

H. 3/4/98 Judiciary

FILED FEB 25 1998

SENATE FILE 2336
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SF 2241)

Passed Senate, Date ^(S34) 3/3/98 Passed House, Date _____
Vote: Ayes 48 Nays 0 Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act requiring that the clerk of the district court confirm
2 that notice has been given to required parties prior to the
3 filing of a nonstatutory lien.

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

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S.F. 2336

1 Section 1. Section 575.1, Code 1997, is amended to read as
2 follows:

3 575.1 NONSTATUTORY LIENS.

4 1. A person claiming a common law lien, an equitable
5 servitude lien, or a lien of similar nature which is other
6 than a statutory lien, shall first give notice to any legal
7 and equitable owners and persons in possession of the real or
8 personal property against which the lien is sought.

9 a. If the lien is filed by an owner of the real or
10 personal property, notice shall first be given to any person
11 with a lien or other interest in the property.

12 b. The notice shall be given pursuant to the Iowa rules of
13 civil procedure.

14 2. Prior to the filing of the lien in any office of record
15 in the county where the real or personal property is located,
16 the following shall occur:

17 a. The clerk of the district court shall confirm that all
18 notices required pursuant to subsection 1 have been given.

19 b. The district court in such county shall hold a hearing
20 to determine the validity of the lien.

21 (1) Pendency of such a proceeding shall not be indexed
22 under section 617.10 and shall not constitute lis pendens or
23 constructive notice to third persons under sections 617.11
24 through 617.15.

25 (2) A bona fide purchaser takes title to the real or
26 personal property free of any claims arising from such
27 proceeding unless proper filing is made in the office of the
28 county recorder as provided in this section.

29 (3) The person claiming the lien is required to prove the
30 validity of the lien by a preponderance of the evidence.

31 (4) If the court determines the person claiming the lien
32 has willfully and maliciously proceeded, a judgment may be
33 entered against the person claiming the lien in favor of any
34 resisting party for reasonable damages, including actual
35 damages, costs, and reasonable attorneys' fees incurred by the

1 resisting party.

2 3. A lien, as described in this section, shall not be
3 filed in any office of record other than as provided in this
4 section and if such lien is filed other than as provided in
5 this section, the lien shall be null and void and of no force
6 or effect.

7 4. If, after hearing the district court enters an order
8 determining the lien to be valid, the person claiming the lien
9 shall file a certified copy of the order in the office of the
10 county recorder where the real or personal property is
11 located.

12 5. An appeal from the district court arising from such
13 proceeding is by certiorari.

14 EXPLANATION

15 This bill requires, before the clerk of the district court
16 permits the filing of a nonstatutory lien under Code section
17 575.1, that the clerk confirm that the required notices have
18 been given to the necessary parties.

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