later time. If the person elects
25 to do so, the lien shall apply only to the work performed or

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1 materials furnished on or after the date thirty days prior to
2 the date the notice was given. The provisions of Subsections
3 [G] B and [D] C of this section apply to any notice given under
4 this subsection.

5 E. No lien that is claimed pursuant to the
6 provisions of Chapter 48, Article 2 NMSA 1978 and that is
7 recorded in the office of the county clerk may be enforced by
8 action or otherwise unless the date that the lien claimant gave
9 written notice as provided in Subsection A of this section and
10 the method of delivery of the notice are listed on the recorded
11 lien.

12 F. For purposes of this section, "original
13 contractor" means a contractor that contracts directly with the
14 owner."

15 SECTION 2. Section 48-2-8 NMSA 1978 (being Laws 1880,
16 Chapter 16, Section 8, as amended) is amended to read:

17 "48-2-8. RECORDING OF LIENS--INDEXING--FEES.--The county
18 clerk ~~[must]~~ shall make a record ~~[the]~~ of a claim ~~[in a book~~
19 ~~kept by him for that purpose]~~, which record ~~[must]~~ shall be
20 indexed as deeds and other conveyances are required by law to
21 be indexed, and for which ~~[he]~~ the county clerk may receive the
22 same fees as are allowed by law for recording deeds and other
23 instruments. Any claim, the form of which complies with the
24 requirements of ~~[this article]~~ Chapter 48, Article 2 NMSA 1978,
25 shall be entitled to be filed of record ~~[and need not comply~~

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1 ~~with the requirements of Section 14-8-4 NMSA 1978]."~~

2 SECTION 3. Section 48-4-2 NMSA 1978 (being Laws 1949,
3 Chapter 15, Section 2) is amended to read:

4 "48-4-2. TIME FOR FILING CLAIM--CONTENTS OF
5 CLAIM--NOTICE.--~~Every]~~

6 A. An abstracter claiming the benefit of [this Act
7 ~~must]~~ Chapter 48, Article 4 NMSA 1978 shall, within ninety
8 ~~[90]~~ days after the date of the certificate in the abstract
9 for which lien is claimed, file for record with the county
10 clerk of the county ~~[or counties]~~ in which the property, or any
11 part ~~[thereof]~~ of it covered by ~~[said]~~ the abstract, is
12 situated, a claim containing a statement of ~~[his]~~ the
13 abstracter's demands, after deducting all just credits and
14 offsets, the name of the owner, ~~[and also]~~ the name of the
15 person by whom ~~[he]~~ the abstracter was employed and ~~[also]~~ a
16 description of the property to be charged with the lien
17 sufficient for identification, which claim ~~[must]~~ shall be
18 verified by the oath of the claimant or of some other person.

19 B. No lien that is claimed pursuant to the
20 provisions of Chapter 48, Article 4 NMSA 1978 and that is
21 recorded in the office of the county clerk may be enforced by
22 action or otherwise unless the abstracter gave written notice
23 to the owner and the person by whom the abstracter was employed
24 and the date and method of delivery of the notice are listed on
25 the recorded lien."

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1 SECTION 4. Section 48-5-2 NMSA 1978 (being Laws 1923,
2 Chapter 102, Section 2) is amended to read:

3 "48-5-2. PROCEDURE TO OBTAIN LIEN--NOTICE.--

4 A. Any person entitled to a lien under [~~this~~
5 ~~chapter~~] Chapter 48, Article 5 NMSA 1978 shall, within ten days
6 after the threshing is completed, file in the office of the
7 county clerk of the county in which the grain was grown a
8 statement in writing, verified by oath, showing the amount and
9 quantity of grain threshed, the price agreed upon for threshing
10 [~~the same~~] it, the name of the person for whom the threshing
11 was done and a description of the land upon which the grain was
12 grown. Unless the person entitled to the lien [~~shall file~~
13 ~~such~~] files that statement within [~~the~~] that time [~~aforsaid~~
14 ~~he~~] limit, the person shall be deemed to have waived [~~his~~] the
15 right [~~thereto~~] to the lien.

16 B. No lien that is claimed pursuant to the
17 provisions of Chapter 48, Article 5 NMSA 1978 and that is
18 recorded in the office of the county clerk may be enforced by
19 action or otherwise unless the person entitled to a lien gave
20 written notice to the grain owner or the grain owner's
21 representative and the date and method of delivery of the
22 notice are listed on the recorded lien."

23 SECTION 5. Section 48-5A-2 NMSA 1978 (being Laws 1989,
24 Chapter 89, Section 2) is amended to read:

25 "48-5A-2. PROCEDURE TO OBTAIN LIEN--NOTICE.--

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1 A. Any person or company entitled to a lien under
2 ~~[this act]~~ Chapter 48, Article 5A NMSA 1978 shall, within
3 twenty-one days after the harvest is completed, file in the
4 office of the county clerk of the county in which the crop was
5 grown a statement in writing, verified by oath, showing the
6 amount and quantity of the crop harvested, the price agreed
7 upon for harvesting it, the name of the person for whom the
8 harvest was done and a description of the land upon which the
9 crop was grown. Unless the person or company entitled to the
10 lien files that statement within the twenty-one-day time limit,
11 ~~[he]~~ the person or company shall be deemed to have waived ~~[his]~~
12 the person's or company's right to the lien.

