

1 SENATE BILL 554

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

3 INTRODUCED BY

4 Daniel Ivey-Soto

5
6
7
8
9
10 AN ACT

11 RELATING TO LIENS; REQUIRING THE DATE AND METHOD OF DELIVERY OF
12 NOTICE BE PROVIDED ON A RECORDED LIEN FOR CLAIMS RELATED TO
13 CERTAIN LIENS.

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 SECTION 1. Section 48-2-10 NMSA 1978 (being Laws 1880,
17 Chapter 16, Section 9, as amended) is amended to read:

18 "48-2-10. LIMITATION OF ACTION TO ENFORCE.--

19 A. No lien that is claimed pursuant to the
20 provisions of Chapter 48, Article 2 NMSA 1978 and that is
21 recorded in the office of the county clerk may be enforced by
22 action or considered of record unless the date that the lien
23 claimant gave written notice and the method of delivery of the
24 notice are listed on the recorded lien. The written notice
25 shall be provided to the owner or reputed owner of the property

.190679.2

underscored material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 on which improvements are being constructed and to the original
2 contractor, if any.

3 B. No lien provided for in Sections 48-2-1 through
4 48-2-17 NMSA 1978 remains valid for a longer period than two
5 years after the claim of lien has been filed unless proceedings
6 have been commenced in a court of competent jurisdiction or in
7 binding arbitration within that time to enforce the lien. A
8 contingent payment clause in a contract shall not be construed
9 as a waiver of the right to file and enforce a mechanic's or
10 materialman's lien pursuant to Sections 48-2-1 through 48-2-17
11 NMSA 1978."

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

14 "48-5-2. PROCEDURE TO OBTAIN LIEN--NOTICE.--

15 A. Any person entitled to a lien under [~~this~~
16 ~~chapter~~] Chapter 48, Article 5 NMSA 1978 shall, within ten days
17 after the threshing is completed, file in the office of the
18 county clerk of the county in which the grain was grown a
19 statement in writing, verified by oath, showing the amount and
20 quantity of grain threshed, the price agreed upon for threshing
21 [~~the same~~] it, the name of the person for whom the threshing
22 was done and a description of the land upon which the grain was
23 grown. Unless the person entitled to the lien [~~shall file~~
24 ~~such~~] files that statement within [~~the~~] that time [~~aforsaid~~
25 ~~he~~] limit, the person shall be deemed to have waived [~~his~~] the

.190679.2

underscored material = new
[bracketed material] = delete

1 right ~~[thereto]~~ to the lien.

2 B. No lien that is claimed pursuant to the
3 provisions of Chapter 48, Article 5 NMSA 1978 and that is
4 recorded in the office of the county clerk may be enforced by
5 action or considered of record unless the person entitled to a
6 lien gave written notice to the grain owner or the grain
7 owner's representative and the date and method of delivery of
8 the notice are listed on the recorded lien."

9 SECTION 3. Section 48-5A-2 NMSA 1978 (being Laws 1989,
10 Chapter 89, Section 2) is amended to read:

11 "48-5A-2. PROCEDURE TO OBTAIN LIEN--NOTICE.--

12 A. Any person or company entitled to a lien under
13 ~~[this act]~~ Chapter 48, Article 5A NMSA 1978 shall, within
14 twenty-one days after the harvest is completed, file in the
15 office of the county clerk of the county in which the crop was
16 grown a statement in writing, verified by oath, showing the
17 amount and quantity of the crop harvested, the price agreed
18 upon for harvesting it, the name of the person for whom the
19 harvest was done and a description of the land upon which the
20 crop was grown. Unless the person or company entitled to the
21 lien files that statement within the twenty-one-day time limit,
22 ~~[he]~~ the person or company shall be deemed to have waived ~~[his]~~
23 the person's or company's right to the lien.

24 B. No lien that is claimed pursuant to the
25 provisions of Chapter 48, Article 5A NMSA 1978 and that is

1 recorded in the office of the county clerk may be enforced by
2 action or considered of record unless the person or company
3 entitled to a lien gave written notice to the owner of the crop
4 or the owner's representative and the date and method of the
5 notice are listed on the recorded lien."

6 SECTION 4. Section 48-8-2 NMSA 1978 (being Laws 1961,
7 Chapter 227, Section 2) is amended to read:

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

9 A. A hospital lien is not effective upon damages
10 recovered for personal injuries unless:

11 [A.] (1) a written notice is filed in the
12 office of the county clerk of the county in which the hospital
13 asserting the lien is located containing the following
14 information:

15 [~~(1)~~ ~~an itemized statement of all~~
16 ~~claims~~]

17 (a) the total liability claimed,
18 certified as correct by an agent of [~~such~~] the hospital;

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

20 [~~(3)~~] (c) the name and location of the
21 hospital; and

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

.190679.2

underscored material = new
[bracketed material] = delete

1 B.] (2) the hospital sends by certified mail,
2 with return receipt requested, prior to the payment of any
3 money to the injured ~~[person]~~ party, or ~~[his]~~ the injured
4 party's attorneys or legal representative, as compensation for
5 the ~~[patient's]~~ injured party's injuries, a copy of the written
6 notice, together with a statement of the date of filing, to the
7 person, firm or corporation alleged to be liable to the injured
8 party for the injuries sustained. The person, firm or
9 corporation alleged to be liable to the injured ~~[person]~~ party
10 shall, upon request of the hospital, disclose the name of the
11 insurance carrier that has insured the person, firm or
12 corporation against liability; and

13 ~~[G.]~~ (3) the hospital mails a copy of the
14 written notice by certified mail with return receipt requested
15 to the home office of any insurance carrier that has insured
16 the person, firm or corporation against liability, if the name
17 and address ~~[is]~~ are known.

