

10/10/89 Amend & DO PASS/H-3926, 4-6-89, (P1407)

FILED MAR 20 1989

SENATE FILE 508
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 357)

Passed Senate, Date 4-3-89 (p.1129) Passed House, Date 4-12-89 (p.1537)
Vote: Ayes 46 Nays 0 Vote: Ayes 83 Nays 7

Approved May 15 1989

Repassed the Senate 4-20-89 (p.1578) Repassed House 2-26-89 (p.2032)
Ayes 47 Nays 0 A BILL FOR AYES 100 NAYS 0

3107 1 An Act relating to common liens on real or personal property and
3200 2 providing a remedy.

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

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SF 508

3/10/2004 all-

1 Section 1. NEW SECTION. 584.5 NONSTATUTORY LIENS.
 2 Any claimant, prior to filing a common law lien, an
 3 equitable servitude lien, or a lien of similar nature which is
 4 other than a statutory lien, shall first give notice to the
 5 owner of the real or personal property against which the lien
 6 is sought or, if the lien is filed by the owner of the real or
 7 personal property, notice shall first be given to any party
 8 with a lien or other interest in the property. The notice
 9 shall be given pursuant to the Iowa rules of civil procedure.
 10 Prior to the filing of the lien by the clerk of the district
 11 court in the county where the real or personal property is
 12 located, the court shall hold a hearing to determine the
 13 validity of the lien. The claimant shall be required to show
 14 the validity of the lien by a preponderance of the evidence.
 15 If the court determines the claimant has willfully and
 16 maliciously attempted to file the lien, a judgment in an
 17 amount no greater than five hundred dollars may be entered
 18 against the claimant and in favor of the resisting party for
 19 the payment of costs and reasonable attorneys' fees incurred
 20 in the action. Any lien, as described in this section which
 21 is filed of record other than as provided in this section is
 22 null and void and of no force or effect.

3926

EXPLANATION

24 This bill provides that prior to the filing of common law
 25 lien, an equitable servitude lien, or lien of similar nature,
 26 the district court shall hold a hearing to determine the
 27 validity of the lien. Notice must be provided by the claimant
 28 to the owner of the real or personal property against which
 29 the lien is sought, or to any other person who has a lien
 30 against the property or who has other interest in the
 31 property. If the court determines that the attempt to file
 32 the lien was willful and malicious, a judgment of up to \$500
 33 for costs and attorneys' fees may be entered against the party
 34 attempting to file the lien. Any liens filed in a manner
 35 other than as provided in this section are null and void.

SENATE FILE 508

H-3988

1 Amend amendment, H-3926, to Senate File 508, as
2 passed by the Senate, as follows:

3 1. Page 1, by striking lines 3 through 9 and
4 inserting the following:

5 "_____. By striking everything after the enacting
6 clause and inserting the following:

7 "Section 1. NEW SECTION. 584.5 NONSTATUTORY
8 LIENS.

9 A person claiming a common law lien, an equitable
10 servitude lien, or a lien of similar nature which is
11 other than a statutory lien, shall first give notice
12 to any legal and equitable owners and persons in
13 possession of the real or personal property against
14 which the lien is sought. If the lien is filed by an
15 owner of the real or personal property, notice shall
16 first be given to any person with a lien or other
17 interest in the property. The notice shall be given
18 pursuant to the Iowa rules of civil procedure. Prior
19 to the filing of the lien in any office of record in
20 the county where the real or personal property is
21 located, the district court in such county shall hold
22 a hearing to determine the validity of the lien.
23 Pendency of such a proceeding shall not be indexed
24 under section 617.10 and shall not constitute lis
25 pendens or constructive notice to third persons under
26 sections 617.11 through 617.15. A bona fide purchaser
27 takes title to the real or personal property free of
28 any claims arising from such proceeding unless proper
29 filing is made in the office of the county recorder as
30 provided in this section. The person claiming the
31 lien is required to prove the validity of the lien by
32 a preponderance of the evidence. If the court
33 determines the person claiming the lien has, willfully
34 and maliciously proceeded, a judgment in an amount no
35 greater than five hundred dollars may be entered
36 against the person claiming the lien in favor of any
37 resisting party for damages, plus costs and reasonable
38 attorneys' fees incurred by the resisting party. A
39 lien, as described in this section, shall not be filed
40 in any office of record other than as provided in this
41 section and if such lien is filed other than as
42 provided in this section, the lien shall be null and
43 void and of no force or effect. If after hearing the
44 district court enters an order determining the lien to
45 be valid, the person claiming the lien shall file a
46 certified copy of the order in the office of the
47 county recorder where the real or personal property is
48 located. An appeal from the district court arising
49 from such proceeding is by certiorari.

50 Sec. 2. This Act, being deemed of immediate

H-3988

Page 2

1 importance, takes effect upon enactment."

2 _____. Title page, line 1, by striking the word

3 "common".

4 _____. Title page, line 2, by inserting after the

5 word "remedy" the following: "and an effective

6 date".

By JAY of Appanoose

H-3988 FILED APRIL 12, 1989

ADOPTED 4-12-89 (p.1537)

SENATE FILE 508

H-3926

*3988
amended
all*

1 Amend Senate File 508, as passed by the Senate, as

2 follows:

3 1. Page 1, by inserting after line 22 the fol-

4 lowing:

5 "Sec. _____. This Act, being deemed of immediate

6 importance, is effective upon enactment."

7 2. Title page, line 2, by inserting after the

8 word "remedy" the following: "and an effective date".

9 3. Renumber as necessary.

