

Lamberti  
Boettger  
Fraise

SSB. 1022  
Judiciary

SENATE/HOUSE FILE \_\_\_\_\_  
BY (PROPOSED ATTORNEY GENERAL  
BILL)

Succeeded by  
SF/HF 429

Passed Senate, Date \_\_\_\_\_

Passed House, Date \_\_\_\_\_

Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_

Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_

Approved \_\_\_\_\_

A BILL FOR

1 An Act relating to notification of forfeited and cancelled  
2 mechanic's liens, challenging a mechanic's lien, and providing  
3 a remedy.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 572.23, Code 1999, is amended to read  
2 as follows:

3 572.23 ACKNOWLEDGMENT OF SATISFACTION OF CLAIM.

4 1. When a mechanic's lien is satisfied by payment of the  
5 claim, the claimant shall acknowledge satisfaction thereof  
6 upon the mechanic's lien book, or otherwise in writing, and,  
7 if the claimant neglects to do so for thirty days after demand  
8 in writing, the claimant shall forfeit and pay twenty-five  
9 dollars to the owner or contractor, and be liable to any  
10 person injured to the extent of the injury.

11 2. If acknowledgment of satisfaction is not filed within  
12 thirty days after demand in writing, the party serving the  
13 demand or causing the demand to be served may file for record  
14 with the clerk of the district court a copy of the demand with  
15 proofs of service attached and endorsed and, in case of  
16 service by publication, a personal affidavit that personal  
17 service could not be made within this state. Upon completion  
18 of the requirements of this subsection, the record shall be  
19 constructive notice to all parties of the due forfeiture and  
20 cancellation of the lien. Upon the filing of the forfeiture  
21 of the lien, the clerk of the district court shall mail a  
22 file-stamped copy of the cancellation to both parties.

23 Sec. 2. Section 572.24, Code 1999, is amended to read as  
24 follows:

25 572.24 TIME OF BRINGING ACTION -- COURT.

26 1. An action to enforce a mechanic's lien, or an action  
27 brought upon any bond given in lieu thereof, may be commenced  
28 in the district court after said lien is perfected.

29 2. An action to challenge a mechanic's lien may be  
30 commenced in the district court or small claims court if the  
31 amount of the lien is within jurisdictional limits. The court  
32 shall make written findings regarding the lawful amount and  
33 the validity of the mechanic's lien. If the court determines  
34 that the mechanic's lien is invalid, valid for a lesser  
35 amount, frivolous, fraudulent, forfeited, expired, or for any

1 other reason unenforceable, the clerk of the district court  
2 shall make an entry of record to the mechanic's lien book  
3 regarding the proper amount of the lien or, if warranted,  
4 canceling the lien.

5 Sec. 3. Section 572.27, Code 1999, is amended to read as  
6 follows:

7 572.27 LIMITATION ON ACTION.

8 1. An action to enforce a mechanic's lien may be brought  
9 within two years from the expiration of the ninety days for  
10 filing the claim as provided in this chapter and not  
11 afterwards.

12 2. If an action is not filed within the time period  
13 provided in subsection 1, the owner, agent, or trustee of the  
14 property may file for record with the clerk of the district  
15 court a copy of the file-stamped mechanic's lien and an  
16 affidavit stating the date on which the mechanic's lien was  
17 filed and that an action has not been filed to enforce the  
18 mechanic's lien within two years from the expiration of the  
19 ninety days for filing claims. Upon completion of the  
20 requirements of this subsection, the record shall be  
21 constructive notice to all parties of the due forfeiture and  
22 cancellation of the lien. Upon the filing of the cancellation  
23 of the lien, the clerk of the district court shall mail a  
24 file-stamped copy of the cancellation to both parties.

25 Sec. 4. Section 572.28, Code 1999, is amended to read as  
26 follows:

27 572.28 DEMAND FOR BRINGING SUIT.

28 1. Upon the written demand of the owner, the owner's  
29 agent, or contractor, served on the lienholder requiring the  
30 lienholder to commence action to enforce the lien, such action  
31 shall be commenced within thirty days thereafter, or the lien  
32 and all benefits derived therefrom shall be forfeited.

33 2. If an action is not filed within thirty days after  
34 demand to commence action is served, the party serving the  
35 demand or causing the demand to be served may file for record

1 with the clerk of the district court a copy of the demand with  
2 proofs of service attached and endorsed and, in case of  
3 service by publication, a personal affidavit that personal  
4 service could not be made within this state. Upon completion  
5 of the requirements of this subsection, the record shall be  
6 constructive notice to all parties of the due forfeiture and  
7 cancellation of the lien. Upon the filing of the forfeiture  
8 of the lien, the clerk of the district court shall mail a  
9 file-stamped copy of the cancellation to both parties.

