

SECOND REGULAR SESSION

SENATE BILL NO. 867

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR MAYER.

Read 1st time January 28, 2010, and ordered printed.

TERRY L. SPIELER, Secretary.

4149S.02I

AN ACT

To repeal sections 429.005, 429.015, 429.080, 429.180, 429.210, 429.230, 429.320, and 429.330, RSMo, and to enact in lieu thereof nine new sections relating to statutory liens against real estate.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 429.005, 429.015, 429.080, 429.180, 429.210, 429.230, 2 429.320, and 429.330, RSMo, are repealed and nine new sections enacted in lieu 3 thereof, to be known as sections 429.005, 429.015, 429.080, 429.180, 429.185, 4 429.210, 429.230, 429.320, and 429.330, to read as follows:

429.005. 1. An agreement by an original contractor, subcontractor, 2 supplier or laborer to waive any right to enforce or claim any lien authorized 3 under this chapter, where the agreement is in anticipation of and in consideration 4 for the awarding of a contract or subcontract to perform work or supply materials 5 for an improvement upon real property, whether expressly stated or implied, is 6 against public policy and shall be unenforceable. The provisions of this section 7 shall not prohibit subordination or release of a lien authorized under this chapter.

8 2. Nothing contained in this section shall be construed to prohibit 9 contractual provisions requiring lien waivers as a condition for payment.

10 **3. All lien waivers and releases, whether provided for in an**
11 **agreement or otherwise, shall be subject to the following terms:**

12 **(1) No oral or written statement purporting to waive, release,**
13 **subordinate, impair, or otherwise adversely affect any right to enforce**
14 **or claim any lien under this chapter shall be enforceable unless it is**
15 **under a waiver and release as prescribed in this section;**

16 **(2) The waiver or release given by any claimant under this**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

17 **section shall be null, void, and unenforceable against the lien claimant**
18 **as against public policy unless it shall waive and release lien rights and**
19 **claims only to the extent of payment received by the claimant in**
20 **exchange for the waiver and release.**

429.015. 1. Every registered architect or corporation registered to practice
2 architecture, every registered professional engineer or corporation registered to
3 practice professional engineering, every registered landscape architect or
4 corporation registered to practice landscape architecture, and every registered
5 land surveyor or corporation registered to practice land surveying, who does any
6 landscape architectural, architectural, engineering or land surveying work upon
7 or performs any landscape architectural, architectural, engineering or land
8 surveying service directly connected with the erection or repair of any building
9 or other improvement upon land under or by virtue of any contract with the
10 owner or lessee thereof, or such owner's or lessee's agent, trustee, contractor or
11 subcontractor, or without a contract if ordered by a city, town, village or county
12 having a charter form of government to abate the conditions that caused a
13 structure on that property to be deemed a dangerous building under local
14 ordinances pursuant to section 67.410, RSMo, upon complying with the provisions
15 of this chapter, shall have for such person's landscape architectural,
16 architectural, engineering or land surveying work or service so done or performed,
17 a lien upon the building or other improvements and upon the land belonging to
18 the owner or lessee on which the building or improvements are situated, to the
19 extent of [one acre] **three acres**. If the building or other improvement is upon
20 any lot of land in any town, city or village, then the lien shall be upon such
21 building or other improvements, and the lot or land upon which the building or
22 other improvements are situated, to secure the payment for the landscape
23 architectural, architectural, engineering or land surveying work or service so done
24 or performed. For purposes of this section, a corporation engaged in the practice
25 of architecture, engineering, landscape architecture, or land surveying, shall be
26 deemed to be registered if the corporation itself is registered under the laws of
27 this state to practice architecture, engineering or land surveying.

28 2. Every mechanic or other person who shall do or perform any work or
29 labor upon or furnish any material or machinery for the digging of a well to
30 obtain water under or by virtue of any contract with the owner or lessee thereof,
31 or such owner's or lessee's agent, trustee, contractor or subcontractor, upon
32 complying with the provisions of sections 429.010 to 429.340 shall have for such

33 person's work or labor done, or materials or machinery furnished, a lien upon the
34 land belonging to such owner or lessee on which the same are situated, to the
35 extent of [one acre] **three acres**, to secure the payment of such work or labor
36 done, or materials or machinery furnished as aforesaid.

