

# Senate Study Bill 1022

## Bill Text

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1 1 Section 1. Section [572.23](#), Code 1999, is amended to read  
1 2 as follows:

1 3 572.23 ACKNOWLEDGMENT OF SATISFACTION OF CLAIM.

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

1 11 2. If acknowledgment of satisfaction is not filed within  
1 12 thirty days after demand in writing, the party serving the  
1 13 demand or causing the demand to be served may file for record  
1 14 with the clerk of the district court a copy of the demand with  
1 15 proofs of service attached and endorsed and, in case of  
1 16 service by publication, a personal affidavit that personal  
1 17 service could not be made within this state. Upon completion  
1 18 of the requirements of this subsection, the record shall be  
1 19 constructive notice to all parties of the due forfeiture and  
1 20 cancellation of the lien. Upon the filing of the forfeiture  
1 21 of the lien, the clerk of the district court shall mail a  
1 22 file-stamped copy of the cancellation to both parties.

1 23 Sec. 2. Section [572.24](#), Code 1999, is amended to read as  
1 24 follows:

1 25 572.24 TIME OF BRINGING ACTION COURT.

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

1 29 2. An action to challenge a mechanic's lien may be  
1 30 commenced in the district court or small claims court if the  
1 31 amount of the lien is within jurisdictional limits. The court  
1 32 shall make written findings regarding the lawful amount and  
1 33 the validity of the mechanic's lien. If the court determines  
1 34 that the mechanic's lien is invalid, valid for a lesser  
1 35 amount, frivolous, fraudulent, forfeited, expired, or for any  
2 1 other reason unenforceable, the clerk of the district court  
2 2 shall make an entry of record to the mechanic's lien book  
2 3 regarding the proper amount of the lien or, if warranted,  
2 4 canceling the lien.

2 5 Sec. 3. Section [572.27](#), Code 1999, is amended to read as  
2 6 follows:

2 7 572.27 LIMITATION ON ACTION.

2 8 1. An action to enforce a mechanic's lien may be brought  
2 9 within two years from the expiration of the ninety days for  
2 10 filing the claim as provided in this chapter and not  
2 11 afterwards.

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

2 22 cancellation of the lien. Upon the filing of the cancellation  
2 23 of the lien, the clerk of the district court shall mail a  
2 24 file-stamped copy of the cancellation to both parties.

2 25 Sec. 4. Section [572.28](#), Code 1999, is amended to read as  
2 26 follows:

2 27 572.28 DEMAND FOR BRINGING SUIT.

2 28 1. Upon the written demand of the owner, the owner's  
2 29 agent, or contractor, served on the lienholder requiring the  
2 30 lienholder to commence action to enforce the lien, such action  
2 31 shall be commenced within thirty days thereafter, or the lien  
2 32 and all benefits derived therefrom shall be forfeited.

2 33 2. If an action is not filed within thirty days after  
2 34 demand to commence action is served, the party serving the  
2 35 demand or causing the demand to be served may file for record  
3 1 with the clerk of the district court a copy of the demand with  
3 2 proofs of service attached and endorsed and, in case of  
3 3 service by publication, a personal affidavit that personal  
3 4 service could not be made within this state. Upon completion  
3 5 of the requirements of this subsection, the record shall be  
3 6 constructive notice to all parties of the due forfeiture and  
3 7 cancellation of the lien. Upon the filing of the forfeiture  
3 8 of the lien, the clerk of the district court shall mail a  
3 9 file-stamped copy of the cancellation to both parties.

3 10 Sec. 5. Section [572.32](#), Code 1999, is amended to read as  
3 11 follows:

3 12 572.32 ATTORNEY FEES REMEDIES.

3 13 1. In a court action to enforce a mechanic's lien, if the  
3 14 plaintiff furnished labor or materials directly to the  
3 15 defendant,

~~the~~

~~- a prevailing plaintiff~~

~~, if successful,~~

~~- shall be~~

3 16 awarded reasonable attorney fees.

3 17 2. In a court action to challenge a mechanic's lien, if  
3 18 the person challenging the lien prevails, the court shall  
3 19 award reasonable attorney fees and actual damages. If the  
3 20 court determines that the mechanic's lien was filed in bad  
3 21 faith or the supporting affidavit was materially false, the  
3 22 court shall award the owner an amount not less than five  
3 23 hundred dollars.

3 24 Sec. 6. Section [631.1](#), Code 1999, is amended by adding the  
3 25 following the new subsection:

3 26 NEW SUBSECTION. 6. The district court sitting in small  
3 27 claims has concurrent jurisdiction of an action to challenge a  
3 28 mechanic's lien pursuant to sections 572.24 and 572.32.

3 29 EXPLANATION

3 30 This bill amends sections of Code chapter 572 relating to  
3 31 mechanic's liens.

3 32 The bill provides a procedure for creating constructive  
3 33 notice of the forfeiture and cancellation of a mechanic's lien  
3 34 upon the failure to acknowledge satisfaction of the lien. The  
3 35 bill provides a procedure for creating constructive notice of  
4 1 the forfeiture and cancellation of a mechanic's lien upon  
4 2 failure to timely file an action to enforce a mechanic's lien.  
4 3 The bill provides a procedure for creating constructive notice  
4 4 of the forfeiture and cancellation of a mechanic's lien upon  
4 5 the failure to commence an action to enforce the lien within  
4 6 30 days after a demand to commence action is served.

4 7 The bill creates an action to challenge a mechanic's lien  
4 8 which may be commenced in either district court or small  
4 9 claims court. The bill provides for the recording in the  
4 10 mechanic's lien book of the proper amount of the lien or the  
4 11 cancellation of the lien when the court makes such findings.  
4 12 The bill provides that, in an action to challenge a mechanic's

4 13 lien, the prevailing party shall be awarded reasonable  
4 14 attorney fees and actual damages. The bill provides that if  
4 15 the mechanic's lien was filed in bad faith or the supporting  
4 16 affidavit was materially false, the court shall award the  
4 17 owner an amount not less than \$500.  
4 18 LSB 1213DP 78  
4 19 tm/gg/8