10 Sec. 5. Section 572.32, Code 1999, is amended to read as  
11 follows:

12 572.32 ATTORNEY FEES -- REMEDIES.

13 1. In a court action to enforce a mechanic's lien, if the  
14 plaintiff furnished labor or materials directly to the  
15 defendant, the a prevailing plaintiff,--if-successful, shall be  
16 awarded reasonable attorney fees.

17 2. In a court action to challenge a mechanic's lien, if  
18 the person challenging the lien prevails, the court shall  
19 award reasonable attorney fees and actual damages. If the  
20 court determines that the mechanic's lien was filed in bad  
21 faith or the supporting affidavit was materially false, the  
22 court shall award the owner an amount not less than five  
23 hundred dollars.

24 Sec. 6. Section 631.1, Code 1999, is amended by adding the  
25 following the new subsection:

26 NEW SUBSECTION. 6. The district court sitting in small  
27 claims has concurrent jurisdiction of an action to challenge a  
28 mechanic's lien pursuant to sections 572.24 and 572.32.

29 EXPLANATION

30 This bill amends sections of Code chapter 572 relating to  
31 mechanic's liens.

32 The bill provides a procedure for creating constructive  
33 notice of the forfeiture and cancellation of a mechanic's lien  
34 upon the failure to acknowledge satisfaction of the lien. The  
35 bill provides a procedure for creating constructive notice of

1 the forfeiture and cancellation of a mechanic's lien upon  
 2 failure to timely file an action to enforce a mechanic's lien.  
 3 The bill provides a procedure for creating constructive notice  
 4 of the forfeiture and cancellation of a mechanic's lien upon  
 5 the failure to commence an action to enforce the lien within  
 6 30 days after a demand to commence action is served.

7 The bill creates an action to challenge a mechanic's lien  
 8 which may be commenced in either district court or small  
 9 claims court. The bill provides for the recording in the  
 10 mechanic's lien book of the proper amount of the lien or the  
 11 cancellation of the lien when the court makes such findings.  
 12 The bill provides that, in an action to challenge a mechanic's  
 13 lien, the prevailing party shall be awarded reasonable  
 14 attorney fees and actual damages. The bill provides that if  
 15 the mechanic's lien was filed in bad faith or the supporting  
 16 affidavit was materially false, the court shall award the  
 17 owner an amount not less than \$500.

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THOMAS J. MILLER  
ATTORNEY GENERAL

## Department of Justice

ADDRESS REPLY TO  
HOOVER BUILDING  
DES MOINES, IOWA 50319  
TELEPHONE 515/281-5164  
FACSIMILE 515/281-4209

# Memorandum

**TO:** Members of the General Assembly  
**FROM:** John Pederson, Legislative Liaison  
**DATE:** November 6, 1998  
**SUBJECT:** Mechanic's Lien

The Iowa Attorney General's Office is submitting a bill request regarding cancellation of mechanic's lien, Iowa Code Chapter 572.

Iowa Code Chapter 572 provides a simple means for home improvement contractors and others to file mechanic's liens against the property of those with whom they contract. However, under current law, there is no simple means of removing these liens when they are entered through fraudulent or deceptive practices. The Attorney General's Consumer Protection division receives numerous complaints every year from citizens who have had liens placed on their real property by home improvement contractors who did little or no work, accepted some or none of the money due under the contract with the consumer, and then refused to return to complete the project. Some of these liens are placed for claims that are not even authorized under chapter 572, while others are placed as a means of engaging in unfair debt collection. There have also been some liens that have been placed as a means of harassing public officials such as sheriffs and judges.

This bill intends to provide individual citizens better tools to remove fraudulent mechanics liens, while protecting the rights of legitimate contractors to ensure payment for services rendered. Sections 1,2 and 3 of the bill provide administrative means for homeowners to clear the liens from the books kept by county clerks. Citizens currently face difficulty in seeing this administrative task completed. These sections also require the clerk to notify the lienholder of the cancellation in the same manner as the clerk is required to notify the property owner when the lien is originally filed.

Sections 4 and 5 of the bill provide an expedited means for property owners to remove these liens when time constraints or other complications prevent them from relying on the methods set

out in sections 1 through 3 of the bill. For example, sections 4 and 5 allow the property owner to challenge a mechanic's lien in either small claims or district court, depending upon the dollar value of the lien. The availability of small claims court will allow property owners to avoid the expense of district court and will provide for a speedier resolution to the dispute. Property owners seeking to challenge a mechanics lien even of a debt as low as \$100 currently do not have this option and must instead hire an attorney and file an action in district court. Section 4 of the bill also directs the court to make written findings as to the validity and lawful amount of the mechanic's lien so that there is a written record of the resolution of the dispute. The clerk is then directed to enter the court's finding into the clerk's record book for mechanic's liens so that all parties with a present or future interest in the real property will have constructive notice of the court's decision.