37 3. Every mechanic or other person who shall do or perform any work or
38 labor upon, or furnish any material, fixtures, engine, boiler or machinery, for the
39 purpose of demolishing or razing a building or structure under or by virtue of any
40 contract with the owner or lessee thereof, or such owner's or lessee's agent,
41 trustee, contractor or subcontractor, or without a contract if ordered by a city,
42 town, village or county having a charter form of government to abate the
43 conditions that caused a structure on that property to be deemed a dangerous
44 building under local ordinances pursuant to section 67.410, RSMo, upon
45 complying with the provisions of sections 429.010 to 429.340, shall have for such
46 person's work or labor done, or materials, fixtures, engine, boiler or machinery
47 furnished, a lien upon the land belonging to such owner or lessee on which the
48 same are situated, to the extent of [one acre] **three acres**. If the building or
49 buildings to be demolished or razed are upon any lot of land in any town, city or
50 village, then the lien shall be upon the lot or lots or land upon which the building
51 or other improvements are situated, to secure the payment for the labor and
52 materials performed.

53 4. The provisions of sections 429.030 to 429.060 and sections 429.080 to
54 429.430 applicable to liens of mechanics and other persons shall apply to and
55 govern the procedure with respect to the liens provided for in subsections 1, 2 and
56 3 of this section.

57 5. Any design professional or corporation authorized to have lien rights
58 under subsection 1 of this section shall have a lien upon the building or other
59 improvement and upon the land, whether or not actual construction of the
60 planned work or improvement has commenced if:

61 (1) The owner or lessee thereof, or such owner's or lessee's agent or
62 trustee, contracted for such professional services directly with the design
63 professional or corporation asserting the lien; and

64 (2) The owner or lessee is the owner or lessee of such real property either
65 at the time the contract is made or at the time the lien is filed.

66 6. Priority between a design professional or corporation lien claimant and
67 any other mechanic's lien claimant shall be determined pursuant to the
68 provisions of section 429.260 on a pro rata basis.

69 7. In any civil action, the owner or lessee may assert defenses which
70 include that the actual construction of the planned work or improvement has not
71 been performed in compliance with the professional services contract, is
72 impracticable or is economically infeasible.

73 8. The agreement is in writing.

 429.080. It shall be the duty of every original contractor, every
2 journeyman and day laborer, including persons who use rented machinery or
3 equipment in performing such work or labor, and every other person seeking to
4 obtain the benefit of the provisions of sections 429.010 to 429.340, within six
5 months after the indebtedness shall have accrued, or, with respect to rental
6 equipment or machinery rented to others, then, within sixty days after the date
7 the last of the rental equipment or machinery was last removed from the
8 property, to file with the clerk of the circuit court of the proper county a [just and
9 true account] **statement of the dollar amount** of the demand due him or them
10 after all just credits have been given, which is to be a lien upon such building or
11 other improvements, and a **brief general description of the type of labor,**
12 **materials, or services provided by the lien claimant, such as carpentry,**
13 **plumbing, electrical, mechanical, painting, and landscaping, and a true**
14 **description of the property, or so near as to identify the same, upon which the**
15 **lien is intended to apply, with the name of the owner or contractor, or both, if**
16 **known to the person filing the lien, which shall, in all cases, be verified by the**
17 **oath of himself or some credible person for him who may be an attorney at**
18 **law. It shall not be necessary to include in the lien statement an**
19 **itemization of the labor, materials, equipment, and other costs.**

 429.180. The pleadings, practice, process and other proceedings in cases
2 arising under sections 429.010 to 429.340 shall be the same as in ordinary civil
3 actions and proceedings in circuit courts, except as herein otherwise
4 provided. The petition, among other things, shall allege the facts necessary for
5 securing a lien under said sections, [and] shall contain a description of the
6 property charged therewith, **the names of the owners of the property that**
7 **is subject to the lien, and pray for the appointment of a disinterested**
8 **person to serve as a referee to assess the lien claim.**

 429.185. **Upon the filing of the petition, a summons shall be**
2 **issued. The summons shall be served by the sheriff of the county, in the**
3 **same manner as writs of summons are or may by law be required to be**
4 **served. If the name or residence of the owner or owners are unknown,**

5 or if the owner or owners do not reside within the state, notice reciting
6 the substance of the petition and the day fixed to answer shall be given
7 by publication once each week for three consecutive weeks prior to the
8 time of hearing the petition, in a newspaper published in the county in
9 which the proceedings are pending, if one is published in such county,
10 or if no newspaper is published in such county or the publisher refuses
11 to publish the same on tender of his or her usual charges for
12 advertising, then by posting such notice for three consecutive weeks at
13 the door of the courthouse of the county where the lands or any portion
14 of the lands lie.