13 B. No lien that is claimed pursuant to the
14 provisions of Chapter 48, Article 5A NMSA 1978 and that is
15 recorded in the office of the county clerk may be enforced by
16 action or otherwise unless the person or company entitled to a
17 lien gave written notice to the owner of the crop or the
18 owner's representative and the date and method of the notice
19 are listed on the recorded lien."

20 SECTION 6. Section 48-8-2 NMSA 1978 (being Laws 1961,
21 Chapter 227, Section 2) is amended to read:

22 "48-8-2. FILING AND NOTICE OF HOSPITAL LIENS.--~~[No]~~

23 A. A hospital lien is not effective upon damages
24 recovered for personal injuries unless:

25 ~~[A.]~~ (1) a written notice is filed in the

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1 office of the county clerk of the county in which the hospital
2 asserting the lien is located containing the following
3 information:

4 ~~[(1) an itemized statement of all~~
5 ~~claims]~~ (a) the total liability claimed, certified as correct
6 by an agent of ~~[such]~~ the hospital;

7 ~~[(2)]~~ (b) the date of the accident;

8 ~~[(3)]~~ (c) the name and location of the
9 hospital; and

10 ~~[(4)]~~ (d) the name of the person, firm
11 or corporation alleged to be liable to the injured party for
12 the injuries received, along with instructions for obtaining an
13 itemized statement; ~~[and~~

14 ~~B-]~~ (2) the hospital sends by certified mail,
15 with return receipt requested, prior to the payment of any
16 money to the injured person, or ~~[his]~~ the person's attorneys or
17 legal representative, as compensation for the patient's
18 injuries, a copy of the written notice, together with a
19 statement of the date of filing, to the person, firm or
20 corporation alleged to be liable to the injured party for the
21 injuries sustained. The person, firm or corporation alleged to
22 be liable to the injured person shall, upon request of the
23 hospital, disclose the name of the insurance carrier that has
24 insured the person, firm or corporation against liability; and

25 ~~[G-]~~ (3) the hospital mails a copy of the

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1 written notice by certified mail with return receipt requested
2 to the home office of any insurance carrier that has insured
3 the person, firm or corporation against liability, if the name
4 and address is known.

5 B. No lien that is claimed pursuant to the
6 provisions of Chapter 48, Article 8 NMSA 1978 and that is
7 recorded in the office of the county clerk may be enforced by
8 action or otherwise unless the date that the hospital gave
9 written notice as provided in Paragraphs (2) and (3) of
10 Subsection A of this section and the method of delivery of the
11 notice are listed on the recorded lien."

12 SECTION 7. Section 48-9-1 NMSA 1978 (being Laws 1973,
13 Chapter 100, Section 1) is amended to read:

14 "48-9-1. SHORT TITLE.--~~[Sections 61-10-1 through 61-10-9~~
15 ~~NMSA 1953]~~ Chapter 48, Article 9 NMSA 1978 may be cited as the
16 "Oil and Gas Products Lien Act"."

17 SECTION 8. Section 48-9-5 NMSA 1978 (being Laws 1973,
18 Chapter 100, Section 5) is amended to read:

19 "48-9-5. PERFECTION OF SECURITY INTEREST AND LIEN--FILING
20 NOTICE.--

21 A. If the purchase price for products, the state
22 royalty and the taxes [~~which~~] that are required to be or are
23 withheld and paid or to be paid are not paid to the person
24 entitled to receive payment therefor after fifteen days and
25 within forty-five days after payment is due by terms of

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1 agreement, the interest owner or operator may perfect the
2 purchase money security interest and lien by filing for record
3 in the office of the county clerk of the county in which the
4 production unit is located a notice of lien in substantially
5 the following form:

6 "NOTICE OF LIEN"

7 Notice is hereby given that (name of
8 interest owner for whom notice is filed)
9 whose address is (address of named
10 interest owner) owns an (fractional or
11 decimal interest) interest in the
12 products severed from the (name of well)
13 by (name and address of operator), which
14 well is designated as production unit No.
15 (number) by the oil and gas [~~accounting~~
16 ~~Commission~~] bureau of the taxation and
17 revenue department and is located on the
18 following described land in (name of
19 county) county, New Mexico:

20 (description of land)

21 Products severed from [~~said~~] that
22 production unit have been and are now or
23 may be taken, received and purchased by
24 (name of first purchaser); and the above
25 named interest owner has a purchase money

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1 security interest in and lien upon such
2 products and the proceeds thereof to
3 secure payment of the purchase price,
4 state royalty and taxes for the months of
5 (list months and year for which payment
6 was not received) under the provisions of
7 the Oil and Gas Products Lien Act.

8 Dated: (date)

9 _____
10 (signature of interest owner
11 or operator)".

12 B. If the notice of lien is not filed for record
13 within the time limit specified in this section, the
14 purchase money security interest and lien shall terminate at
15 the expiration of that time limit.

16 [~~B.~~] C. All instruments [~~which~~] that are presented
17 to a county clerk for filing in accordance with Subsection A
18 of this section shall be deemed to be and filed as financing
19 statements under the Uniform Commercial Code, even though
20 the signature of the first purchaser may not appear thereon.
21 All such instruments may be terminated in the same manner as
22 financing statements under the provisions of the Uniform
23 Commercial Code. Filing of a notice of lien or termination
24 statement by an operator shall inure to the benefit of and
25 be binding upon all named interest owners.

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