The law already provides that a successful lien holder who enforces a mechanic's lien through the court shall be awarded attorney fees. However, the law does not provide a like remedy for a prevailing property owner in an action challenging a frivolous mechanic's lien nor does it recognize that a proper owner may incur additional actual damages due to a frivolous mechanic's lien. Section 7 strikes a balance between the interests of the two parties by awarding attorney fees and actual damages to a prevailing property owner. Section 7 also discourages the filing of frivolous mechanic's liens by authorizing the court to award the property owner a minimum of \$500.00 in punitive damages if the court determines that the mechanic's lien was filed in bad faith or if the lienholder filed a materially false affidavit. This final provision should discourage the filing of mechanic's liens to collect on debts which are not covered under this chapter, the filing of liens for amounts which are not reasonably related to the actual work done or the materials provided, or the filing of liens merely for the purpose of harassing public officials or neighbors.

H. 3/19/99 Judiciary  
H. 3/31/99 Do Pass

FILED MAR 15 1999

SENATE FILE 429  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 1022)

Passed Senate, Date <sup>(p.654)</sup> 3/17/99 Passed House, Date <sup>(P.1283)</sup> 4/14/99  
Vote: Ayes 49 Nays 0 Vote: Ayes 96 Nays 0  
Approved April 28, 1999

<sup>(p.122)</sup>  
Repassed 4/20/99  
vote 48-0

A BILL FOR

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SF 429



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4 1. When a mechanic's lien is satisfied by payment of the  
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7 if the claimant neglects to do so for thirty days after demand  
8 in writing is personally served upon the claimant, the  
9 claimant shall forfeit and pay twenty-five dollars to the  
10 owner or contractor, and be liable to any person injured to  
11 the extent of the injury.

12 2. If acknowledgment of satisfaction is not filed within  
13 thirty days after demand in writing, the party serving the  
14 demand or causing the demand to be served may file for record  
15 with the clerk of the district court a copy of the demand with  
16 proofs of service attached and endorsed and, in case of  
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29 in the district court after said lien is perfected.

30 2. An action to challenge a mechanic's lien may be  
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32 amount of the lien is within jurisdictional limits. Any  
33 permissible claim or counterclaim meeting subject matter and  
34 jurisdictional requirements may be joined with the action.  
35 The court shall make written findings regarding the lawful

1 amount and the validity of the mechanic's lien. In addition  
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4 determines that the mechanic's lien is invalid, valid for a  
5 lesser amount, frivolous, fraudulent, forfeited, expired, or  
6 for any other reason unenforceable, the clerk of the district  
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33 1. In a court action to enforce a mechanic's lien, if the  
34 plaintiff furnished labor or materials directly to the  
35 defendant, ~~the a prevailing plaintiff, if successful, shall~~

1 may be awarded reasonable attorney fees.

2 2. In a court action to challenge a mechanic's lien filed  
3 on an owner-occupied dwelling, if the person challenging the  
4 lien prevails, the court may award reasonable attorney fees  
5 and actual damages. If the court determines that the  
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7 affidavit was materially false, the court shall award the  
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9 five hundred dollars or the amount of the lien, whichever is  
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13 NEW SUBSECTION. 6. The district court sitting in small  
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16 EXPLANATION

17 This bill amends sections of Code chapter 572 relating to  
18 mechanic's liens.

19 The bill provides that if demand on a claimant for  
20 acknowledgment of satisfaction of a mechanic's lien is made in  
21 writing and personally served on the claimant and the claimant  
22 neglects to acknowledge satisfaction for 30 days after the  
23 demand, the claimant shall forfeit and pay damages. The bill  
24 provides a procedure for creating constructive notice of the  
25 forfeiture and cancellation of a mechanic's lien upon the  
26 failure to acknowledge satisfaction of the lien. The bill  
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31 The bill creates an action to challenge a mechanic's lien  
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1 for the recording in the mechanic's lien book of the proper  
2 amount of the lien or the cancellation of the lien when the  
3 court makes such findings. The bill provides that, in an  
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5 furnished labor or materials directly to the defendant, the  
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7 The bill provides that, in an action to challenge a mechanic's  
8 lien filed on an owner-occupied dwelling, the prevailing party  
9 may be awarded reasonable attorney fees and actual damages.  
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SENATE FILE 429

H-1390

1 Amend Senate File 429, as passed by the Senate, as  
2 follows:  
3 1. Page 1, line 13, by inserting after the word  
4 "after" the following: "service of the".  
5 2. Page 2, by striking lines 27 through 29 and  
6 inserting the following: "cancellation of the lien.  
7 Upon the filing of the demand with the required  
8 attachments, the clerk of the district court shall  
9 mail a file-stamped copy of the demand to both  
10 parties."