By COMMITTEE ON JUDICIARY AND
LAW ENFORCEMENT

JAY of Appanoose, Chairperson

H-3926 FILED APRIL 7, 1989

Adopted 4-12-89 (p.1537)

HOUSE AMENDMENT TO
SENATE FILE 508

S-3707

1 Amend Senate File 508, as passed by the Senate, as
2 follows:

3 1. By striking everything after the enacting
4 clause and inserting the following:

5 "Section 1. NEW SECTION. 584.5 NONSTATUTORY
6 LIENS.

7 A person claiming a common law lien, an equitable
8 servitude lien, or a lien of similar nature which is
9 other than a statutory lien, shall first give notice
10 to any legal and equitable owners and persons in
11 possession of the real or personal property against
12 which the lien is sought. If the lien is filed by an
13 owner of the real or personal property, notice shall
14 first be given to any person with a lien or other
15 interest in the property. The notice shall be given
16 pursuant to the Iowa rules of civil procedure. Prior
17 to the filing of the lien in any office of record in
18 the county where the real or personal property is
19 located, the district court in such county shall hold
20 a hearing to determine the validity of the lien.

21 Pendency of such a proceeding shall not be indexed
22 under section 617.10 and shall not constitute lis
23 pendens or constructive notice to third persons under
24 sections 617.11 through 617.15. A bona fide purchaser
25 takes title to the real or personal property free of
26 any claims arising from such proceeding unless proper
27 filing is made in the office of the county recorder as
28 provided in this section. The person claiming the
29 lien is required to prove the validity of the lien by
30 a preponderance of the evidence. If the court

31 determines the person claiming the lien has, willfully
32 and maliciously proceeded, a judgment in an amount no
33 greater than five hundred dollars may be entered
34 against the person claiming the lien in favor of any
35 resisting party for damages, plus costs and reasonable
36 attorneys' fees incurred by the resisting party. A
37 lien, as described in this section, shall not be filed
38 in any office of record other than as provided in this
39 section and if such lien is filed other than as
40 provided in this section, the lien shall be null and
41 void and of no force or effect. If after hearing the
42 district court enters an order determining the lien to
43 be valid, the person claiming the lien shall file a
44 certified copy of the order in the office of the
45 county recorder where the real or personal property is
46 located. An appeal from the district court arising
47 from such proceeding is by certiorari.

48 Sec. 2. This Act, being deemed of immediate
49 importance, takes effect upon enactment."

50 2. Title page, line 1, by striking the word

S-3707

Page 2

1 "common".

2 3. Title page, line 2, by inserting after the

3 word "remedy" the following: "and an effective date".

RECEIVED FROM THE HOUSE

S-3707 FILED APRIL 14, 1989

Senate concurred 4-20-89 (p.1578)

SENATE FILE 508

S-3762

1 Amend the House amendment, S-3707, to Senate File

2 508, as passed by the Senate, as follows:

3 1. Page 1, by striking lines 32 through 35 and

4 inserting the following: "and maliciously proceeded,

5 a judgment may be entered against the person claiming

6 the lien in favor of any resisting party for

7 reasonable damages, including actual damages, costs,

8 and reasonable".

By JOE WELSH

S-3762 FILED APRIL 18, 1989

adopted 4-20-89 (p.1577)

SENATE AMENDMENT TO HOUSE AMENDMENT TO SENATE FILE 508

H-4146

1 Amend the House amendment, S-3707, to Senate File

2 508, as passed by the Senate, as follows:

3 1. Page 1, by striking lines 32 through 35 and

4 inserting the following: "and maliciously proceeded,

5 a judgment may be entered against the person claiming

6 the lien in favor of any resisting party for

7 reasonable damages, including actual damages, costs,

8 and reasonable".

RECEIVED FROM THE SENATE

H-4146 FILED APRIL 20, 1989

House concurred 4-20-89 (p.2082)

SENATE FILE 508

AN ACT
RELATING TO LIENS ON REAL OR PERSONAL PROPERTY AND PROVIDING
A REMEDY AND AN EFFECTIVE DATE.

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

Section 1. NEW SECTION. 584.5 NONSTATUTORY LIENS.

A person claiming a common law lien, an equitable servitude lien, or a lien of similar nature which is other than a statutory lien, shall first give notice to any legal and equitable owners and persons in possession of the real or personal property against which the lien is sought. If the lien is filed by an owner of the real or personal property, notice shall first be given to any person with a lien or other interest in the property. The notice shall be given pursuant to the Iowa rules of civil procedure. Prior to the filing of the lien in any office of record in the county where the real or personal property is located, the district court in such county shall hold a hearing to determine the validity of the lien. Pendency of such a proceeding shall not be indexed under section 617.10 and shall not constitute lis pendens or constructive notice to third persons under sections 617.11 through 617.15. A bona fide purchaser takes title to the real or personal property free of any claims arising from such proceeding unless proper filing is made in the office of the county recorder as provided in this section. The person claiming the lien is required to prove the validity of the lien by a preponderance of the evidence. If the court determines the person claiming the lien has, willfully and maliciously proceeded, a judgment may be entered against the person claiming the lien in favor of any resisting party for reasonable damages, including actual damages, costs, and reasonable attorneys' fees incurred by the resisting party. A lien, as described in this section, shall not be filed in any office of record other than as provided in this section and if

such lien is filed other than as provided in this section, the lien shall be null and void and of no force or effect. If after hearing the district court enters an order determining the lien to be valid, the person claiming the lien shall file a certified copy of the order in the office of the county recorder where the real or personal property is located. An appeal from the district court arising from such proceeding is by certiorari.

Sec. 2. This Act, being deemed of immediate importance, takes effect upon enactment.

JO ANN ZIMMERMAN
President of the Senate

DONALD D. AVENSON
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 508, Seventy-third General Assembly.

JOHN F. DWYER
Secretary of the Senate

Approved *May 15*, 1989

TERRY E. BRANSTAD
Governor