429.210. 1. The court shall ascertain, **except as otherwise provided,**
2 by a fair trial in the usual way, the amount of the indebtedness for which the lien
3 is prosecuted, and may render judgment therefor in any sum not exceeding the
4 amount claimed in the demand filed with the lien, [together with interest and
5 costs,] **and shall include interest, costs, and reasonable attorneys' fees**
6 **as provided in this section to be levied against the property charged**
7 **with the lien,** although the creditor may have unintentionally failed to enter in
8 [his] **the creditor's** account filed the full amount of credits to which the debtor
9 may be entitled.

10 2. **If the court finds that the owner who contracted to have the**
11 **improvements made failed or refused to pay the original contractor the**
12 **full adjusted contract price, including extras, without just cause or**
13 **right, the court shall tax the owner the reasonable attorneys' fees of the**
14 **lien claimant at whatever tier who had perfected its claim.**

15 3. **If the court finds that a lien claimant has brought a lien**
16 **enforcement action under this chapter without just cause or right, the**
17 **court shall tax the lien claimant the reasonable attorneys' fees of the**
18 **owner who contracted to have the improvements made and who**
19 **defended the lien enforcement action.**

20 4. **As used in this section, "without just cause or right" shall mean**
21 **a claim asserted by a lien claimant or a defense asserted by an owner**
22 **who contracted to have the improvement made, which is not grounded**
23 **in fact and warranted by existing law or a good faith argument for the**
24 **extension, modification, or reversal of existing laws.**

429.230. When the debtor has not been served with summons according
2 to law, and has not appeared, but has been lawfully notified by publication, the
3 judgment, if for the plaintiff, shall be that [he] **the plaintiff** recover the amount

4 of the indebtedness found to be due, [and] **interest**, costs of suit, **and**
5 **reasonable attorneys' fees** to be levied [of] **against** the property charged with
6 the lien therefor, which said property shall be correctly described in said
7 judgment. **The entitlement to attorneys' fees shall be determined on the**
8 **same basis as set forth in section 429.210.**

429.320. [At the instance of any party to said action the court may
2 appoint a referee to hear and report the evidence and to] 1. **Within ten days**
3 **after being satisfied that all necessary parties have been duly served**
4 **with process, the court shall appoint one disinterested person to act as**
5 **a referee, who shall be a person who is licensed to practice law in the**
6 **state of Missouri and is knowledgeable and experienced in matters**
7 **related to mechanics liens and construction law, and who shall assess**
8 **the respective claims, interests, and defenses of all lien claimants,**
9 **mortgagees, owners, and contractors and the validity and amount of the**
10 **lien claimant's underlying debt and the validity and priority of all liens**
11 **filed in such action. Within forty-five days after appointment by the**
12 **court, which may be extended by the court with good cause shown,**
13 **after having considered the evidence and held such hearings as the**
14 **referee may deem advisable, the referee shall return to the clerk of**
15 **such court, under oath, his or her report in duplicate of the assessment,**
16 **setting forth the lien amounts found to be valid for each claimant, if**
17 **any; and should more than one lien claim be considered, then the**
18 **award, if any, allowed to each claimant or claimants, respectively, shall**
19 **be stated separately. The clerk shall file one copy of such report in his**
20 **or her office and record the same in the order book of the court, and he**
21 **or she shall deliver the other copy, duly certified by him or her, to the**
22 **recorder of deeds of the county where the land lies, or to the recorder**
23 **of deeds of the city of St. Louis if the land lies in such city, who shall**
24 **record the same in his or her office, and index each tract separately as**
25 **provided in section 59.440. The fee for such recording shall be taxed by**
26 **the clerk as costs in the proceedings. The appointed referee shall be**
27 **entitled to a reasonable fee for his or her final services rendered. The**
28 **court may at any time order the parties to deposit all or a portion of**
29 **the referee's fees with the clerk to be disbursed to the referee upon**
30 **application of the referee. The failure of a party to pay the party's**
31 **share of the referee's fee as ordered may result in the court striking the**
32 **pleadings of the party or dismissing the action or proceeding or**