By PARMENTER of Story

H-1390 FILED APRIL 5, 1999

*Adopted*  
4-14-99 (P. 1283)

HOUSE AMENDMENT TO  
SENATE FILE 429

S-3372

1 Amend Senate File 429, as passed by the Senate, as  
2 follows:  
3 1. Page 1, line 13, by inserting after the word  
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5 2. Page 2, by striking lines 27 through 29 and  
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10 parties."

RECEIVED FROM THE HOUSE

*Senate Concurred 4/20/99 (P. 1223)*

S-3372 FILED APRIL 14, 1999

## AN ACT

RELATING TO NOTIFICATION OF FORFEITED AND CANCELLED MECHANIC'S  
LIENS, CHALLENGING A MECHANIC'S LIEN, AND PROVIDING A REMEDY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 572.23, Code 1999, is amended to read as follows:

## 572.23 ACKNOWLEDGMENT OF SATISFACTION OF CLAIM.

1. When a mechanic's lien is satisfied by payment of the claim, the claimant shall acknowledge satisfaction thereof upon the mechanic's lien book, or otherwise in writing, and, if the claimant neglects to do so for thirty days after demand in writing is personally served upon the claimant, the claimant shall forfeit and pay twenty-five dollars to the owner or contractor, and be liable to any person injured to the extent of the injury.

2. If acknowledgment of satisfaction is not filed within thirty days after service of the demand in writing, the party serving the demand or causing the demand to be served may file for record with the clerk of the district court a copy of the demand with proofs of service attached and endorsed and, in case of service by publication, a personal affidavit that personal service could not be made within this state. Upon completion of the requirements of this subsection, the record shall be constructive notice to all parties of the due forfeiture and cancellation of the lien. Upon the filing of the forfeiture of the lien, the clerk of the district court

shall mail a file-stamped copy of the cancellation to both parties.

Sec. 2. Section 572.24, Code 1999, is amended to read as follows:

## 572.24 TIME OF BRINGING ACTION -- COURT.

1. An action to enforce a mechanic's lien, or an action brought upon any bond given in lieu thereof, may be commenced in the district court after said lien is perfected.

2. An action to challenge a mechanic's lien may be commenced in the district court or small claims court if the amount of the lien is within jurisdictional limits. Any permissible claim or counterclaim meeting subject matter and jurisdictional requirements may be joined with the action. The court shall make written findings regarding the lawful amount and the validity of the mechanic's lien. In addition to any other appropriate order, the court may enter judgment on a permissibly joined claim or counterclaim. If the court determines that the mechanic's lien is invalid, valid for a lesser amount, frivolous, fraudulent, forfeited, expired, or for any other reason unenforceable, the clerk of the district court shall make an entry of record to the mechanic's lien book regarding the proper amount of the lien or, if warranted, canceling the lien.

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## 572.28 DEMAND FOR BRINGING SUIT.

1. Upon the written demand of the owner, the owner's agent, or contractor, served on the lienholder requiring the lienholder to commence action to enforce the lien, such action shall be commenced within thirty days thereafter, or the lien and all benefits derived therefrom shall be forfeited.

2. If an action is not filed within thirty days after demand to commence action is served, the party serving the demand or causing the demand to be served may file for record with the clerk of the district court a copy of the demand with proofs of service attached and endorsed and, in case of service by publication, a personal affidavit that personal service could not be made within this state. Upon completion of the requirements of this subsection, the record shall be constructive notice to all parties of the due forfeiture and cancellation of the lien. Upon the filing of the demand with the required attachments, the clerk of the district court shall mail a file-stamped copy of the demand to both parties.

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572.32 ATTORNEY FEES -- REMEDIES.

1. In a court action to enforce a mechanic's lien, if the plaintiff furnished labor or materials directly to the defendant, the a prevailing plaintiff, if successful, shall may be awarded reasonable attorney fees.

2. In a court action to challenge a mechanic's lien filed on an owner-occupied dwelling, if the person challenging the lien prevails, the court may award reasonable attorney fees and actual damages. If the court determines that the mechanic's lien was filed in bad faith or the supporting affidavit was materially false, the court shall award the owner reasonable attorney fees plus an amount not less than five hundred dollars or the amount of the lien, whichever is less.

Sec. 5. Section 631.1, Code 1999, is amended by adding the following the new subsection:

NEW SUBSECTION. 6. The district court sitting in small claims has concurrent jurisdiction of an action to challenge a mechanic's lien pursuant to sections 572.24 and 572.32.

---

MARY E. KRAMER  
President of the Senate

---

RON J. CORBETT  
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 429, Seventy-eighth General Assembly.

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MICHAEL E. MARSHALL  
Secretary of the Senate

Approved *April 28*, 1999

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THOMAS J. VILSACK  
Governor