18 B. No lien that is claimed pursuant to the
19 provisions of Chapter 48, Article 8 NMSA 1978 and that is
20 recorded in the office of the county clerk may be enforced by
21 action or considered of record unless the date that the
22 hospital gave written notice as provided in Paragraphs (2) and
23 (3) of Subsection A of this section and the method of delivery
24 of the notice are listed on the recorded lien."

25 SECTION 5. Section 48-9-1 NMSA 1978 (being Laws 1973,

.190679.2

underscored material = new
[bracketed material] = delete

1 Chapter 100, Section 1) is amended to read:

2 "48-9-1. SHORT TITLE.--[Sections 61-10-1 through 61-10-9
3 ~~NMSA 1953~~] Chapter 48, Article 9 NMSA 1978 may be cited as the
4 "Oil and Gas Products Lien Act"."

5 SECTION 6. Section 48-9-5 NMSA 1978 (being Laws 1973,
6 Chapter 100, Section 5) is amended to read:

7 "48-9-5. PERFECTION OF SECURITY INTEREST AND LIEN--FILING
8 NOTICE.--

9 A. If the purchase price for products, the state
10 royalty and the taxes [~~which~~] that are required to be or are
11 withheld and paid or to be paid are not paid to the person
12 entitled to receive payment therefor after fifteen days and
13 within forty-five days after payment is due by terms of
14 agreement, the interest owner or operator may perfect the
15 purchase money security interest and lien by filing for record
16 in the office of the county clerk of the county in which the
17 production unit is located a notice of lien in substantially
18 the following form:

19 "NOTICE OF LIEN

20 Notice is hereby given that (name of
21 interest owner for whom notice is filed)
22 whose address is (address of named
23 interest owner) owns an (fractional or
24 decimal interest) interest in the
25 products severed from the (name of well)

.190679.2

underscored material = new
[bracketed material] = delete

1 by (name and address of operator), which
2 well is designated as production unit No.
3 (number) by the oil and gas [~~accounting~~
4 ~~Commission~~] bureau of the taxation and
5 revenue department and is located on the
6 following described land in (name of
7 county) county, New Mexico:

8 (description of land)

9 Products severed from [~~said~~] that
10 production unit have been and are now or
11 may be taken, received and purchased by
12 (name of first purchaser); and the above
13 named interest owner has a purchase money
14 security interest in and lien upon such
15 products and the proceeds thereof to
16 secure payment of the purchase price,
17 state royalty and taxes for the months of
18 (list months and year for which payment
19 was not received) under the provisions of
20 the Oil and Gas Products Lien Act.

21 Dated: (date)

22 _____
23 (signature of interest owner
24 or operator)".

25 B. If the notice of lien is not filed for record

underscored material = new
[bracketed material] = delete

1 within the time limit specified in this section, the
2 purchase money security interest and lien shall terminate at
3 the expiration of that time limit.

4 ~~[B.]~~ C. All instruments ~~[which]~~ that are presented
5 to a county clerk for filing in accordance with Subsection A
6 of this section shall be deemed to be and filed as financing
7 statements under the Uniform Commercial Code, even though
8 the signature of the first purchaser may not appear thereon.
9 All such instruments may be terminated in the same manner as
10 financing statements under the provisions of the Uniform
11 Commercial Code. Filing of a notice of lien or termination
12 statement by an operator shall inure to the benefit of and
13 be binding upon all named interest owners.

14 ~~[C.]~~ D. Upon perfection by filing, the purchase
15 money security interest and lien of the interest owner shall
16 relate back to and be effective as of the date on which the
17 first purchaser took, received or purchased product unpaid
18 for and shall take priority over the rights of all persons
19 whose rights or claims arise or attach to the product unpaid
20 for or the proceeds of product if such product has been sold
21 by the first purchaser, including those ~~[which]~~ that arise
22 or attach between the time the purchase money security
23 interest and lien attaches and the time of filing.

24 E. No lien that is claimed pursuant to the
25 provisions of the Oil and Gas Products Lien Act and that is

underscoring material = new
~~[bracketed material] = delete~~

1 recorded in the office of the county clerk may be enforced
2 by action or considered of record unless the interest owner
3 gave written notice to the operator and first purchaser and
4 the date and method of delivery of the notice are listed on
5 the recorded lien."

6 SECTION 7. APPLICABILITY.--The provisions of this act
7 apply to liens filed in the office of the county clerk on or
8 after July 1, 2013.

9 SECTION 8. EFFECTIVE DATE.--The effective date of the
10 provisions of this act is July 1, 2013.