33 rendering a judgment by default against the disobedient party. At the
34 conclusion of the proceedings, the referee shall submit a final fee
35 request to the clerk of the court who shall tax the referee's fees as costs
36 of the proceeding, and shall charge fifty percent of the referee's fee to
37 the owner of the property, and if there shall be two or more owners of
38 the property, then the owners' fee shall be divided equally among them,
39 and fifty percent shall be taxed to the lien claimants in pro rata as a
40 percentage that each lien claimant's claim bears to the total principal
41 amount claimed by all lien claimants.

42 2. Prior to the issuance of any report under subsection 1 of this
43 section, a referee shall notify all parties named in the petition, no less
44 than ten days prior to the referee's hearing, of the named parties'
45 opportunity to present evidence to the referee regarding the validity
46 of each such lien in such action and the claims and interests of all lien
47 claimants in the property.

48 3. The referee may view the property, shall hear evidence and
49 arguments, and review other relevant information that may be offered
50 by the parties. The referee's report to the court shall report the
51 evidence adduced at the hearings, make conclusions and findings of fact and
52 law therein, and [to] report the same to the court for its further action thereon[,
53 and]. All exceptions to the report of the referee shall be in writing and
54 filed within ten days and shall be argued without delay. Any
55 exceptions filed to an award in favor of a lien claimant shall be
56 accompanied with a cash or surety bond, as approved by the court, in
57 an amount equal to one hundred fifty percent of the referee's award to
58 a prevailing lien claimant. If the bond is a surety bond, the surety
59 submits to the jurisdiction of the court and the liability on the bond
60 may be enforced on motion for judgment thereon, without the necessity
61 of an independent action. The bond shall remain on deposit with the
62 court until such time as the court has rendered final judgment in
63 accordance with subsection 4 of this section or after all appeals thereto
64 have been heard, if necessary. At such time that the judgment is final
65 and all appeals, if any, have been exhausted, the prevailing party may
66 apply to the court for enforcement or release of the bond.

67 4. Within ten days after receiving the referee's report, the court
68 [may] shall confirm and approve said report in full or in parts and may modify
69 or set aside the same and make other findings [from the evidence reported] as

70 may be just and proper and render judgment accordingly. [The court shall not
71 appoint in any such equitable action any referee of its own motion. And] **If**
72 **exceptions in the report are sustained, the court may refer the report**
73 **to the referee, with instructions, if necessary, but if the report is**
74 **confirmed by the court, judgment shall be rendered thereon in the same**
75 **manner and with like effect as upon a special verdict.**

76 **5.** In any such action the court may, if it [deem] **deems** the parties
77 entitled thereto, or in its discretion submit any issue upon any separate claim or
78 demand to a jury, and any two or more of such issues may in the discretion of the
79 court be submitted to one jury or the court may submit separately such issues to
80 a jury and shall be bound by the findings of the jury thereon in the further
81 proceedings in said cause, subject to the power of the court to grant new trial of
82 such issues.

83 **6.** **If the referee's report is sustained as to the validity of a lien**
84 **claimant's claim in any amount, the lien claimant's reasonable**
85 **attorneys' fees, as determined by the court, incurred after the time the**
86 **referee's report is filed with the court shall be added to the lien**
87 **claimant's claim to be levied against the property charged with the**
88 **lien. If the referee's report is sustained as to the invalidity of a lien**
89 **claimant's claim, the owner's reasonable attorneys' fees attributable to**
90 **defending against the lien claimant's lien claim, as determined by the**
91 **court, incurred after the time the referee's report is filed with the court**
92 **shall be awarded to the owner and against the lien claimant whose lien**
93 **claim was found to be invalid.**

429.330. This equitable action shall not apply to instances in which there
2 is only one mechanic's lien claimed against the property and any of it, but in any
3 suit thereon the **referee shall nonetheless be appointed and the referee**
4 **and** court shall determine the respective priorities as between such mechanic's
5 lien and any other lien or encumbrance and enforce the same accordingly.

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